OMNIBUS CERTIFICATE OF MANAGECO MANAGER LLC

The undersigned, the duly authorized manager of MANAGECO MANAGER LLC, a Delaware limited liability company ("Manageco Manager"), which is the manager of MANAGECO IX, LLC, a Delaware limited liability company ("Manageco"), which is the managing member of DRA GROWTH AND INCOME MASTER FUND IX, LLC, a Delaware limited liability company ("Guarantor"), which is the sole member of DRA FUND IX ACQUISITION LLC, a Delaware limited liability company ("Acquisition"), which is the sole member G&I IX INVESTMENT LAKE POINTE LLC, a Delaware limited liability company ("Investment"), which is the managing member of G&I IX MJW LAKE POINTE JV LLC, a Delaware limited liability company ("JV"), which is the sole member of G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company ("Borrower"), hereby certifies to CANADIAN IMPERIAL BANK OF COMMERCE acting through its New York Branch as Administrative Agent ("Lender") in connection with that certain loan in the original principal amount of $13,815,000.00 ("Loan"), that:

1. Each person named on Exhibit A is a duly elected, qualified and acting officer of Manageco holding the title set forth opposite their name, and the signature appearing opposite of such name is the true and correct signature of such person. Each person named is authorized individually to execute on behalf of Manageco, in its capacity as the managing member of, and on behalf of, Guarantor, all instruments to be delivered by Guarantor in connection with the Loan.

2. Each person named on Exhibit B is a duly elected, qualified and acting officer of Investment holding the title set forth opposite their name, and the signature appearing opposite of such name is the true and correct signature of such person. Each person named is authorized individually to execute on behalf of Investment, in its capacity as the managing member of JV, in its capacity as the sole member of Borrower, all instruments to be delivered by Borrowers in connection with the Loan.

3. Attached hereto as Exhibit C is a true, complete and correct copy of the Certificate of Formation of Manageco, as duly filed with the Secretary of State of the State of Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

4. Attached hereto as Exhibit D is a true, complete and correct copy of the redacted Amended and Restated Liability Company Agreement for Manageco, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

5. Attached hereto as Exhibit E is a true, correct and complete copy of Certificate of Good Standing of Manageco issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of Manageco as a domestic limited liability company of the State of Delaware.

6. Attached hereto as Exhibit F is a true, complete and correct copy of the Certificate of Formation of Guarantor, as duly filed with the Secretary of State of the State of

Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

7. Attached hereto as Exhibit G is a true, complete and correct copy of the redacted Amended and Restated Limited Liability Company Agreement for Guarantor and redacted Amendment to Amended and Restated Limited Liability Company Agreement for Guarantor, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

8. Attached hereto as Exhibit H is a true, correct and complete copy of Certificate of Good Standing of Guarantor issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of Guarantor as a domestic limited liability company of the State of Delaware.

9. Attached hereto as Exhibit I is a true, complete and correct copy of the Certificate of Formation of Acquisition, as duly filed with the Secretary of State of the State of Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

10. Attached hereto as Exhibit J is a true, complete and correct copy of the redacted Limited Liability Company Agreement for Acquisition, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

11. Attached hereto as Exhibit K is a true, correct and complete copy of Certificate of Good Standing of Acquisition issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of Acquisition as a domestic limited liability company of the State of Delaware.

12. Attached hereto as Exhibit L is a true, complete and correct copy of the Certificate of Formation of Investment, as duly filed with the Secretary of State of the State of Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

13. Attached hereto as Exhibit M is a true, complete and correct copy of the Limited Liability Company Agreement for Investment, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

14. Attached hereto as Exhibit N is a true, correct and complete copy of Certificate of Good Standing of Investment issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of Investment as a domestic limited liability company of the State of Delaware.

15. Attached hereto as Exhibit O is a true, complete and correct copy of the Certificate of Formation of JV, as duly filed with the Secretary of State of the State of Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

16. Attached hereto as Exhibit P is a true, complete and correct copy of the Limited Liability Company Operating Agreement for JV, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

17. Attached hereto as Exhibit Q is a true, correct and complete copy of Certificate of Good Standing of JV issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of JV as a domestic limited liability company of the State of Delaware.

18. Attached hereto as Exhibit R is a true, complete and correct copy of the Certificate of Formation of Borrower, as duly filed with the Secretary of State of the State of Delaware, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

19. Attached hereto as Exhibit S is a true, complete and correct copy of the Limited Liability Company Agreement for Borrower, which has not been amended, modified or rescinded as of the date hereof and is in full force and effect as of the date hereof.

20. Attached as Exhibit T is the true, correct and complete copy of the Application for Certificate of Authority to Transact Business in Indiana for the Borrower, as duly filed with the Office of The Secretary of State of Indiana, which have not been amended, modified or rescinded as of the date hereof and are in full force and effect as of the date hereof.

21. Attached hereto as Exhibit U is a true, correct and complete copy of Certificate of Good Standing of Borrower issued by the Secretary of State of the State of Delaware on October 30, 2018, which confirms the existence of Borrower as a domestic limited liability company of the State of Delaware.

22. Attached hereto as Exhibit V is a true, correct and complete copy of Certificate of Status of Borrower, issued by the Secretary of State of the State of Indiana, on October 31, 2018, which confirms that Borrower is authorized to transact business in the State of Florida and has "active" status in the State of Indiana.

23. Attached hereto as Exhibit W is a true, complete and accurate copy of the Written Consent in Lieu of Meeting of Manageco Manager LLC, which consent authorizes the execution and delivery in connection with the Loan of certain loan documents by the Company, as the managing member of JV as the sole member of the Borrower, and which consent has not been amended, modified or rescinded as of the date hereof and is in full force and effect on the date hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;

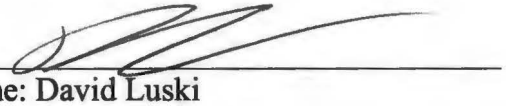
SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

TO
CERTIFICATE
FOR
MANAGECO MANAGER LLC

IN WITNESS WHEREOF, the undersigned has executed this Certificate and caused this Certificate to be delivered this 5th day of November, 2018.

MANAGECO MANAGER LLC

By: 

Name: David Luski
Title: Manager

EXHIBIT A

Name	Office:	Signature
David Luski	President	
Jean Marie Apruzzese	Senior Vice President and Secretary	
Andrew E. Peltz	Vice President and Assistant Secretary	
David Gray	Vice President and Treasurer	
Jason Borreo	Vice President	
Valla Brown	Vice President	
Adam Breen	Vice President	

EXHIBIT A

Name	Office:	Signature
David Luski	President	
Jean Marie Apruzzese	Senior Vice President and Secretary	
Andrew E. Peltz	Vice President and Assistant Secretary	
David Gray	Vice President and Treasurer	
Jason Borreo	Vice President	
Valla Brown	Vice President	
Adam Breen	Vice President	

EXHIBIT B

Name	Office:	Signature
David Luski	President	
Jean Marie Apruzzese	Senior Vice President and Secretary	
Andrew E. Peltz	Vice President and Assistant Secretary	
David Gray	Vice President and Treasurer	
Jason Borreo	Vice President	
Valla Brown	Vice President	
Adam Breen	Vice President	

EXHIBIT B

Name	Office:	Signature
David Luski	President	
Jean Marie Apruzzese	Senior Vice President and Secretary	
Andrew E. Peltz	Vice President and Assistant Secretary	
David Gray	Vice President and Treasurer	
Jason Borreo	Vice President	
Valla Brown	Vice President	
Adam Breen	Vice President	

EXHIBIT C

CERTIFICATE OF FORMATION OF MANAGECO

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "MANAGECO IX, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE SIXTEENTH DAY OF MARCH, A.D. 2016, AT 12:44 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "MANAGECO IX, LLC".

5990291 8100H
SR# 20186623653

Authentication: 203408822
Date: 09-12-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:44 PM 03/16/2016
FILED 12:44 PM 03/16/2016
SR 20161684864 - File Number 5990291

CERTIFICATE OF FORMATION OF

MANAGECO IX, LLC

Under Section 18-201 of the
Delaware Limited Liability Company Act

1. The name of the limited liability company is Manageco IX, LLC (the "Company").

2. The address of the registered office of the Company in Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Delaware 19808.

3. The name and address of the registered agent of the Company upon whom process against it may be served is Corporation Service Company, 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of March 16, 2016.

By: _____
Name: David Luski
Title: Authorized Person

EXHIBIT D

REDACTED AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF MANAGECO

MANAGECO IX, LLC

(a Delaware Limited Liability Company)

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Dated as of July 8, 2016

MANAGECO IX, LLC

(a Delaware Limited Liability Company)

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT

This AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of MANAGECO IX, LLC (the "Company") is entered into and shall be effective as of July 8, 2016, among MANAGECO MANAGER LLC, a Delaware limited liability company, as the manager of the Company (the "Manager"), and each Person (as defined herein) whose name is set forth on such Person's Schedule A hereto, as a member of the Company (each, a "Member" and collectively, the "Members").

WHEREAS, the Company was formed pursuant to a Certificate of Formation of the Company, which was executed by an "authorized person" within the meaning of the Act and filed in the office of the Secretary of State of the State of Delaware on March 16, 2016;

WHEREAS, the Withdrawing Member entered into a Limited Liability Company Agreement dated as of March 16, 2016 (the "Original Agreement");

WHEREAS, the Withdrawing Member wishes to withdraw from the Company as a member of the Company immediately after the admission of the Members on the date hereof, and the Members wish to be admitted to the Company as members thereof; and

WHEREAS, the Members desire to enter into this Agreement to define formally and express the terms of the Company and their rights and obligations with respect thereto and to amend and restate in its entirety the Original Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements made herein and intending to be legally bound hereby, the parties hereby amend and restate the Original Agreement in its entirety to read as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Accountant" means the independent certified public accountant selected by the Manager.

"Act" shall have the meaning ascribed to it in Section 2.1 hereof.

"Affiliate" means, when used with reference to a specified Person, (i) any Person that directly or indirectly controls or is controlled by or is under common

ARTICLE IV

DISTRIBUTIONS

Section 4.1. Distributions of Distributable Funds. Except as provided in Section 8.2 hereof relating to distributions upon the dissolution or liquidation of the Company and subject to Section 4.2 hereof, Distributable Funds shall be distributed to the Members in proportion to their respective Company Interests.

Section 4.2. Reserve Accounts. The Manager may maintain such reserve accounts as it deems reasonably necessary or desirable for known or existing obligations in the conduct of the business of the Company.

Section 4.3. Restriction on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company (and the Manager on behalf of the Company) shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate § 18-607 of the Act.

ARTICLE V

MANAGEMENT

Section 5.1. Management of the Company. The overall management and control of the business and affairs of the Company shall be vested in the Manager. David Luski, or such other Member approved from time to time by Members holding two-thirds of the Company Interests, shall be designated as the "tax matters partner" of the Company for purposes of Section 6231(a)(7) of the Code for taxable years of the Company beginning in or before 2017, and David Luski (or such person as may be designated by the Manager in its sole discretion) shall be designated, in the manner prescribed by applicable law, as the partnership representative authorized to act on behalf of the Company in respect of Company audits relating to tax returns filed for taxable years beginning after 2017 (David Luski or such other person, the "Tax Matters Partner").

Section 5.2. Authority of the Manager. In managing the business of the Company pursuant to this Agreement, the Manager shall have the full and absolute discretionary power and authority to take any and all action and do anything and everything it deems necessary or appropriate in performing its duties hereunder, including, without limitation, the authority to enter into, execute, acknowledge, deliver and perform on behalf of the Company any and all contracts, agreements and other instruments or documents necessary, appropriate, convenient or incidental to carry out such powers in furtherance of the purposes of the Company, subject only to the provisions of Section 5.1 hereof.

Section 5.3. Liability of the Manager; Indemnification. None of the Manager, or its officers, directors, stockholders, employees, agents, Affiliates, successors or assigns or any Officer (individually, a "Responsible Party" and, collectively, the "Responsible Parties") shall be liable, responsible or accountable to the Company or its Members for any loss or damage incurred by the Company or any Member for any act or

EXHIBIT E

CERTIFICATE OF GOOD STANDING ISSUED BY SECRETARY OF STATE OF DELAWARE OF MANAGECO

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "MANAGECO IX, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "MANAGECO IX, LLC" WAS FORMED ON THE SIXTEENTH DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

5990291 8300

Authentication: 203711851

SR# 20187394545

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT F

CERTIFICATE OF FORMATION OF GUARANTOR

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "DRA GROWTH AND INCOME MASTER FUND IX, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE THIRTIETH DAY OF MARCH, A.D. 2016, AT 7:16 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "DRA GROWTH AND INCOME MASTER FUND IX, LLC".

6003847 8100H
SR# 20180380250

Authentication: 202003168
Date: 01-19-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

CERTIFICATE OF FORMATION OF

DRA GROWTH AND INCOME MASTER FUND IX, LLC

Under Section 18-201 of the
Delaware Limited Liability Company Act

1. The name of the limited liability company is DRA Growth and Income Master Fund IX, LLC (the "Company").

2. The address of the registered office of the Company in Delaware is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Delaware 19808.

3. The name and address of the registered agent of the Company upon whom process against it may be served is Corporation Service Company, 2711 Centerville Road, Suite 400, County of New Castle, Wilmington, Delaware 19808.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation as of March 30, 2016.

By: _____
Name: David Luski
Title: Authorized Person

DOC ID - 23971112.1

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:16 PM 03/30/2016
FILED 07:16 PM 03/30/2016
SR 20161980498 - File Number 6003847

EXHIBIT G

REDACTED AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF GUARANTOR AND REDACTED AMENDMENT TO AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT FOR GUARANTOR

EXECUTION VERSION

DRA GROWTH AND INCOME MASTER FUND IX, LLC

(A Delaware Limited Liability Company)

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

THE COMPANY INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "33 ACT"), THE SECURITIES LAWS OF ANY STATE IN THE UNITED STATES OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. COMPANY INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND ARE SUBJECT TO SIGNIFICANT RESTRICTIONS ON TRANSFERABILITY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS AND THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT. THEREFORE, MEMBERS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

TABLE OF CONTENTS

DRA GROWTH AND INCOME MASTER FUND IX, LLC

(A Delaware Limited Liability Company)

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

This Amended and Restated Limited Liability Company Agreement of DRA Growth and Income Master Fund IX, LLC is made as of July 8, 2016 by and among Manageco IX, LLC, a Delaware limited liability company, as the managing member (together with any additional or successor managing member hereafter admitted as provided herein, the "*Managing Member*"), and each Person (as defined below) who is executing, either directly or by an attorney-in-fact, this Agreement (as defined below) and whose name is set forth on the Register (as amended from time to time) under the heading "Investor Member" (each, an "*Investor Member*" and, collectively, the "*Investor Members*").

RECITALS

WHEREAS, the Company was formed pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.) and a Certificate of Formation of the Company dated as of March 30, 2016 as filed in the office of the Secretary of State of the State of Delaware on March 30, 2016; and

WHEREAS, the Managing Member has entered into a Limited Liability Company Agreement dated as of March 30, 2016 (the "*Original Agreement*"); and

WHEREAS, the Managing Member desires to amend and restate the Original Agreement in its entirety and to continue such limited liability company.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound hereby, hereby amend and restate the Original Agreement in its entirety to read as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"*AAA*" has the meaning ascribed in Section 4.6(e) hereof.

"*Accountant*" has the meaning ascribed in Section 7.1 hereof.

"*Acquisition Period*" means the period from and including the Initial Closing Date to and including the third anniversary of the Final Closing Date, unless

extended by the Managing Member with the approval of Investor Members having Company Interests aggregating not less than sixty-seven percent (67%).

"*Act*" has the meaning ascribed in Section 2.1 hereof.

"*Adjusted Capital Account Deficit*" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant period, after giving effect to the following adjustments:

(i) credit to such Capital Account of any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1) or pursuant to the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

This definition of Adjusted Capital Account Deficit and the limitations and allocations set forth in Sections 3.6(b)(ii) and 3.6(d)(iv) hereof are together intended to comply with Treasury Regulations Section 1.704-1(b)(2)(ii)(d), and shall be so interpreted.

"*Advisor Representative*" has the meaning ascribed in Section 4.6(d) hereof.

"*Advisory Fee*" has the meaning ascribed in Section 5.3 hereof.

"*Affiliate*" means, when used with reference to a specified Person, (i) any Person that directly or indirectly controls, is controlled by or is under common control with the specified Person; (ii) any Person that is an officer, director, partner, member or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, director, partner, member or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that directly or indirectly is the beneficial owner of ten percent (10%) or more of any class of voting securities of, or otherwise has a substantial beneficial interest in, the specified Person, or of which the specified Person is directly or indirectly the owner of ten percent (10%) or more of any class of voting securities or in which the specified Person has a substantial beneficial interest and (iv) any relative or spouse of the specified Person.

"*Agreement*" means this Amended and Restated Limited Liability Company Agreement, excluding Annex A and B hereto, as from time to time amended, modified, supplemented or restated.

"*Appraiser*" means a M.A.I. real estate appraiser (i) licensed in the real estate market of the geographic area in which the real property constituting or underlying the Real Estate Investment to be appraised is located, (ii) being familiar with the prices paid for properties in such area comparable to the property it is engaged to appraise, and (iii) having suitable and comprehensive experience in appraising properties in the real

estate market of the geographic area in which the real property constituting the Real Estate Investment to be appraised is located.

"*Asset Value*" has the meaning ascribed in Section 7.3 hereof.

"*BHC Act*" means the U.S. Bank Holding Company Act of 1956, as amended from time to time.

"*BHC Member*" means an Investor Member that (i) is subject to the BHC Act, or is directly or indirectly "*controlled*" (as that term is defined in the BHC Act) by a company that is subject to the BHC Act and (ii) so indicates in writing to the Managing Member on or before the closing at which such Investor Member is admitted to the Company.

"*Beneficial Ownership*" has the meaning set forth in a Declaration. The term "*Beneficially Owned*" has a correlative meaning.

"*Benefit Plan Investor*" means a "benefit plan investor" as defined in Section 3(42) of ERISA.

"*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or obliged by law to close.

"*Calculation Date*" means the date of each proposed distribution pursuant to Section 4.1, or, for purposes of Section 3.6(a)(ii) hereof, the day on which the Accountant computes the amount to be allocated pursuant to such provision for any Fiscal Year.

"*Calculation Period*" means the period from a respective Contribution Date to a Calculation Date.

"*Capital Account*" means, with respect to any Member, the aggregate Capital Contributions by such Member to the Company, as adjusted pursuant to Section 3.5 hereof.

"*Capital Contribution*" means the total amount of cash capital contributions to the Company (prior to the deduction of expenses) by all the Members, or any one Member, or the predecessor holders of the Company Interests, or any portion thereof, of such Members or Member, as the context may require, less any Refunded Capital Contribution, any Refunded Organizational Costs, any Refunded Acquisition Period Contribution and any portion of any Payment Amount not applied to fund a Real Estate Investment or to pay, satisfy or discharge any fees, taxes, expenses or other obligations and returned to such Member pursuant to Section 3.2(e).

"*Cash From Operations*" means, with respect to any period, all cash receipts from operations in the ordinary course of business, including, without limitation, any rentals, tenant reimbursements, distributions from entities in which the Company has

an equity interest, income on Short-Term Investments, sales of personal property not constituting a Sale of a Real Estate Investment and interest collected on loans made by the Company, without deduction for depreciation and similar non-cash charges, but after deducting payments during such period for operating cash expenditures and required distributions (including Advisory Fees, Severance Distributions and other amounts payable or distributable by the Company to the Managing Member hereunder) in connection with the Company and its investments, and after deducting debt service and capital expenditures with respect to investments unless paid from reserves or Sale and/or Financing Proceeds, and after deducting any amounts set aside for the restoration, increase or creation of reserves, but in no event shall "*Cash From Operations*" include any Sale and/or Financing Proceeds or tenant security deposits.

"*Catch-Up Contribution*" has the meaning ascribed in Section 2.8(b)(ii) hereof.

"*Cause*" means a determination by a final decision (after all appeals and the expiration of time to appeal) by a court of competent jurisdiction or an arbitrator that the Managing Member (i) has acted in a manner that constitutes fraud against the Company, a reckless disregard of its duties to the Company or a material breach of its fiduciary duties to the Company, (ii) has engaged in willful misconduct, a willful material violation of law or bad faith in the performance of its duties to the Company, (iii) was grossly negligent in performing its duties hereunder or otherwise in connection with any investment by the Company in a manner that has a material adverse effect on the Company or (iv) has materially breached this Agreement.

"*Certificate*" has the meaning ascribed in Section 3.4(c).

"*Certificate of Cancellation*" has the meaning ascribed in the Act.

"*Certificate of Formation*" means the Certificate of Formation of the Company filed with the office of the Secretary of State of the State of Delaware on March 30, 2016, as the same may from time to time be amended, corrected or restated.

"*Client Representatives*" has the meaning ascribed in Section 4.6(d) hereof.

"*Code*" means the United States Internal Revenue Code of 1986, as amended (or, with respect to any provision of the Code referred to herein, any corresponding provision of any succeeding law).

"*Co-Investment*" has the meaning ascribed in Section 5.12 hereof.

"*Commitment*" with respect to any Member means the aggregate Purchase Price for all Units Committed of such Member, as the same may be adjusted as provided in Sections 2.8 and 3.2(b) hereof or as a result of the exercise of remedies in respect of a Defaulting Member pursuant to Section 3.3.

"*Company*" means the limited liability company contemplated by this Agreement and formed on the filing of the Certificate of Formation.

"*Company Costs*" has the meaning ascribed in Section 6.3 hereof.

"*Company Interest*" of a Member means a Member's limited liability company interest in the Company, including a percentage share of the profits and losses of the Company and a Member's rights to receive distributions of the Company's assets in accordance with the provisions of this Agreement and the Act. The Company Interests of each Member shall be the percentage determined by dividing such Member's Units Committed by the total Units Committed; *provided, however*, that for purposes of calculating any Company Interest required for any matter requiring, or submitted for, approval, vote, consent or decision of the Members, (i) any Defaulting Member's Company Interests shall be disregarded in such calculation in accordance with Section 3.3(a) hereof and (ii) any BHC Member's Company Interest in excess of 4.99% of the aggregate voting Company Interests shall be disregarded in such calculation in accordance with Section 5.11 hereof.

"*Company Reports*" has the meaning ascribed in Section 7.2(d) hereof.

"*Compensatory Interests*" has the meaning ascribed in Section 11.14 hereof.

"*Confidential Information*" has the meaning ascribed in Section 7.2(f) hereof.

"*Conflicts*" means any transaction between the Managing Member and/or any of its Affiliates and the Company or services provided by the Managing Member and/or any of its Affiliates to the Company, other than those transactions and services contemplated by and performed in accordance with Section 5.3(a) hereof, and other than those transactions that relate to Warehoused Investments.

"*Conflicts Notice*" has the meaning ascribed in Section 5.4(a)(i) hereof.

"*Contribution Date*" has the meaning ascribed in Section 3.2(b) hereof.

"*Covered Person*" has the meaning ascribed in Section 10.1(a) hereof.

"*Credit Facility*" has the meaning ascribed in Section 5.14 hereof.

"*Credit Facility Confirmation*" has the meaning ascribed in Section 5.14 hereof.

"*Credit Facility Opinion*" has the meaning ascribed in Section 5.14 hereof.

"*Declaration*" means the Articles of Incorporation or Declaration of Trust of a REIT, as the same may be amended, modified or restated from time to time.

"*Default*" has the meaning ascribed in Section 3.3(a) hereof.

"*Defaulting Member*" has the meaning ascribed in Section 3.3(a) hereof.

"*Depreciation*" means, for each Fiscal Year or relevant portion thereof, an amount equal to the depreciation, amortization, and other cost recovery deductions allowable with respect to an asset for such period, except that if the Gross Asset Value of an asset differs from its adjusted basis for U.S. federal income tax purposes at the beginning of such year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the U.S. federal income tax depreciation, amortization and other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis.

"*Designated Co-Investment Board*" has the meaning ascribed in Section 5.4(b)(i) hereof.

"*Designated Co-Investment Board Member*" has the meaning ascribed in Section 5.4(b)(i) hereof.

"*Development Asset*" has the meaning specified in Section 5.2(g) hereof.

"*Distributable Funds*" means all Cash From Operations and Sale and/or Financing Proceeds received by the Company (or released from reserves) during any period, as reduced by the setting aside during such period of such reserves as the Managing Member may deem reasonably necessary for the discharge of liabilities or obligations of the Company to the extent that such reserves have not been deducted in the calculation of Cash From Operations or Sale and/or Financing Proceeds.

"*DRA*" means DRA Advisors LLC, a Delaware limited liability company.

"*DRA-Managed Vehicle*" has the meaning ascribed in Section 5.4(b)(i) hereof.

"*Drawdown Request*" has the meaning ascribed in Section 3.2(b) hereof.

"*Electing Non-Defaulting Member*" has the meaning ascribed in Section 3.3(d) hereof.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended (or, with respect to any provision thereof referred to herein, any corresponding provision of any succeeding law).

"*ERISA Investor Member*" means an Investor Member (i) that is a Benefit Plan Investor and (ii) so indicates in writing to the Managing Member on or before the closing at which such Investor Member is admitted to the Company.

"*ERISA Opinion*" has the meaning ascribed in Section 3.4(d) hereof.

"Excess Share Trust" has the meaning set forth in a Declaration.

"Extraordinary Compensation" has the meaning ascribed in Section 5.3(d) hereof.

"Fair Market Price of the Managing Member's Company Interest" has the meaning ascribed in Section 5.5(d) hereof.

"Feeder Fund" means DRA Growth and Income Fund IX, LLC.

"Feeder Fund Agreement" means the Amended and Restated Limited Liability Company Agreement of the Feeder Fund, dated as of the date hereof, as from time to time amended, modified, supplemented or restated.

"Final Closing Date" has the meaning ascribed in Section 2.8(b)(i) hereof.

"Financing" means any financing, refinancing or borrowing by the Company or any of its direct or indirect subsidiaries, whether secured or unsecured, and whether or not any such financing is in addition to borrowings initially made to finance the purchase of investments, but excluding in all cases any financing, refinancing or borrowing obtained from the Company or any of its direct or indirect subsidiaries.

"Fiscal Year" has the meaning ascribed in Section 2.3 hereof.

"Follow-On Investment" means any additional direct or indirect investment by the Company in any existing Real Estate Investment or portfolio of Real Estate Investments, the acquisition of which is determined by the Managing Member in its discretion to be necessary or desirable to preserve, protect or enhance the value of such Real Estate Investment(s), including, without limitation, any investment made to finance improvements or alterations to such Real Estate Investment(s), to provide working capital with respect to such Real Estate Investment(s), to acquire or develop additional phases of a Real Estate Investment or portfolio of Real Estate Investments or to make payments with respect to any financing of such Real Estate Investment(s). Except to the extent otherwise provided herein, all references to a Real Estate Investment shall be deemed to include Follow-On Investments with respect thereto.

"Fund VIII" means, collectively, DRA Growth and Income Fund VIII, LLC and DRA Growth and Income Fund VIII(A), LLC.

"Fund IX REIT" means DRA G&I Fund IX Real Estate Investment Trust.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

"Gross Asset Cost" with respect to any Real Estate Investment acquired by or on behalf of the Company, subject to adjustment as provided below, means the aggregate amount of:

(i) the gross purchase price of such Real Estate Investment, which gross purchase price shall include the cash amount paid by the Company for its interest in such Real Estate Investment and any indebtedness encumbering or otherwise related to such Real Estate Investment at or contemporaneously with the acquisition by the Company of its interest therein; and

(ii) all cash invested by the Company, and all indebtedness encumbering or otherwise related to such Real Estate Investment, in connection with the development, expansion or other capital improvement of such Real Estate Investment, excluding all amounts expended for maintenance and routine repairs.

With respect to any Real Estate Investment held by a partnership, limited liability company or other joint venture or subject to any manner of cotenancy in which the Company has a direct or indirect ownership interest, the Gross Asset Cost of such Real Estate Investment shall include the aggregate amount of the Company's equity capital invested in such Real Estate Investment and a share of all indebtedness encumbering or otherwise related to such Real Estate Investment proportionate to the Company's share of all equity capital invested in such Real Estate Investment.

"Gross Asset Value" means, with respect to any of the Company's assets, such asset's adjusted basis for U.S. federal income tax purposes except that:

(i) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of such distribution as determined by an independent appraiser selected by the Accountant;

(ii) the Gross Asset Values of all of the Company's assets shall be adjusted to equal their respective fair market values, as determined in the sole discretion of the Managing Member, as of (A) the acquisition of any additional Company Interest (or increase in its Company Interest) by any new or existing Member in exchange for more than a de minimis Capital Contribution, (B) the distribution of more than a de minimis amount of the Company's cash or property to a Member as consideration for all or a portion of an interest in the Company, (C) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g), or (D) the grant of an interest (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a member capacity in anticipation of being a Member; *provided, however*, that the adjustments pursuant to clauses (A), (B) and (D) shall be made only if the Managing Member reasonably determines such adjustment is

necessary to reflect the relative economic interest of the Members of the Company; and

(iii) to the extent that the Gross Asset Value is determined under clauses (i) or (ii) of this definition, the Gross Asset Value of such property shall be adjusted by the amount of Depreciation taken into account with respect to such asset for purposes of computing Net Profit or Net Loss.

"*Indemnifying Investor Member*" has the meaning ascribed in Section 8.2 hereof.

"*Initial Closing Date*" means July 8, 2016.

"*Investment Company Act*" means the Investment Company Act of 1940, as amended.

"*Investment Date*" means, for each Real Estate Investment, the date on which the Company makes such Real Estate Investment.

"*Investment Disclosure*" has the meaning ascribed in Section 5.12 hereof.

"*Investor Members*" has the meaning ascribed in the Preamble hereto.

"*Investor Related Taxes*" means taxes imposed pursuant to Sections 1471-1474 of the Code, or other similar laws, resulting from the status, action or inaction of a Member (or one or more if its members).

"*Key Person Event*" means if all of the individuals described in any two of clauses (i) [redacted] (ii) [redacted] and [redacted] and (iii) [redacted] are no longer substantially involved in the management of the Company.

"*Loss*" has the meaning ascribed in Section 10.2(a) hereof.

"*Managing Member*" has the meaning ascribed in the Preamble hereto. The Managing Member is also the managing member of the Feeder Fund.

"*Members*" means the Managing Member and the Investor Members unless otherwise indicated, in their capacities as members of the Company. "*Member*" means any one of the Members. Notwithstanding any provision of this Agreement to the contrary, the Members shall constitute a single class or group of members of the Company for all purposes of the Act and this Agreement.

"*Members' Board*" has the meaning ascribed in Section 5.4(a)(i) hereof.

"*Minimum Gain*" has the meaning set forth for "partnership minimum gain" in Treasury Regulations Sections 1.704-2(b)(2), 1.704-2(d) and 1.704-2(i)(5), as the context warrants.

"Net Asset Value of the Company" means, as at any date, the then fair market value of the Company's assets, decreased by the liabilities of the Company, as calculated pursuant to 3.4, 4.6 or 7.3 hereof, as applicable.

"Net Profit" and *"Net Loss"* means, for each Fiscal Year of the Company or relevant portion thereof, an amount equal to the Company's U.S. federal taxable income or loss for such year or portion, determined by the Company's accountants at the close of the Fiscal Year, including without limitation each item of the Company's income, gain, loss or deduction, adjusted as follows:

(i) all income of the Company that is exempt from U.S. federal income tax shall increase Net Profit or reduce Net Loss;

(ii) any expenditure of the Company described in Section 705(a)(2)(B) of the Code (or so treated) shall reduce Net Profit or increase Net Loss;

(iii) in calculating gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for U.S. federal income tax purposes, the basis of such property shall be its Gross Asset Value rather than its basis for U.S. federal income tax purposes;

(iv) the depreciation, amortization or other cost recovery deductions shall be computed in accordance with the definition of *"Depreciation"* hereunder;

(v) in the event the Gross Asset Value of any Company asset is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profit or Net Loss; and

(vi) notwithstanding any other provision of this definition, any items or amounts that are specially allocated pursuant to Section 3.6(d) hereof shall not be taken into account in computing Net Profit or Net Loss.

The amounts of the items of Company income, gain, loss or deduction available to be allocated pursuant to Sections 3.5, 3.6 or 3.7 of this Agreement shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"Offering Memorandum" means the Confidential Private Placement Memorandum, dated April 2016, with respect to the offering of the Units, together with any supplements thereto.

"Organizational Costs" has the meaning ascribed in Section 6.1 hereof.

"Original Agreement" has the meaning ascribed in the recitals hereto.

"Parallel Company" means any "parallel company" contemplated by the second sentence of Section 5.13 hereof.

"*Payment Amount*" has the meaning ascribed in Section 3.2(b) hereof.

"*Pass-Thru Partner*" has the meaning ascribed in Section 5.9 hereof.

"*Payment Date*" has the meaning ascribed in Section 4.6(c) hereof.

"*Person*" means any individual, sole proprietorship, corporation, general partnership, limited partnership, joint venture, association, joint stock company, bank, business or statutory trust, trust, estate, unincorporated organization, limited liability company or any other form of entity.

"*Plan Asset Regulations*" means the "plan asset" regulations set forth in 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA and as amended from time to time.

"*Preferred Return*" means a return on investment equal to [redacted] percent [redacted]%) per annum for each Investor Member on its Unreturned Capital Contributions from time to time for any Calculation Period.

"*Prime Plus Two Rate*" means the lesser of (x) the prime or base rate of interest per annum, as reported in the New York City edition of The Wall Street Journal, or if no longer in circulation, a similar publication selected in the reasonable discretion of the Managing Member, plus 200 basis points per annum and (y) the maximum rate of interest permitted by applicable law.

"*Proposed Rules*" has the meaning ascribed in Section 11.14 hereof.

"*Purchase Price*" with respect to any Unit Committed means $100.00.

"*Real Estate Investments*" means, in general, all interests (and "*Real Estate Investment*" means any or each interest individually, as the context requires) of the Company or any subsidiary thereof in or relating to real property of whatever nature and personal property, both tangible and intangible, directly or indirectly associated or connected therewith, and interests in entities performing real estate-related services, and shall include, without limitation, direct or indirect equity investments in real estate, including interests in partnerships, corporations, real estate investment trusts, existing or to be formed real estate operating companies and other entities having an interest in real property, mortgages and other secured loans and unsecured loans (including, without limitation, participating, mezzanine, nonparticipating, convertible, amortizing, non-amortizing, short-term, intermediate-term and long-term loans and loans which, on a current or future basis, will provide the lender with a participation in the appreciation of a particular Real Estate Investment), options to purchase real property or interests in partnerships or other entities having an interest in real property or performing real estate-related services, leasehold interests and leasebacks and any other form of real estate or real estate-related investment which the Managing Member shall determine is in the best interest of the Company; *provided*, that, for the avoidance of doubt, each individual asset within a portfolio of assets shall be a separate Real Estate Investment for purposes of this definition.

"Refunded Acquisition Period Contribution" has the meaning ascribed in Section 3.2(b) hereof.

"Refunded Capital Contribution" has the meaning ascribed in Section 2.8(b)(ii) hereof.

"Refunded Organizational Costs" has the meaning ascribed in Section 2.8(b)(iii) hereof.

"Register" has the meaning ascribed in Section 2.8 hereof.

"REIT" means a Member (including the Fund IX REIT) or subsidiary of the Company that is intended to qualify as a *"real estate investment trust"* (within the meaning of Section 856 of the Code).

"Removing Members" has the meaning ascribed in Section 5.5(a) hereof.

"Reporting Site" has the meaning ascribed in Section 7.2(d) hereof.

"Safe Harbor Election" has the meaning ascribed in Section 11.14 hereof.

"Sale" means any sale, exchange or other disposition of real or personal property, including, without limitation, dispositions through public offerings or other securitization forms, condemnation, recovery of damage awards and insurance proceeds (other than business or rental interruption insurance proceeds), collection of principal payments with respect to loans made by the Company, collection of interest upon deferred payments of purchase price, and collection of interest or prepayment penalties due upon a Sale, financing or termination of a loan not delinquent due to a default in payment, but excluding in all cases dispositions of Short-Term Investments, lease termination or similar fees or any Financing.

"Sale and/or Financing Proceeds," "Sale Proceeds" or *"Financing Proceeds,"* as the context requires, means all cash receipts arising from a Sale or Financing or received in the course of the liquidation of the Company, less the following:

(i) the amount necessary for the payment of debts and obligations of the Company related to any particular investment;

(ii) the amount of cash paid or to be paid by the Company in connection with such Sale or Financing;

(iii) the amount considered appropriate by the Managing Member to pay other costs, expenses and taxes of the Company, or to provide reserves therefor; and

(iv) the amount of the Advisory Fee payable from time to time to the Managing Member and/or the amount of the Severance Distribution and, if applicable, the proceeds from the redemption of the Managing Member's

remaining Company Interest under clauses (c)(ii) and (d) of Section 5.5 hereof distributable to the Managing Member.

"*Severance Distribution*" has the meaning ascribed in Section 4.6(a) hereof.

"*Shares-in-Trust*" has the meaning set forth in a Declaration.

"*Short-Term Investments*" means investments having maturities of not more than 270 days at the time of purchase and which are securities issued by or fully guaranteed by United States governmental agencies, commercial paper having a rating of "*A 2*" or better with Standard & Poor's Ratings Services or a rating of "*P 2*" or better with Moody's Investors Service, Inc., money market funds which invest exclusively in such securities or commercial paper, and bankers' acceptances and certificates of deposit having ratings of A 2 or P 2 or better in banks having undivided capital and surplus of not less than $100,000,000.

"*Significant Benefit Plan Investment*" shall mean, with respect to any entity, that Benefit Plan Investors hold twenty-five percent (25%) or more of the total value of any class of equity interest in such entity, as determined in accordance with Section 3(42) of ERISA, or such other percentage as may be prescribed by ERISA or the Plan Asset Regulations from time to time as the minimum level of investment by Benefit Plan Investors that would cause all or any portion of the entity's assets to constitute or be deemed to constitute "*plan assets*" for purposes of ERISA or Section 4975 of the Code in the event such entity did not qualify as a VCOC, real estate operating company or other operating company, within the meaning of the Plan Asset Regulations.

"*Subscription Agreement*" means, as to any Investor Member, the Subscription Agreement among the Company, the Managing Member and such Investor Member, effective as to such Investor Member on the date of acceptance thereof by the Managing Member.

"*Subsequently Admitted Investor Member*" has the meaning ascribed in Section 2.8(b)(ii) hereof.

"*Term*" has the meaning ascribed in Section 2.7 hereof.

"*Tax Matters Partner*" has the meaning ascribed in Section 5.9 hereof.

"*Terminated Member*" has the meaning ascribed in Section 3.3(b) hereof.

"*Termination Date*" has the meaning ascribed in Section 5.5(a) hereof.

"*Termination Notice*" has the meaning ascribed in Section 5.5(a) hereof.

"*Tranche Amount*" has the meaning ascribed in Section 3.2(b) hereof.

"*Transfer Expenses*" has the meaning ascribed in Section 8.1(f) hereof.

"Treasury Regulations" means the regulations issued under the Code, as such regulations may be amended from time to time and including any successor regulations.

"Triggering Event" means the satisfaction of both of the following conditions: (i) the Company shall have paid on any Calculation Date aggregate distributions, including, without limitation, upon the liquidation of the Company, in an aggregate amount equal to at least (a) the Preferred Return over the relevant period or periods plus (b) the aggregate amount of the Capital Contributions; and (ii) either (x) in the event the Company shall not have committed to close any Real Estate Investment after the end of the Acquisition Period pursuant to a written commitment entered into prior to the Acquisition Period, the Acquisition Period shall have expired, (y) in the event the Company shall have committed to close any Real Estate Investment or Real Estate Investments after the end of the Acquisition Period pursuant to a written commitment entered into prior to the Acquisition Period in accordance with Section 3.2(b) hereof, all such Real Estate Investments shall have closed, or (z) Capital Contributions equal to the aggregate Commitments of all Members (other than Commitments of Defaulting Members) shall have been contributed to the Company or the Managing Member has irrevocably committed to invest any unused Commitments in a Real Estate Investment. For purposes of the calculation set forth in clause (i) above, amounts distributed by the Company from time to time shall be applied first toward the specified rate of return on the Capital Contributions and second, to the extent to which amounts constituting such specified rate of return have at any such time been paid, toward the return of all or part of such Capital Contributions.

"Unconsummated Deal Costs" has the meaning ascribed in Section 6.3 hereof.

"Unit" means a unit of interest in the Company representing a commitment by a Member to make Capital Contributions in the aggregate amount of $100.00 to be paid to the Company in accordance with the provisions of this Agreement.

"Units Committed" with respect to any Member means the aggregate number of Units which such Member commits to purchase, and which commitment the Managing Member accepts, pursuant to the terms hereof and of the Subscription Agreement.

"Unreturned Capital Contributions" means, for any Member as of any date, the excess, if any, of (i) such Member's Capital Contributions, over (ii) the portion of the cumulative distributions received by such Member pursuant to Sections 4.1(a) and 9.2(b) hereof as of such date that are deemed to be applied toward the return of Capital Contributions pursuant to the last sentence of the definition of *"Triggering Event"*.

"Valuation Committee" has the meaning ascribed in Section 4.6(d) hereof.

"Valuation Expert" has the meaning ascribed in Section 4.8(b) hereof.

"VCOC" has the meaning ascribed in Section 3.2(b) hereof.

"Warehoused Investments" has the meaning ascribed in Section 5.2(b)(xvii) hereof.

"Withdrawal Notice" has the meaning ascribed in Section 3.4(d) hereof.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 Formation of Limited Liability Company. The Company was formed as a limited liability company under and pursuant to the laws of the State of Delaware and the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq. (as amended from time to time, the *"Act"*) by the Managing Member. David Luski has been designated as an *"authorized person"* within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, his powers as an *"authorized person"* ceased, and the Managing Member thereupon became the designated *"authorized person"* and shall continue as the designated *"authorized person"* within the meaning of the Act. The Managing Member, as an authorized person within the meaning of the Act, shall execute, deliver and file, or cause the execution, delivery and filing of, all certificates (and any amendments and/or restatements thereof) required or permitted by the Act to be filed with the Secretary of State of the State of Delaware. The Managing Member shall appoint such agents and attorneys for service of process as may be necessary or appropriate in connection with the formation and continuation of the Company under the laws of the State of Delaware. The Managing Member shall take all other necessary action required by the law to perfect and maintain the Company as a limited liability company under the Act and in all other jurisdictions in which the Company may elect to conduct business.

Section 2.2 Name of the Company. The name of the Company shall be *"DRA Growth and Income Master Fund IX, LLC"*, or such other name as the Managing Member may from time to time determine. The Managing Member shall cause to be filed on behalf of the Company such assumed or fictitious name certificate or certificates or other certificates or instruments, or any amendments thereof, as may from time to time be required by law or deemed appropriate by the Managing Member.

Section 2.3 Fiscal Year. All books and records of the Company shall be kept, and, except as may otherwise be required by the Code or the Treasury Regulations issued thereunder, all Company tax returns shall be filed, on the basis of an annual accounting period ending on December 31st of each year (a *"Fiscal Year"*), except that the final accounting period of the Company shall end on the date of termination of the existence of the Company. The profits and losses of the Company shall be determined for each Fiscal Year on an accrual basis, and otherwise in accordance with U.S. federal income tax principles.

Section 2.4 Business of the Company.

(a) The Company is formed for the purpose of affording the Members the possibility of gains from the realization of capital appreciation and current income, principally by means of investment in Real Estate Investments, and in connection therewith:

(i) To finance the acquisition, construction, operation, maintenance, management, improvement, rental, and sale of Real Estate Investments (which shall include borrowing money, encumbering assets (including a pledge of unfunded Commitments as security for any Credit Facility) and otherwise incurring indebtedness (including the issuance of guarantees of the payment or performance obligations by any Person) in connection with or in furtherance of the acquisition of all or a significant portion of or the financing of a Real Estate Investment);

(ii) To enter into and perform contracts of any kind necessary or incidental to, or in connection with, the Real Estate Investments or the accomplishment of the purposes of the Company, including entering into and performing contracts with Affiliates of the Managing Member;

(iii) To acquire, construct, operate, maintain, improve, manage, buy, dispose of, own, sell, convey, assign, mortgage, pledge and otherwise encumber, refinance, rent or lease Real Estate Investments and any other property, real or personal, in fee or under lease, or any rights or interests therein or appurtenant thereto, necessary or incidental to, or in connection with, such Real Estate Investments;

(iv) To open and maintain bank accounts and make Short-Term Investments of cash;

(v) To maintain and operate the Company's assets;

(vi) To negotiate for and conclude agreements for the sale, exchange or other disposition of all or any part of the Company's property, including, without limitation, effecting a disposition through a public offering or other form of securitization;

(vii) To hire, compensate and remove agents, independent contractors, attorneys and accountants;

(viii) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of corporations, associations, general or limited partnerships, trusts, limited liability companies, or individuals or direct or indirect obligations of the United States or of any government, state, territory, government district or municipality or of any instrumentality of any of them, and to enter into joint ventures with other Persons;

(ix) To repay borrowings under any Credit Facility or which are otherwise hereby authorized, subject to receipt by the Company of such documents or instruments as shall be necessary or appropriate to evidence such repayment;

(x) To purchase liability insurance which is available at commercially reasonable rates, at the expense of the Company, in respect of any liabilities for which the Managing Member or any other indemnified party would otherwise be entitled to indemnification under this Agreement;

(xi) To cause the Company or a REIT to enter into and perform the terms of any Credit Facility;

(xii) To make investments in joint ventures and similar operating partnerships that may provide for the payment and/or allocation of incentive, promote, performance, property management and/or similar fees to third parties; and

(xiii) To carry on any other activities necessary, convenient, desirable or incidental to, or in connection with, any of the foregoing, the accomplishment of the purposes of the Company or any other lawful purpose.

(b) Subject to the provisions of Section 5.2(e), nothing contained in this Agreement shall be deemed to restrict the freedom of any Member, any Affiliate of a Member or any other Person from engaging in any one or more other businesses, or from acquiring other investments of any nature whatsoever (including businesses and investments competing with the Real Estate Investments), and none of the Members shall have any rights, by virtue of this Agreement or by virtue of being Members, in or to said other businesses or investments or in or to the income or profits derived therefrom.

(c) Nothing in this Agreement shall be deemed to preclude any Member, or any Affiliate of any Member, from conducting its business in any manner it may elect, including, without limitation, entering into any transaction with any Person affiliated in any way with such Member or Affiliate of such Member, *provided*, that no such conduct of its business shall be permitted if it would result in a breach by such Member of its obligations under this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, the Company, and the Managing Member on behalf of the Company, have the power and authority to enter into, execute and deliver the respective Subscription Agreements without any further act, vote or approval of any Person.

Section 2.5 Place of Business of the Company. The principal office and principal place of business of the Company shall be at 220 East 42nd Street, 27th Floor, New York, New York 10017. The Company shall have such other offices as may from time to time be designated by the Managing Member on prior notice to each other Member.

Section 2.6 Registered Agent. The Company shall maintain a registered office in the State of Delaware. The name and address of the registered agent of the Company in the State of Delaware upon whom process may be served, and the address of the registered office of the Company in the State of Delaware, is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. The Managing Member shall give prompt notice to each other Member of any change in the registered office of the Company.

Section 2.7 Duration of the Company. The term (the *"Term"*) of the Company commenced upon the filing of the Certificate of Formation, and shall continue through the close of business on December 31, 2026, unless extended for up to two additional, successive one-year periods from and after such date by the Managing Member, subject to the approval of the Members' Board; *provided*, that the Company's regular business activities shall end upon the Company's dissolution pursuant to Section 9.1 hereof or as may otherwise be provided by applicable law.

Section 2.8 Register; Admission of Members.

(a) The name and address of the Managing Member is Manageco IX, LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017. Each Person being admitted to the Company as a Member shall be deemed admitted as a member of the Company at the time of execution and delivery to the Managing Member of a Subscription Agreement, the acceptance thereof by the Managing Member and the execution and delivery of this Agreement or a counterpart hereof by such Member. All Units have been, and will be, sold to such Persons as the Managing Member in its sole discretion shall determine. The Managing Member shall cause to be maintained in the principal office of the Company a register setting forth, with respect to each Member, the name, address and amount of the Commitment of each Member and such other information as the Managing Member may deem necessary or desirable (the *"Register"*). The Register shall not be part of this Agreement. The Managing Member shall from time to time update the Register as the Managing Member shall deem necessary or advisable, including, without limitation, to reflect the admission (or increase in Commitment) of Subsequently Admitted Investor Members (as defined below). Any reference in this Agreement to the Register shall be deemed a reference to the Register as in effect from time to time. Subject to the terms of this Agreement, the Managing Member may take any action authorized hereunder in respect of the Register without any need to obtain the consent of any other Member. No action of any Member shall be required to amend or update the Register.

(b) (i) At any time and from time to time on or before the date which is nine (9) months after the Initial Closing Date (the last such time, the *"Final Closing Date"*), the Managing Member in its sole discretion, but subject to the following provisions of this Section 2.8(b), may admit to the Company additional Investor Members or permit existing Investor Members to increase their Commitments, and any such additional Investor Member (or Investor Member whose Commitment is to be increased) shall be deemed admitted as a member of the Company (or deemed to have increased its Commitment) at the

time of execution and delivery to the Managing Member of a Subscription Agreement, the acceptance thereof by the Managing Member and the execution and delivery of this Agreement or a counterpart hereof by such additional Investor Member (or Investor Member whose Commitment is increased).

(ii) Each Investor Member admitted to the Company (or whose Commitment is to be increased) after the Initial Closing Date and on or before the Final Closing Date (each such Investor Member being herein referred to as a *"Subsequently Admitted Investor Member"*) shall (a) retroactively participate with respect to each Real Estate Investment made prior to such Subsequently Admitted Investor Member's admission (or increased Commitment) as if such Subsequently Admitted Investor Member had been admitted as a Member (or such increase in its Commitment had been made) on the Initial Closing Date and (b) contribute to the Company an amount (such amount being hereinafter referred to as the *"Catch-Up Contribution"*) equal to the product of (x) the aggregate of the Tranche Amounts for the Real Estate Investments in question (reduced by any distributions theretofore made in respect thereof) and any other Capital Contributions for expenses (other than Organizational Costs, which shall be calculated in accordance with Section 2.8(b)(iii) below) or other Company obligations multiplied by (y) a fraction, the numerator of which equals the Subsequently Admitted Investor Member's Commitment (or increase in its Commitment) and the denominator of which equals the aggregate Commitments of all Members (including, without limitation, the Subsequently Admitted Investor Members' Commitments and increased Commitments). The Company shall refund to each theretofore admitted Member a portion of such Member's Capital Contributions theretofore made equal to its pro rata share of the Catch-Up Contribution being made (such amount being hereinafter referred to as a Member's *"Refunded Capital Contribution"*). Each Subsequently Admitted Investor Member shall, upon admission to the Company (or upon the date its Commitment is increased), also pay to the Company on behalf of the previously admitted Investor Members, in cash, an amount equal to the product of (i) the lesser of ten percent (10%) per annum (applied for the period commencing on the required payment date(s) of the Payment Amount(s) in question and ending on the date of the Catch-Up Contribution of such Subsequently Admitted Investor Member) or the maximum rate of interest permitted by applicable law and (ii) such Subsequently Admitted Investor Member's Catch-Up Contribution. The Company shall distribute to each previously admitted Investor Member its share of such interest amount based upon such Member's Refunded Capital Contribution.

(iii) If, prior to the Final Closing Date, the Company has paid or reimbursed any Organizational Costs, the amount of Organizational Costs shall be recalculated by the Managing Member to reflect the additional Organizational Costs in connection with the admission of Subsequently Admitted Investor Members and each Subsequently Admitted Investor Member shall contribute to the Company, on the date of its admission to the Company, an amount equal to its pro rata share (calculated on the same basis as the Catch Up Contribution) for

such recalculated Organizational Costs. Thereafter, the Managing Member shall cause the Company to refund to each theretofore admitted Member an amount equal to a portion of such Member's original Capital Contribution for Organizational Costs equal to the excess, if any, of (x) such original Capital Contribution for Organizational Costs which has not been previously refunded over (y) the amount that such Member's Capital Contribution would have been with respect to such recalculated Organizational Costs (*"Refunded Organizational Costs"*).

(iv) Notwithstanding anything to the contrary contained herein, the unfunded Commitment of each Member shall be increased by the aggregate amount of the Refunded Capital Contribution and Refunded Organizational Costs received by such Member.

(v) After the Final Closing Date, no additional Investor Members shall be admitted to the Company, except as substituted Investor Members as provided by Section 3.3(d) or Article VIII hereof and no additional Subscriptions for Units shall be accepted from any Member.

(vi) The admission (or increased Commitment) of each Subsequently Admitted Investor Member pursuant to this Section 2.8(b) shall be treated, to the extent consistent with Section 707(a) of the Code and any Treasury Regulations issued thereunder, as the purchase of a portion of the Company Interest by each such Subsequently Admitted Investor Member from the other Investor Members.

(vii) Notwithstanding the foregoing provisions of this Section 2.8, to the extent that the Subsequently Admitted Investor Member referenced in this Section 2.8 is the Fund IX REIT, the Managing Member may make such adjustments as it determines are appropriate to the application of the provisions of this Section 2.8 to take into account the interplay between the subsequently admitted investor member provisions of the Feeder Fund Agreement and this Section 2.8.

(c) Notwithstanding the foregoing or any other provision of this Agreement: (i) the aggregate Commitments of all Members and commitments of members of any Parallel Company shall not exceed [redacted] unless the Managing Member decides in its sole discretion to accept additional Commitments from Members and commitments from members of any Parallel Company of up to $[redacted] *provided*, that the aggregate Commitments from all Members and commitments from all members of any Parallel Company shall never exceed $[redacted] and (ii) the Company shall not at any time have such number of Members as would, in the judgment of the Managing Member, require it to register as an investment company under the Investment Company Act of 1940, as amended.

Section 2.9 Title to Company Property. All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member individually shall have any ownership interest in such property. The Company may hold any of its assets in its own name or in

the name of its nominees, which nominees may be one or more individuals, partnerships, trusts or other Persons.

ARTICLE III

CAPITAL CONTRIBUTIONS, ALLOCATIONS

Section 3.1 Capital Contributions, Generally. Each Member commits to contribute to the capital of the Company an amount equal to $100.00 per Unit purchased by such Member, payable as provided by Section 3.2(b).

Section 3.2 Capital Contributions and Drawdowns.

(a) Each of the Investor Members shall be admitted to the Company on the date of acceptance by the Managing Member of such Investor Member's subscription to purchase Units pursuant to the Subscription Agreement and upon compliance with Section 2.8.

(b) Subject to the provisions of this Section 3.2(b), each Member shall be obligated, and hereby agrees, to contribute capital to the Company up to an amount equal to such Member's Commitment, which contributions shall be payable to the Company as provided herein.

(i) Each Member agrees to pay as herein described not less than ten (10) days after, and as specified in, a written request for such payment (such request, a *"Drawdown Request"* and the date set forth therein for contribution, the *"Contribution Date"*) is made by the Managing Member, that portion of its Commitment requested by the Managing Member in the Drawdown Request, which amount shall be paid on the Contribution Date in immediately available funds to such account as the Managing Member shall designate in the Drawdown Request.

(ii) The Managing Member may reduce the amount set forth in a Drawdown Request by giving notice to the Members of the reduced amount to be contributed as promptly as practicable after the Managing Member decides to reduce the amount of the Drawdown Request, and in no event less than one (1) Business Day prior to the Contribution Date, which shall remain the date set forth in the original Drawdown Request. The aggregate amount to be contributed by the Members on any Contribution Date (such amount, the *"Tranche Amount"*) will be the amount determined by the Managing Member in its sole discretion to be necessary or desirable for the Company in connection with (A) the closing of the Real Estate Investment with respect to which such Drawdown Request was made, (B) to meet other expenses and obligations of the Company (e.g., Company Costs), including, without limitation, the amount of any fees payable to the Managing Member or an Affiliate thereof (including without limitation the Advisory Fee and/or the Severance Distribution) and/or (C) making payments due under any Credit Facility. The amount required to be paid by each Member on

any Contribution Date (a "*Payment Amount*") will be determined by multiplying the Tranche Amount by the ratio of such Member's Commitment to the aggregate Commitments of all the Members on the date of the Drawdown Request; *provided, however*, that in the event any Member shall Default, the Payment Amount of each non-defaulting Member may, at the sole discretion of the Managing Member, and upon three (3) Business Days' notice to each such Member, be increased by an amount equal to such Member's pro rata share, determined in accordance with the non-defaulting Members' Commitments, of the aggregate amount of the Payment Amounts of such Defaulting Members; *provided, further*, that the aggregate Payment Amounts (including in respect of Defaulting Members) contributed by a Member shall not result in such Member's Commitment being exceeded. Any such additional contribution by non-defaulting Members shall not constitute a waiver of any of the Company's rights against any Defaulting Member.

(iii) The Managing Member shall provide the Members with prompt written notice if a Key Person Event shall occur. Upon the occurrence of a Key Person Event, the Acquisition Period shall be automatically suspended and the Managing Member shall not make any further Drawdown Requests unless (A) such Drawdown Request is made with respect to the closing of any Real Estate Investment that was committed to by the Company pursuant to a written commitment prior to the Key Person Event, (B) such Drawdown Request is made to fund expenses and obligations, including, without limitation, capital expenses, management fees, indemnity expenses and/or financing expenses, with respect to existing Real Estate Investments, or (C) such Drawdown Request is made to repay principal, interest or other amounts, if any, owing, or which may become due, under any existing Credit Facility (but only to the extent that such payments relate to drawdowns under such Credit Facility that were made prior to the occurrence of the Key Person Event), *provided, however*, that the Managing Member may resume making all Drawdown Requests if the Investor Members whose Company Interests aggregate at least sixty-seven percent (67%) vote to reinstate the Acquisition Period within sixty (60) days after receipt of the notice of the Key Person Event. Further, the Managing Member shall dissolve the Company and commence an orderly liquidation of the Company in accordance with Article IX if, within sixty (60) days after receipt of the notice of the Key Person Event, Investor Members having Company Interests aggregating not less than sixty-seven percent (67%) and entitled to vote on Company matters vote to dissolve the Company.

(iv) In no event shall any Drawdown Request be made after the expiration of the Acquisition Period, except (A) within six (6) months after the end of the Acquisition Period, to fund the closing of any Real Estate Investment that was committed to pursuant to a written commitment by the Company prior to the expiration of the Acquisition Period, (B) to repay all principal, interest and other amounts, if any, owing, or which may become due, under any existing Credit Facility, (C) to make Capital Contributions in accordance with Section 10.2(a) hereof, and (D) to make Follow-On Investments and to pay, or establish

reasonable reserves for, Company taxes and Company Costs in an aggregate amount not to exceed the lesser of (1) aggregate remaining unfunded Commitments of all Members as of the end of the Acquisition Period and (2) ten percent (10%) of the aggregate Commitments of all Members; *provided, however,* that in no event shall the Managing Member make a Drawdown Request to make any Follow-On Investment in accordance with this Section 3.2(b)(iv)(D) if the Triggering Event shall have occurred as of the date such Drawdown Request is made.

(v) If Sale and/or Financing Proceeds are distributed pursuant to Section 4.1 hereof with respect to a Real Estate Investment at any time during the Acquisition Period (such amount, the *"Refunded Acquisition Period Contribution"*), each Member's unfunded Commitment shall be increased by the lesser of (x) such distribution so received by it or (y) its prior Payment Amount with respect to such Real Estate Investment (it being understood that in no event shall this provision result in an increase in such Member's Commitment); *provided, however*, that in no event shall any Member be required to contribute capital to the Company which constitutes Refunded Acquisition Period Contributions in excess of sixty percent (60%) of such Member's Commitment; *provided, further*, that any Refunded Acquisition Period Contributions shall be reinvested at the discretion of the Managing Member solely in Real Estate Investments that are made, or committed to be made, prior to the expiration of the Acquisition Period.

(vi) If there is Significant Benefit Plan Investment in the Company, an ERISA Investor Member shall, prior to the date upon which the Company shall make its first long-term investment so that it should qualify as a *"venture capital operating company"* within the meaning of the Plan Asset Regulations (a *"VCOC"*) and upon receipt of a Drawdown Request, pay its respective Payment Amount into an escrow account established for such purpose. For purposes of this Section 3.2(b), *"escrow account"* shall mean an escrow established by the Company with an independent escrow agent on behalf of the ERISA Investor Member, the terms of which are intended to comply with United States Department of Labor Advisory Opinion 95-04A. Any Payment Amounts in respect of any Drawdown Requests on or after the date of the making of such first long-term investment that should qualify the Company as a VCOC shall be made in accordance with the terms of this Agreement without regard to the immediately preceding sentence; *provided, however*, that no ERISA Investor Member shall be required to contribute any Payment Amounts directly to the Company, and no Payment Amounts then held in any escrow account shall be released from such escrow account to the Company, until such time as the Company's *"initial valuation date"* shall have occurred and the Managing Member has delivered to the ERISA Investor Member (and the escrow agent, if applicable) the opinion of counsel described in Section 3.4(b) hereof.

(vii) Notwithstanding anything to the contrary set forth in this Section 3.2(b) or elsewhere in this Agreement, except as required by the Act, no Member

shall be required to make Capital Contributions in excess of such Member's Commitment, subject to such Member's obligation to make Capital Contributions pursuant to Section 10.2(a).

(c) Except as specifically set forth herein and in Section 10.2(a) hereof, no Member is obligated to make any additional contribution to the capital of the Company. No interest shall accrue on any Capital Contribution, and no Member shall have the right to withdraw or to be repaid any Capital Contribution contributed by such Member, except as specifically provided in this Agreement.

(d) No date certain has been determined for the return to any Member of such Member's Capital Contribution. No right is given to any Member to demand and receive property other than cash in return for its Capital Contribution. Other than as contemplated in Section 3.3 hereof, no Member has priority over any other Member as to such Member's Capital Contribution or as to compensation by way of income.

(e) In the event the acquisition of a Real Estate Investment fails to close or any amounts that were called from the Members in accordance with Section 3.2(b) hereof are not used to fund Real Estate Investments or otherwise used by the Company for any permitted purpose hereunder, the Payment Amounts with respect thereto may be returned to the Members by the Managing Member. To the extent so returned, each such Payment Amount shall not be treated as a return of capital to a Member, and such Member's Commitment shall be deemed not to have been funded to the extent of such Payment Amount; *provided, however*, that, for the avoidance of doubt, the Preferred Return shall accrue on any such Payment Amount during the time such Payment Amount is held by the Company, until the return of any such Payment Amount to such Member. In addition, all income earned, pursuant to Short-Term Investments, on Payment Amounts prior to their investment in a Real Estate Investment shall be allocated to the Members pro rata in accordance with their Company Interests. All such interest income so returned or paid to the Members pursuant to this Section 3.2(e) shall not be included in the calculation of the Preferred Return.

Section 3.3 Default.

(a) If for any reason a Member shall fail to contribute any portion of a Payment Amount as and when due under this Agreement (a *"Default"*), such defaulting Member (the *"Defaulting Member"*) shall remain liable in respect of such portion of its Payment Amount and any additional amount of its Commitment. Except as provided below with respect to a Terminated Member, the Managing Member, in its sole discretion and to the extent permitted by applicable law, may, after five (5) business days' written notice to the Defaulting Member, (i) extend the time of payment, (ii) declare the entire unpaid amount of the Commitment of such Defaulting Member to be immediately due and payable, (iii) enforce by appropriate legal proceedings the Defaulting Member's obligation to make payment on its Payment Amount or to pay its entire unused Commitment (if the Managing Member has accelerated such Defaulting Member's obligation to make payment thereon as provided by clause (ii) of this sentence), (iv) terminate and/or transfer the Defaulting Member's Company Interest in the manner

hereinafter provided in this Section 3.3, and/or (v) pursue any other remedy that the Managing Member deems advisable. A Defaulting Member shall not be permitted to vote all or any portion of its Company Interests. Whenever the vote, consent or decision of an Investor Member is required or permitted pursuant to this Agreement, a Defaulting Member shall not be entitled to participate in such vote or consent, or to make such decision, and such vote, consent or decision shall be tabulated or made as if such Defaulting Member were not a Member with respect to such Defaulting Member's Company Interest. Each Defaulting Member hereby further irrevocably waives its corresponding right to vote for a successor managing member under the Act with respect to such non-voting Company Interest.

(b) The Managing Member may (x) terminate the entire Company Interest of a Defaulting Member or (y) transfer the unused Commitment of a Defaulting Member pursuant to Section 3.3(d) and terminate the remaining Company Interest of such Defaulting Member, in either case only after ten (10) days' written notice to such effect to the Defaulting Member (during which period, or such longer period, not to exceed sixty (60) days, as the Managing Member may in its sole discretion extend the time for cure, the Defaulting Member may cure such Default by payment of the amount from which such Default arose, together with all related expenses incurred by the Company and any other damages suffered by the Company by reason of such Default, together with interest on the amount of such non-payment, expenses and damages as provided herein), and, thereupon, such Member (a "*Terminated Member*") shall cease to be a Member of the Company and shall have no further interest in the Company or rights, including, without limitation, voting rights and the right to appoint a representative to the Members' Board. Any representative of the Defaulting Member then serving on the Members' Board shall be immediately removed as a representative. Following such termination and/or transfer, as the case may be:

(i) the Capital Account of such Terminated Member shall be reduced by an amount equal to thirty percent (30%) of the amount of such Terminated Member's Capital Account on the date of such Default and the amount of such reduction shall be credited either (x) if the Managing Member has terminated the entire Company Interest of the Terminated Member, to the Capital Accounts of the other Members pro rata in accordance with their respective Company Interests at such time; *provided, however*, that each such other Member may elect not to receive such credit to its Capital Account, in which case the Managing Member will receive a credit in its Capital Account equal to such amount, (y) if the Managing Member has transferred the entire unused Commitment of the Terminated Member pursuant to Section 3.3(d), then to the Capital Accounts of the transferees in proportion to their share of the unused Commitment transferred to them or (z) if the Managing Member has transferred a portion of the unused Commitment of the Terminated Member pursuant to Section 3.3(d), then to the Capital Accounts of the transferees in proportion to their share of the unused Commitment transferred to them and the remainder in accordance with clause (x) above; and

(ii) such Terminated Member shall not have allocated to its Capital Account or receive any distributions with respect to any income, profit or gain beginning with the taxable year in which such Default arises that relates to any Real Estate Investment for which such Terminated Member made Capital Contributions prior to such Default (and the other Members shall receive such distributions, and any such income, profit or gain shall be credited to the Capital Accounts of the other Members in proportion to their relative Company Interests at such time with respect to each such Real Estate Investment). The Company shall be entitled to retain from any distributions otherwise distributable to such Terminated Member pursuant to Section 9.2(b) an amount equal to interest accrued on any overdue payment on a Payment Amount as hereinafter provided and any expenses incurred or anticipated to be incurred by the Company in connection with such Terminated Member's Default and termination (including expenses incurred in enforcing the provisions of this Section 3.3) and any other damages suffered by the Company by reason of such Default, together with interest on such expenses and damages as hereinafter provided.

(c) Upon the failure of a Defaulting Member to pay when due any Payment Amount, interest on the amount of such nonpayment, and the amount of any loss, damage, cost or expense suffered or incurred by the Company as a result of such Default, shall accrue commencing on the date such payment was due or such loss, damage, cost or expense was suffered or incurred, at the Prime Plus Two Rate determined at the time of such Default. In the event that the Defaulting Member shall timely cure its Default, including, without limitation, the payment of interest on the defaulted Payment Amount and the amount of any such losses, prior to becoming a Terminated Member under Section 3.3(b) hereof (i) the amount of accrued interest and losses received from such Defaulting Member shall be distributed to all the Members, with the exception of the Defaulting Member, in proportion to their Company Interests, and (ii) to the extent that Investor Members made additional Capital Contributions pursuant to Section 3.2(b)(ii) hereof, then the Payment Amount so received from the Defaulting Member shall be distributed to such Investor Members in proportion to, and in repayment of, such Investor Members' Capital Contributions pursuant to the first proviso of Section 3.2(b)(ii) and said Investor Members' unfunded Commitments shall be increased by the amount of the distribution received pursuant to this Section 3.3(c)(ii).

(d) If, pursuant to Section 3.3(b), the Managing Member elects to transfer the unused Commitment of a Defaulting Member, the Managing Member shall give notice thereof to the other non-defaulting Members, which notice shall offer each such Member the opportunity to acquire, on a pro rata basis, a portion of the unused Commitment by increasing its Commitment in an amount equal to its share of the Defaulting Member's unused Commitment. Each non-defaulting Member receiving such notice shall have ten (10) days to notify the Managing Member of its acceptance of such offer (each, an *"Electing Non-Defaulting Member"*) and of its interest, if any, in acquiring a portion of any remaining unused Commitment which has not been accepted by the non-defaulting Members. If the entire unused Commitment of the Defaulting Member is not accepted by the non-defaulting Members pursuant to the above-described offer, the Managing Member shall first offer to each Electing Non-Defaulting Member

the opportunity to acquire, on a pro-rata basis, the remaining unused Commitment. Thereafter, if the remaining unused Commitment of the Defaulting Member is not accepted by the Electing Non-Defaulting Members, the Managing Member may, in its sole discretion, (i) offer the remaining unused Commitment to one or more third parties (each such third party to be admitted to the Company as a substituted Investor Member with respect to its share of such unused Commitment upon satisfaction of the conditions set forth in Article VIII hereof), (ii) cancel the offer described in this Section 3.3(d) and terminate the entire Company Interest of the Defaulting Member in accordance with Section 3.3(b), or (iii) transfer such portions of the unused Commitment to the Persons who have accepted such offers and terminate the remaining Company Interest of the Defaulting Member in accordance with Section 3.3(b). To the extent that capital is contributed to the Company by transferees of some portion of, or all of, a Defaulting Member's Company Interest, such capital shall first be used and distributed in accordance with clause (ii) of the second sentence of Section 3.3(c) hereof and the unfunded Commitments of the Investor Members receiving such distribution shall be increased by the amount so received.

(e) If the Fund IX REIT is a Defaulting Member (as a result of a member of the Feeder Fund being deemed a defaulting member of the Feeder Fund pursuant to Section 3.3 of the Feeder Fund Agreement), this Section 3.3 shall only be applied to the extent that any member in the Feeder Fund defaults in making any capital contribution directly and/or indirectly to such Feeder Fund, and only with respect to such proportion of the Company Interest of the Fund IX REIT indirectly attributable to such defaulting member of the Feeder Fund, and shall not be applied, directly or indirectly, to any portion of the Fund IX REIT's Company Interest that is indirectly attributable to a member of the Feeder Fund that is not in default in making any capital contribution directly and/or indirectly to such Feeder Fund.

Section 3.4 ERISA Matters.

(a) If the Managing Member reasonably determines, based on advice of counsel from counsel reasonably acceptable to the Managing Member, that there is a reasonable likelihood that (i) the assets of the Company will be deemed to constitute *"plan assets"* of any ERISA Investor Member under the Plan Asset Regulations or (ii) the conduct of the business of the Company will cause the Company or the Managing Member to violate any provision of ERISA, the Managing Member, in its sole discretion, may take any and all actions necessary or appropriate to mitigate, prevent or cure such adverse consequences, including, but not limited to (A) requiring each of the ERISA Investor Members to withdraw (and receive a distribution in cash based upon the Net Asset Value of the Company) such portion of its Company Interest as the Managing Member determines to be necessary, (B) requiring each of the ERISA Investor Members to sell to one or more Persons (including other Members) who, if an Investor Member, would not be an ERISA Investor Member, such portion of their Company Interests as the Managing Member determines to be necessary, and admitting the purchaser or purchasers thereof as substituted Investor Members upon satisfaction of the conditions set forth in Article VIII of this Agreement, any such sales by an ERISA Investor Member to be in compliance with Section 406 of ERISA or Section 4975 of the Code, as applicable, or an

exemption therefrom and on such terms as are mutually agreed upon by the selling ERISA Investor Member and the purchaser or (C) dissolving the Company. Notwithstanding anything contained herein to the contrary, (i) any requirement imposed under clauses (A) or (B) of this Section 3.4(a) for an ERISA Investor Member to withdraw or transfer its interest shall, to the extent practicable, be imposed on each ERISA Investor Member in proportion to its Commitment to the extent sufficient to ensure that there is not Significant Benefit Plan Investment in the Company and (ii) unless the assets of the Company would be deemed to constitute *"plan assets"* of any ERISA Investor Member for purposes of ERISA, the Managing Member shall not exercise its right to dissolve the Company under clause (C) of this Section 3.4(a) without the consent of the Members' Board. If it is determined, based on an opinion of counsel from counsel reasonably acceptable to the Managing Member, that the continued participation of an ERISA Investor Member would result in a violation of law or governmental rule or regulation to which such ERISA Investor Member is subject or that the assets of the Company could be deemed to constitute "plan assets" of such ERISA Investor Member for purposes of ERISA, the Managing Member may require, or at the request of such ERISA Investor Member shall permit, such ERISA Investor Member to withdraw (and receive a distribution, based upon the Net Asset Value of the Company as of the withdrawal date, which shall be payable in cash, in kind (in accordance with Section 4.8 hereof), in the form of a promissory note (the terms of which are mutually acceptable to the Managing Member and such withdrawing Investor Member) or any combination of the foregoing, as determined by the Managing Member) such portion of its Company Interest as the Managing Member reasonably determines to be necessary to prevent such violation of law or to prevent the assets of the Company from being deemed to constitute "plan assets" of any ERISA Investor Member for purposes of ERISA; *provided*, that, for the avoidance of doubt and for all purposes hereunder, a claim for the breach of a fiduciary duty of any Person based upon the investment strategy or performance of the Company shall in no event be deemed to constitute a violation of law. If it is determined based on an opinion of counsel (from counsel reasonably acceptable to the Managing Member (it is hereby acknowledged by the Managing Member that an opinion of the relevant state Attorney General with respect to any Investor Member which is a governmental plan as defined in Section 3(32) of ERISA is satisfactory to the Managing Member)) that the continued participation of an Investor Member which constitutes a governmental plan under Section 3(32) of ERISA would result in a violation of law or governmental rule or regulation to which such Investor Member is subject, the Managing Member shall permit such Investor Member to withdraw (and receive a distribution, based upon the Net Asset Value of the Company as of the withdrawal date, which shall be payable in cash, in kind (in accordance with Section 4.8 hereof), in the form of a promissory note (the terms of which are mutually acceptable to the Managing Member and such withdrawing Investor Member) or any combination of the foregoing, as determined by the Managing Member) such portion of its Company Interest from the Company as is reasonably determined by the Managing Member (or as is specified in the opinion of counsel provided to the Managing Member) to be necessary to prevent such violation of law; *provided*, that, for the avoidance of doubt and for all purposes hereunder, a claim for the breach of a fiduciary duty of any Person based upon the investment strategy or performance of the Company shall in no event be deemed to

constitute a violation of law. For purposes of this Section 3.4, Net Asset Value of the Company shall be the most recent Net Asset Value of the Company determined in accordance with the provisions of Section 7.3 hereof as adjusted by the Managing Member as reasonably necessary to accurately reflect intervening dispositions, redemptions and distributions.

(b) On or prior to the Company's *"initial valuation date"* (as defined in the Plan Asset Regulations), the Managing Member will, if there is Significant Benefit Plan Investment in the Company, deliver to each ERISA Investor Member an opinion of counsel reasonably acceptable to the ERISA Investor Member stating that the Company should qualify as a VCOC as of such initial valuation date.

(c) If and for so long as there is Significant Benefit Plan Investment in the Company, the Managing Member shall, within forty-five (45) days after the end of each *"annual valuation period"* (as defined in the Plan Asset Regulations), deliver to each ERISA Investor Member a certificate, in form and substance reasonably satisfactory to the ERISA Investor Member, stating that the Company should qualify as a VCOC as of the date of the certificate and should continue to qualify as a VCOC during the twelve-month period commencing upon the expiration of such annual valuation period (or, if shorter, during the period commencing upon the expiration of such annual valuation period and ending upon the expiration of the term of the Company)(the *"Certificate"*).

(d) In the event that the Managing Member shall fail to deliver the Certificate to an ERISA Investor Member within such forty-five day period, and shall thereafter fail to deliver to the ERISA Investor Member within ten Business Days after its receipt of a written demand therefor from the ERISA Investor Member either (i) the Certificate or (ii) an opinion of counsel reasonably acceptable to the ERISA Investor Member stating the assets of the Company should not be deemed to constitute *"plan assets"* of such ERISA Investor Member under the Plan Asset Regulation (the *"ERISA Opinion"*), the ERISA Investor Member shall have the right to withdraw from the Company by giving the Managing Member written notice of its election to withdraw (the *"Withdrawal Notice"*). Unless, prior to the effective date of the ERISA Investor Member's withdrawal, the Managing Member delivers the Certificate or ERISA Opinion to the ERISA Investor Member, the withdrawal of the ERISA Investor Member shall become effective upon the date that is (i) the last day of the fiscal quarter of the Company immediately following the fiscal quarter during which the Withdrawal Notice was given to the Managing Member or (ii) an earlier date agreed to by the ERISA Investor Member and the Managing Member. The withdrawing ERISA Investor Member shall not be required to make any Capital Contributions, and shall not be deemed to be in Default, with respect to any Drawdown Request which specifies a Contribution Date occurring on or after the date of receipt of the Withdrawal Notice by the Managing Member; *provided, however*, that if the Certificate or ERISA Opinion is provided prior to the effective date of the withdrawal, such ERISA Investor Member will be obligated to make Capital Contributions with respect to such Drawdown Request within ten (10) days after the delivery of the Certificate or ERISA Opinion. The determination of the value of the Company Interest being withdrawn by the Investor Member, and the form of the

distribution to be received by the Investor Member in connection with its withdrawal, shall be made in accordance with Section 3.4(a) hereof.

Section 3.5 Capital Accounts.

(a) A separate Capital Account shall be maintained for each Member. No Member shall be entitled to interest on such Member's Capital Account, notwithstanding any disproportion therein as between the Members. The Capital Account of each Member shall be maintained in accordance with the rules of Section 704(b) of the Code and the Treasury Regulations (including Section 1.704-1(b)(2)(iv) thereof) thereunder. Adjustments shall be made to the Capital Accounts for all distributions and allocations as required by the rules of Section 704(b) of the Code and the Treasury Regulations thereunder. In general, a Member's Capital Account shall be (i) increased by (A) the amount of money contributed to the Company by the Member and (B) allocations to the Member of Net Profit and items of income and gain, including income and gain exempt from taxation and (ii) decreased by (A) the amount of money distributed (or deemed distributed) to the Member by the Company, (B) the fair market value of property distributed to the Member by the Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code), (C) allocations to the Member of expenditures not deductible in computing the Company's taxable income and not properly chargeable to any particular Member's Capital Account and (D) allocations to the Member of Net Loss and items of loss and deductions. If there is a transfer of all or part of a Company Interest, the Capital Account of the transferring Member that is attributable to the transferred Company Interest shall carry over to the Member receiving such transferred interest. It is also the intent of the Members that (x) no allocation to any Member of any loss, whether attributable to depreciation or otherwise, shall create any asset of or obligation to the Company, even if said allocation reduces such Member's Capital Account, and (y) no Member shall be obligated to pay any such amount to or for the account of the Company or any creditor of the Company; *provided, however*, that the Managing Member, as provided in Section 4.7(b), shall have an obligation to restore to, and solely for the benefit of, the Company by the end of the Fiscal Year or portion thereof in which the Company or the Managing Member's interest is liquidated (or, if later, within ninety (90) days after the date of such liquidation) the cumulative amount of distributions pursuant to Section 4.7 hereof received by the Managing Member that did not reduce amounts which would have otherwise been received by the Managing Member under Section 4.1 hereof, and such restored amounts shall be distributed as provided in Section 9.2(b) hereof.

(b) In the event that a provision of this Agreement shall conflict with the rules set forth in Treasury Regulations Sections 1.704-1(b) or 1.704-2, as in effect on the date of this Agreement, relating to the proper maintenance of capital accounts, or such Treasury Regulations are modified after the date of this Agreement, the Managing Member, in its reasonable discretion, may modify this Agreement so as to comply with such Treasury Regulations; *provided, however*, that in so complying, the after-tax economic interests of any Member are not materially adversely affected thereby.

Section 3.6 Profit and Loss.

(a) Net Profit shall be allocated as follows:

(i) First, to the Members in amounts sufficient to offset, in reverse order, all prior allocations of Net Loss pursuant to the second sentence of Section 3.6(b)(ii) hereof;

(ii) Second, to the Members, in proportion to their Company Interests, until the cumulative Net Profit allocated to each Member pursuant to this clause (ii) in excess of the cumulative Net Loss allocated pursuant to Section 3.6(b)(i)(B) hereof is equal to the full amount of such Member's Preferred Return for the Calculation Period; and

(iii) Thereafter, (A) [redacted] percent [redacted]%) to the Members (other than the Managing Member), in proportion to their respective Company Interests and (B) [redacted] percent [redacted]%) to the Managing Member.

(b) (i) Net Loss shall be allocated as follows:

(A) First, to the extent that Net Profit has been allocated to the Members pursuant to Section 3.6(a)(iii) hereof (and not previously offset pursuant to this clause (A)), (1) [redacted] percent [redacted]%) to the Members (other than the Managing Member), in proportion to their respective Company Interests and (2) [redacted] percent [redacted]%) to the Managing Member;

(B) Thereafter, to the Members, in proportion to their respective Company Interests.

(ii) Notwithstanding Section 3.6(b)(i) hereof, Net Loss allocated pursuant to Section 3.6(b)(i) to any Member for any Fiscal Year shall not exceed the maximum amount of Net Loss that may be allocated to such Member without causing such Member to have an Adjusted Capital Account Deficit at the end of such Fiscal Year. Any Net Loss in excess of the limitation in this Section 3.6(b)(ii) shall be specially allocated solely to the other Members to the maximum extent permitted by this Section 3.6(b)(ii).

(c) Subject to Section 3.6(g), if, despite the Managing Member's efforts to the contrary, prior allocations of Net Profit do not correspond to subsequent distributions made under Section 4.1 (due, for example, to the delayed time in which such distributions are made), then the Managing Member shall allocate Net Profit or Net Loss or items of income, gain, loss and deduction recognized in subsequent years among the Members in such manner as shall, in the Managing Member's reasonable discretion, eliminate as rapidly as possible the disparity between the prior allocations of Net Profit and the subsequent distributions. An allocation of Net Profit or Net Loss to a Member shall be treated as an allocation to such Member of the same share of each item of

income, gain, loss and deduction that is taken into account in computing such Net Profit or Net Loss, as the case may be.

(d) Notwithstanding Sections 3.6(a), (b) or (c), the following special allocations shall be made in the following order prior to the application of Sections 3.6(a), (b) or (c) (as the case may be):

(i) If there is a net decrease in Company Minimum Gain (as such decrease is determined as provided in Treasury Regulations Sections 1.704-2(d) and 1.704-2(g)) during any Fiscal Year or relevant portion thereof, certain items of income and gain, including gross income or gain, shall be allocated to the Members in the amounts and manner described in Treasury Regulations Section 1.704-2(f). This Section 3.6(d)(i) is intended to comply with the minimum gain chargeback requirement relating to partnership non-recourse liabilities (as defined in Treasury Regulations Section 1.704-2(f)) and shall be so interpreted.

(ii) If there is a net decrease in Minimum Gain attributable to partner non-recourse debt (determined pursuant to Treasury Regulations Section 1.704-2(i)) during any Fiscal Year or relevant portion thereof, certain items of income and gain, including gross income or gain, shall be allocated as quickly as possible to those Members which had a share of the Minimum Gain attributable to the partner non-recourse debt (such share to be determined pursuant to Treasury Regulations Section 1.704-1(i)(5)) in the amounts and manner described in Treasury Regulations Sections 1.704-2(i) and (j). This Section 3.6(d)(ii) is intended to comply with the minimum gain chargeback requirement relating to partner non-recourse debt set forth in Treasury Regulations Section 1.704-2(i)(4)) and shall be so interpreted.

(iii) Deductions attributable to obligations with respect to which a Member bears the economic risk of loss within the meaning of Treasury Regulation Section 1.704-2(b)(4) shall be allocated to the Member or Members that bear the economic risk of loss for such debt in accordance with the requirements of Treasury Regulation Section 1.704-2(i)(1). "*Nonrecourse Deductions*" (as such term is defined in Treasury Regulations Sections 1.704-2(b)(1) and 1.704-2(c)) of the Company shall be allocated to the Members in proportion to their Company Interests.

(iv) If one or more of the Members unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), then items of income and gain shall be specially allocated to such Members in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible; *provided, however,* that an allocation pursuant to this Section 3.6(d)(iv) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section 3.6 have been tentatively made as if this Section 3.6(d)(iv) were not in this Agreement. This provision is intended to qualify as a

"qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

(v) If one or more of the Members has a deficit Capital Account at the end of any Fiscal Year or relevant portion thereof which is in excess of the sum of (A) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (B) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible; *provided, however,* that an allocation pursuant to this Section 3.6(d)(v) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 3.6 have been made as if Section 3.6(d)(iv) hereof and this Section 3.6(d)(v) were not in the Agreement.

(vi) The allocations set forth in Section 3.6(d)(i)-(v) hereof (the *"Regulatory Allocations"*) are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 3.6(d)(vi). Therefore, the Managing Member shall make such offsetting special allocations of Company income, gain, loss and deduction in whatever manner it determines appropriate, so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 3.6(a), (b) and (c). In exercising its discretion, the Managing Member shall take into account future Regulatory Allocations pursuant to Sections 3.6(d)(i) and (ii) hereof that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 3.6(d)(iii) hereof.

(e) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, items of income, gain, loss and deduction with respect to any property contributed to the capital of the Company and Company property revalued pursuant to the definition of *"Gross Asset Value"* herein shall, solely for U.S. federal income tax purposes, be allocated to the Members so as to take into account any variation between the adjusted basis of such property to the Company for U.S. federal income tax purposes and its Gross Asset Value under any permitted method under Treasury Regulations Section 1.704-3 selected by the Managing Member. Allocations pursuant to this Section 3.6(e) are solely for purposes of U.S. federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profit, Net Loss, other items, or distributions pursuant to any provision of this Agreement.

(f) Solely for purposes of determining a Member's proportionate share of excess non-recourse liabilities of the Company within the meaning of Treasury Regulations Section 1.752-3(a)(3), a Member's interest in the Company's profits shall be as set forth in Section 3.6(a)(iii) hereof.

(g) In the event that the Managing Member reasonably determines that the allocations otherwise required pursuant to this Section 3.6 would not properly reflect the economic arrangement of the Members or would otherwise cause any inequitable or onerous result for any Members, then, notwithstanding any provision in this Agreement to the contrary, the Managing Member may adjust such allocations in the manner as the Managing Member reasonably determines to be required to prevent such result.

Section 3.7 Other Allocation Rules.

(a) For purposes of determining the profits, losses, or any other items allocable to any period, Net Profit, Net Loss, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Managing Member using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their shares of Company income and loss for income tax purposes.

Section 3.8 Return of Contributions. It is the intent of the parties hereto that no distribution to any Member shall be deemed a return of any money or other property in violation of the Act. The provisions of this Agreement and the payment of any such money or the distribution of any such property to a Member shall, to the fullest extent permitted by law, be deemed to be a compromise within the meaning of Section 18-502(b) of the Act, and the Member receiving any such money or property shall not, to the fullest extent permitted by law, be required to return any such money or property to any other person, the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Member is obligated to return such money or property, such obligation shall be the obligation of such Member and not of the Managing Member or any other Member.

Section 3.9 Withdrawal. In the event that it becomes necessary for any Investor Member which is a *"private foundation"* within the meaning of the Code to withdraw from the Company or reduce its interest therein in order to avoid (x) excise taxes imposed by Section 4943 of the Code or (y) a violation of, or a breach of the fiduciary duties of its trustees under, any U.S. federal or state law applicable to private foundations or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction, then such Investor Member shall deliver to the Managing Member a Withdrawal Notice, accompanied by an opinion of counsel (which may be counsel employed by such Investor Member or other counsel reasonably satisfactory to the Managing Member), confirming the necessity of such withdrawal or reduction, and explaining in reasonable detail the reasons therefor (and, in the case of a reduction,

specifying the amount of reduction of its Company Interest). Unless the Managing Member is able to eliminate the necessity for such withdrawal or reduction to the reasonable satisfaction of such Investor Member and its counsel, whether by correction of the condition giving rise thereto or amendment of this Agreement or otherwise, within sixty (60) days after receipt of such Withdrawal Notice and opinion, such Investor Member shall have the right to withdraw such portion of its Company Interest in the Company as shall be necessary in order to avoid (x) excise taxes imposed by Section 4943 of the Code or (y) a violation of, or a breach of the fiduciary duties of its trustees under, any U.S. federal or state law applicable to private foundations or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction. The specified withdrawal or reduction shall be effective on the last day of the fiscal quarter during which such sixty (60)-day period expired or, if in the opinion of counsel referred to above, an earlier effective date is necessary in order to comply with applicable legal or regulatory requirements, on such earlier date. The withdrawing Investor Member pursuant to this Section 3.9 shall not be required to make any Capital Contributions, and shall not be deemed to be in Default, with respect to any Drawdown Request issued after the date of receipt of the Withdrawal Notice by the Managing Member; *provided, however*, that (x) such withdrawing Investor Member will be required to make Capital Contributions to pay amounts owing or that become due under any Credit Facility to the extent secured by such Investor Member's Commitment (but only to the extent that such payments relate to Real Estate Investments that were made prior to the date of the Withdrawal Notice) and (y) if the reason for such withdrawal is cured prior to the effective date of such withdrawal, such Investor Member will be obligated to make Capital Contributions with respect to such Drawdown Request within eight (8) days after such cure. The determination of the value of the Company Interest being withdrawn by the Investor Member shall be made in accordance with Section 3.4(a) hereof.

ARTICLE IV

DISTRIBUTIONS

Section 4.1 Distributions of Distributable Funds. Distributable Funds shall be distributed to the Members as follows:

(a) First, to the Members in proportion to their respective Company Interests until the Triggering Event shall have occurred; and

(b) Thereafter, (i) [redacted] percent [redacted]%) to the Members (other than the Managing Member) in proportion to their respective Company Interests and (ii) [redacted] percent [redacted]%) to the Managing Member.

Section 4.2 Timing of Distributions. Subject to the Act and other applicable law, the Managing Member intends to distribute Sale and/or Financing Proceeds promptly after their receipt by the Company and to distribute Cash From Operations at least quarterly.

Section 4.3 Reserve Accounts. The Managing Member may maintain such reserve accounts as it deems reasonably necessary or desirable in the conduct of the business of the Company. Any amounts so reserved which are not used shall be invested in Short-Term Investments. The Managing Member may at any time release any funds so reserved and any interest earned thereon or increment thereto and distribute them to the Members as provided by Section 4.1.

Section 4.4 Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any U.S. federal, state or other tax law with respect to any payment, distribution or allocation to the Company, the Managing Member or the Investor Members and which are attributable to a Member shall be treated as amounts distributed to such Member pursuant to this Article IV for all purposes under this Agreement. Amounts withheld in respect of Investor Related Taxes shall be treated as amounts distributed to the Member to which such Investor Related Taxes are attributable. The Managing Member is authorized to withhold from distributions, and with respect to allocations, to the Managing Member and the Investor Members, and to pay over to any U.S. federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other U.S. federal, state or local law and shall allocate any such amounts to the Managing Member and the Investor Members with respect to which such amount was withheld. The withholdings referred to in this Section 4.4 shall be made at the maximum applicable statutory rate under the applicable tax law unless the Managing Member shall have received an opinion of counsel or other evidence, satisfactory to the Managing Member, to the effect that a lower rate is applicable, or that no withholding is applicable. To the extent that the aggregate of such payments to a Member for any fiscal period exceeds the distributions under Section 4.1 hereof to which such Member is entitled for such period, the amount of such excess shall be considered a loan from the Company to such Member, with interest at the prime or base rate as reported in The Wall Street Journal from time to time (which interest shall be treated as an item of Company income), until discharged by such Member by repayment, which discharge may be effected in the discretion of the Managing Member out of distributions under Section 4.1 hereof to which such Member would otherwise subsequently be entitled. Unless otherwise agreed to by the Managing Member in writing, each Member agrees to indemnify the Company and the Managing Member from and against any liability with respect to such Member's allocable share of any withholding as determined under this Section 4.4. Notwithstanding anything to the contrary set forth in this Section 4.4, no Member shall be required to indemnify the Company and the Managing Member from and against any liability with respect to such Member's allocable share of any foreign withholding if such liability arises out of the gross negligence of the Managing Member.

Section 4.5 Restricted Distributions. Notwithstanding any provision to the contrary contained in this Agreement, the Company, and the Managing Member on behalf of the Company, shall not make a distribution to any Member on account of its interest in the Company if such distribution would violate the Act, ERISA or other applicable law.

Section 4.6 Severance Distribution.

(a) In the event that the Managing Member is removed pursuant to Section 5.5(a) hereof, whether for Cause or without Cause, the Managing Member shall be entitled to receive a severance distribution (the *"Severance Distribution"*) in an amount to be determined in accordance with clauses (b)-(f) of this Section 4.6.

(b) In the event that the Managing Member is so removed prior to the occurrence of the Triggering Event, the Severance Distribution shall be in an amount equal to twenty percent (20%) of that portion, if any, of the Net Asset Value of the Company in excess of the amount that would, as of the Termination Date, be required to be distributed to the Investor Members in order to cause the Triggering Event to occur (without regard to any unused Commitments or whether the Acquisition Period has expired). In the event that the Managing Member is so removed upon or subsequent to the occurrence of the Triggering Event, the Severance Distribution shall be in an amount equal to twenty percent (20%) of the Net Asset Value of the Company as of the Termination Date; *provided*, that for purposes of determining the amount of the Severance Distribution, the Net Asset Value of the Company will be calculated without reduction for Investor Related Taxes that have accrued or been paid as of the applicable calculation date. Notwithstanding anything to the contrary set forth in the preceding sentences of this Section 4.6(b), in the event that the Severance Distribution is being made by reason of the removal of the Managing Member for Cause, the Managing Member shall be entitled to receive seventy-five percent (75%) of the Severance Distribution to which it otherwise would be entitled to receive.

(c) The Severance Distribution shall be distributed to the Managing Member in cash or immediately available funds on the later of the Termination Date or five (5) Business Days after the amount of the Severance Distribution has been determined in accordance with this Section 4.6 (such later date, the *"Payment Date"*); *provided, however*, that, if sufficient funds (less such reserves, if any, as shall be determined in good faith to be necessary by the Members' Board) are not available to the Company to distribute all or any part of the Severance Distribution, such outstanding amount shall be distributed by the Company to the Managing Member from time to time as quickly as practicable out of funds available to the Company as the Members' Board shall determine in good faith to be prudent, and no amounts shall be distributed to the Members until the Severance Distribution shall have been distributed in full. Nothing herein shall be construed to absolve the Company of its obligation to borrow funds, or to cause any subsidiary or REIT to borrow funds, on commercially reasonable terms if necessary in order to make the Severance Distribution in full on the earliest possible Payment Date; *provided, however*, that in no event shall the Company have any obligation to borrow funds, or cause any subsidiary or REIT to borrow funds, in order to make the Severance Distribution in the event that the Severance Distribution is being made by reason of the removal of the Managing Member for Cause, unless the Managing Member is deemed to have cured such Cause by, within 30 days after a Termination Notice is delivered to the Managing Member by the Removing Members in accordance with Section 5.5(a), (i) terminating or causing the termination of employment with the Managing Member and its Affiliates of all individuals who engaged in the conduct constituting such Cause and (ii) making the Company whole for any actual financial loss which such conduct has caused the Company. In the event that less than the full amount

of the Severance Distribution is made on the Payment Date, from and after the Payment Date, the portion of the Severance Distribution remaining undistributed from time to time shall accrue simple interest for the relevant period at the Prime Plus Two Rate; *provided, however*, that in the event that the Severance Distribution is being made by reason of the removal of the Managing Member for Cause, no such interest shall accrue.

(d) In the event that a Severance Distribution shall be distributable, the Net Asset Value of the Company shall be determined in good faith by a committee (the "*Valuation Committee*"). The Valuation Committee shall be comprised of (i) the representatives of the Members' Board or such other representatives as may be designated thereby (collectively, the "*Client Representatives*"), in all circumstances voting as a class, and (ii) a representative designated by the removed Managing Member (the "*Advisor Representative*"). All members of the Valuation Committee shall use their best efforts without disregarding their duties to the Company (in the case of the Members' Board), or the removed Managing Member (in the case of the Advisor Representative), to minimize the time and expense associated with the procedures set forth in this Section 4.6.

(e) If the Client Representatives, on one hand, and the Advisor Representative, on the other hand, cannot agree on a determination of the Net Asset Value of the Company within twenty-five (25) Business Days following the delivery of the Termination Notice, then within twenty (20) Business Days thereafter the Client Representatives, on one hand, and the Advisor Representative, on the other hand, shall each designate one or more Appraisers to appraise the Real Estate Investments of the Company; *provided, however*, that if either the Advisor Representative or the Client Representatives shall fail to designate an Appraiser to appraise any particular Real Estate Investment within such twenty (20) Business-Day period and thereafter shall fail to do so within three (3) Business Days after written notice by the other requesting that such designation be made, then such Appraiser shall be designated by the American Arbitration Association (or its successor organization) located in New York City (the "*AAA*") in accordance with its rules. All designated Appraisers shall separately complete their appraisals within thirty (30) days after the date on which the last such Appraiser has been designated and retained. Within five (5) Business Days thereafter, such Appraisers shall meet together with the Valuation Committee, and at such meeting each such Appraiser shall present to the Valuation Committee a sealed letter setting forth its judgment as to the fair market value of each such Real Estate Investment it has been designated to appraise. If the Valuation Committee does not so agree on the Net Asset Value of the Company, the value of each Real Estate Investment on which the Client Representatives, on one hand, and the Advisor Representative, on the other hand, do not agree shall be determined as follows: If the higher of the amounts indicated in the respective letters from the Appraisers designated to appraise such particular Real Estate Investment shall not exceed 110% of the lower amount, then the value shall be the average of the amounts set forth in such letters. If the higher amount set forth in either of such letters shall exceed 110% of the lower amount, then within ten (10) Business Days thereafter the two Appraisers having appraised the Real Estate Investment in question shall designate a third Appraiser. If the first two Appraisers shall fail to agree upon the designation of a third Appraiser, then the third Appraiser shall be appointed in

accordance with the rules of the AAA. The third Appraiser shall complete its appraisal within thirty (30) days after its date of designation. In the case where three appraisals are required, the appraisal most different from the average of the other two shall be discarded and such average shall be binding upon both the Company and the removed Managing Member; *provided, however*, that if the highest appraisal and the lowest appraisal are equidistant from the third appraisal, the third appraisal shall be binding upon both the Company and the removed Managing Member. Each such appraisal of a Real Estate Investment shall be in the amount determined in good faith to be the most probable price which such Real Estate Investment would bring in a competitive and open market under current economic conditions, assuming all conditions requisite to a fair sale, including, without limitation, that the buyer and seller are each acting prudently and knowledgeably, that the price is not affected by undue stimulus and that up to twelve (12) months are allowed in which to complete such transaction, reduced by one percent (1%) of such probable price to reflect assumed disposition costs.

(f) In the event that the Valuation Committee cannot agree upon the Net Asset Value of the Company based upon the aggregation of the fair market values of the Company's Real Estate Investments as determined in accordance with Sections 4.6(d) and 4.6(e) hereof, then the Net Asset Value of the Company shall be determined in accordance with the rules of the AAA. The fees and expenses of each Appraiser designated in accordance with this Section 4.6 and of the AAA, if applicable, shall be borne by the Company.

(g) To the extent permitted under applicable law, the Severance Distribution may, in the Managing Member's discretion, be treated for U.S. federal income tax purposes as a distribution pursuant to Section 731 of the Code; *provided*, that if the Managing Member makes the election set forth in Section 5.5(c)(ii) hereof, the Severance Distribution together with the purchase price set forth in Sections 5.5(c)(ii) and 5.5(d) hereof shall be treated as payments pursuant to Section 736 of the Code.

Section 4.7 Distributions to Pay Taxes.

(a) The Managing Member shall be entitled to distribute to itself an amount sufficient for the Managing Member (or its beneficial owners) to pay its tax liability which arises in respect of its share of net taxable income and gain of the Company allocated to it pursuant to Section 3.6(a)(iii)(B), determined as set forth below by the Managing Member using its reasonable judgment. Any funds distributed pursuant to this Section 4.7 shall reduce the amount the Managing Member would otherwise receive pursuant to Section 4.1 hereof. For purposes of this Section 4.7, the Managing Member's tax liability for any taxable year shall be deemed to be equal to the product of (i) its share of net taxable income and gain of the Company for such year allocated to it pursuant to Section 3.6(a)(iii)(B) and (ii) the sum of the highest marginal rate of U.S. federal, New York State and New York City local tax (including Medicare tax) imposed on individuals for such year with respect to items of the same character as such net income and gain, taking into account the deductibility of state and local income taxes for U.S. federal income tax purposes based on such reasonable assumptions as the Managing Member determines in good faith to be appropriate.

(b) Notwithstanding anything to the contrary set forth in Section 4.7(a) above, the calculation for the amount of any distribution for taxes to the Managing Member in any given year shall include the aggregate Net Loss allocated to the Managing Member in the previous year pursuant to Section 3.6(b)(i)(A), if any (with any Net Loss from previous years that are not offset against Net Profit for subsequent years carried forward until they have been exhausted). Upon the liquidation of the Company, the Managing Member shall recontribute to the Company an amount equal to any tax distributions made to the Managing Member pursuant to this Section 4.7 to the extent such tax distributions were not previously applied to reduce distributions the Managing Member would otherwise receive pursuant to Section 4.1; *provided, however*, that the Managing Member shall not be required to return any amount pursuant to this sentence if it would result in the Managing Member receiving less in aggregate distributions than it would have received absent Section 4.7.

Section 4.8 In Kind Distributions.

(a) Prior to the liquidation of the Company, distributions pursuant to Section 4.1 shall be made, at the discretion of the Managing Member, only in cash or freely tradeable securities that are not subject to any material restrictions on transfer as a result of applicable contractual provisions. For purposes of the immediately preceding sentence, "freely tradeable" for this purpose shall mean securities that are: (i) transferable by a Member pursuant to a then-effective registration statement (including a shelf registration statement) under the '33 Act, as amended, or regulations thereunder (or similar applicable statutory provision in the case of foreign securities); (ii) transferable by Members who are not Affiliates of the issuer pursuant to Rule 144(k) under the '33 Act, or any successor rule thereto (or similar applicable rule in the case of foreign securities); or (iii) transferable by Members pursuant to Rule 144A, which shall include (A) a covenant by the issuer of such security to comply with the reporting and informational requirements under Rule 144A and (B) eligibility for trading such securities on PORTAL. The Managing Member shall give each Investor Member ten (10) days' notice prior to any in kind distribution. No in kind distribution shall be made

to such Member if, within five (5) days prior to the scheduled date of such in kind distribution, such Investor Member sends the Managing Member a written notice requesting that the Managing Member sell such in kind assets on behalf of and for the account of such Member. In such event the Managing Member shall use its reasonable best efforts to arrange for the sale of such in kind assets on behalf of and for the account of such Investor Member; *provided, however*, that such Member shall acknowledge and agree that the net proceeds of any such disposition may differ from (x) the net proceeds obtained from a sale by any Investor Members who received such distribution-in-kind or (y) the fair market value of such assets. Upon such disposition, the Managing Member shall promptly distribute to such Member the net proceeds thereof, excluding expenses incurred by the Managing Member in connection with such sale. In no event shall any such disposition by the Managing Member relieve any Investor Member of its obligations hereunder.

(b) All assets distributed in kind, if any, shall be valued by the Managing Member in good faith as of the date of distribution; *provided, however*, that if the Members' Board objects to the valuation of the Managing Member, the Managing Member and the Members' Board shall have thirty (30) days from the date of distribution to agree upon a valuation, and, if they are unable to do so within such thirty (30) day period, the Managing Member shall cause a valuation to be performed by an appropriate independent valuation expert or independent major investment banking firm (as the case may be, the "*Valuation Expert*") selected by the Managing Member and approved by the Members' Board. In the event the Managing Member and the Members' Board are unable to agree upon a Valuation Expert, the Managing Member and the Members' Board shall each promptly select its own Valuation Expert and the two selected Valuation Experts shall be charged with selecting a third Valuation Expert acceptable to both such Valuation Experts, which third Valuation Expert shall be deemed to be acceptable to the Managing Member and the Members' Board and shall be charged with producing the valuation in question. Any valuation produced by a Valuation Expert selected as aforesaid shall be binding on the Members. The cost of any such valuation shall be borne by the Company.

ARTICLE V

MANAGEMENT

Section 5.1 Management of the Company. The overall management and control of the business and affairs of the Company shall be vested solely in the Managing Member, subject to the terms and conditions of this Agreement. No Member, other than the Managing Member, shall have any authority to bind the Company. No Member, other than the Managing Member, shall have any right or power or vote or approval with respect to any matter, except as specifically set forth elsewhere in this Agreement.

Section 5.2 Authority of the Managing Member.

(a) In managing the business of the Company pursuant to this Agreement, the Managing Member shall have the full and absolute discretionary power and authority to bind the Company and take any and all action and do anything and everything it deems necessary or appropriate in performing its duties hereunder, including, without limitation, the authority to enter into, execute, acknowledge and deliver on behalf of the Company any and all contracts, agreements, and other instruments or documents (including the Subscription Agreements) necessary or appropriate to carry out such powers in furtherance of the purposes of the Company. The authority granted to the Managing Member by this Agreement may be exercised by it without further notice to, or consent or approval by, the other Members.

(b) In conformity with the investment objectives of the Company, the Managing Member, acting by itself or by delegating such power to any other Person, as may be determined in the Managing Member's sole and absolute discretion, shall, on behalf of the Company:

(i) perform the investment and administrative operations of the Company in compliance with the investment objectives and policies of the Company, and in connection therewith perform Real Estate Investment acquisition, management and disposition services on behalf of the Company on a fully discretionary basis, including, without limitation, property analysis, market and economic surveys, on-site physical inspections, identification and selection of Real Estate Investments to be acquired or sold, negotiations for purchase and sale on such terms and conditions as the Managing Member in its sole and absolute discretion shall determine and the review and preparation of projections and financial statements;

(ii) expend the Capital Contributions of the Members in furtherance of the Company's operations, including, without limitation, for the purpose of acquiring Real Estate Investments (and invest the Capital Contributions in Short-Term Investments in anticipation of such acquisitions), or pay, in accordance with the provisions of this Agreement, all debts and obligations of the Company to the extent that funds of the Company are available therefor;

(iii) retain third parties on behalf of the Company for property management, leasing and other services for properties owned by the Company and supervise and review the performance of such services by such third parties, including, without limitation, review and approval of operating budgets, on-site physical inspections, review and approval of contracts, analysis of results of operation (including rental collections and property occupancies) and conducting of performance reviews; *provided, however*, that if any such third party shall be an Affiliate of the Managing Member, (A) any agreement with such third party on behalf of the Company shall be on terms disclosed to the Members which shall be at rates customarily charged for similar services by Persons engaged in the same or substantially similar activities in the relevant geographical area and the provisions of each such contract shall be at least as favorable to the Company as the terms reasonably expected by the Managing Member to be available from a

third party not an Affiliate of the Managing Member and (B) the provision of such services shall be deemed to be a Conflict and shall be subject to the approval of the Members' Board in accordance with Section 5.4;

(iv) manage the Company's Short-Term Investments representing assets held as reserves or for investment in Real Estate Investments;

(v) negotiate, incur and manage all Company indebtedness (which shall include all indebtedness incurred by the Company or a REIT), enter into guarantees of indebtedness (or cause any REIT or Affiliate of the Company to enter into such guarantees), as well as related interest rate caps, swaps, options and other hedging devices, whether any such indebtedness or hedging device, as the case may be, is secured or unsecured, and, in connection therewith, encumber any assets of the Company (including a pledge of unfunded Commitments as security for any Credit Facility); *provided, however*, that the Company's indebtedness (excluding any indebtedness pursuant to a Credit Facility) will be managed in an effort to attain leverage not to exceed sixty-five percent (65%) of the aggregate value of all of the Company's assets, as reasonably determined by the Managing Member at the termination of the Acquisition Period and thereafter at the time of the closing of any Financing. After the termination of the Acquisition Period, any Financing that would cause the Company's indebtedness (excluding any indebtedness pursuant to a Credit Facility) to exceed sixty-five percent (65%) of the aggregate value of all of the Company's assets shall be subject to the prior approval of two-thirds (2/3) of the members of the Members' Board in the same manner as a Conflict pursuant to Section 5.4(a)(i); *provided, however*, that the extension or refinancing of an existing loan for proceeds equal to or less than the original debt on the applicable Real Estate Investment shall not be subject to such Members' Board approval;

(vi) conduct periodic reviews of the returns on the Company's Real Estate Investments and Short-Term Investments;

(vii) exercise any conversion privilege, subscription right, option or consent, veto power or other right of the Company relating to its investments, vote securities owned by the Company and participate in reorganizations or other negotiations concerning changes in property rights, and make such other decisions and take such other action as the Managing Member deems advisable in the interest of the Company, including, without limitation, negotiate, execute, consent to, amend, modify and/or terminate instruments and agreements (including, without limitation, leases, notes, guarantees, loan agreements, deeds of trust and mortgages, and leasing, service, maintenance and property management contracts) with respect to investments and the operations of the Company and its subsidiaries, give and receive notices, requests, directions, consents, refusals and demands thereunder, and otherwise manage such investments and operations;

(viii) prepare annual reports with respect to Real Estate Investments, including receipts and disbursements relating thereto;

(ix) distribute Distributable Funds to the Members as provided in this Agreement;

(x) maintain books and records relating to the Company's performance and provide the Investor Members with information and reports at such times as may be reasonably requested regarding the investments of the Company, the funds available or to become available for investment, and generally as to the condition of the Company's affairs and the Company's results of operations, and prepare financial statements and reports or other documents to be delivered to the Investor Members or required under any applicable U.S. federal, state or local statue, or rule or regulation thereunder (including, without limitation, tax returns);

(xi) establish such bank accounts with such financial institutions as it shall deem appropriate for deposit of the portions of the Company's assets consisting of cash balances, including cash reserves, and to cause rent, mortgage and other payments incident to the day-to-day management of the Company to be deposited into such accounts by or at the direction of the Managing Member. All expenses normally incident to the day-to-day management of the Company may be paid by the Managing Member from such accounts;

(xii) liquidate all assets of the Company in contemplation of or upon the dissolution of the Company as may be required hereby and to take all actions determined by the Managing Member to be necessary or desirable in connection therewith;

(xiii) if and for so long as there is Significant Benefit Plan Investment in the Company, use commercially reasonable efforts so that the Company should qualify as a VCOC;

(xiv) carry on any other activities necessary or incidental to, or in connection with, any of the foregoing or the accomplishment of the purposes of the Company;

(xv) cause the Company to invest in Real Estate Investments through the acquisition of interests in other limited liability companies, joint ventures, one or more REITs or otherwise;

(xvi) cause all borrowings, including any Credit Facility, to be made by the Company or a REIT; and

(xvii) cause, in the Managing Member's sole discretion, the Managing Member and/or any of its Affiliates to acquire one or more investments (and/or enter into purchase agreements or other contracts in connection with such investments and pay deposits related thereto) appropriate for the Company prior to the Initial Closing Date (each such transaction, a "*Warehoused Investment*"). Subsequent to the Initial Closing Date, the Company or an Affiliate of the Company (and any Parallel Company, as applicable) shall purchase such Warehoused Investments from the Managing Member and/or any of its Affiliates

(or acquire the purchase agreements and related contracts via assignment thereof to the Company and/or purchase such Warehoused Investments directly from the applicable sellers, as applicable, and reimburse the Managing Member and/or any of its Affiliates for any deposits related thereto) for an amount equal to the cost of such Warehoused Investments.

(c) (i) In connection with its responsibilities for reviewing and evaluating Real Estate Investment opportunities, negotiating and effecting the acquisition, disposition and financing of investments and managing the Company's investments, the Managing Member may hire on behalf of the Company and at the Company's expense outside consultants and experts of whatever nature the Managing Member shall deem appropriate under the circumstances, including, without limitation, property managers, appraisers, architects, engineers, environmental consultants, title searchers, surveyors, real estate brokers, mortgage brokers, mortgage servicing agents, attorneys, brokers, accountants, auditors, insurance brokers, and other agents, consultants and experts; *provided, however*, that the cost of such services shall be paid by the Managing Member to the extent that such services are within the scope of services generally expected to be provided by the Managing Member under the terms of this Agreement, and *provided, further*, that if any such consultant shall be an Affiliate of the Managing Member, (A) any agreement with such third party on behalf of the Company shall be on terms disclosed to the Members which shall be at rates customarily charged for similar services by Persons engaged in the same or substantially similar activities in the relevant geographical area and the provisions of the contracts pursuant to which such consultants were engaged shall be at least as favorable to the Company as the terms reasonably expected by the Managing Member to be available from a third party not an Affiliate of the Managing Member, and (B) the provision of such services shall be deemed to be a Conflict and shall be subject to the approval of the Members' Board in accordance with Section 5.4. The Managing Member may also retain on behalf of the Company any other Person, including an Affiliate of the Managing Member (subject to the requirements of Sections 5.2(b)(iii), 5.3(b) and 5.4 hereof) it deems necessary or appropriate in connection with the performance of its duties under this Agreement.

(ii) The Managing Member shall cause to be prepared and shall execute on behalf of the Company any and all commitments, contracts, agreements and other documents or instruments necessary for the acquisition or disposition of any Real Estate Investment. Any third party dealing with the Company shall be entitled to rely on a written instrument executed by the Managing Member as constituting conclusive evidence that such instrument was duly executed and is binding upon the Company.

(iii) All instruments evidencing the ownership of investments by the Company and all documents which are necessary to exercise the rights or remedies of the Company with respect to such assets, including, but not limited to, all notes, mortgages, deeds, leases, certificates, title policies, assignments,

legal opinions, bills of sale and indemnities, shall be held by the Managing Member, it being the intention of the parties to this Agreement that the Managing Member shall be responsible for all custodial arrangements with respect thereto.

(iv) Other than the Managing Member, no Member shall (A) be permitted to participate in the management or control of the Company or (B) have any authority to bind or act for or on behalf of the Company.

(d) In fulfilling its obligations under this Agreement, the Managing Member shall maintain a staff sufficient to enable it fully to perform those obligations and shall devote such part of its time as is reasonably necessary for the operations contemplated by this Agreement, it being understood and agreed by the parties that the Managing Member and its employees shall not be bound to devote all of their time to the management of the affairs of the Company and may render similar services to other Persons or engage in activities which are unrelated to those provided herein.

(e) (i) It is agreed that, until the earlier of such time as (x) seventy-five percent (75%) of the Commitments have been invested in, or committed or reserved for investment in identified Real Estate Investments or (y) the Acquisition Period has expired, neither the Managing Member nor any of its Affiliates will organize a multiple-investor fund or other managed account of a substantially similar, blind-pool nature and with substantially similar investment objectives that competes directly with the investment objectives and policies of the Company; *provided, however*, that (A) subject to the foregoing, the Managing Member, any of its Affiliates, and/or any shareholder, officer, director, partner or employee of any thereof, and/or any Person owning a legal or beneficial interest therein, may now or in the future possess an interest in or engage in other investments, businesses or ventures of any nature or description independently or with others, including, without limitation, the ownership, financing, leasing, operation, management, brokerage and development of real estate investments, (B) the Managing Member or any of its Affiliates may form one or more REITs and offer interests therein to individual accredited investors so as to permit such REITs to maintain such tax qualification and (C) Fund VIII, including any co-investment funds related thereto, may acquire investments that would otherwise be presented to and suitable for investment by the Company, and in such cases, the Managing Member shall have allocated such investment opportunities as between Fund VIII (or its applicable co-investment funds) and the Company in a manner consistent with DRA's investment allocation policies in effect as of such time.

(ii) The proviso set forth in Section 5.2(e)(i) hereof shall not be deemed to create any right in the Investor Members to invest or otherwise participate in any such other investments, businesses or ventures or the income or proceeds derived therefrom.

(f) The Managing Member shall not enter into any Conflicts without the approval of the Members' Board in accordance with Section 5.4 hereof.

(g) The Managing Member shall not, without the prior consent of the Members' Board, make (i) any Real Estate Investment that would cause the Capital Contributions actually made by the Members in respect of such Real Estate Investment to exceed twenty percent (20%) of the aggregate Commitments of the Members, or (ii) any Real Estate Investment in a property to be developed that is not substantially pre-leased (a "*Development Asset*") if such Real Estate Investment would cause the Capital Contributions actually made by the Members in respect of Development Assets to exceed twenty percent (20%) of the aggregate Commitments of the Members, in each case calculated assuming the Capital Contributions in respect of such Real Estate Investment had been made. For purposes of this Section 5.2(g), to the extent that a Real Estate Investment classified as a Development Asset when acquired later becomes substantially pre-leased, such Real Estate Investment shall not be included in making the determination set forth in Section 5.2(g)(ii) above.

(h) The Managing Member shall not make any Real Estate Investment (excluding any Follow-On Investments or Real Estate Investment that is an individual asset within a portfolio of assets) that has an aggregate capitalization below $10,000,000.

Section 5.3 Compensation to the Managing Member.

(a) During the Acquisition Period, the Company shall, and/or the Company shall cause each REIT and/or the Feeder Fund to, pay to the Managing Member an investment advisory fee (the "*Advisory Fee*") payable in arrears at the end of each calendar quarter in the amount of [redacted]%) per annum of the weighted average calculated on a daily basis for each day in the calendar quarter of the Gross Asset Cost of all Real Estate Investments in which the Company has invested during such calendar quarter. Following the expiration of the Acquisition Period, the Company shall, and/or the Company shall cause each REIT and/or the Feeder Fund to, pay the Advisory Fee to the Managing Member in the amount of [redacted] percent [redacted]%) per annum of such weighted average aggregate Gross Asset Cost, calculated as aforesaid. In the event that the Acquisition Period ends other than at the close of a calendar quarter, the amount of the Advisory Fee for such quarter shall be based upon both such calculations, prorated accordingly. Notwithstanding anything to the contrary set forth in the preceding sentences of this Section 5.3(a) and exclusively for purposes of calculating the amount of the Advisory Fee from time to time, the Gross Asset Cost of the Real Estate Investments shall be (i) reduced by any indebtedness in excess of [redacted] percent [redacted]%) of the aggregate acquisition cost of all Real Estate Investments on a portfolio-wide basis, and (ii) calculated without reduction for Investor Related Taxes that have accrued or been paid as of the applicable calculation date. The Managing Member may direct that all or a portion of the Advisory Fee be paid directly to DRA on account of services provided by DRA on behalf of the Company. The Managing Member shall have the right to assign its rights to receive any Advisory Fee payable to the Managing Member to an Affiliate of the Managing Member. For the avoidance of doubt, the Managing Member shall not be subject to, and the Managing Member's Capital Account shall not be debited by any amount in respect of, the Advisory Fee.

(b) To the extent permitted under applicable law, the Managing Member and/or any of its Affiliates may provide services in respect of the Real Estate Investments and other assets of the Company in addition to those contemplated to be provided by the Managing Member hereunder, and receive additional compensation therefor; *provided, however*, that (i) any fee paid by the Company, a REIT and/or the Feeder Fund for such services shall be disclosed to the Members' Board and shall be at rates customarily charged for similar services by Persons engaged in the same or substantially similar activities in the relevant geographical area and the provisions of each such contract shall be at least as favorable to the Company as the terms reasonably expected by the Managing Member to be available in an arm's-length transaction with an independent third party and (ii) the provision of such services shall be deemed to be a Conflict and shall be subject to the approval of the Members' Board in accordance with Section 5.4.

(c) [Intentionally Omitted.]

(d) To the extent that the Managing Member, DRA or any officer or Affiliate thereof receives a director's fee or break-up fee arising from investment banking activities in connection with any Real Estate Investment of the Company (*"Extraordinary Compensation"*), such amount will be held in escrow pending the approval of such amount by two-thirds (2/3) of the members of the Members' Board in the same manner as a Conflict pursuant to Section 5.4(a)(i). Upon such Members' Board approval, eighty percent (80%) of the amount of such Extraordinary Compensation shall be deducted from the next installment of the Advisory Fee payable to the Managing Member pursuant to and in accordance with Section 5.3(a) hereof. In the event that the aggregate amount of Extraordinary Compensation equals or exceeds [redacted] dollars ($[redacted] then one hundred percent (100%) of the amount of such Extraordinary Compensation in excess of such amount shall be deducted from the immediately following installment (or, if such installment would otherwise be less than such amount, installments) of the Advisory Fee payable to the Managing Member pursuant to and in accordance with Section 5.3(a) hereof. If any Extraordinary Compensation exceeds the next installment of the Advisory Fee, the excess shall be carried forward for offset against future installments of the Advisory Fee. To the extent any such Extraordinary Compensation has not been set off against the Advisory Fees prior to the final distributions to be made pursuant to Section 9.2 hereof, an amount equal to such excess Extraordinary Compensation shall be paid by the Managing Member to the Company, which shall be treated as a payment made pursuant to Section 707(a)(1) of the Code, and distributed to the Members; provided that any Member may disclaim entitlement to its pro rata share of such excess Extraordinary Compensation by delivering to the Managing Member an irrevocable written disclaimer of any entitlement to such payment prior to the first date upon which the Managing Member makes any such payment.

(e) This Section 5.3 shall survive the termination of this Agreement.

Section 5.4 Members' Board and Designated Co-Investment Boards.

(a) (i) Prior to, or as soon as is practicable following, the Final Closing Date, there shall be established a board (the *"Members' Board"*) that shall serve as the Members' Board of the Company, the Feeder Fund and of any Parallel Company which shall include such representatives as are more fully described in Section 5.4(a)(ii) hereof. Subject to Section 5.4(b) hereof, the Members' Board shall review the Real Estate Investments of the Company and administrative and other topics relevant to the success of the Company as such representatives may suggest and perform any other obligations assigned to it under this Agreement, including, without limitation, those under Section 4.6 hereof; *provided, however*, that any member of the Members' Board that is a representative of a BHC Member shall not take any action which would cause such BHC Member to violate or otherwise contravene the BHC Act. In addition, the Members' Board shall (A) provide its approval or disapproval (1) as may be required by this Agreement, (2) with respect to all Conflicts, within ten (10) Business Days after the Managing Member shall have presented such Conflict to the Members' Board for its approval; *provided, however*, that with respect to Conflicts that are deemed to be material in the reasonable discretion of the Managing Member, the Managing Member shall convene a meeting of the Members' Board within such ten (10) Business Day period; *provided, further*, that if the Members' Board shall not have given its approval (or its approval subject to the satisfaction of certain specified conditions) or disapproval with respect to such Conflict within such ten (10) Business Day period, the Managing Member may thereafter send written notice (the *"Conflicts Notice"*) to the Members' Board stating, in bold, prominent lettering, that the Members' Board is required to respond to the Conflict before it within ten (10) Business Days, and if the Members' Board shall fail to approve or disapprove such Conflict within ten (10) Business Days after the delivery of the Conflicts Notice, then such Conflict shall be deemed approved by each representative of the Members' Board that failed to approve or disapprove such Conflict within such additional ten (10) Business Day period, and (3) as may otherwise be requested by the Managing Member, (B) review the annual determination of Net Asset Value of the Company as described in Section 7.3 hereof and (C) participate in the determination of Net Asset Value of the Company in the context of determining the Severance Distribution as described in Sections 4.6 and 5.5 hereof. Subject to the immediately preceding sentence, any and all recommendations made by the Members' Board to the Managing Member and the Company shall be non-binding on the Managing Member and the Company and the Members' Board shall not participate in the management or control of the Company or have any authority to bind or act for or on behalf of the Company.

(ii) The Members' Board shall consist of (A) a non-voting representative designated by the Managing Member, (B) upon request of any Investor Member (or similarly situated member of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT) holding five percent (5%) or more of the aggregate Units Committed of all Members and units committed by the members of any Parallel Company (each as determined on the Final Closing Date), a representative designated by such Investor Member (or such similarly

situated member of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT), and (C) subject to the Managing Member's approval in its sole discretion, upon request of an Investor Member (or similarly situated member of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT) holding less than five percent (5%) of the aggregate Units Committed of all Members and units committed by the members of any Parallel Company, a representative designated by such Investor Member (or such similarly situated member of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT); *provided, however*, that such non-voting representative designated by the Managing Member may be asked to leave any meeting of the Members' Board upon the request of a majority of the members of the Members' Board and shall then immediately leave the meeting; *provided, further*, that if fewer than three (3) representatives are designated by the Investor Members (and similarly situated members of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT), the Managing Member shall annually select in its sole discretion one or more Investor Members (or similarly situated members of the Feeder Fund or any Parallel Company, but excluding the Fund IX REIT) to designate representatives to the Members' Board to serve for a one-year term such that the total number of representatives, including, without limitation, the representative designated by the Managing Member, is at least four (4); *provided, further*, that no Defaulting Member (or similarly situated defaulting member of the Feeder Fund or any Parallel Company) may designate, or otherwise be represented by, a representative on the Members' Board (or, for the avoidance of doubt, any Designated Co-Investment Board). The Members' Board shall meet at least once annually and otherwise as necessary to fulfill its duties and obligations described in Section 5.4(a)(i) above and shall adopt its own rules and procedures as to its meetings. The Members' Board may meet concurrently with, or separately from, any Designated Co-Investment Board, in each case as determined by the Managing Member. Any Member (or similarly situated member of the Feeder Fund or any Parallel Company) entitled to designate a representative to the Members' Board as herein contemplated shall be entitled to remove and replace at any time any representative previously designated by such Member or similarly situated member of the Feeder Fund or any Parallel Company. Any vacancy on the Members' Board, whether by reason of death, resignation or removal, shall be filled by the Member (or similarly situated member of the Feeder Fund or any Parallel Company) that was entitled to designate the representative whose death, resignation or removal has caused the vacancy. Removing a representative or filling a vacancy shall be effected by written notice to the Managing Member. Subject to the preceding provisions of this Section 5.4(a)(ii), each representative on the Members' Board shall be entitled to reimbursement by the Company for travel expenses incurred in connection with attending meetings of the Members' Board.

(iii) A majority of the members of the Members' Board present in person or represented by proxy shall constitute a quorum for the transaction of business at any meeting of the Members' Board, and the transaction of business at any meeting of the Members' Board shall require the affirmative vote of a

majority of the voting members present in person or represented by proxy. Any written action taken by the Members' Board shall be executed by a majority of the voting members thereof. Each voting member of the Members' Board shall be entitled to cast one vote in all matters coming before the Members' Board (A) at a meeting, in person, by written proxy or by a signed writing directing the manner in which such member desires that such vote be cast, or (B) without a meeting, by a signed writing directing the manner in which such member desires such vote be cast. Any member may waive notice of or attendance at any meeting of the Members' Board and may attend by telephone or any other electronic communication device or may execute a signed written consent in lieu of a meeting.

(b) (i) The Managing Member may, in its discretion, create, from time to time, additional member boards (each, a *"Designated Co-investment Board"*) to review such matters with respect to any Co-Investments made by the Company and any other investment vehicle(s) managed by DRA or any of its Affiliates (each, a *"DRA-Managed Vehicle"*) pursuant to Section 5.12 hereof, as would otherwise be subject to the approval, disapproval or review of the Members' Board pursuant to this Agreement. Each Designated Co-Investment Board shall include (A) the members of the Members' Board and (B) subject to the Managing Member's approval, one or more representatives designated by one or more investor members (or limited partners or other equivalent investors) of the applicable DRA-Managed Vehicles, so long as each such investor remains admitted as a member, limited partner or other investor in good standing of the applicable DRA-Managed Vehicle and has not defaulted on any obligation under the operating, limited partnership or other governing agreement of such DRA-Managed Vehicle or any other agreement executed in connection with any such investor's participation in such DRA-Managed Vehicle (each member, a *"Designated Co-Investment Board Member"*); *provided, however*, that no Investor Member that has a designee on the Members' Board shall be entitled to designate an additional designee on a Designated Co-Investment Board in connection with its participation in any DRA-Managed Vehicle other than the Company; *provided, further*, that the majority of the members of each Designated Co-Investment Board shall be representatives designated by Investor Members of the Company. For the avoidance of doubt, notwithstanding anything to the contrary contained in this Agreement, (x) no matter subject to approval or review by any Designated Co-Investment Board shall be subject to approval or review by the Members' Board, (y) to the extent that any matter which is subject to the approval of the Members' Board directly or indirectly affects in any manner whatsoever any investment by any DRA-Managed Vehicle, such matter shall be subject to the review and approval of the applicable Designated Co-Investment Board, if any and (z) neither the Managing Member nor any Affiliate thereof shall have any obligation to create a Designated Co-Investment Board. Notwithstanding anything to the contrary contained herein, references to the Members' Board in sections of the Agreement other than this Section 5.4 or in the specific definitions provided in Article I shall be deemed to be references to the Members' Board or a Designated Co-Investment Board, as applicable, in each

case subject to the provisions of this Section 5.4 applicable to Designated Co-Investment Boards.

(ii) Each Designated Co-Investment Board shall meet at least once annually and otherwise as necessary to fulfill its duties and obligations described in this Section 5.4(b) and shall adopt its own rules and procedures as to its meetings. Each Designated Co-Investment Board may meet concurrently with, or separately from, the Members' Board and any other Designated Co-Investment Board, in each case as determined by the Managing Member in its reasonable discretion. Any investor member entitled to designate a representative to a Designated Co-Investment Board as herein contemplated shall be entitled to remove and replace at any time any representative previously designated by such investor member. Any vacancy on a Designated Co-Investment Board, whether by reason of death, resignation or removal, shall be filled by the Investor Member or other investor in the applicable DRA-Managed Vehicle that was entitled to designate the representative whose death, resignation or removal has caused the vacancy. Removing a representative or filling a vacancy shall be effected by written notice to the Managing Member. Each Designated Co-Investment Board Member shall be entitled to reimbursement by the Company and each of the applicable DRA-Managed Vehicles, on a pro rata basis, for travel expenses incurred in connection with attending meetings of the Designated Co-Investment Board. A majority of any Designated Co-Investment Board Members present in person or represented by proxy shall constitute a quorum for the transaction of business at any meeting of the applicable Designated Co-Investment Board, and the transaction of business at any meeting of any Designated Co-Investment Board shall require the affirmative vote of a majority of the voting members present in person or represented by proxy. Any written action taken by any Designated Co-Investment Board shall be executed by a majority of the voting members thereof. Each voting member of any Designated Co-Investment Board shall be entitled to cast one vote in all matters coming before such Designated Co-Investment Board (A) at a meeting, in person, by written proxy or by a signed writing directing the manner in which such member desires that such vote be cast, or (B) without a meeting, by a signed writing directing the manner in which such member desires such vote be cast. Any Designated Co-Investment Board Member may waive notice of or attendance at any meeting of the applicable Designated Co-Investment Board and may attend by telephone or any other electronic communication device or may execute a signed written consent in lieu of a meeting.

(iii) Each Designated Co-Investment Board Member and any Person designating such Designated Co-Investment Board Member shall have the benefit of the same rights and protections as those granted to those representatives appointed to the Members' Board and their designating parties pursuant to Section 5.4 of this Agreement. Accordingly, any Designated Co-Investment Board Member serving on a Designated Co-Investment Board or Person designating such Designated Co-Investment Board Member shall be considered a Covered Person for purposes of Article X of this Agreement and pursuant to any

other governing agreement of any DRA-Managed Vehicle. The Managing Member shall allocate expenses (including, without limitation, any indemnity expenses) among the Company and any DRA-Managed Vehicles in its reasonable discretion.

Section 5.5 Removal of the Managing Member.

(a) Without the consent of the Managing Member, Investor Members (i) having Company Interests aggregating not less than fifty percent (50%) may, by voting at a meeting or by written consent, effect, for Cause or (ii) having Company Interests aggregating not less than sixty-seven percent (67%) may, by voting at a meeting or by written consent, effect, without Cause (the Investor Members described in each of clauses (i) and (ii), the "*Removing Members*"), the removal of the Managing Member at any time upon ninety (90) days' prior written notice (the "*Termination Notice*") to the Managing Member (the last day of such ninety-day period, the "*Termination Date*"), which Termination Notice shall be executed by the Removing Members; *provided, however*, that, in the event that after diligent effort a successor Managing Member is not appointed prior to the Termination Date, the Managing Member shall, pursuant to a written request by the Removing Members, continue thereafter to perform all services required hereunder until (i) a successor Managing Member has been designated by the Removing Members or (ii) the Removing Members shall have delivered to the Managing Member thirty (30) days' prior written notice that its services are no longer required. All fees and reimbursements to be paid to the Managing Member pursuant to this Agreement shall continue to be paid by the Company to the Managing Member in respect of such ninety-day period prior to and including the Termination Date, and in respect of any period after the Termination Date during which the Managing Member continues to perform any services hereunder at the request of the Removing Members as aforesaid. For the avoidance of doubt, the Termination Notice delivered to the Managing Member by the Removing Members may specify that the removal of the Managing Member is for Cause whether or not a final determination of Cause (after all appeals and the expiration of time to appeal) has been issued by a court of competent jurisdiction or an arbitrator; *provided, however*, that the determination of the amount of the Severance Distribution payable pursuant to Section 4.6 shall be subject to such final determination by a court of competent jurisdiction or arbitrator.

(b) Upon the removal of the Managing Member, the Managing Member shall:

(i) pay over to the Company all money collected and held for the account of the Company, after deducting any accrued compensation and reimbursement for its expenses to which the Managing Member is then entitled;

(ii) deliver to the Members' Board a full accounting, including a statement showing all payments collected by the Managing Member and a statement of any money held by it, covering the period following the date of the last accounting furnished to the Members pursuant to Section 7.2 hereof;

(iii) deliver to the Members' Board all property and documents of the Company then in the custody of the Managing Member and do such other acts and things as the Members' Board may reasonably request in connection with such termination;

(iv) consistent with professional practices, cooperate with the Company and the successor Managing Member, if any, to provide for the orderly transition of authority over the management of the Company's assets; and

(v) not be entitled to receive any further amounts pursuant to Section 4.1(b) after the date of such removal of the Managing Member.

(c) In the event that the Managing Member is removed pursuant to Section 5.5(a) hereof with or without Cause, the Managing Member shall be entitled (i) to receive a Severance Distribution in an amount to be determined in accordance with Section 4.6 hereof, and (ii) to elect to require the Company to purchase its remaining Company Interest (after giving effect to the distribution of the Severance Distribution), in accordance with Section 5.5(d) hereof.

(d) (i) In the event that the Managing Member is removed pursuant to Section 5.5(a) hereof, then the Managing Member may elect to require the Company to redeem its remaining Company Interest (after giving effect to the Severance Distribution, if applicable, under Sections 4.6 and 5.5(c)(i) hereof) for cash in an amount equal to the Fair Market Price of the Managing Member's Company Interest (as defined in Section 5.5(d)(ii) hereof).

(ii) For the purposes of Section 5.5(d)(i) hereof, the *"Fair Market Price of the Managing Member's Company Interest"* shall equal the product of the Net Asset Value of the Company (determined in accordance with clauses (d)-(f) of Section 4.6 hereof, after giving effect to the Severance Distribution under Sections 4.6 and 5.5(c)(i) hereof), and the Managing Member's Company Interest.

(iii) In the event that the Managing Member is removed pursuant to Section 5.5(a) hereof during the Acquisition Period and the Managing Member elects to exercise its rights under Sections 5.5(c)(ii) and 5.5(d)(i) hereof, then, notwithstanding any contrary provision of this Agreement, any obligation hereunder of the Managing Member to contribute any portion of its respective Commitment remaining unpaid or any other amounts shall terminate immediately and the Managing Member shall cease to be a member of the Company.

(e) The rights of the Investor Members pursuant to this Section 5.5 to remove and replace the Managing Member shall not come into existence or be effective in any manner unless and until, at the expense of the Company (which expense shall be borne by the Members, excluding the Managing Member, indirectly), either (i) the Company has received an opinion of counsel, which counsel shall be selected by the Removing Members in their reasonable discretion, that such action may be effected without (A) adversely affecting the status of Investor Members as members in a limited

liability company or terminating the Company for tax purposes, (B) violation of the '33 Act or any applicable state securities or *"blue sky"* laws, and (C) the necessity of registration of the Company as an *"investment company"* under the Investment Company Act or (ii) a court of competent jurisdiction has entered a judgment which has become final removing the Managing Member.

(f) The provisions of Section 4.6 and of this Section 5.5 shall survive the termination of this Agreement.

Section 5.6 Assignment by the Managing Member of its Company Interest.

(a) The Managing Member may not resign from the Company, or assign, transfer or hypothecate all or any portion of its Company Interest to any Person not an Affiliate of the Managing Member, unless and until Investor Members whose Company Interests aggregate seventy-five percent (75%) or more shall have consented in writing to such resignation or assignment. On or prior to the effective date of any such assignment, the assignee of the Managing Member shall have executed a counterpart of this Agreement pursuant to which such assignee shall be admitted as a Member of the Company and shall have agreed to perform the duties and obligations of the Managing Member and to be bound by and to comply with the terms and provisions of this Agreement as a Member and as the Managing Member. The Managing Member shall pay or cause to be paid all expenses incurred by the Company in connection with such assignment.

(b) Any limited liability company interests in the Managing Member shall not be transferred without the consent of the Members' Board; *provided, however*, that transfers to the following Persons shall be deemed to be permitted transfers which do not require the consent of the Members' Board: transfers (i) to Persons which have controlling interests in the Managing Member, (ii) to any Person controlled by or under common control with DRA or any of its members, (iii) to any Person controlled by or under common control with David Luski or Paul McEvoy, (iv) to the spouse, children, grandchildren of a partner or a family trust in which the spouse, children or grandchildren of such partner are the sole beneficiaries in connection with the estate planning of the partners of the Managing Member, or (v) to employees of DRA.

Section 5.7 Tax Elections.

(a) The Managing Member may, in its sole discretion, make (and if made, may revoke) all elections with respect to the Company permitted to be made under the Code or any successor thereto or other applicable tax law. Without limiting the generality of the foregoing, the Managing Member in particular may, in its sole discretion, make (and, if made, revoke) the election referred to in Section 754 of the Code, or any similar provision enacted in lieu thereof, and the transferee of any Company Interest or portion thereof transferred while such an election is in effect shall bear all expenses arising as a result of such election as it relates to the interest so transferred.

Each Member will, upon request, supply the information necessary to give effect properly to such election.

(b) The Managing Member agrees to not cause any REIT to elect to pay income tax on its net capital gains to the extent commercially reasonable to do so.

(c) The Managing Member agrees not to cause the Company to elect to be taxed as a corporation without the unanimous consent of all of the Members.

Section 5.8 Maintenance of Company Status. The Managing Member will use commercially reasonable efforts to meet all future requirements of any Governmental Authority for the classification of the Company as a partnership for U.S. federal income tax purposes that is not a publicly traded partnership taxable as a corporation or an association taxable as a corporation.

Section 5.9 Tax Matters Partner. The Managing Member shall be designated on the Company's annual U.S. federal information tax return, and have full powers and responsibilities, as the tax matters partner of the Company for purposes of Section 6231(a)(7) of the Code with respect to tax returns filed by the Company for tax years beginning before 2017, and the Managing Member (or such Person as may be designated by the Managing Member in its sole discretion) shall be designated, in the manner prescribed by applicable law, as the partnership representative authorized to act on behalf of the Company in respect of Company audits relating to tax returns filed for taxable years beginning after 2017 (the Managing Member and/or such other Person, the *"Tax Matters Partner"*). Each Person (for purposes of this Section 5.9, called a *"Pass-Thru Partner"*) that holds or controls an interest in the Company as a Member on behalf of, or for the benefit of, another Person or Persons, or which Pass-Thru Partner is beneficially owned (directly or indirectly) by another Person or Persons, shall, within 30 days following receipt from the Tax Matters Partner of any notice, demand, request for information or similar document, convey such notice or other document in writing to all holders of beneficial interests in the Company holding such interests through such Pass-Thru Partner. In the event the Company shall be the subject of an income tax audit by any U.S. federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member thereof. The Tax Matters Partner shall have the authority to make, or cause to be made, all relevant decisions and elections, including, with respect to audits relating to tax returns filed for taxable years beginning after 2017, an election under Section 6226 of the Code, as then in effect, and any similar elections under state or local law, and each Investor Member hereby agrees to promptly take any action, and furnish the Tax Matters Partner with any information necessary, to give effect to any such decision or election. All expenses incurred by the Tax Matters Partner in connection with any such audit, investigation, settlement or review shall be borne by the Company.

Section 5.10 Regulation. The Managing Member intends to operate the Company in such a way that the Company will not be deemed to be an *"investment*

company" as such term is defined in the Investment Company Act. However, changes in law, regulation thereunder and interpretations thereof, or the assignment or reallocation of all or any part of a Company Interest may make it necessary or advisable to register the Company under the Investment Company Act, or to make structural, operating or other changes in the Company in order to permit any of the Company, the Members, the Managing Member or any Affiliate of any thereof to comply with the provisions of the Investment Company Act. The Managing Member is hereby authorized to take any action it may deem necessary or advisable (provided that such action is not materially adverse to the interests of the Investor Members or the Company) in light of such changing conditions in order to permit the Company to continue in existence, including, without limitation, registering the Company under the Investment Company Act, taking any and all action necessary to secure such registration, and amending this Agreement without the consent of any of the Investor Members.

Section 5.11 Certain Limitations Regarding Voting Rights of BHC Members. Notwithstanding any other provision of this Agreement, all BHC Members shall be subject to the limitations on voting set forth in this Section 5.11. If at any time a BHC Member holds Company Interests that would otherwise represent 5% or more of the total voting Company Interests, such BHC Member may not vote any portion of its Company Interests representing in excess of 4.99% of the Company Interests entitled to vote. Whenever the vote, consent or decision of an Investor Member is required or permitted pursuant to this Agreement, a BHC Member shall not be entitled to participate in such vote or consent, or to make such decision, with respect to the portion of such BHC Member's Company Interest in excess of 4.99% of Company Interests, and such vote, consent or decision shall be tabulated or made as if such BHC Member were not a Member with respect to such BHC Member's Company Interests in excess of 4.99% of the Company Interests. Each BHC Member hereby further irrevocably waives its corresponding right to vote for a successor managing member under the Act with respect to any non-voting Company Interests, which waiver shall be binding upon such BHC Member and any Person that succeeds to its interest. In the event that two or more BHC Members are affiliated, the limitations of this Section 5.11 shall apply to the aggregate Company Interests held by such BHC Members and each such BHC Member shall be entitled to vote its pro rata portion of 4.99% of the Company Interests entitled to vote. Except as provided in this Section 5.11, any Company Interest of a BHC Member held as a non-voting Company Interest shall be identical in all respects to the Company Interests of the other Investor Members. Any such Company Interest held as a non-voting Company Interest shall remain a non-voting Company Interest in the event that the BHC Member holding such Company Interest ceases to be a BHC Member and shall continue as a non-voting Company Interest with respect to any assignee or other transferee of such Company Interest.

Section 5.12 Co-Investments.

(a) The Managing Member is hereby specifically authorized to invest the Commitments of the Members (or the members of the Feeder Fund) on a side-by-side basis with any Person, including any Investor Member (or investor member of the Feeder Fund), whenever the Managing Member deems it appropriate. Subject to Section 5.13, if

the Managing Member provides any Member (or member of the Feeder Fund) or any Person the opportunity to invest on a side-by-side basis with the Company during the Acquisition Period, the Managing Member will make such opportunity available to all of the Members (and members of the Feeder Fund) with a Commitment (or commitment to the Feeder Fund) of $[redacted] or greater that are not in default of their respective obligations to the Company (or the Feeder Fund, as applicable) hereunder (or under the Feeder Fund Agreement) or under their respective Subscription Agreements (or subscription agreements to the Feeder Fund), to co-invest with the Company in each Real Estate Investment in which the Company is entitled to invest but does not invest (each such co-investment opportunity, a "*Co-Investment*"), whether for purposes of achieving a reasonably diversified portfolio, to satisfy the diversification requirements set forth in Section 5.2(g), or as otherwise determined by the Managing Member in its sole discretion. Each Member (or member of the Feeder Fund) entitled to co-invest in accordance with the immediately preceding sentence shall be offered the opportunity to co-invest in each Co-Investment on a first refusal, pro rata basis in accordance with their respective Company Interests (or company interests to the Feeder Fund). The terms and conditions of any entity formed to co-invest with the Company (including, without limitation, the economic terms) may be more beneficial to the investors participating therein than those terms provided to the Members pursuant to this Agreement. The Managing Member shall send written notice to each Member (and member of the Feeder Fund) entitled to co-invest hereunder describing the Co-Investment in reasonable detail (the "*Investment Disclosure*"). The Managing Member shall use its reasonable best efforts to ensure that all Co-Investments will be made on substantially the same terms and conditions as the Company's investment in the associated Real Estate Investment. The vehicle through which any Co-Investment is made shall share, on a pro rata basis in accordance with the commitments of the vehicles investing in such Co-Investment and associated Real Estate Investment (including such vehicle and the Company), as applicable, aggregate investment-related expenses (including, without limitation, any indemnity expenses) applicable to such Co-Investment and associated Real Estate Investment; *provided, however,* that investment-related expenses (including any broken-deal expenses) attributable to any Co-Investment that does not ultimately close, including any expenses that would otherwise be borne by the vehicle through which such Co-Investment was proposed to be made, will instead be borne by the Company. Subject to the immediately preceding sentence, the vehicle through which any Co-Investment is made shall bear any organizational expenses of such vehicle. If a Member (or member of the Feeder Fund) elects to participate in the Co-Investment, the Member (or member of the Feeder Fund) shall be required to notify the Managing Member, within a reasonable period of time as determined by the Managing Member in its sole discretion, after its receipt of the Investment Disclosure of its intention to participate in such Co-Investment, and the Member (or member of the Feeder Fund) shall be required, upon the written request of the Managing Member, to fund its pro rata share of the Co-Investment in accordance with Section 3.2 hereof (or Section 3.2 of the Feeder Fund Agreement). Notwithstanding anything to the contrary set forth in this Section 5.12, the ability of the Company to enter into joint ventures or similar transactions of any nature with any Person without offering the opportunity to any Investor Member(s) (or investor members of the Feeder Fund) shall not be impaired by the foregoing, and the Managing Member

will not be obligated to offer any such opportunity to invest in any Co-Investment to any Investor Member (or investor member of the Feeder Fund), even if an Investor Member (or investor member of the Feeder Fund) or any Affiliate thereof (other than an Affiliate of the Managing Member) originates the proposed transaction. If the Members of the Company (and members of the Feeder Fund) do not elect to participate in the entire Co-Investment opportunity, the Managing Member shall be free to offer any or all of such remaining Co-Investment, in its sole discretion, to, without limitation, any of its Affiliates, any Investor Member (or investor member of the Feeder Fund), any third party, or may (but shall not be obligated to) retain such remaining Co-Investment for its own account; *provided, however*, that in the event the Managing Member and/or any of its Affiliates participates in such remaining Co-Investment, the Managing Member and/or any such participating Affiliate shall share, on a pro rata basis in accordance with the commitments of the investors in such Co-Investment, expenses (including, without limitation, any indemnity expenses) applicable to such Co-Investment.

(b) In the event that the Company co-invests with Fund VIII in any Real Estate Investment, the Managing Member shall provide prior notice thereof to the Investor Members (and the investor members of the Feeder Fund).

Section 5.13 Special Purpose Vehicles.

(a) The Managing Member is hereby specifically authorized to make or hold some or all of the Real Estate Investments in whole or in part through special purpose entities in which the Company holds an interest (which may be limited liability companies, corporations or other types of entities). The Managing Member is also hereby specifically authorized (a) to invest, or to direct the investment of, the Commitments of the Members pursuant to other arrangements, including one or more parallel companies (or other entities) in which the Members would have separate interests, that are reasonably expected to preserve in all material respects the overall economic relationship of the Members contemplated by this Agreement and that will have materially the same terms and conditions as the Company, except as the Managing Member determines to be reasonably necessary for legal, tax or regulatory reasons, including, for the avoidance of doubt, to facilitate the acquisition of one or more Real Estate Investments that may not appropriately be held through a REIT, (b) to modify this Agreement as may be necessary or desirable to accommodate any such arrangements and (c) to execute and deliver on behalf of the Investor Members as their agent and attorney-in-fact such other documents as may be reasonably necessary or desirable to implement any such arrangements (including the limited liability company agreements for any such parallel companies or other entities); *provided, however*, that the use of any such special purpose vehicle pursuant to this Section 5.13 shall only be permitted if the Capital Contributions of all Members (and members of the Feeder Fund) applied to fund the applicable Real Estate Investment(s) for which such special purpose vehicle is used are ultimately invested through one entity which directly or indirectly holds such applicable Real Estate Investment(s). Copies of any documents necessary or desirable in connection with the implementation of any such arrangements (including the limited liability company agreements for any such parallel companies or other entities) shall be delivered to the Investor Members. Notwithstanding the foregoing, the use of any such special

purpose vehicle pursuant to this Section 5.13 shall not (i) jeopardize the limited liability of any Investor Member, or (ii) cause any Investor Member to violate applicable law.

(b) The Managing Member shall generally invest the Company's assets pro rata with any Parallel Company (or any REIT (defined below) or other entity through which any Parallel Company may invest), taking into account the total Commitments of the Company and the capital commitments to any such Parallel Company in allocating investment opportunities among them, subject to legal, regulatory, tax or other similar considerations. For purposes of this Section 5.13(b), "REIT" means any entity that is intended to qualify as a *"real estate investment trust"* (within the meaning of Section 856 of the Code). All Real Estate Investments, including the purchase price paid for such Real Estate Investments, acquired in any transaction by the Company shall, subject to legal, regulatory, tax or other similar considerations, be acquired on substantially the same economic terms by any Parallel Company. The Company and any Parallel Company shall, subject to legal, regulatory, tax or other similar considerations, acquire and dispose of their investments (or a proportionate share thereof) at substantially the same time and on substantially the same economic terms. All Company Costs shall be allocated between the Company and any Parallel Company on the basis of the total Commitments of the Members and the total capital commitments of the investors of any such Parallel Company; *provided*, that any such expenses that relate solely to the Company and not to such Parallel Company shall be paid solely by the Company and vice versa; *provided, further*, that certain investment-related expenses may, in the Managing Member's sole discretion, be allocated between the Company and any Parallel Company on the basis of invested capital (or proposed acquisition cost in the case of broken-deal expenses) with respect to such investments. Whenever pursuant to this Agreement or any of the other agreements contemplated by this Agreement, any of the Members shall be required or permitted to take any action, whether by vote, consent or otherwise, all such actions shall be taken by the applicable Members in the Company and members of any Parallel Company, acting collectively as a group (i.e., based on aggregate Units Committed of all Members and units committed by the members of such Parallel Company).

Section 5.14 Credit Facility.

(a) The Company is authorized to enter into (or authorized to cause any REIT to enter into) one or more credit facilities (each, a *"Credit Facility"*) to finance Real Estate Investments and Follow-On Investments, and to otherwise carry out the business and activities permitted hereunder; *provided, however*, that at any one time there shall only be one Credit Facility in effect. Such Credit Facilities may be secured by (x) a pledge by the Company (or the Feeder Fund or REIT, as applicable) of all or a portion of the aggregate unfunded Commitments of all Members (or the aggregate unfunded commitments of members of the Feeder Fund, as applicable), and (y) a pledge by the Managing Member of its interest in the Company and the Feeder Fund and the rights of the Managing Member contained herein, including, without limitation, the right to deliver Drawdown Requests and receive Capital Contributions and enforce all remedies against Members that fail to fund their respective unfunded Commitments pursuant thereto and in accordance with the terms hereof (or the rights of the Managing Member to deliver

drawdown requests and receive capital contributions and enforce all remedies against members that fail to fund their respective unfunded commitments pursuant to the Feeder Fund Agreement, as applicable). In connection with any such Credit Facility, each Member agrees that, subject to the other terms of this Agreement, (i) if the lender under such Credit Facility shall reasonably request, such Member shall acknowledge to such lender the amount of such Member's Commitment and unfunded Commitment and such Member's obligations under this Agreement (not including financial information with respect to any Member, the obligation to submit any such information being addressed below), (ii) such Member is obligated to fund capital calls to the Company made by such lender exercising the rights of the Managing Member in accordance with the terms of this Agreement (provided that the Members shall not have any greater obligation to honor capital calls made by such lender than their obligation to honor capital calls made by the Managing Member), (iii) such Member will execute an estoppel letter substantially in the form annexed hereto as Annex A confirming the foregoing and its obligations under this Agreement in connection with any Credit Facility (each, a *"Credit Facility Confirmation"*), (iv) such Member shall provide to the Managing Member for provision to such lender copies of its formation documents and relevant authority documents and opinions (or similar documents reasonably requested by the lender under any Credit Facility) and shall otherwise cooperate reasonably with the Managing Member to satisfy the relevant lender with regard to the foregoing and (v) such Member shall deliver an opinion of counsel reasonably satisfactory to such lender regarding the due formation, valid existence and good standing of such Member and the due authorization, valid execution and delivery of its Subscription Agreement and any Credit Facility Confirmation substantially in the form annexed hereto as Annex B (each, a *"Credit Facility Opinion"*). The Credit Facility Confirmation may contain other acknowledgements of the Member as reasonably requested by the lender. Each Member further agrees, upon request of the Managing Member, to deliver to the lender under any Credit Facility (A) either (1) its balance sheet as of the end of each of its fiscal years and the related statements of operations for each such fiscal year prepared by its independent public accountants, or, if it has not retained public accountants to prepare such statements, certified by an officer, or (2) such other information or reports as shall be reasonably acceptable to the Managing Member and reasonably available to, or attainable by, such Investor Member (as set forth in a written notice from the Managing Member to any Member), in either case by the latest to occur of (y) the date which is one hundred twenty (120) days after the end of its fiscal year and (z) the date it makes such financial information available to its shareholders, directors, stakeholders, principals or other lenders or such financial information becomes available to the public, and (B) from time to time upon the request of the Managing Member, a certificate setting forth the remaining amount of its unfunded Commitments. The Managing Member agrees to the Members' execution of any Credit Facility Confirmation. The Company shall use funds borrowed under any Credit Facility solely (x) to pay expenses and obligations of the Company in advance of Capital Contributions, (y) to make deposits in advance of Capital Contributions, or (z) as interim acquisition financing on a short term basis in advance of Capital Contributions and/or permanent financing.

(b) In the event that a Member makes a Capital Contribution to any collateral account pledged by the Company, as guarantor, to any lender as security for

any Credit Facility, the payment into such account shall be a Capital Contribution of such Member to the Company, shall reduce each contributing Member's unfunded Commitment, and the funding of any Capital Contribution to such pledged account on or prior to the applicable Contribution Date shall be deemed compliance with the requirements regarding the funding of Capital Contributions pursuant to this Agreement.

ARTICLE VI

COSTS AND EXPENSES

Section 6.1 Organizational Costs. The Company shall pay or cause to be paid or cause the Managing Member to be reimbursed for all costs and expenses (*"Organizational Costs"*) incurred in connection with (a) the formation and organization of the Company, the Feeder Fund and the Fund IX REIT, and (b) the sale of the Units (and any corresponding units of the Feeder Fund and the Fund IX REIT); *provided, however*, that the Company's obligations in respect of Organizational Costs shall not exceed $[redacted] in the aggregate. Organizational Costs shall in each case include, without limitation, and whether incurred before or after the formation of the Company, the Feeder Fund and the Fund IX REIT, all related travel, accommodation, legal, accounting, consulting, filing, registration, selling and printing costs.

Section 6.2 Expenses Not Borne by the Company. The Managing Member shall pay, without reimbursement by the Company, all of its own ordinary administrative and overhead expenses, including, but not limited to, all costs and expenses on account of rent, supplies, telephone, postage and delivery, equipment, furniture, fixtures, salaries, wages, bonuses and other employee benefits. Additionally, the Managing Member shall bear all costs and expenses (including legal fees) incurred to comply with its own regulatory and compliance filings (including preparing and filing its Form ADV and Form PF). For the avoidance of doubt, Company Costs and Organizational Costs shall be borne by the Company and shall not be considered administrative and overhead expenses of the Managing Member.

Section 6.3 Normal Operating, Investment and Other Costs. Subject to Sections 4.6 and 5.3 hereof, all normal operating costs and administrative expenses of the Company shall be paid by the Company and, if incurred by or through the Managing Member, shall be reimbursed by the Company. Normal operating costs and administrative expenses shall include:

(a) any and all fees, costs and expenses incurred in connection with the discovery, investigation, evaluation, negotiation, acquisition, purchase, holding, monitoring, operation, maintenance, improvement, leasing, sale or exchange of proposed or existing Real Estate Investments (whether or not consummated), including private placement fees, sales commissions, appraisal fees, taxes, brokerage fees, broken-deal expenses, lenders' fees, legal fees, accounting fees, investment banking fees, consulting fees, research-related fees, professional fees, reasonable out of pocket and third-party costs and expenses (including those related to title agents, engineers, environmental inspectors, tax advisors, due diligence firms and other consultants, as well as any reports

generated in relation to any of the foregoing), including travel expenses incurred by the officers and employees of the Managing Member in connection with any of the foregoing;

(b) any and all costs and expenses incurred in connection with the carrying or management of Real Estate Investments, including without limitation, the Company's normal record keeping and reporting, custodial fees, trustee fees, maintenance and storage costs of books and records and other administrative fees;

(c) any and all costs and expenses incurred in connection with the Company's financial statements and reports, the cost of the Company's annual audit, entity-level taxes, tax returns, K-1's (or similar schedules) and any other communications with Members;

(d) any and all fees and disbursements of attorneys, accountants and appraisers relating to Real Estate Investments or other Company matters;

(e) except as set forth in Section 6.2, any and all costs and expenses (including legal fees and expenses) incurred to comply with any law or regulation related to the activities of the Company (including any regulatory and compliance filings necessitated by or attributable to the investments or operations of the Company) or incurred in connection with any litigation or governmental inquiry, investigation or proceeding involving the Company or in connection with investigating, defending and settling any claim, investigation, action or proceeding against or involving the Company or incurred in the protection or assertion by the Company of any of its rights, including the amount of any judgments, settlements, damages or fines paid in connection therewith, except to the extent such expenses or amounts have been determined to be excluded from the indemnification provided for in Section 10.2;

(f) any and all costs and expenses incurred in connection with any amendments, modifications, revisions or restatements, if any, to this Agreement or any other constituent documents of the Company and entities related to the Company;

(g) any and all costs and expenses incurred in connection with any acquisition, disposition or valuation of the current or prospective assets of the Company (including any software used by the Company or the Managing Member that is directly attributable to such acquisition, disposition or valuation of Company assets);

(h) any and all fees and expenses incurred in connection with obtaining and negotiating any Credit Facility and any and all interest on, and fees and expenses arising out of, any debt (including pursuant to any Credit Facility) incurred by the Company that is permitted under this Agreement;

(i) any and all taxes and other governmental charges that may be incurred or payable by the Company;

(j) any and all insurance premiums and expenses incurred by the Company in connection with the activities of the Company, including errors, omissions,

fidelity, general partner liability, fiduciary, directors' and officers' insurance and similar coverage for any Covered Person acting on behalf of the Company or any entity related to the Company;

(k) any and all costs and expenses incurred in connection with the dissolution, liquidation, winding up or termination of the Company;

(l) any and all costs and expenses incurred in connection with distributions to the Members;

(m) all costs and expenses of the Members' Board (including meetings thereof and travel expenses of its representatives), and all costs and expenses incurred in connection with meetings with the Members held pursuant to this Agreement or the Act (including travel expenses related thereto);

(n) reasonable costs and expenses related to the Company's indemnification obligations pursuant to Section 10.2;

(o) any and all costs and expenses related to defaults by Members in the payment of any Capital Contributions (to the extent not paid by Defaulting Members in accordance with this Agreement); and

(p) any Advisory Fees payable by the Company pursuant to Section 5.3.

The amounts referred to in clauses (a) through (p) are "*Company Costs*". The foregoing Company Costs shall not exceed the usual and customary charges imposed by Persons engaged in the same or substantially similar activities. Certain investor-specific taxes, including Investor Related Taxes, may be imposed on a particular Member or Members. In the event that the Company incurs costs in connection with an unconsummated transaction ("*Unconsummated Deal Costs*") and an Affiliate of the Company later closes such transaction, such Affiliate shall be responsible for such Unconsummated Deal Costs. In the event that the Company co-invests in a Real Estate Investment with an Affiliate and/or a third-party through a joint venture vehicle or other operating partnership, the expenses in connection with such Real Estate Investment shall be allocated pro-rata between the Company, such Affiliate and/or third-party based upon the aggregate amount invested by each party in such Real Estate Investment. Additionally, for the avoidance of doubt, such joint ventures may provide for the payment and/or allocation of incentive, promote, performance, property management and/or similar fees to third parties.

Section 6.4 Allocation of Expenses. Notwithstanding anything in this Agreement to the contrary, to the extent expenses borne by the Company, or by the Managing Member on behalf of the Company, are also allocable to other funds or client accounts managed by DRA or its Affiliates (including, for the avoidance of doubt, the Managing Member), such expenses will be allocated between the Company and such other funds or client accounts (including, for the avoidance of doubt, the Fund IX REIT, the Feeder Fund and any Parallel Company) in a manner that the Managing Member in its sole discretion considers to be fair and equitable, taking into account a number of

factors, including, without limitation, the nature of the expense and the applicability and relative utility of the expense to the specific investment vehicle or its investments, and the relative capital commitments, assets under management, portfolio composition and investment phase of the applicable funds or client accounts.

ARTICLE VII

BOOKS, RECORDS AND REPORTS

Section 7.1 Books and Records. The Managing Member shall cause the Company to keep complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts, profits and losses of the Company and such other matters as the Managing Member and the independent nationally recognized certified public accountant selected by the Managing Member (the *"Accountant"*) from time to time shall deem necessary or appropriate. Subject to the Company's Privacy Policy (the *"Privacy Policy"*) as described in Part 5 of each Subscription Agreement, which Privacy Policy permits, among other things, Investor Members who are natural persons to opt out of the disclosure of certain non-public information to other Investor Members, such books of account and records shall be the property of the Company, shall at all times be maintained at the principal office of the Company and shall, upon written demand, be available for inspection and copying at all reasonable times by the Members or their duly authorized representatives so long as such inspection and copying is in connection with any purpose reasonably related to the Member's interest as a member of the Company.

Section 7.2 Financial Statements; Confidentiality.

(a) The Managing Member shall (i) cause to be prepared in accordance with U.S. generally accepted accounting principles and on an accrual basis, and delivered to each Member on or before the 120th day after the end of each Fiscal Year, (x) annual audited financial statements for the Company, consisting of a balance sheet and related statement of financial condition, statement of operations, statement of changes in Members' Capital Accounts and statement of cash flow, which financial statements shall be accompanied by a report of the Accountant thereon and (y) information regarding the amount of such Member's share in the Company's taxable income or loss for such year, in sufficient detail to enable such Member to prepare its U.S. federal, state and other tax returns, (ii) cause to be prepared and delivered to each Member, within sixty (60) days following the end of each fiscal quarter of the Company (provided that such date may be extended for a reasonable period in the event of business exigencies), summary operational reports prepared on an accrual basis for the Company, (iii) cause to be prepared and delivered to each Member, an annual report on the Company's operations, (iv) furnish from time to time and with reasonable promptness, such further information with respect to the business, affairs and financial condition of the Company as any Member may reasonably request in connection with any purpose reasonably related to the Member's interest as a member of the Company, and (v) cause to be disclosed in a footnote to the annual financial statements to be delivered pursuant to clause (i) above any and all distributions made to the Managing Member under Section

4.1(b)(ii) during such Fiscal Year. In addition, the Managing Member shall furnish to each Member on a quarterly basis a summary of every investment made by the Company during such quarter, including an overview of the acquisition, the investment strategy and the projected return with respect to such investment.

(b) Each annual statement of income and expense provided pursuant to Section 7.2(a) hereof shall be accompanied by a summary, in reasonable detail, of the operations of the property of the Company for such year, and a statement indicating that portion of income attributable to the operation of escalation provisions for taxes and operating expenses provided in occupancy leases of any particular property of the Company.

(c) Without limitation of Section 7.2(a)(iv) above but subject to any applicable confidentiality requirements imposed upon the Managing Member or the Company, the Managing Member shall, upon request by a Member, provide such Member with the following: (i) on or about the time the Managing Member furnishes the annual report to a Member pursuant to Section 7.2(a)(iii), supplemental information regarding calculations for gross and net internal rates of return in respect of such Member's Commitment and applicable equity multiples and (ii) on or before the ninetieth (90th) day after the end of the Fiscal Year, copies of operating statements with respect to each Real Estate Investment held by the Company as of the end of the Fiscal Year.

(d) The Managing Member shall be entitled, in its discretion, to transmit the reports and statements described in this Section 7.2 (the "*Company Reports*") to one or more Members solely by means of granting such Members access to a database or other forum hosted on a website designated by the Managing Member (the "*Reporting Site*"), with such parameters regarding access and availability of information for review as the Managing Member deems reasonably necessary to protect the confidentiality and proprietary nature of the information contained therein (including, without limitation, establishing password protections for access to the Reporting Site, preventing the Company Reports posted on the Reporting Site from being copied or printed and having such Company Reports available for review for a restricted period of time (but, with respect to each Company Report, in no event less than thirty (30) days from the first date such Company Report is posted on the Reporting Site)). The Managing Member shall notify such Members that (i) such Company Reports are available for viewing on the Reporting Site and (ii) the length of time such Company Reports will be available for viewing on the Reporting Site. Any Member shall have the right to obtain upon request written copies of the Company Reports contained on the Reporting Site. Unless the Managing Member exercises its discretion pursuant to and in compliance with this Section 7.2 to restrict access to certain Confidential Information that may be included in a Company Report posted on the Reporting Site, the Company Reports posted on the Reporting Site shall contain all of the material information included in those Company Reports transmitted to Members other than pursuant to this Section 7.2(d). The Company Reports shall be posted on the Reporting Site within the same number of days after the end of the applicable fiscal quarter or Fiscal Year as is required pursuant to this Section 7.2.

(e) Each of the Members shall keep confidential and not disclose to any Person any Confidential Information (as defined below) other than to its directors, officers, employees, attorneys, accountants, trustees and advisors involved in such Member's investments (the *"Representatives"*) who shall be informed of the confidential information prior to such disclosure and shall be directed to keep such Confidential Information confidential, without the express prior written consent of the Managing Member (which may be withheld in the sole discretion of the Managing Member) unless (i) such disclosure by such Member shall be required by applicable law, governmental rule or regulation, court order, administrative or arbitral proceeding or by any regulatory authority having jurisdiction over such Member; or (ii) such disclosure is required by such Member in response to any court order, subpoena or similar process. In the event disclosure of any such Confidential Information is permitted by the Managing Member or the exceptions set forth in the first sentence of this Section 7.2(e) apply, such Member is responsible for the compliance by any such recipient with the foregoing restrictions. Each Member acknowledges and agrees that the Confidential Information shall be deemed non-public, confidential and proprietary in nature and shall, to the fullest extent permitted by law, constitute trade secrets under applicable law with respect to the Company or its business, the disclosure of which could have adverse effects on the Company or its business. Notwithstanding anything in this Agreement to the contrary, if the Managing Member determines that notifying the Members of any information with respect to the Company or any Real Estate Investment would (A) cause a risk of jeopardizing, diminishing the value of, or increasing the price to be paid for, that prospective Real Estate Investment or otherwise have an adverse effect on such prospective Real Estate Investment, (B) cause a risk of violating any applicable law or (C) otherwise not be in the best interest of the Company, the Managing Member may omit the identifying information from the Drawdown Request. In such a case, the Managing Member shall include in such Drawdown Request such description of the nature of the prospective Real Estate Investment and the business to which it relates as the Managing Member deems appropriate. Notwithstanding anything in the foregoing to the contrary, the Managing Member may disclose the identity of the Members to other Members (including, without limitation, in communications directed to all Members) or to the extent reasonably calculated to advance or protect the interests of the Company. Confidential Information may be used by an Investor Member and its Affiliates only in connection with Company matters and in connection with the maintenance of its interest in the Company.

(f) *"Confidential Information"* shall mean any information related to the activities and operations of the Company, the Feeder Fund, the Fund IX REIT, any Parallel Company, any Real Estate Investment, the Managing Member, and its Affiliates, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by a Member in violation of this Agreement), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member by the Company or the Managing Member, or (iii) becomes available to a Member on a non-confidential basis from a third party; *provided, however,* that such third party is not known by such Member to be bound by this Agreement or another confidentiality agreement with the Company. Such Confidential Information may include, without limitation, information that pertains or relates to (A) the business

and affairs of any other Member, (B) any investments or proposed investments, or (C) any other Company matters.

(g) In connection with Section 7.2(e), if any Member is required to disclose any of the Confidential Information, such Member will, to the extent permitted by applicable law, provide the Managing Member with prompt written notice prior to responding so that the Managing Member may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Member will reasonably cooperate with the Managing Member in any effort to obtain a protective order or other remedy. If such protective order or other remedy is not obtained, such Member will furnish only that portion of the Confidential Information that, after consultation with counsel, is required and will exercise commercially reasonable efforts to obtain assurance that the Confidential Information will be accorded confidential treatment.

(h) Each Member acknowledges that it will be impossible to measure in money the damages that would be suffered if it failed to comply with the obligations set forth in this Section 7.2, and in the event of such failure the Managing Member, other Members or the Company will be irreparably damaged and will not have an adequate remedy at law. To the fullest extent permitted by law, any such Person shall, therefore, be entitled to seek injunctive relief and/or specific performance to enforce such obligations, and if any action should be brought in equity to enforce this Section 7.2, no party to this Agreement shall raise the defense that there is an adequate remedy at law.

(i) Each Member understands and acknowledges that the Company, the Managing Member and its Affiliates make no representation or warranty as to the accuracy or completeness of the Confidential Information provided to the Members which is provided to the Company by any third party, except as otherwise provided therein, and that to the extent the Company, the Managing Member or its Affiliates provides any such Confidential Information to any Member, such Member acknowledges and agrees that, except as otherwise provided therein, such information is provided for informational purposes only. To the fullest extent permitted by law, none of the Company, the Managing Member or its Affiliates shall have any liability to any Members or any other Person resulting from reliance on or use of such third party Confidential Information.

(j) Each Member acknowledges and agrees that the Managing Member and the Company may, in the Managing Member's sole discretion, exclude any Member from a meeting of the Members and any representative of a Member appointed to the Members' Board from a meeting of the Members' Board, in each case, where the Managing Member determines in its sole discretion that such action is necessary or advisable where issues regarding confidentiality may exist.

(k) Notwithstanding anything in this Agreement to the contrary, the Managing Member shall have the right to keep confidential from any or all Members for such a period of time as the Managing Member deems reasonable in its sole discretion (i) any information that the Managing Member determines to be in the nature of trade

secrets that should not be disclosed to such Member(s) and (ii) any other information or any portion thereof, including, without limitation, information provided to other Members, (x) the disclosure of which the Managing Member determines is not in the best interest of the Company or could damage the Company or its investments or business or (y) that the Company is required by law or by agreement with a third Person to keep confidential. To the fullest extent permitted by law, the Members agree that neither the Managing Member nor its members shall be in breach of any duty under this Agreement or applicable law in consequence of acquiring, holding or failing to disclose such information to the Company or the Members so long as such actions were undertaken in good faith.

(l) Notwithstanding anything in this Agreement to the contrary, in order to preserve the confidentiality of certain information disseminated by the Managing Member or the Company under this Agreement that a Member is entitled to receive pursuant to the provisions of this Agreement, including, but not limited to, financial statements, information provided to the Members' Board, and information provided at the Company's meetings, the Managing Member may take such actions as it deems appropriate in its sole discretion, including, but not limited to, requiring such Member to return any copies of information provided to it by the Managing Member or the Company.

(m) Notwithstanding anything herein to the contrary, to comply with Treasury Regulations Section 1.6011-4(b)(3), each Member (and any representative of such Member) may disclose to any and all Persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the Company or any transactions undertaken by the Company, it being understood and agreed, for this purpose, that (i) the name of, or any other identifying information regarding (A) the Company or any existing or future investor (or any Affiliate thereof) in the Company, or (B) any investment or transaction entered into by the Company; (ii) any performance information relating to the Company or the Real Estate Investments; and (iii) any performance or other information relating to investments sponsored by the Managing Member does not constitute such tax treatment or tax structure information.

Section 7.3 Net Asset Value of the Company. On or before the 120th day after the end of each Fiscal Year, the Managing Member at the expense of the Company shall determine the Net Asset Value of the Company. In determining the Net Asset Value of the Company for purposes of this Section 7.3, all Real Estate Investments (including, without limitation, direct equity investments and investments in the securities of entities owning real estate or providing real estate-related services) will be valued initially by the Managing Member at cost. The Managing Member agrees that it will cause each Real Estate Investment to be appraised by an independent appraiser on or prior to the second anniversary of the acquisition of such Real Estate Investment and every two years thereafter; *provided, however*, to the extent there has been a material change in the valuation of a Real Estate Investment in a quarter in which such independent appraisal is not required to be performed as a result of a material change in the financial condition, results of operations, business or prospects or otherwise relating to such Real Estate Investment (as determined by the Managing Member in its sole

discretion), such Real Estate Investment will be valued internally by the Managing Member as of the end of the calendar quarter in which such material change occurred. Notwithstanding the foregoing, Short-Term Investments of the Company will always be valued at the lower of cost or fair market value. After so determining the value of the Company assets (the *"Asset Value"*), the Members agree that the Managing Member will determine Net Asset Value of the Company by subtracting from the Asset Value the liabilities of the Company and by making such other adjustments to Asset Value as the Managing Member determines are reasonably necessary to accurately reflect dispositions, redemptions and distributions.

Section 7.4 Tax Ownership. Each Investor Member hereby agrees to provide the Managing Member with such information as the Managing Member may reasonably request from time to time with respect to the citizenship, residency, status, ownership or control of such Investor Member so as to permit the Managing Member to (i) evaluate and comply with any regulatory and tax requirements applicable to the Company or proposed investments of the Company, or (ii) reduce or eliminate withholding or other taxes (including, for the avoidance of doubt, any tax or liabilities relating to tax imposed as a result of an audit of the Company or any subsidiary of the Company through which the Company directly or indirectly invests) imposed on or with respect to the Company or such Investor Member's interest therein. Each Investor Member shall, within a reasonable period following a written request from the Managing Member, give written notice to the Managing Member setting forth such information regarding the ownership and status of such Investor Member as the Managing Member shall request in order to determine the effect, if any, of such ownership of Company Interests on any REIT's status as a *"real estate investment trust"* (within the meaning of Section 856 of the Code) and as a *"pension-held REIT"* (within the meaning of Section 856(h)(3)(D) of the Code), and as a *"domestically controlled REIT"* (within the meaning of Section 897(h) of the Code and the Treasury Regulations promulgated thereunder; *provided*, that the foregoing shall apply only with respect to REITs organized as subsidiaries of the Company.

Section 7.5 REIT Matters.

(a) Each Investor Member (other than the Fund IX REIT) that is not (i) a pension trust or an educational endowment or (ii) an Investor Member that is within the group of Investor Members with the lowest Commitments that, when aggregated, do not exceed 20% of the aggregate Commitments of all Members, covenants to notify the Managing Member of any single transfer of greater than 5% of the direct or indirect ownership interest in such Investor Member at least 10 Business Days prior to the consummation of any such transfer.

(b) Each Investor Member hereby represents to the Managing Member that it understands that the provisions of any Declaration are expected to set forth, among other things, certain restrictions on direct and indirect transfers of equity interests in any REIT subsidiary of the Company and the circumstances in which equity interests in any REIT will be converted into Shares-in-Trust. Notwithstanding any other provision of this Agreement, in the event that (i) any interest in the Company is transferred or any direct or

indirect ownership interest in any Investor Member (other than the Fund IX REIT) is transferred and (ii) as a result of such transfer, the interests in any REIT that are held by the Company are converted into Shares-in-Trust pursuant to a Declaration, then (A) such transferee of the interests in the Company or such Investor Member whose ownership interests were transferred, as the case may be, shall (1) repay to the Company the amount of any distributions received by it from the Company that are attributable to interests in any REIT that are held by the Company that are designated as Shares-in-Trust and that were received on or after the date that such shares became Shares-in-Trust, and (2) have its right to distributions pursuant to this Agreement reduced by an amount equal to the sum of the amount of cash and the fair market value of any property received by the Excess Share Trust with respect to such Shares-in-Trust and distributed by the Excess Share Trust to the Charitable Beneficiary (as defined in the Declaration) or used by the Excess Share Trust to pay its expenses, (B) the allocations of income, gain, loss or expense of the Company pursuant to Article III shall be adjusted to the extent necessary to reflect the rights and obligations of such transferee or Investor Member as described in clause (A) of this sentence and (C) for purposes of determining such transferee's or Investor Member's Beneficial Ownership of the interests in any REIT subsidiary of the Company, interests in any such REIT that otherwise would be Beneficially Owned by such transferee or Investor Member (but for the transfer to the Excess Share Trust) shall be reduced by such number of Shares-in-Trust. Notwithstanding anything to the contrary contained herein, for purposes of determining the Managing Member's Severance Distributions with respect to such transferee or Investor Member (other the Fund IX REIT), such transferee or Investor Member shall be treated as having received a distribution pursuant to Section 4.1 in an amount equal to the sum of the amount of cash and the fair market value of any property received by the Excess Share Trust with respect to such Shares-in-Trust and distributed by the Excess Share Trust to the Charitable Beneficiary or used by the Excess Share Trust to pay its expenses.

ARTICLE VIII

ASSIGNABILITY OF INTERESTS

Section 8.1 Substitution and Assignment of an Investor Member's Company Interest.

(a) An Investor Member may not voluntarily sell, transfer, assign, pledge, or otherwise dispose of all or any part of such Investor Member's Company Interest unless and until all of the following conditions shall have been satisfied:

(i) No such transfer or assignment shall be made or be effective which, in the opinion of counsel to the Company, may (A) jeopardize the status of the Company as a partnership for U.S. federal income tax purposes, (B) result in the termination of the Company for purposes of Section 708 of the Code, or any successor provision thereto, (C) result in the assets of the Company being deemed to constitute *"plan assets"* of any ERISA Investor Member for purposes of ERISA, (D) cause the Company to be treated as a *"publicly traded partnership"* within the meaning of Section 7704 of the Code and the Treasury Regulations

thereunder, (E) violate, or cause the Company to violate, any applicable law or governmental rule or regulation, including, without limitation, ERISA, or (F) jeopardize the status of any REIT that is a subsidiary of the Company as a real estate investment trust or cause any such REIT to qualify as a *"pension-held"* real estate investment trust pursuant to Section 856(h) of the Code, for U.S. federal income tax purposes;

(ii) No such transfer or assignment shall be made if, in the opinion of counsel to the Company, such assignment may not be effected without (A) registration under the '33 Act, (B) violation of applicable state securities laws, or (C) registration of the Company as an *"investment company"* under the Investment Company Act;

(iii) The instrument conveying such Company Interest has been delivered to and accepted by the Managing Member for recordation on the books of the Company and such assignee has executed and delivered to the Managing Member a Subscription Agreement (as appropriately amended) and/or such other instruments as requested by the Managing Member;

(iv) Unless an assignee or transferee becomes an Investor Member in accordance with the provisions set forth below, such assignee or transferee shall not be entitled to any of the rights granted to an Investor Member hereunder, other than the right (unless prohibited by Section 8.1(a)(ii) hereof) to receive all or part of the share of the profits, losses, cash distributions or returns of capital to which the assignor would otherwise be entitled;

(v) The Managing Member shall have consented to such transfer or assignment, which consent shall not be unreasonably withheld;

(vi) The assignee or transferee agrees to be bound by the provisions set forth in Section 8.3 hereof; and

(vii) no assignment, pledge, hypothecation or other transfer shall be permitted at any time that a Credit Facility is outstanding and secured by a pledge contemplated in Section 5.14 hereof, unless either (A) the transferring Member remains liable for the full amount of its unfunded Commitment, after the transfer or (B) all amounts which would become due under such Credit Facility as a result of the transfer by such Investor Member of its interest in the Company are paid to the lender of such Credit Facility by such Investor Member.

(b) An assignee of the Company Interest of an Investor Member, or any portion thereof, shall become a substituted Investor Member to the extent of such Company Interest, entitled to all the rights of an Investor Member with respect thereto, if, and only if:

(i) The assignor shall have given the assignee such right, except in the case of a transfer pursuant to Section 3.3 hereof;

(ii) The Managing Member shall have consented in writing to such substitution (which consent shall not be unreasonably withheld); and

(iii) The assignee shall have executed and delivered such other instruments, in form and substance satisfactory to the Managing Member, as the Managing Member shall have reasonably requested to effect such substitution and to confirm the agreement of the assignee to be bound by all of the terms and provisions of this Agreement.

(c) After satisfaction of the foregoing conditions, the assignee shall be admitted to the Company as an Investor Member and the Managing Member shall revise the Register to reflect such admission.

(d) The Company and the Managing Member shall be entitled to treat the record owner of any Company Interest as the absolute owner thereof, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written assignment of such Company Interest has been received and accepted by the Managing Member as provided in this Section 8.1 and recorded on the books of the Company.

(e) Notwithstanding anything to the contrary contained herein, without the consent of the Managing Member, no Company Interest may be sold, transferred, assigned or otherwise disposed of until the earlier to occur of (x) the expiration of the Acquisition Period and (y) Capital Contributions aggregating all Commitments (other than Commitments of Defaulting Members which are terminated pursuant to Section 3.3 hereof) shall have been contributed to the Company, other than transfers contemplated under the provisions of Sections 3.3, 3.4 or 5.6 hereof.

(f) The assigning Investor Member hereby agrees to reimburse the Company, at the request of the Managing Member, for any expenses reasonably incurred by the Company in connection with such assignment, including any legal, administrative, accounting and other expenses (*"Transfer Expenses"*), whether or not such assignment is consummated. For avoidance of doubt, Transfer Expenses shall include the additional accounting, tax preparation and other administrative expenses reasonably incurred (or to be incurred) by the Company in the case of an assignment that results in tax basis adjustments under Section 743 of the Code or related provisions. In the case of an assignment that is expected to result in future expenses of the type described in the preceding sentence, the Managing Member may estimate the amount of such expenses in good faith, and such estimate shall be final.

(g) The Managing Member agrees that if the Managing Member receives notice that an Investor Member desires to transfer its Company Interest, it will request that such transferring Investor Member offer its Company Interest to the other Investor Members; *provided, however*, that the Managing Member is under no obligation to ensure that the transferring Investor Member will do so.

Section 8.2 Indemnification Upon Transfer or Assignment. Unless otherwise agreed to by the Managing Member in writing, each Investor Member (an "*Indemnifying Investor Member*") shall indemnify and hold harmless the Company and every Member who was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of or arising from any actual or alleged misrepresentation, misstatement of facts or omission to state facts made (or omitted to be made) by such Indemnifying Investor Member in connection with any assignment, transfer, encumbrance or other disposition of all or any part of any Company Interest, against expenses for which the Company or such other Member has not otherwise been reimbursed (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by it or him in connection with such action, suit or proceeding; *provided, however*, that the foregoing indemnification shall not be valid as to any Member who supplied the information which gave rise to any actual misrepresentation, misstatement of facts or omission to state facts.

Section 8.3 Representations Regarding Transfers. Each Investor Member hereby covenants and agrees with the Company for the benefit of the Company and all Investor Members, that (a) it is not currently making a market in Company Interests and will not in the future make a market in Company Interests, (b) it will not transfer its Company Interest, or any portion thereof, on an established securities market or a secondary market (or the substantial equivalent thereof) within the meaning of Section 7704(b) of the Code (and any Treasury Regulations, revenue rulings, or other official pronouncements of the Internal Revenue Service or Treasury Department that may be promulgated or published thereunder) without the prior written approval of the Managing Member, and (c) in the event such regulations, revenue rulings, or other pronouncements treat any or all arrangements which facilitate the selling of Company Interests and which are commonly referred to as "*matching services*" as being a secondary market or substantial equivalent thereof, it will not transfer any Company Interest, or any portion thereof, through a matching service without the prior written approval of the Managing Member. Each Investor Member further agrees that it will not transfer any Company Interest, or any portion thereof, to any Person unless such Person agrees to be bound by this Section 8.3 and to transfer such Company Interests only to Persons who agree to be similarly bound.

ARTICLE IX

DISSOLUTION AND TERMINATION

Section 9.1 Events of Dissolution.

(a) The Company shall be dissolved upon the earliest to occur of:

(i) the expiration of the term of the Company, as provided in Section 2.7 hereof;

(ii) at any time there are no Members, unless the Company is continued in the manner permitted by the Act;

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

(iv) the sale of all or substantially all of the Company's assets;

(v) a decision by the Managing Member to dissolve the Company pursuant to Section 3.4; or

(vi) upon the vote of the Investor Members to dissolve the Company following a Key Person Event, as provided in Section 3.2(b)(iii).

(b) With the exception of any event set forth in Section 9.1(a), the Company shall not be dissolved by any other event or vote set forth in Section 18-801 of the Act.

(c) Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the assets of the Company and the affairs of the Members, as such, shall continue to be governed by this Agreement. Upon dissolution, the Managing Member or, if there be none, a liquidator appointed by the Investor Members whose Company Interests aggregate in excess of fifty percent (50%) may elect either to (i) liquidate the assets of the Company and apply and distribute the proceeds thereof as contemplated by this Agreement or (ii) distribute the assets of the Company in kind as contemplated by this Agreement, and in either such case shall thereupon cause the execution and filing of a Certificate of Cancellation of the Certificate of Formation of the Company, as well as any and all other documents required by applicable law to effectuate the termination of the Company. Subject to the fiduciary duties and obligations of the Managing Member, upon dissolution of the Company, and assuming that the Managing Member is the Person winding up the Company under this Section 9.1(c), the Managing Member will use its best efforts to liquidate the assets of the Company and apply and distribute the proceeds thereof as cash.

Section 9.2 Distributions Upon Dissolution or Liquidation. In the final year of the Term and upon dissolution, Net Profit, Net Loss and items of income, gain, loss and deduction shall be credited or charged to the Capital Accounts of the Members (which Capital Accounts shall first be adjusted to take into account all non-liquidating distributions made during such final year) in accordance with Sections 3.6 and 3.7 hereof. Thereupon, all of the assets of the Company, or the proceeds therefrom, including amounts contributed by the Managing Member pursuant to the proviso of Section 3.5(a) hereof, shall be distributed or used as follows and in the following order of priority, to the fullest extent permitted by applicable law:

(a) first, to creditors in satisfaction of the debts and liabilities of the Company (whether by payment or the making of reserves or other reasonable provisions for payment thereof) and the expenses of liquidation. Said reserves may be paid over by the Managing Member or liquidator to a bank, to be held in escrow for the purpose of paying any such liabilities or obligations and, at the expiration of such period as the Managing Member or liquidator may deem advisable, such reserves shall be distributed

to the Members or their assigns in the manner set forth in clause (b) of this Section 9.2; and

(b) second, to the Members, in accordance with Section 4.1.

ARTICLE X

LIABILITY AND INDEMNIFICATION

Section 10.1 Liability.

(a) Except as otherwise provided by the Act and except as set forth in Section 10.2(a) hereof, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member (including, for purposes of this definition of Covered Person, the Fund IX REIT, the Feeder Fund and the members of the Feeder Fund), Affiliate of such Member or officer, director, shareholder, partner, member, employee, representative or agent of such Member or their respective Affiliates nor any member serving on the Members' Board or Person designating such member (each, a *"Covered Person"*) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) Except as otherwise expressly required by law and except as set forth in Section 10.2(a) hereof, a Member, in its capacity as Member, shall have no liability in excess of (i) the Member's Commitment, (ii) its obligation to make other payments expressly provided for in this Agreement, and (iii) the amount of any distributions wrongfully distributed to it and required to be refunded under the Act.

Section 10.2 Indemnification.

(a) To the fullest extent permitted by applicable law, each Covered Person shall be entitled to indemnification from the Company for any loss, damage or liability (*"Loss"*) incurred by such Covered Person by reason of any act or omission performed, or omitted to be performed, by such Covered Person in good faith and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person (other than, to the fullest extent permitted by law, any member serving on the Members' Board and/or any Designated Co-Investment Board or Person designating such member) shall be entitled to be indemnified in respect of (x) any Loss incurred by such Covered Person by reason of any acts or omissions by such Covered Person which constitute willful misconduct, fraud, gross negligence, reckless disregard of duties to the Company, material breach of this Agreement, material breach of fiduciary duties to the Company or conviction of a felony that has a material adverse effect on the Company or (y) any Loss resulting solely out of internal disputes between or among members of the Managing Member or its Affiliates and any officer, director, shareholder, partner, employee, representative or agent of any of the foregoing; *provided, however*, that if any indemnification obligation of the Company shall arise under this Section 10.2(a) at a time when the Company has

(i) distributed some or all of the assets of the Company and (ii) lacks sufficient resources to meet such obligation, the Managing Member may require each Member (including, for the avoidance of doubt, the Managing Member) to return distributions made to such Member hereunder for the purpose of meeting such Member's share of such obligation in a manner that seeks to have each Member return distributions previously received pursuant to Section 4.1 in the reverse order in which such distributions were previously made to such Member; *provided, further*, that (A) no Member shall be required to return a distribution until its remaining unfunded Commitment is reduced to zero, (B) the aggregate amount that each Member may be required to contribute to the Company to indemnify all Covered Persons pursuant to this Section 10.2(a) shall not exceed the sum of (x) such Member's remaining unfunded Commitment and (y) the aggregate amount of distributions made to such Member by the Company up to an amount equal to 20% of such Member's Commitment and (C) in no event shall any distributions made to a Member by the Company be required to be returned by the Member to the Company pursuant to clause 10.2(a)(B)(y) above after the date which is two (2) years after the dissolution of the Company.

(b) To the fullest extent permitted by law, if any claim shall be asserted against a Covered Person, in respect of which such Covered Person proposes to demand indemnification under this Section 10.2 from the Company, the Company shall be notified to that effect with reasonable promptness after such assertion, and the Company shall have the right to assume the entire control of the defense or settlement of any such claim, through its own attorneys and at its expense, and in connection therewith, such Covered Person shall cooperate fully to make available to the Company all information under its control relating thereto.

(c) All rights to indemnification provided herein shall survive the termination of this Agreement and the withdrawal, removal or insolvency of any Member, provided that a claim for indemnification hereunder is made by or on behalf of the Covered Person seeking such indemnification within two years after the distribution in liquidation of the assets of the Company is made pursuant to Article IX.

(d) The Managing Member shall promptly give the Members' Board notice in the event that, in any twelve month period, the Company incurs an aggregate uninsured Loss under this Section 10.2 and under Section 10.3 equal to or greater than $250,000.

Section 10.3 Certain Expenses. To the fullest extent permitted by applicable law, costs and expenses (including reasonable legal fees and expenses) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding, provided that the Company shall have received an undertaking by or on behalf of the Covered Person to repay such amount if it shall be ultimately determined that the Covered Person is not entitled to be indemnified as authorized in Section 10.2 by a court or other tribunal having appropriate jurisdiction in a decision that is not subject to appeal. Notwithstanding anything to the contrary set forth herein, in the event that Investor Members (and similarly situated investor members

of the Feeder Fund, but excluding the Fund IX REIT) whose Company Interests (and corresponding company interests of the Feeder Fund) aggregate at least seventy-five percent (75%) bring a claim against the Managing Member alleging that the Managing Member has engaged in fraud, gross negligence, willful violation of applicable criminal or securities laws or willful misconduct in connection with the business and operation of the Company or its investments, the Managing Member shall not seek advancement of legal fees under this Section 10.3 until such claim is resolved in favor of the Managing Member by a final decision of an arbitrator, court or other tribunal of competent jurisdiction.

Section 10.4 Insurance. The Company may purchase and maintain insurance, to the extent and in such amounts as the Managing Member shall deem reasonable, on behalf of Covered Persons and such other Persons as the Managing Member shall determine, against any liability that may be asserted against or expenses that may be incurred by any such Person in connection with the activities of the Company, the Feeder Fund or such indemnities. The Company may enter into indemnity contracts with Covered Persons and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Section 10.3 and containing such other procedures regarding indemnification as are appropriate. Any Covered Person entitled to indemnification from the Company hereunder shall first seek recovery under any such other indemnity contract or insurance policies by which such Covered Person is indemnified or covered, as the case may be, (including, without limitation and to the extent applicable, those provided for, purchased or maintained by third-party sources). If any Covered Person recovers any amounts in respect of any Loss from insurance coverage or any third party source, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to it by the Company in respect of such Loss.

Section 10.5 Exculpation.

(a) No Covered Person shall be liable to the Company or any other Covered Person bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's willful misconduct, fraud, gross negligence, reckless disregard of duties to the Company, material breach of this Agreement, material breach of fiduciary duties to the Company or conviction of a felony that has a material adverse effect on the Company; *provided, however*, that, to the fullest extent permitted by law, the foregoing exception shall not apply to any Investor Member, or any Affiliate, officer, director, shareholder, partner, employee, representative or agent of such Investor Member or their respective Affiliates, or to any designee to the Members' Board and/or any Designated Co-Investment Board or Person designating such member.

(b) Subject, with respect to the Managing Member, to the provisions of Section 10.6, a Covered Person shall be fully protected in relying in good faith upon

the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

(c) To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, (i) whenever in this Agreement a Covered Person is permitted or required to make a decision subject, with respect to decisions of the Managing Member, to the requirements of Section 10.6, in its *"good faith"* or under another express standard, such Covered Person shall act under such express standard and shall not be subject to any other or different standard and (ii) neither the members of the Members' Board and/or any Designated Co-Investment Board nor any Person designating such members shall have any fiduciary or, except as otherwise expressly provided herein, other duty to the Members or the Company and accordingly, may act for their own best interest without regard to the interests of the Members or the Company.

(d) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or any other Member, any Covered Person acting under this Agreement or otherwise shall not be liable to the Company or any Member for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person otherwise existing at law or in equity to the Company or its Members, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

Section 10.6 Conduct of Managing Member. Notwithstanding anything to the contrary set forth herein, the Managing Member shall devote such time and attention as shall be appropriate to manage and supervise the Company business properly and efficiently, and shall take such actions as shall be prudent and appropriate for the proper management and supervision of the business of the Company and to carry out its obligations under this Agreement. The Managing Member shall be under a duty to conduct the affairs of the Company in the best interests of the Company and the Investor Members and in accordance with applicable law and the provisions of this Agreement. Notwithstanding the foregoing, the Managing Member shall be entitled to rely in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Managing Member reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Notices. All notices hereunder shall be in writing and shall be given: (a) if to the Company, c/o the Managing Member at the address of its principal place of business set forth in Section 2.5 hereof, or such other address or addresses as to which the Members shall have been given notice, with a copy to Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attention: Joseph A. Smith, Esq. or such other address or addresses as to which the Members shall have been given notice, and (b) if to the Investor Members, at the respective physical or electronic mail addresses or by utilizing the respective facsimile numbers set forth on the Register, or such other physical or electronic mail addresses or by utilizing such facsimile numbers as to which the Company shall have been given notice. Any notice shall be deemed to have been given if (a) personally delivered, (b) sent by United States mail or by overnight express courier service, in each such case against receipt, or (c) sent by electronic mail transmission or facsimile and will be deemed properly given, (i) if sent by certified or registered mail, return receipt requested, on the date actually received (as evidenced by return receipt), (ii) if sent by overnight express courier service, on the date actually received (as evidenced by such courier's receipt), (iii) if delivered by hand, on the date of receipt, and (iv) if transmitted via electronic mail transmission or facsimile, on the date sent. Notwithstanding the foregoing, rejection or other refusal to accept shall be deemed to be the proper giving and receipt of the notice, demand or request sent.

Section 11.2 Successors and Assigns. Subject to the restrictions on transfer set forth herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the Members, their respective successors, successors-in-title, heirs and permitted assigns, and each and every successor-in-interest to any Member, whether such successor acquires such interest by way of gift, purchase, foreclosure, or by any other method, shall hold such interest subject to all of the terms and provisions of this Agreement.

Section 11.3 Power of Attorney. The Investor Members shall, at the request of the Managing Member, execute such documents as the Managing Member deems reasonably necessary or appropriate to comply with applicable law where the Company does business. Each Investor Member hereby irrevocably constitutes and appoints the Managing Member and each of its officers as its true and lawful representative and attorney-in-fact, with full power and authority in its name, place and stead to make, execute, sign, acknowledge, deliver, swear to, record and file with respect to the Company (a) any and all instruments, documents and certificates which, from time to time, may be required by the laws of the United States of America, the State of Delaware or any other state in which the Company shall determine to do business, or any political subdivision or agency thereof, to execute, implement and continue the valid and subsisting existence and business operation of the Company or to effect the dissolution and termination of the Company in accordance with Article IX hereof and applicable law, including the winding up of the business of the Company and (b) any amendments to or restatements of this Agreement and the Certificate of Formation as are contemplated

hereby, including, without limitation, for the purpose of admitting any Person as a Member and describing a Member's Capital Contribution. This power of attorney is irrevocable and coupled with an interest and shall continue in full force and effect notwithstanding, and shall not be affected by, and shall survive, the subsequent liquidation, insolvency, termination, disability, incapacity or winding-up of an Investor Member. The Managing Member shall deliver to each Investor Member a copy of any such instrument, document or certificate executed on its behalf pursuant to this power of attorney.

Section 11.4 Amendments.

(a) In addition to any amendments otherwise authorized herein, amendments may be made to this Agreement from time to time with the written consent of (x) the Managing Member and (y) Investor Members whose Company Interests aggregate more than fifty percent (50%), except that:

(i) the Managing Member, without the consent or approval of the Investor Members, may (A) add to the duties or obligations of the Managing Member or surrender any right or power granted to the Managing Member herein in a manner that is not adverse to any Investor Member; (B) make any amendment to this Agreement to correct typographical errors; (C) make any amendment to this Agreement that would not be adverse to any Investor Member or the Company; (D) make any other changes to eliminate ambiguities or inconsistencies in this Agreement that would not, as determined by the Managing Member in good faith and confirmed by the Members' Board, be adverse to any Investor Member not consenting thereto; (E) delete or add any provision of this Agreement required to be so deleted or added by any U.S. federal agency or by a state "*blue sky*" commission or such similar agency, which addition or deletion is deemed by such agency to be for the benefit or protection of the Investor Members; (F) make changes to the Register; (G) amend the provisions of this Agreement relating to the Company's allocations in order either to ensure that the Company's allocations satisfy the requirements of Section 704(b)(2) of the Code; (H) make any amendment that the Managing Member determines, in its sole discretion, is necessary to ensure that the Company is taxed as a partnership that is not a publicly traded partnership taxable as a corporation or an association taxable as a corporation for U.S. federal tax purposes; and (I) amend the provisions of this Agreement following a change in law to reflect a change in the terms applicable to distributions or to the allocation of net income and gain and Net Loss to the Managing Member or applicable to the payment of the Advisory Fee, following a change in law, to preserve the capital nature of such distributions or allocation of such payments prior to such change in law or otherwise to reduce the adverse impact of such change in law on the Managing Member; *provided*, that such amendment does not have a material adverse effect on any Investor Member, which shall be deemed to include any deferral or reduction in the amount of distributions to such Member or an unfavorable change in the characterization of such distributions for tax purposes, without such Investor Member's consent;

(ii) any amendment (a) reasonably expected to result in a (x) material adverse change to the Company's cash distributions to the Investor Members or (y) change in the fee structure of the Company or (b) related to the Member giveback obligations contained in Section 10.2(a) shall, in each case, require the consent of Investor Members whose Company Interests aggregate more than seventy-five percent (75%);

(iii) no amendment shall be adopted pursuant to this Section 11.4 unless the adoption thereof (A) is not materially adverse to the interests of the Investor Members affected by such amendment or is consented to by such affected Investor Members whose Company Interests aggregate more than fifty percent (50%) of all Company Interests of all such affected Investor Members; (B) is consistent with Section 5.1 of this Agreement; and (C) does not affect the limited liability of the Members contemplated by Section 10.1 of this Agreement or the status of the Company as a partnership that is not a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes;

(iv) any provision of this Agreement (other than a provision of the Act that becomes a part of this Agreement by operation of law) that provides that an action taken or a decision made under such provision shall be approved by such number of Members or percentage of Company Interests may only be amended with the written approval of such number of Members or percentage of Company Interests;

(v) the provisions of Section 3.4 of this Agreement or any other ERISA-related provisions may not be amended without the consent of ERISA Investor Members having Company Interests aggregating more than fifty percent (50%) of all Company Interests of all ERISA Investor Members.

(b) The power of attorney granted pursuant to Section 11.3 of this Agreement may be used by the Managing Member to execute on behalf of an Investor Member any document evidencing or effecting an amendment adopted in accordance with the terms of this Section 11.4.

(c) The Managing Member shall promptly deliver to each Investor Member a conformed copy of any amendment made to this Agreement.

Section 11.5 Partition. The Members hereby agree that no Member or any successor-in-interest to any Member shall have the right, while this Agreement remains in effect, (a) to have the property of the Company, or any portion thereof, partitioned, or (b) to file a complaint or institute any proceeding at law or in equity to have any such property partitioned, and each Member, for itself, its successors, representatives, heirs, and assigns, hereby waives any such right to the fullest extent permitted by applicable law. It is the intention of the Members that during the term of this Agreement, the rights of the Members and their successors-in-interest, as among themselves, shall be governed by the terms of this Agreement, and that the right of any Member or any successor-in-interest to such Member to assign, transfer, sell or otherwise

dispose of its interest in any such property shall be subject to the limitations and restrictions of this Agreement.

Section 11.6 No Waiver. To the fullest extent permitted by law, the failure of any Member to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Member's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

Section 11.7 Entire Agreement. Subject to Section 11.11, this Agreement constitutes the full and complete agreement of the parties hereto with respect to the subject matter hereof; *provided, however*, that the representations and warranties in, and other provisions of, the individual Subscription Agreements executed and accepted in connection herewith shall survive the execution and delivery of this Agreement.

Section 11.8 Captions; Context; Gender. Titles or captions of Articles or Sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the neuter gender shall include the masculine, the feminine and the neuter. All references hereto to *"Articles," "Sections,"* clauses and paragraphs shall refer to corresponding provisions of this Agreement, unless otherwise specified.

Section 11.9 Counterparts. This Agreement may be executed in several counterparts, all of which together shall for all purposes constitute one Agreement, binding on all the Members notwithstanding that all Members have not signed the same counterpart.

Section 11.10 Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Delaware without regard to principles of conflict of laws.

Section 11.11 Other Agreements. Notwithstanding the provisions of this Agreement, including, without limitation, Section 11.4 hereof, or of any Subscription Agreement, it is hereby acknowledged and agreed that the Managing Member, on its own behalf or on behalf of the Company, without the approval of any Investor Member or any other Person, may enter into a side letter or similar agreement to or with an Investor Member which has the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or of any Subscription Agreement; *provided, however*, that the Managing Member agrees that it shall not enter into any side letter with any Member which would have a material adverse effect on any other Member. The parties hereto agree that any terms contained in a side letter or similar agreement to or with an Investor

Member shall govern with respect to such Investor Member notwithstanding the provisions of this Agreement or of any Subscription Agreement.

Section 11.12 Third Party Beneficiaries. None of the provisions of this Agreement shall be construed as for the benefit of or as enforceable by any creditor (other than Persons entitled to indemnification hereunder) of the Company or any Member or any other person not a party to this Agreement. For purposes of clarification, nothing in this Section 11.12 shall be deemed to affect the rights of lenders under a Credit Facility to the extent the documentation for such Credit Facility gives such lenders rights under this Agreement or that are derivative of rights under this Agreement.

Section 11.13 Compliance with Applicable Laws and Requirements. Notwithstanding any other provision in this Agreement to the contrary, the Managing Member, in its own name and on behalf of the Company, shall be authorized without the consent of any Person, including any other Member, to take such action as it determines in its reasonable discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by the Subscription Agreements. If any answer provided or background document required under an Investor Member's Subscription Agreement is found to be false, forged or misleading, each Investor Member understands that the Company may compulsorily withdraw the Company Interests held by such Investor Member.

Section 11.14 Elections with Respect to Issuance of Certain Compensatory Equity Interests.

(a) The Managing Member is hereby authorized and directed to cause the Company to make an election to value any interests issued by the Company as compensation for services to the Company (collectively, *"Compensatory Interests"*), at liquidation value (the *"Safe Harbor Election"*), as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to Proposed Regulations Section 1.83-3(l) and IRS Notice 2005-43 (collectively, the *"Proposed Rules"*). The Managing Member shall cause the Company to make any allocations of items of income, gain, deduction, loss or credit (including forfeiture allocations and elections as to allocation periods) necessary or appropriate to effectuate and maintain the Safe Harbor Election.

(b) Any such Safe Harbor Election shall be binding on the Company and on all of its Members with respect to all transfers of Compensatory Interests thereafter made by the Company, except for any such transfers made after revocation of such Safe Harbor Election. A Safe Harbor Election once made may be revoked by the Managing Member as permitted by the Proposed Rules or any applicable rule.

(c) Each Member (including any person to whom a Compensatory Interest is transferred in connection with the performance of services), by signing this Agreement or by accepting such transfer, hereby agrees to comply with all requirements of the Safe

Harbor Election with respect to all Compensatory Interests transferred while the Safe Harbor Election remains effective.

(d) The Managing Member shall file or cause the Company to file all returns, reports and other documentation as may be required to perfect and maintain the Safe Harbor Election with respect to transfers of Compensatory Interests covered by such Safe Harbor Election.

(e) Notwithstanding anything to the contrary contained herein, the Managing Member is hereby authorized and empowered, without further vote or action of the Members, to amend this Agreement (provided that such amendment is not materially adverse to the interests of the Investor Members or the Company) as necessary to comply with the Proposed Rules or any rule, in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same, and shall have the authority to execute any such amendment by and on behalf of each Member. Any undertakings by the Members necessary to enable or preserve a Safe Harbor Election may be reflected in such amendments and to the extent so reflected shall be binding on each Member, respectively.

(f) Each Member agrees to cooperate with the Managing Member to perfect and maintain any Safe Harbor Election, and to timely execute and deliver any documentation with respect thereto reasonably requested by the Managing Member.

(g) No transfer of any interest in the Company by a Member shall be effective unless prior to such transfer the transferee of such interest shall have agreed in writing to be bound by the provisions of this Section 11.14, in form satisfactory to the Managing Member.

(h) Costs and expenses incurred by the Managing Member in making and preserving (or if revoked, revoking) the Safe Harbor Election shall be paid by the Company.

Section 11.15 Prohibited Tax Shelter Transaction. The Managing Member shall not knowingly cause the Company to engage in a prohibited tax shelter transaction that would subject an Investor Member of the Company to the excise tax imposed by Section 4965(a) of the Code. In the event that an Investor Member in the Company becomes subject to the excise tax imposed by Section 4965(a) of the Code by reason of the Company's engagement in such a transaction, the Managing Member shall give such Investor Member notice of such transaction.

Section 11.16 Information Regarding Adjusted Tax Basis. Upon request of the Managing Member, each Member agrees to provide to the Managing Member information regarding its adjusted tax basis in its Interest along with documentation substantiating such amount.

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SIGNATURE PAGE

TO

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF DRA GROWTH AND INCOME MASTER FUND IX, LLC

IN WITNESS WHEREOF the parties hereto have executed this Amended and Restated Limited Liability Company Agreement, either directly or by an attorney-in-fact, as of this 8th day of July, 2016.

MANAGING MEMBER:

MANAGECO IX, LLC, a Delaware limited liability company

By: _____
Name: Paul McEvoy
Title: Senior Vice President

INVESTOR MEMBERS:

By: MANAGECO IX, LLC, a Delaware limited liability company
(as Attorney-in-Fact for the Investor Members)

By: _____
Name: Paul McEvoy
Title: Senior Vice President

ANNEX A

FORM OF CREDIT FACILITY CONFIRMATION

_____, 2016

[*Insert Lender Name*,
as Administrative Agent]
[*Insert Lender Address*]

Re: Credit Facility (the "***Facility***") to be evidenced by that certain Revolving Credit Agreement (as the same may be modified, amended, or restated from time to time, the "***Credit Agreement***"), entered into or to be entered into by and among DRA Growth and Income Master Fund IX, LLC, as borrower ("***Borrower***"), DRA Growth and Income Fund IX, LLC, as guarantor ("***Guarantor***")], the lenders from time to time party thereto ("***Lenders***"), [_____], as Administrative Agent (in such capacity, "***Administrative Agent***").

Ladies and Gentlemen:

The purpose of this confirmation letter is to confirm to you the status of our involvement in [Borrower][Guarantor] and to consent to, and acknowledge, certain aspects of the Facility.

We have entered into a subscription agreement (the "***Subscription Agreement***") dated as of _____, with [Borrower][Guarantor], and we have entered into the Amended and Restated Limited Liability Company Agreement of [Borrower][Guarantor] dated as of [_____] (as the same may be further modified, amended, or restated from time to time, the "***LLC Agreement***"; all capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the LLC Agreement), pursuant to which we have: (i) purchased a limited liability company interest in [Borrower][Guarantor]; and (ii) committed to fund capital calls of [Borrower][Guarantor] in the aggregate amount of $_____ (the "***Capital Commitment***").

To date, $_____ of our Capital Commitment has been "called," of which we have funded $_____. $_____ of our Capital Commitment remains to be drawn upon the delivery of one or more Drawdown Requests pursuant to and in accordance with the LLC Agreement.

We hereby acknowledge and confirm that under the LLC Agreement, we will be obligated to deliver to you, upon the request of the Managing Member, either: (a) our balance sheet as of the end of such fiscal year and the related statements of operations for such fiscal year prepared by our independent public accountants, or, if we have not retained public accountants to prepare such statements, certified by an officer; or (b) such other information or reports as shall be reasonably acceptable to the Managing Member and reasonably available to, or attainable by, the undersigned, in either case by the latest to occur of: (i) the date which is one hundred twenty

(120) days after the end of our fiscal year; and (ii) the date we make such financial information available to our shareholders, directors, stakeholders, principals or other lenders or such financial information becomes available to the public; and (c) from time to time upon the request of the Managing Member, a certificate setting forth the remaining amount of our Capital Commitment which we are obligated to fund (the "***Unpaid Capital Obligations***").

We hereby acknowledge and confirm to you that under the terms of and subject to the limitations and conditions set forth in the LLC Agreement, we are and shall remain obligated to fund our Unpaid Capital Obligations required on account of capital calls duly made in accordance with the terms of the LLC Agreement (including, without limitation, those required as a result of the failure of any other Member to advance funds with respect to a capital call duly made), and we agree to fund such capital calls without defense, counterclaim or offset of any kind, including, without limitation, any defense relating to or based upon the inability or failure of [Borrower][Guarantor] to issue any Units in respect of any payment of the Unpaid Capital Obligations or arising under *Section 365(c)* of the U.S. Bankruptcy Code, if applicable; *provided* that such agreement to fund shall not act as a waiver of any claim we may have against any other Investor Member, the Managing Member, Guarantor or the Borrower.

We hereby: (a) acknowledge and consent to the pledge and assignment by [Borrower][Guarantor] and Managing Member to you, for the benefit of Lenders, of: (i) our Capital Commitment and the right to receive Capital Contributions; and (ii) the right to issue Drawdown Requests and call and receive all payments of all or any portion of our Unpaid Capital Obligations in accordance with the terms of the LLC Agreement and the Subscription Agreement in order to secure the payment of the obligations of [Borrower][Guarantor] under the Facility; (b) represent that to our knowledge, as of the date hereof, there is no default, or circumstance which with the passage of time and/or notice would constitute a default under the LLC Agreement, which would constitute a defense to, or right of offset against, our obligation to fund our Capital Commitment or otherwise reduce our Capital Commitment and to our knowledge, as of the date hereof, there is no defense to, or right of offset against, our obligation to fund our Capital Commitment; (c) represent that the Subscription Agreement has been duly executed and delivered by us and confirm the accuracy of the representations made therein; (d) represent that [assuming that the assets of [Borrower][Guarantor] do not, and will not, constitute "plan assets" for purposes of ERISA] [*prior language necessary only for ERISA Investor Members*] the Subscription Agreement and the LLC Agreement constitute our valid and binding obligations, enforceable against us in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditor's rights generally from time to time in effect and to general principles of equity; (e) acknowledge that for so long as the Facility is in place, the Managing Member and [Borrower][Guarantor] have agreed with you not to amend, modify, supplement, cancel, terminate, reduce or suspend any of our obligations under the Subscription Agreement or LLC Agreement without your prior written consent; (f) acknowledge and consent that for so long as the Facility is in place: (i) we will not pledge, hypothecate or otherwise encumber our interest in [Borrower][Guarantor] or our rights under the Subscription Agreement; and (ii) any transfer of our interest in [Borrower][Guarantor] may be subject to limitations including, but not limited to your consent; and (g) acknowledge and confirm that, for so long as the Facility is in place, all payments made by us under the Subscription Agreement or LLC Agreement will be made by

wire transfer to the following account which Guarantor has also pledged to you for the benefit of the Lenders as security for the Facility:

[*Insert Lender Name and ABA #*]
Credit: DRA Growth and Income Fund IX, LLC
[*Insert Lender Name*, as
Administrative Agent, Collateral Account
Collateral Account No.: ____]
Reference [insert name of investor]: _____

We hereby agree that for so long as the Credit Agreement is in effect, we shall, under the terms and subject to the limitations and conditions set forth in the LLC Agreement, honor any Drawdown Request with respect to [Borrower][Guarantor] delivered to us in the name of the Administrative Agent, without setoff, counterclaim or defense by funding the applicable portion of our Capital Commitment into the above account, provided such Drawdown Request is delivered for purposes of paying due and payable obligations of [Borrower][Guarantor] to the Lenders under the Facility.

We also acknowledge that because you and the Lenders will be relying upon the statements made herein in connection with making the Facility available to Borrower, for so long as the Facility is in place, payments we make under the Subscription Agreement or LLC Agreement will not satisfy our obligation to fund our Capital Commitment unless such contributions are paid into the above account. We hereby acknowledge and agree that the terms of the Credit Agreement and of each loan document delivered in connection therewith (collectively the "***Loan Documents***") can be modified without further notice to us or our consent; *provided, however,* that in no event shall any modification of the Credit Agreement or any Loan Document alter our rights or obligations under the Subscription Agreement or the LLC Agreement without our written consent. We hereby further acknowledge and agree that you and/or any of the Lenders may assign all or part of your or their rights under this confirmation to any assignee of your/their rights under the Credit Agreement and the Loan Documents, and that this confirmation will remain in effect until we are notified jointly by you and the Managing Member that the Facility has been terminated, which notification you agree to deliver to us at the address set forth below promptly upon such termination.

You shall keep confidential all non-public information about us provided to you by us or [Borrower][Guarantor] pursuant to the LLC Agreement that is designated confidential; *provided however*, that nothing herein shall prevent you from disclosing any such information: (a) to any Lender that participates in the Facility or any Affiliate of any Lender which has agreed in writing to comply with the provisions of this paragraph; (b) to any assignee, participant or prospective assignee or participant with respect to the Facility which has agreed in writing to comply with the provisions of this paragraph; (c) to the employees, directors, agents, attorneys, accountants, and other professional advisers of any Lender, assignee, participant, prospective assignee or participant with respect to the Facility or their respective Affiliates which has agreed in writing to comply with the provisions of this paragraph; (d) upon the request or demand of any governmental authority having or asserting jurisdiction over you or any Lender; (e) in response to any order of any court or other governmental authority or as may otherwise be required pursuant to any requirement of law; (f) if requested or required to do so in connection with any

litigation or similar proceeding; (g) which has been publicly disclosed other than in breach of this paragraph; (h) in connection with the exercise of any remedy under the Credit Agreement or any other Loan Document; or (i) upon the advice of counsel that such disclosure is required by law.

Riders [to be inserted if appropriate]

For governmental entity Investors:

[We represent and warrant that: (i) we are subject to commercial law with respect to our obligations under the LLC Agreement, the Subscription Agreement and this confirmation letter; (ii) the making and performance of the LLC Agreement, the Subscription Agreement and this confirmation letter constitute private and commercial acts rather than governmental or public acts, and that neither we nor any of our properties or revenues has any right of immunity from suit, court jurisdiction, execution of a judgment or from any other legal process with respect to our obligations under the LLC Agreement, the Subscription Agreement and this confirmation letter. To the extent that we may hereafter be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to the LLC Agreement, the Subscription Agreement or this confirmation letter to claim any such immunity, and to the extent that in any such jurisdiction there may be attributed to us such an immunity (whether or not claimed), we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by applicable law.]

For ERISA Investors:

[The undersigned signatory confirms that it is the fiduciary of the plans whose assets are invested in [Borrower][Guarantor] and it confirms that: (i) it made its own determination that the Transaction (defined below) was made on terms that are no less favorable to such plans than those that could be obtained in arm's-length transactions with unrelated parties; (ii) the decision to invest in [Borrower][Guarantor] and to execute and deliver this confirmation letter (the "***Transaction***") was made by the undersigned, and the undersigned is not included among, is independent of, and is unaffiliated with, the Lenders (including the Administrative Agent) and [Borrower][Guarantor]; (iii) each plan on behalf of which we have invested in [Borrower][Guarantor] (or commingled funds of related plans): (A) has no less than $100,000,000 of assets; and (B) not more than five percent (5%) of the assets of each such plan (or commingled fund) have been invested in [Borrower][Guarantor]; and (iv) the Lenders (including the Administrative Agent): (x) had no influence, authority, or control over the decision to invest in [Borrower][Guarantor], and (y) rendered no investment advice with respect to the investment in [Borrower][Guarantor]. For purposes of this paragraph, a fiduciary is "not included among, is independent of, and unaffiliated with" a Lender (including the Administrative Agent) and [Borrower][Guarantor], as applicable, if: (A) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or [Borrower][Guarantor]; (B) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or [Borrower][Guarantor]; and (C) no officer, director, highly-compensated employee, or partner of [Borrower][Guarantor], or any officer, director or highly-compensated employee, or partner of a Lender, is also an officer, director, highly-compensated employee, or partner of the fiduciary. If such individual is a director of the

Lender, then he or she must abstain from participation in, and not otherwise be involved in, the decision made by the fiduciary to invest in [Borrower][Guarantor].]

{or – where this confirmation letter is being signed by a custodian or someone other than the fiduciary:}

We confirm that [_____] is the fiduciary (the "***Fiduciary***") of the undersigned investor (the "***Investor***") and that the Fiduciary has confirmed to the undersigned Investor that: (i) the Fiduciary made its own determination that the Transaction (defined below) was made on terms that are no less favorable to the Investor than those that could be obtained in arm's-length transactions with unrelated parties; (ii) the Fiduciary made the decision to invest in [Borrower][Guarantor] and to execute and deliver this confirmation letter (the "***Transaction***"), and the Fiduciary is not included among, is independent of, and is unaffiliated with, the Lenders (including the Administrative Agent) and [Borrower][Guarantor]; (iii) each plan on behalf of which the Investor has invested in [Borrower][Guarantor] (or commingled funds of related plans): (A) has no less than $100,000,000 of assets; and (B) not more than five percent (5%) of the assets of each such plan (or commingled fund) have been invested in [Borrower][Guarantor]; and (iv) the Lenders (including the Administrative Agent): (x) had no influence, authority, or control over the Fiduciary's decision to invest in [Borrower][Guarantor], and (y) rendered no investment advice with respect to the Investor's investment in [Borrower][Guarantor]. For purposes of this paragraph, a fiduciary is "not included among, is independent of, and unaffiliated with" a Lender (including the Administrative Agent) and [Borrower][Guarantor], as applicable, if: (A) the fiduciary is not, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Lender or [Borrower][Guarantor]; (B) the fiduciary is not an officer, director, employee or relative of, or partner in, such Lender or [Borrower][Guarantor]; and (C) no officer, director, highly-compensated employee, or partner of [Borrower][Guarantor], or any officer, director or highly-compensated employee, or partner of a Lender, is also an officer, director, highly-compensated employee, or partner of the fiduciary. If such individual is a director of the Lender, then he or she must abstain from participation in, and not otherwise be involved in, the decision made by the fiduciary to invest in [Borrower][Guarantor].]

For ERISA Investors, the following MUST be included:

We have been informed that [_____] has received prohibited transaction exemption No. 2004-02 from the United States Department of Labor, retroactive to January 1, 2003, with respect to the extension of credit by [_____] acting as a lender or as an agent on behalf of a group of lenders, to certain investment opportunity funds. The exemption ruling applies to funds in which certain retirement and welfare benefit plans invest, where one of the lenders may be a party in interest or disqualified person with respect to one or more of such plans. The exemption ruling exempts certain types of loan transactions from the prohibited transaction rules of *Section 406(a)(1)(B)* and *406(a)(1)(B)* of ERISA and *Section 4975(a)* and *(b)* of the Internal Revenue Code by reason of Code *Section 4975(c)(1)(B)* and *4975(c)(1)(D)*. Administrative Agent will provide a copy of the exemption ruling to you upon your request.

For non-U.S. Investors:

[We acknowledge and agree that: (i) this confirmation letter shall be governed by the laws of the State of New York; (ii) (x) any suit, action or proceeding against us with respect to this confirmation letter may be brought in the courts of the State of New York, or in the United States Courts located in the Borough of Manhattan in New York City, in the Administrative Agent's sole discretion; and (y) we hereby submit to the non-exclusive jurisdiction of such courts for the purpose of any suit; (iii) service of all writs, process and summonses in any such suit, action or proceeding brought in the State of New York may be brought upon our process agent appointed below, and the Investor hereby irrevocably appoints [Name] _____, [Address] _____, Attention: _____, as our process agent, as its true and lawful attorney-in-fact in the name, place and stead of it to accept such service of any and all such writs, process and summonses; and (iv) we hereby irrevocably waive: (x) any objection which we may have now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this confirmation letter brought in the courts located in the state of New York, Borough of Manhattan in New York City; and (y) any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.]

This Agreement and the rights and obligations of the parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of New York without regard to principles of conflict of laws.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE FOLLOWS.]

SIGNATURE PAGE

TO

CREDIT FACILITY CONFIRMATION

This page constitutes the signature page to the Credit Facility Confirmation letter in the form attached to *Annex A* of the Amended and Restated Limited Liability Company Agreement of DRA Growth and Income Master Fund IX, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Credit Facility Confirmation as of this _____ day of _____, 20__.

_____
Print Name of Investor

By _____
Authorized Signatory

_____
Print Name and Title of Authorized Signatory

Notice Address:

_____
_____
_____

ANNEX B
FORM OF CREDIT FACILITY OPINION

_____, 20__

[*Insert Lender Name*,
as Administrative Agent]
[*Insert Lender Address*]

Re: DRA Growth and Income Master Fund IX, LLC ("the ***Company***")

Ladies and Gentlemen:

[We][I] have acted as counsel for [_____], a [STATE OF FORMATION/INCORPORATION] [FORM OF LEGAL ENTITY] (the "***Investor***"), in connection with the matters addressed herein. This opinion is being prepared and is being delivered to you at the direction of the Investor.

[We][I] have examined originals, or copies certified or otherwise identified to [our][my] satisfaction, of such documents, corporate records, and other instruments as [we][I] have deemed necessary or appropriate for the purposes of this opinion, including the following:

(a) the Amended and Restated Limited Liability Company Agreement of the Company dated as of [_____] (the "***Operating Agreement***");

(b) the Subscription Agreement for the Company (the "***Subscription Agreement***") of Investor dated as of [_____] , relating to Investor's subscription to the Company; and

(c) the letter of confirmation (the "***Credit Facility Confirmation***") dated as of [_____], made by Investor in connection with that certain Revolving Credit Agreement entered into or to be entered into by and among [DRA Growth and Income Master Fund IX, LLC, as borrower, [•], as guarantor,] the Conduit Lenders from time to time party thereto, [_____], as Administrative Agent, an Administrator, Alternate Lender and Managing Agent, and the other Administrators, Alternate Lenders and Managing Agents from time to time party thereto (the "***Credit Agreement***").

Based on the foregoing, [we][I] [are][am] of the opinion that:

1. The Investor is a [LEGAL ENTITY] duly formed and validly existing in good standing under the laws of the State of [_____]. The Investor has all [LEGAL ENTITY] power and authority required to execute and deliver the Subscription Agreement, pursuant to which Investor agreed to be bound by the terms of the Operating Agreement and the Credit Facility Confirmation, and to perform its obligations thereunder.

2. The Subscription Agreement and the Credit Facility Confirmation have each been duly authorized, executed and delivered by Investor.

This opinion may be relied on by you and by any lender that becomes party to the Credit Agreement.

Very truly yours,

AMENDMENT TO THE AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT OF

DRA GROWTH AND INCOME MASTER FUND IX, LLC

This amendment (this "*Amendment*") to the Amended and Restated Limited Liability Company Agreement of DRA Growth and Income Master Fund IX, LLC (the "*Master Fund*") is entered into by and among the undersigned Members of the Master Fund.

WHEREAS, the Master Fund was formed pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (6 Del. C. § 18-101, *et seq.)* and a Certificate of Formation of the Master Fund was filed in the office of the Secretary of State of the State of Delaware on March 30, 2016;

WHEREAS, the operation and activities of the Master Fund are presently governed by the Amended and Restated Limited Liability Company Agreement of the Master Fund, dated as of July 8, 2016 (the "*Agreement*"; capitalized terms used herein shall have the meanings ascribed to them in the Agreement); and

WHEREAS, the Managing Member has determined that it is in the best interests of the Master Fund to amend the Agreement to increase Master Fund's size limitation.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the parties hereto hereby agree as follows:

1. Ratification of Recitals. The foregoing recitals are hereby ratified and confirmed.

2. Amendments.

(a) The definition of "Acquisition Period" in Section 1.1 of the Agreement is hereby amended as follows (with additional language double-underlined and deleted language ~~struck through~~):

> "*"Acquisition Period"* means the period from and including the Initial Closing Date to ~~and including the third anniversary of the Final Closing Date~~ February 17, 2020, unless extended by the Managing Member with the approval of Investor Members having Company Interests aggregating not less than sixty-seven percent (67%)."

(b) Section 2.8(c) of the Agreement is hereby amended as follows (with additional language double-underlined and deleted language ~~struck through~~):

> "Notwithstanding the foregoing or any other provision of this Agreement: (i) the aggregate Commitments of all Members and

commitments of members of any Parallel Company shall not exceed [redacted] [redacted], ~~unless the Managing Member decides in its sole discretion to accept additional Commitments from Members and commitments from members of any Parallel Company of up to [redacted]; provided, that the aggregate Commitments from all Members and commitments from all members of any Parallel Company shall never exceed [redacted]~~; and (ii) the Company shall not at any time have such number of Members as would, in the judgment of the Managing Member, require it to register as an investment company under the Investment Company Act of 1940, as amended."

3. Effectiveness. This Amendment is entered into as of the Effective Date set forth below and shall serve to approve and ratify all prior actions taken by or on behalf of the Managing Member or the Master Fund in reasonable reliance hereon as of the Initial Closing Date.

4. Integration. The Agreement and this Amendment shall be read together as one instrument and, except as modified hereby, the Agreement shall remain unmodified and in full force and effect.

5. Governing Law. This Amendment and the rights and obligations of the parties hereto shall be interpreted and enforced in accordance with and governed by the laws of the State of Delaware applicable to agreements made and to be performed wholly within that jurisdiction without reference to conflict of law provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment as of the 3 day of April, 2017 (the "*Effective Date*").

MANAGING MEMBER:

MANAGECO IX, LLC,
a Delaware limited liability company

By: _____
Name: Jean Marie Apruzzese
Title: Vice President

This Amendment is executed by the Managing Member on behalf of the Investor Members pursuant to a Power of Attorney executed in favor of, and granted and delivered to, the Managing Member by each Investor Member pursuant to Sections 11.3 and 11.4(b) of the Agreement.

MANAGING MEMBER ON BEHALF OF INVESTOR MEMBERS:

MANAGECO IX, LLC,
a Delaware limited liability company

By: _____
Name: Jean Marie Apruzzese
Title: Vice President

EXHIBIT H

CERTIFICATE OF GOOD STANDING ISSUED BY SECRETARY OF STATE OF DELAWARE OF GUARANTOR

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "DRA GROWTH AND INCOME MASTER FUND IX, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DRA GROWTH AND INCOME MASTER FUND IX, LLC" WAS FORMED ON THE THIRTIETH DAY OF MARCH, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

6003847 8300

Authentication: 203711850

SR# 20187394544

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT I

CERTIFICATE OF FORMATION OF ACQUISITION

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "DRA FUND IX ACQUISITION LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE SEVENTH DAY OF JULY, A.D. 2016, AT 6:17 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "DRA FUND IX ACQUISITION LLC".

Jeffrey W. Bullock, Secretary of State

6089769 8100H
SR# 20186623809

Authentication: 203408890
Date: 09-12-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 06:17 PM 07/07/2016
FILED 06:17 PM 07/07/2016
SR 20164820816 - File Number 6089769

CERTIFICATE OF FORMATION

OF

DRA Fund IX Acquisition LLC

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is DRA Fund IX Acquisition LLC

SECOND: The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

Executed on July 7, 2016

/s/ Sheldon Bender
SHELDON BENDER
Authorized Person

EXHIBIT J

REDACTED LIMITED LIABILITY COMPANY AGREEMENT FOR ACQUISITION

LIMITED LIABILITY COMPANY AGREEMENT

OF

DRA FUND IX ACQUISITION LLC

LIMITED LIABILITY COMPANY AGREEMENT

OF

DRA FUND IX ACQUISITION LLC

8. Powers. The business and affairs of the Company shall be managed by the Managers (as defined below) in accordance with Section 18 of this Agreement. In furtherance of its purpose, the Company shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the protection and benefit of the Company.

18. Managers. There shall be eight (8) managers of the Company (the "Managers"), each appointed by the Member, each of whom will be an officer of the Company and each of whom acting alone shall have, on behalf and in the name of the Company, full, exclusive and complete discretion to manage and control the business and affairs of the Company and to take all such actions as they deem necessary or appropriate to accomplish the purpose of the Company as set forth in this Agreement including, without limitation, to represent the Company in connection with any litigation, dispute, mediation, arbitration or other proceeding before any court, regulatory or administrative body, panel or other forum involving the Company. The Member hereby appoints a President, Secretary, Treasurer and Vice-Presidents and Assistant Secretaries to serve as Managers. Each Manager is an agent of the Company and the actions of a Manager taken in such capacity and in accordance with this Agreement shall bind the Company. All instruments, contracts and agreements shall be valid and binding on the Company if executed by any Manager. The Member shall appoint the following individuals as the initial officers and Managers of the Company:

President	David Luski
Senior Vice President and Assistant Secretary	Paul McEvoy, Jr.
Vice President and Assistant Secretary	Andrew E. Peltz
Vice President and Treasurer	Brian T. Summers
Vice President and Secretary	Jean Marie Apruzzese
Vice President	David Gray
Vice President	Jason Borreo
Vice President	Valla Brown

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first indicated above.

SOLE MEMBER:

DRA GROWTH AND INCOME MASTER FUND IX, LLC, a Delaware limited liability company

By: Manageco IX, LLC, a Delaware limited liability company, its managing member

By: _____
Name: Jean Marie Apruzzese
Title: Vice President

EXHIBIT K

CERTIFICATE OF GOOD STANDING OF ACQUISITION

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "DRA FUND IX ACQUISITION LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "DRA FUND IX ACQUISITION LLC" WAS FORMED ON THE SEVENTH DAY OF JULY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.

6089769 8300

Authentication: 203711854

SR# 20187394552

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT L

CERTIFICATE OF FORMATION OF INVESTMENT

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "G&I IX INVESTMENT LAKE POINTE LLC", FILED IN THIS OFFICE ON THE FIFTH DAY OF OCTOBER, A.D. 2018, AT 12:18 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

7088495 8100
SR# 20187007009

Authentication: 203560473
Date: 10-05-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:18 PM 10/05/2018
FILED 12:18 PM 10/05/2018
SR 20187007009 - File Number 7088495

CERTIFICATE OF FORMATION

OF

G&I IX INVESTMENT LAKE POINTE LLC

In compliance with the requirements of Section 18-201 of the Delaware Limited Liability Company Act, relating to the formation of a limited liability company, the undersigned, desiring to form a limited liability company, hereby certifies that:

1. The name of the limited liability company is:

   G&I IX Investment Lake Pointe LLC

2. The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

IN TESTIMONY WHEREOF, the undersigned has executed this Certificate of Formation this 5th day of October, 2018.

/s/ Cristina Gomez
Name: CRISTINA GOMEZ
Title: Authorized Person

EXHIBIT M

LIMITED LIABILITY COMPANY AGREEMENT FOR INVESTMENT

LIMITED LIABILITY COMPANY AGREEMENT

OF

G&I IX INVESTMENT LAKE POINTE LLC

LIMITED LIABILITY COMPANY AGREEMENT
OF
G&I IX INVESTMENT LAKE POINTE LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement") of G&I IX INVESTMENT LAKE POINTE LLC (the "Company") is made as of November 5, 2018, by DRA Fund IX Acquisition LLC, a Delaware limited liability company ("Fund IX Acquisition"), as the sole member of the Company (Fund IX Acquisition, or any successor thereto, admitted as a member of the Company, the "Member").

BACKGROUND:

WHEREAS, the Company was formed as a Delaware limited liability company by the filing of a Certificate of Formation on October 5, 2018 (the "Certificate") in the office of the Secretary of State of Delaware pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et. seq., as amended from time to time (the "Act"); and

WHEREAS, the Member desires to enter into this Agreement to define formally and express the terms of the Company and its rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Member hereby agrees as follows:

1. Formation. The Company has been formed and established as a Delaware limited liability company by the filing of the Certificate pursuant to the Act with the Secretary of State of the State of Delaware. The Member hereby agrees that the rights, duties and liabilities of the Member shall be as provided in the Act, except as otherwise provided herein.

2. Name. The name of the limited liability company formed by the filing of the Certificate is G&I IX Investment Lake Pointe LLC. The business of the Company may be conducted under any other name deemed necessary or desirable by the Member in order to comply with local law. The Member authorizes and ratifies the designation of Cristina Gomez as an authorized person, within the meaning of the Act, to execute, deliver and file the Certificate.

3. Term. The Company shall exist in perpetuity, unless earlier dissolved and its affairs wound up in accordance with this Agreement and/or the Act.

4. Purpose. The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing. The Member agrees to (i) take all necessary actions (including, without limitation, making any required election) to ensure that the Company is treated for federal income tax purposes as an eligible entity that is disregarded as an entity separate from its owner pursuant to Treas. Reg. § 301.7701-3 and (ii) not take any actions inconsistent with such treatment (including, without limitation, any action that would cause the Company to cease to qualify as a branch that is disregarded under federal income tax laws).

5. Registered Office. The address of the registered office of the Company in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, County of New Castle, Delaware 19808.

6. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, County of New Castle, Delaware 19808.

7. Member. The name and the business or mailing address of the Member is as follows: DRA Fund IX Acquisition LLC, c/o DRA Advisors LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017.

8. Powers. The business and affairs of the Company shall be managed by the Managers (as defined below) in accordance with Section 18 of this Agreement. In furtherance of its purpose, the Company shall have the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or for the protection and benefit of the Company.

9. Capital Contribution. The Member has contributed or is deemed to have contributed to the Company One Thousand Dollars ($1,000.00).

10. Dissolution. The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (a) the written consent of the Member or (b) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

11. Allocation of Profits and Losses. The Company's profits and losses shall be allocated to the Member.

12. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member.

13. Assignments. The Member may transfer or assign to any entity, person or persons, at any time and from time to time, in whole or in part, its limited liability company interest. Upon the consummation of an agreement of assignment between the Member as assignor and any assignee, the assignee shall be admitted as the Member and the Member acting as assignor thereunder shall no longer be a member.

14. Resignation. The Member shall not resign from the Company prior to the dissolution and winding up of the Company.

15. Admission of Additional Members. Additional members may be admitted to the Company with the consent of the Member.

16. Liability of Member and Managers. The Member and the Managers shall not have any liability for the obligations or liabilities of the Company, except to the extent provided in the Act.

17. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

18. Managers. There shall be seven (7) managers of the Company (the "Managers"), each appointed by the Member, each of whom will be an officer of the Company and each of whom acting alone shall have, on behalf and in the name of the Company, full, exclusive and complete discretion to manage and control the business and affairs of the Company and to take

all such actions as they deem necessary or appropriate to accomplish the purpose of the Company as set forth in this Agreement including, without limitation, to represent the Company in connection with any litigation, dispute, mediation, arbitration or other proceeding before any court, regulatory or administrative body, panel or other forum involving the Company. The Member hereby appoints a President, Secretary, Treasurer and Vice-Presidents and Assistant Secretaries to serve as Managers. Each Manager is an agent of the Company and the actions of a Manager taken in such capacity and in accordance with this Agreement shall bind the Company. All instruments, contracts and agreements shall be valid and binding on the Company if executed by any Manager. The Member hereby appoints the following individuals as the initial officers and Managers of the Company:

President	David Luski
Senior Vice President and Secretary	Jean Marie Apruzzese
Vice President and Assistant Secretary	Andrew E. Peltz
Vice President and Treasurer	David Gray
Vice President	Valla Brown
Vice President	Jason Borreo
Vice President	Adam Breen

19. Indemnification. The Company shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Company, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a manager, director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise. Where required by law, the indemnification provided for herein shall be made only as authorized in the specific case upon a determination, in the manner provided by law, that indemnification of the director, officer, employee or agent is proper in the circumstances. The Company may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the Company in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Company to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the Company may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

20. Amendments. This Agreement may be modified or amended by the Member at any time or from time to time. This Agreement is the only limited liability Company Operating Agreement (within the meaning of the Act) of the Company.

[Signatures appear on following page]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first indicated above.

SOLE MEMBER:

DRA FUND IX ACQUISITION LLC, a Delaware limited liability company

By: _____

Name: David Gray

Title Vice President

EXHIBIT N

CERTIFICATE OF GOOD STANDING OF INVESTMENT

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "G&I IX INVESTMENT LAKE POINTE LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "G&I IX INVESTMENT LAKE POINTE LLC" WAS FORMED ON THE FIFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.

7088495 8300

Authentication: 203711852

SR# 20187394546

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT O

CERTIFICATE OF FORMATION OF JV

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "G&I IX MJW LAKE POINTE JV LLC", FILED IN THIS OFFICE ON THE FIFTH DAY OF OCTOBER, A.D. 2018, AT 12:18 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

7088529 8100
SR# 20187007021

Authentication: 203560553
Date: 10-05-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:18 PM 10/05/2018
FILED 12:18 PM 10/05/2018
SR 20187007021 - File Number 7088529

CERTIFICATE OF FORMATION

OF

G&I IX MJW LAKE POINTE JV LLC

In compliance with the requirements of Section 18-201 of the Delaware Limited Liability Company Act, relating to the formation of a limited liability company, the undersigned, desiring to form a limited liability company, hereby certifies that:

1. The name of the limited liability company is:

   G&I IX MJW Lake Pointe JV LLC

2. The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

IN TESTIMONY WHEREOF, the undersigned has executed this Certificate of Formation this 5th day of October, 2018.

/s/ Cristina Gomez
Name: CRISTINA GOMEZ
Title: Authorized Person

EXHIBIT P

LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF JV

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

G&I IX MJW LAKE POINTE JV LLC

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
G&I IX MJW LAKE POINTE JV LLC

THIS LIMITED LIABILITY COMPANY OPERATING AGREEMENT is made as of November 5, 2018 by and between **G&I IX INVESTMENT LAKE POINTE LLC**, a Delaware limited liability company (**"DRA"**), having an address c/o DRA Advisors LLC, 220 East 42nd Street (27th Floor), New York, New York 10017 and **M & J LP INVESTORS LLC**, a Delaware limited liability company (**"Operator"**), having an address c/o M & J Wilkow, Ltd., 20 South Clark Street, Suite 3000, Chicago, Illinois 60603.

W I T N E S E T H:

WHEREAS, the parties hereto desire to form a limited liability company under and subject to the laws of the State of Delaware; and

WHEREAS, the parties desire to enter into this limited liability company operating agreement to define on a formal basis and to express the terms and conditions of such limited liability company and their respective rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged by each party to the others, the parties hereto for themselves, their respective heirs, executors, administrators, successors and assigns, hereby agree as follows:

ARTICLE 1.
CERTAIN DEFINED TERMS

1.1. Defined Terms. As used herein, the following terms shall have the following meanings:

"Acceptance Notice" shall have the meaning described in Section 7.13(b).

"Accountants" shall mean the firm of independent certified public accountants retained by the Company, which shall be designated by the DRA Manager from time to time, and shall be a nationally or regionally recognized accounting firm.

"Acquisition Proposal" shall have the meaning given that term in Section 7.11.

"Act" shall mean the Delaware Limited Liability Company Act, 6 Del. C. 18-101 et seq., as amended from time to time, and any successor to such statute.

"Adjusted Capital Account Balance" shall mean, with respect to each Member, the balance in such Member's Capital Account as of the end of the relevant fiscal year after crediting such Capital Account with such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain.

"Administrative Agent" shall mean Canadian Imperial Bank of Commerce, as administrative agent under the Loan Agreement.

"Affiliate" shall mean, when used with reference to a specified Person: (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person who is an officer or director of a specified Person or Person who serves in a similar capacity with respect to a specified Person or is a spouse or relative of a specified Person, and (c) any Person which directly or indirectly is the beneficial owner of ten percent (10%) or more of any class of equity securities, partnership interests or other ownership interests in the specified Person or of which the specified Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, partnership interests or other ownership interests. For the purposes of this definition, "control" means the power to direct the management and policies of such Person, directly or through one or more intermediaries, whether through the ownership of voting securities, by agreement or otherwise, and the term "controlled" has the meaning correlative to the foregoing.

"Agreement" shall mean this limited liability company operating agreement, as amended from time to time, as the context requires. Words such as "herein," "hereto," "hereinafter," "hereof," "hereby" and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

"Bankruptcy" or "Bankrupt" with respect to any Person shall mean:

(a) the institution by such Person of proceedings to be adjudged as bankrupt or insolvent, or for an order of relief or the consent by such Person to the institution of bankruptcy or insolvency proceedings against him or it, or the filing by such Person of a petition or answer or consent seeking reorganization or relief under the present or any future Federal bankruptcy statute or any other present or future applicable Federal, state, or foreign law regarding bankruptcy, insolvency or other relief for debtors, or the consent by such Person to the filing of any such petition or to the appointment of a receiver, liquidator, trustee (or other similar official) of such Person or of all or of a substantial part of the assets of such Person, or the making by such Person of any assignment for the benefit of creditors or the admission in writing by such Person of his or its inability to pay his or its debts generally as they come due or the commission by such Person of any act sufficient to sustain an order for relief under the present or any future Federal bankruptcy statute; or

(b) the entry by a court of competent jurisdiction of an order, judgment or decree judging such Person a bankrupt or insolvent or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such Person under the present or any future Federal bankruptcy statute or any other present or future applicable Federal, state or foreign law relating to bankruptcy, insolvency, or other relief of debtors, or appointing a receiver, liquidator, trustee (or other similar official) of such Person or of all or a substantial part of the assets of such Person, or ordering the winding up or liquidation of the affairs of such Person, which order, judgment or decree shall remain unstayed and in effect for an aggregate of sixty (60) days (whether or not consecutive).

"Book Value" shall mean, with respect to any Company asset, the asset's adjusted basis for Federal income tax purposes, except as follows:

(a) The initial Book Value for any asset (other than money) contributed by a Member to the Company shall be the gross fair market value of such asset, as agreed upon by the contributing Member and the DRA Manager at the time of such contribution;

(b) The Book Value of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the DRA Manager as of the following times: (i) the acquisition of an additional Percentage Interest in the Company by any new or existing Member in consideration for the provision of services to or for the benefit of the Company or in consideration for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of cash or property as consideration for a Percentage Interest in the Company, if (in any such event) such adjustment is necessary or appropriate, in the reasonable judgment of the DRA Manager to reflect the relative economic interests of the Members in the Company; or (iii) the liquidation of the Company for Federal income tax purposes pursuant to Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that, if a Member or former Member whose Percentage Interest in the Company is being purchased or liquidated does not accept the proposed adjustment to the Book Value of any asset or assets, then such adjustment shall be determined by the following procedure: the disagreeing Member and the DRA Manager shall each select a qualified appraiser. Unless the same Person is selected, the two appraisers shall then jointly nominate a third, neutral qualified appraiser, who shall determine the appropriate adjustment and whose determination shall be final and conclusive on the parties hereto;

(c) The Book Value of any Company asset distributed to any Member shall be adjusted to equal its gross fair market value on the date of distribution as reasonably determined by the DRA Manager;

(d) The Book Values of the Company's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and the definition of "Capital Accounts" in Section 3.4; provided, however, that Book Values shall not be adjusted pursuant to this clause (d) to the extent that an adjustment pursuant to clause (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d); and

(e) If the Book Value of an asset has been determined or adjusted pursuant to clause (a), (b), or (d), such Book Value shall thereafter be adjusted by the Depreciation taken into account from time to time with respect to such asset for purposes of computing Profits and Losses.

"Call Notice" shall have the meaning given that term in Section 3.2(a).

"Call Period" shall have the meaning given that term in Section 3.2(a).

"Capital Account" shall mean, with respect to any Member, the capital account maintained for such Member as set forth in Section 3.4(a).

"Capital Call" shall have the meaning given that term in Section 3.2(a).

"Capital Contributions" of a Member shall mean the amounts contributed by such Member to the capital of the Company pursuant to Article 3 hereof.

"Capital Event" shall mean (i) the sale, exchange, transfer, assignment or other disposition of the Property or any portion thereof or interest therein, including, but not limited to, master leases for all or substantially all the Property and ground leases, but excluding leases for space in the Property or ground leases for any outparcels, (ii) any financing by the Company (or a direct or indirect subsidiary of the Company) secured by the Property or any portion thereof or a direct or indirect interest therein (other than the financing, if any, obtained to acquire the Property), or any refinancing of any indebtedness of the Company (or a direct or indirect subsidiary of the Company) secured by the Property or any portion thereof or a direct or indirect interest therein (collectively, a **"Refinancing"**), (iii) the condemnation or deed in lieu of condemnation of the Property or any portion thereof, (iv) any casualty with respect to the Property or any portion thereof, or (v) any other similar transaction which is, in accordance with generally accepted accounting principles, treated as a capital or financing transaction.

"Capital Proceeds" shall mean the net proceeds received by the Company from a Capital Event, after deducting (i) all costs and expenses incurred in connection therewith, (ii) the principal and interest on any indebtedness secured by the Property which is then required to be and is paid, in whole or part, with such proceeds, and (iii) any reserves reasonably established by the DRA Manager.

"Cash Flow" in any fiscal period shall mean the sum of:

(a) The cash receipts of the Company during such period from all operating sources other than Capital Contributions, Capital Proceeds and unapplied tenant security and other similar deposits, and

(b) Any reduction in reserves established from such receipts in prior fiscal periods, less the sum of:

(i) All cash disbursements for operations of the Company during such fiscal period, including without limitation, disbursements for operating, development and construction expenses (including capital expenditures, repairs and maintenance items), debt service, but excluding cash disbursements paid out of Capital Contributions and Capital Proceeds and distributions to the Members, and

(ii) Any cash set aside from such receipts for any reserves in such fiscal period deemed necessary by the DRA Manager in its sole but reasonable discretion.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Company" shall mean G&I IX MJW Lake Pointe JV LLC, a Delaware limited liability company formed pursuant to a Certificate of Formation filed with the Delaware Secretary of State.

"Company Minimum Gain" shall have the meaning set forth for the term "partnership minimum gain" in Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

"Default Amount" shall have the meaning given to it in Section 3.2(b).

"Default Capital Contribution" shall have the meaning given to it in Section 3.2(b).

"Default Capital Contribution Balance" shall mean, for each Member, the cumulative Default Capital Contributions of that Member, less the cumulative distributions to that Member in return thereof under Section 8.2(b).

"Default Preferred Return" shall have the meaning given to it in Section 3.2(c).

"Default Preferred Return Balance" of any Member shall mean, at any particular time, the Default Preferred Return earned as of that date, reduced by the aggregate amount of all prior distributions made to such Member under Sections 8.1(a) and 8.2(a).

"Depreciation" shall mean, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for Federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if such depreciation, amortization, or other cost recovery deductions with respect to any such asset for federal income tax purposes is zero for any Fiscal Year, Depreciation shall be determined with reference to the asset's Book Value at the beginning of such year using any reasonable method selected by the DRA Manager.

"DRA" shall have the meaning given to it in the Preamble.

"DRA Manager" shall mean DRA or any Person who or which, at the time of reference thereto, has been designated pursuant to the terms hereof as the DRA Manager of the Company as a successor in ownership to the Membership Interest of DRA in the Company.

"**Emergency Expenses**" shall mean any costs or expenditures necessary to prevent (a) imminent risk to health and safety to Persons on or about the Property, (b) imminent damage to the Property or other Company assets (e.g., roof repairs, hurricane preparations), or (c) imminent imposition of criminal or civil sanctions against the Company.

"Escrow Agent" shall mean a nationally recognized title insurer selected by DRA Manager.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Excess Nonrecourse Liabilities" shall have the meaning set forth in Section 1.752-3(a)(3) of the Treasury Regulations.

"Excusable Employee Misconduct" means any event described in Section 5.14(a)(i) caused by an employee or employees acting on behalf of Operating Manager or any Affiliate (the "**Applicable Employee Misconduct**") if each of the following conditions is satisfied: (1) no such employee is an Operator Principal or appointed officer of Operator's corporate parent, (2) upon Operator's senior management learning of the Applicable Employee Misconduct, Operating Manager promptly notifies DRA Manager of such occurrence, (3) within thirty (30) days after Operator's senior management learns of the occurrence of such Applicable Employee Misconduct, Operating Manager (a) removes the employee or employees who committed the Applicable Employee Misconduct from any responsibility with respect to the Property, and (b) pays to the Company an amount equal to the damages actually incurred by any of them by reason of the Applicable Employee Misconduct (if any).

"Failing Member" shall have the meaning given that term in Section 3.2(b).

"Fiscal Year" shall have the meaning given to it in Section 10.2.

"GAAP" shall mean generally accepted accounting principles of the United States, consistently applied.

"Guaranteed Obligation" shall have the meaning given to that term in Section 3.7.

"Guaranteeing Party" shall have the meaning given to that term in Section 3.7.

"**Incapacity**" or "**Incapacitated**" shall mean, (a) as to any individual, death, total physical disability or entry by a court of competent jurisdiction finally adjudicating such individual incompetent to manage his or her Person or estate, (b) as to any corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter, (c) as to any partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company, (d) as to any estate, the distribution by the fiduciary of the estate's entire interest in the Company, (e) as to any trustee of a trust, the termination of the trust (but not the substitution of a new trustee) or (f) as to any Person, the Bankruptcy of such Person.

"Internal Rate of Return" shall mean the internal rate of return on a Member's Capital Contributions calculated pursuant to the formula set forth in Exhibit B.

"**Lender"** shall mean, collectively, Canadian Imperial Bank of Commerce, and the other lenders which are a party to the Loan Agreement.

"Liquidation" shall mean (a) when used with reference to the Company, the earlier of (i) the date upon which the Company is terminated or (ii) the date upon which the

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

"Loan" shall mean that certain loan made by Lender in the original principal amount of $13,815,000.00 and evidenced by the Loan Documents**.**

"Loan Agreement" shall mean that certain Loan Agreement, dated as of the date hereof, by and between Property Owner and Lender.

"Loan Documents" shall mean those certain documents and instruments executed in connection with the Loan, as such may hereafter be further amended, restated or modified.

"Losses" for any period shall mean the excess, if any, of all items of loss, deduction and expense of the Company over all items of income and gain of the Company for such period, determined according to Section 3.5.

"Management Agreement" shall have the meaning ascribed to it in Section 5.3.

"Manager Termination Event" shall have the meaning ascribed to it in Section 5.14.

"Managers" shall mean, collectively, DRA Manager and Operating Manager. "Manager" shall refer to any of the Managers as the context requires.

"Material Lease" shall mean any lease, sublease or other occupancy agreement which (i) covers in excess of 5,000 square feet, (ii) grants a tenant (whether at execution of lease or otherwise) an exclusive use, option to expand (such as the expanded space covers in excess of 5,000 square feet) or terminate or purchase option, (iii) requires landlord to provide any service not typically provided to tenants of similar space at the Property, (iv) requires landlord to expend amounts or perform work not contemplated by the Operating Plan or which contain other economic or other terms or obligations inconsistent with the Operating Plan, or (v) contains material adverse modifications to the Property's standard lease form.

"Members" shall mean DRA and Operator, and any Persons who or which, at the time of reference thereto, have been admitted to the Company as members of the Company, including a Substituted Member.

"Member" shall refer to any of the Members as the context requires.

"Member Nonrecourse Debt" shall have the meaning set forth for the term "Partner Nonrecourse Debt" in Section 1.704-2(b)(4) of the Treasury Regulations.

"Member Nonrecourse Debt Minimum Gain" shall mean an amount, with respect to each Member Nonrecourse Debt equal to the Company Minimum Gain that would

result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.

"Member Nonrecourse Deductions" shall have the meaning set forth for the term "Partner Nonrecourse Deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Treasury Regulations.

"Membership Interest" shall mean the interest of a Member in the Company, including the right of such Member in the capital, Profits and Losses of, and distributions from, the Company, and the right of such Member to any and all benefits to which such Member may be entitled under this Agreement.

"Non-Failing Member" shall have the meaning given to it in Section 3.2(b).

"Nonrecourse Deductions" shall have the meaning set forth in Section 1.704-2(b)(1) of the Treasury Regulations. The amount of Nonrecourse Deductions shall equal the excess (if any) of the net increase (if any) in the amount of Company Minimum Gain during a fiscal year over the aggregate amount of any distributions during such fiscal year of proceeds of a Nonrecourse Debt that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Treasury Regulations Section 1.704-2(c).

"Nonrecourse Liability" shall have the meaning set forth in Section 1.704-2(b)(3) of the Treasury Regulations.

"Offer Price" shall have the meaning set forth in Section 7.13(a).

"Operating Manager" shall mean Operator or any Person who or which, at the time of reference thereto, has been designated pursuant to the terms hereof as the Operating Manager of the Company as a successor in ownership to the Membership Interest of Operator in the Company.

"Operator" shall have the meaning given to it in the Preamble, and shall include any Person who or which, at the time of reference thereto, is a permitted assignee of all the interest of such Member and has been admitted to the Company as a Substituted Member for such Member.

"Operator Principal(s)" shall mean, individually or collectively, Marc R. Wilkow, Clifton J. Wilkow and Gregg J. Wilkow.

"Percentage Interest" shall mean, initially, ninety percent (90%) in the case of DRA, and ten percent (10%) in the case of Operator, as such percentages may be adjusted from time to time. For purposes of determining the Members' Percentage Interests, if Percentage Interests of the Members are changed pursuant to the terms of this Agreement during any fiscal quarter, the amounts of all items to be credited, charged or distributed to such Member for such entire fiscal quarter in accordance with their respective Percentage Interests, shall be allocated between (i) the portion of such fiscal quarter which precedes the date of such change and (ii) the portion of such fiscal quarter which occurs on and after the date of such change, in proportion to the number of days in each such portion, and the amounts of the items so allocated to each such

portion shall be credited or distributed to such Members in proportion to their respective Percentage Interests in the Company during each such portion of the fiscal year or quarter in question.

"Person" shall mean any individual, general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, cooperative or association and the heirs, executors, administrators and assigns thereof, where the context so requires.

"Prime Rate" means the rate of interest then most recently announced by JP Morgan Chase (or any successor thereto) as its prime, reference, or similar rate.

"Profits" for any period shall mean the excess, if any, of all items of income and gain of the Company over all items of Loss, deduction and expense of the Company for such period, determined in accordance with Section 3.5.

"**Prohibited Persons**" shall have the meaning given to it in Section 2.8(b).

"Property" shall mean the real property, or properties, or an interest therein (including, without limitation, a leasehold interest), consisting of the land described on Exhibit A attached hereto, improvements thereon, development rights and all tangible and intangible personal property used in the rental, operation and maintenance thereof.

"Property Manager" shall mean any Person who or which, at the time of reference thereto, has been designated pursuant to both the terms hereof and the Management Agreement.

"Property Owner" shall mean G&I IX MJW Lake Pointe III & IV LLC, a Delaware limited liability company.

"Purchase Agreement" shall mean that certain Agreement of Purchase and Sale dated September 28, 2018, by and between Lake Pointe Fee Owner, LLC, an Indiana limited liability company, as seller, and DRA Fund IX LLC, a Delaware limited liability company, as purchaser, as assigned to Property Owner, as the same is amended from time to time.

"Ratable Share" shall have the meaning given to it in Section 3.2(a).

"REIT" shall mean a "real estate investment trust" within the meaning of Section 856 of the Code.

"Refinancing" shall have the meaning described above in the definition of "Capital Event."

"Rejection Notice" shall have the meaning described in Section 7.13(c).

"Residual Percentages" shall mean (i) Residual Percentages I, if distributions are being made under Section 8.2(e), and (ii) Residual Percentages II, if distributions are being made under Section 8.2(f).

"Residual Percentages I" shall mean, initially, in the case of Operator its then Percentage Interest plus twenty percent (20%) and, in the case of DRA, 100% minus Operator's Residual Percentages I, as such percentages may be adjusted from time to time (e.g., if, at the time of calculation, Operator's Percentage Interests are ten percent (10%) and DRA's Percentage Interests are ninety percent (90%), then Operator's Residual Percentage I shall equal thirty percent (30%) and DRA's Residual Percentage I shall equal seventy percent (70%)).

"Residual Percentages II" shall mean, initially, in the case of Operator its then Percentage Interest plus thirty percent (30%) and, in the case of DRA, 100% minus Operator's Residual Percentages II, as such percentages may be adjusted from time to time (e.g., if, at the time of calculation, Operator's Percentage Interests are ten percent (10%) and DRA's Percentage Interests are ninety percent (90%), then Operator's Residual Percentage II shall equal forty percent (40%) and DRA's Residual Percentage II shall equal sixty percent (60%)).

"Restricted Area" shall have the meaning given to it in Section 2.6(c).

"Restricted Projects" shall have the meaning given to it in Section 2.6(b).

"Restricted Project Offer" shall have the meaning given to it in Section 2.6(c).

"Right of First Offer" shall have the meaning given to it in Section 7.13(a).

"Response Period" shall have the meaning described in Section 7.13(b).

"Sales Notice" shall have the meaning described in Section 7.13(a).

"Section" shall mean a section of this Agreement unless otherwise indicated.

"Section 704(c) Residual Gain" shall mean the excess, if any, of (i) the amount of gain that would be allocated to a Member under Section 704(c) of the Code (or under the principles of Section 704(c) of the Code in connection with a revaluation of Company property in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and(g)) on a sale of Company property for Book Value, over (ii) the amount of gain that would be allocated to a Member under Section 704(c) of the Code (or under the principles of Section 704(c) of the Code in connection with a revaluation of Company property in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f) and (g)) on a sale of Company property for an amount equal to the Nonrecourse Liabilities that secure such property.

"Special Loan" shall mean any loan of moneys by a Member to the Company or a Member, pursuant to Section 3.2(b).

"Substituted Member" shall mean any Person admitted to the Company as a Member, pursuant to the provisions of Section 7.7.

"Tag Along Notice" shall have the meaning given that term in Section 7.12.

"Tag Along Sale" shall have the meaning given that term in Section 7.12.

"Third-Party Purchaser" shall have the meaning set forth in Section 7.13(f).

"Treasury Regulations" shall refer to the United States Department of Treasury Income Tax Regulations promulgated under the Code, including proposed regulations, as may be amended from time to time.

"Unrecovered Capital Contributions" of any Member, at any particular time, shall mean the Capital Contributions made by such Member at or prior to such time, reduced by the aggregate amount of all prior distributions made to such Member under Sections 8.2(c).

The definitions in this Article 1 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

ARTICLE 2.
FORMATION; PURPOSES; REPRESENTATIONS

2.1. Formation. The Company has been organized as a Delaware limited liability company by the filing of a Certificate of Formation under the Act.

2.2. Name and Principal Place of Business. The Company shall conduct its business and promote its purpose under the firm name and style "G&I IX MJW Lake Pointe JV LLC" or such other name or names as the DRA Manager hereinafter from time to time may select. The Company's principal office for the transaction of business shall be maintained at c/o DRA Advisors LLC, 220 East 42nd Street, New York, New York 10017, or such other place or places as the DRA Manager hereinafter may select.

2.3. Purposes. Except as otherwise expressly provided herein, the purposes of the Company shall be owning one hundred percent (100%) of the membership interest in Property Owner and directing Property Owner in acquiring, developing, redeveloping, improving, owning, holding, selling, leasing, transferring, exchanging, managing, and operating and otherwise dealing with the interest in the Property (and no other property), managing the affairs of the Property Owner, obtaining financing and performing its obligations under any corresponding loan documents and transacting any lawful business that is incident, necessary and appropriate to accomplish the foregoing. It is intended by the Members that the Company assets not be deemed "plan assets" for purposes of Department of Labor Regulations, 29 C.F.R. Section 2510.3-101. For so long as the Loan is outstanding the Company's permitted activities shall be subject to Section 2.9 below.

2.4. Term. The term of the Company shall continue in perpetuity, unless the Company is earlier dissolved and its affairs wound up pursuant to the laws of the State of Delaware or Section 11.1.

2.5. Registered Office and Registered Agent. The registered office of the Company in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808 and the registered agent for service of process shall be Corporation Service Company at such address.

2.6. No Restrictions.

(a) Nothing contained in this Agreement shall be construed so as to prohibit any Member, any Affiliate or any director, officer, employee, partner or other person or entity related to any Member from owning, operating, or investing in any real estate or real estate development not owned or operated by the Company, wherever located and whether or not the same competes with the Property and, neither the Company nor any Member or any Affiliate or entity related to any of them shall have any rights by virtue of this Agreement in and to said independent ventures or to the income or profits derived therefrom.

(b) Except as set forth in Section 2.6(c) below neither Operator, the Operator Principals, nor any entity in which the Operator Principals, individually or in the aggregate, directly or indirectly own at least twenty-one percent (21%) of the economic interests (each such person is hereinafter called an **"Operator Person"**), shall own, develop, or operate (directly or indirectly) any competitive property within a four (4) mile radius of the Property ("**Restricted Projects**") without the express written consent of DRA Manager, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the foregoing shall not prevent or restrict any Affiliate of any Operator Principals from acting as a third party manager or leasing agent with respect to any property where no Operator Principal, directly or indirectly, has any ownership interest in the owner of such property.

(c) An Operator Person shall not undertake to acquire or develop any Restricted Projects for its own account or for the accounts of others whether as the sole developer or as owner of at least twenty-one percent (21%) of the economic interests whether for new construction, acquisition, development or rehabilitation of an existing project, unless Operator first offers to DRA (as principal or agent) the opportunity to participate in such Restricted Project on such economic terms (as between themselves) as they mutually agree upon and acting in good faith, but otherwise on identical terms on which the Operator Person intends to participate in such Restricted Project. Such offer (each a **"Restricted Project Offer"**) shall be made in writing and shall set forth all material terms thereof. Any Affiliate of DRA may accept the Restricted Project Offer. DRA or its Affiliate shall accept such Restricted Project Offer, if at all, within ten (10) business days from the date it receives in writing all information, to the extent in Operator's possession, reasonably necessary to make its investment decision whether or not to participate in such Restricted Project, it being agreed that during such ten (10) business day period Operator shall prepare and/or deliver to DRA any additional information it may reasonably request, to the extent in Operator's possession, if the Restricted Project Offer does not contain all terms that it reasonably requires to make such investment decision. If DRA or its Affiliate does not accept such Restricted Project Offer in writing within the ten (10) business day period, then it shall be deemed to have declined the Restricted Project Offer and the Operator Person shall have the right to undertake such Restricted Project, provided however, that if the Operator Person undertakes such Restricted Project on terms which are materially better to the Operator Person than those set forth in the Restricted Project Offer, then Operator must submit a revised Restricted Project Offer to DRA and the review process as set forth above shall be repeated. If DRA or its Affiliate accepts the Restricted Project Offer and elects to participate in such Restricted Project then it shall be required to enter into appropriate definitive venture agreements mutually agreeable to Operator and DRA (or its Affiliate) and they shall fund any required payments or capital contribution in accordance with the Restricted Project Offer or

revised Restricted Project Offer on or before the earlier to occur of (i) ten (10) business days after acceptance of such Restricted Project Offer or (ii) such date as may be set forth in the Restricted Project Offer as the date by which a bid deadline must be met from a third party (but not less than ten (10) business days).

(d) Other than with respect to any other property in which both Operator and DRA (or either of their respective Affiliates) together own an interest, neither an Operator Person, nor DRA or an affiliate or agent thereof, shall lease space to, or initiate leasing negotiations with, any tenant of the Property (or knowingly with any parent, subsidiary or affiliate of such tenant) which would result in such tenant vacating the Property.

2.7. No Member Responsible for Others' Commitments. Neither the Members nor the Company shall be responsible or liable for any indebtedness or obligation of the other Member incurred either before or after the execution of this Agreement, except as provided herein or pursuant to written assignment and assumption agreements and each Member indemnifies and agrees to hold the others harmless from such unassumed obligations and debts.

2.8. Representations by Members.

(a) **General**. Each Member represents and warrants to the other Members that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action and do not require the consent or approval of any third party, (ii) it has and they have all necessary power with respect thereto, (iii) the consummation of such transactions will not (and with the giving of notice or lapse of time or both would not) result in a breach or violation of, or a default or loss of contractual benefits under, its charter, by-laws, partnership agreement or limited liability company agreement, any agreement by which it or they or any of its or their properties are bound, or any statute, regulation, order or other law to which it or they or any of its or their properties are subject, or give rise to a lien or other encumbrance upon any of its or their properties or assets, (iv) this Agreement is a valid and binding agreement on the part of such Member, enforceable in accordance with its terms, and (v) such Member is not a foreign person as that term is defined in Section 1445 of the Code.

(b) **OFAC Representations.**

(i) DRA and Operator understand and agree that the Company prohibits the investment of funds by any persons or entities that are acting, directly or indirectly, (A) in contravention of any U.S. or international laws and regulations, including anti-money laundering regulations or conventions, (B) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control (**"OFAC"**), as such list may be amended from time to time, (C) for a senior foreign political figure, any member of a senior foreign political figure's immediate family or any close associate of a senior foreign political figure[1], unless the DRA Manager, after being specifically

[1] Senior foreign political figure means a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a senior foreign political figure includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign

notified by DRA and/or Operator (as applicable) in writing that it is such a person, conducts further due diligence, and determines that such investment shall be permitted, or (D) for a foreign shell bank[2] (such persons or entities in (A) through (D) are collectively referred to as "**Prohibited Persons**").

(ii) DRA represents, warrants and covenants that: (A) it is not, nor is any person or entity controlling, controlled by or under common control with DRA, a Prohibited Person, and (B) to the extent DRA has any "beneficial owners"[3], (1) it has carried out thorough due diligence to establish the identities of such beneficial owners, (2) based on such due diligence, DRA reasonably believes that no such beneficial owners are Prohibited Persons, (3) it holds the evidence of such identities and status and will maintain all such evidence for at least five years from the date of such party's complete withdrawal from the Company, and (4) it will make available such information and any additional information that the Company may require upon request.

(iii) Operator represents, warrants and covenants that: (A) it is not, nor is any person or entity controlling, controlled by or under common control with Operator, a Prohibited Person, and (B) to the extent Operator has any "beneficial owners"[4], (1) it has carried out thorough due diligence to establish the identities of such beneficial owners, (2) based on such due diligence, Operator reasonably believes that no such "beneficial owners" are Prohibited Persons, (3) it holds the evidence of such identities and status and will maintain all such evidence for at least five years from the date of Operator's complete withdrawal from the Company, and

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political figure. The immediate family of a senior foreign political figure typically includes the political figure's parents, siblings, spouse, children and in-laws. A close associate of a senior foreign political figure is a person who is widely and publicly known internationally to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

[2] Foreign shell bank means a foreign bank without a physical presence in any country, but does not include a regulated affiliate. A post office box or electronic address would not be considered a physical presence. A regulated affiliate means a foreign shell bank that: (1) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and (2) is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

[3] Beneficial owners will include, but not be limited to: (i) shareholders of a corporation; (ii) partners of a partnership; (iii) members of a limited liability company; (iv) investors in a fund-of-funds; (v) the grantor of a revocable or grantor trust; (vi) the beneficiaries of an irrevocable trust; (vii) the individual who established an IRA; (viii) the participant in a self-directed pension plan; (ix) the sponsor of any other pension plan; and (x) any person being represented by DRA in an agent, representative, intermediary, nominee or similar capacity. If the beneficial owner is itself an entity, the information and representations set forth herein must also be given with respect to its individual beneficial owners. If DRA is a publicly-traded company, it need not conduct due diligence as to its beneficial owners.

[4] Beneficial owners will include, but not be limited to: (i) shareholders of a corporation; (ii) partners of a partnership; (iii) members of a limited liability company; (iv) investors in a fund-of-funds; (v) the grantor of a revocable or grantor trust; (vi) the beneficiaries of an irrevocable trust; (vii) the individual who established an IRA; (viii) the participant in a self-directed pension plan; (ix) the sponsor of any other pension plan; and (x) any person being represented by the Operator in an agent, representative, intermediary, nominee or similar capacity. If the beneficial owner is itself an entity, the information and representations set forth herein must also be given with respect to its individual beneficial owners. If Operator is a publicly-traded company, it need not conduct due diligence as to its beneficial owners.

(4) it will make available such information and any additional information that the Company may require upon request.

(iv) If any of the foregoing representations, warranties or covenants ceases to be true or if the Company no longer reasonably believes that it has satisfactory evidence as to their truth, notwithstanding any other agreement to the contrary, the Company may be obligated to freeze DRA's or Operator's (as applicable) investment, either by prohibiting additional investments, declining or suspending any withdrawal requests and/or segregating the assets constituting the investment in accordance with applicable regulations, or DRA's and/or Operator's (as applicable) investment may immediately be involuntarily withdrawn by the Company, and the Company may also be required to report such action and to disclose DRA's and/or Operator's (as applicable) identity to OFAC or other authority. In the event that the Company is required to take any of the foregoing actions, DRA and/or Operator (as applicable) understands and agrees that it shall have no claim against the Company or DRA Manager or their respective affiliates, directors, members, partners, shareholders, officers, employees and agents for any form of damages as a result of any of the aforementioned actions.

(v) DRA and/or Operator (as applicable) understand and agree that any distributions paid to them will be paid to the same account from which DRA's and/or Operator's (as applicable) investment in the Company was originally remitted, or to another FDIC insured account, unless DRA Manager, in its sole discretion, agrees otherwise.

(c) In addition to the representations and warranties set forth in Sections 2.8(a) and 2.8(b), DRA hereby represents and warrants to Operator as follows:

(i) DRA is a limited liability company duly formed and validly existing under the laws of Delaware and has the power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby.

(ii) There is no petition in Bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law filed by or against or threatened to be filed by or against DRA or its members.

(iii) Neither the execution and the delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement is subject to any requirement that DRA obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party which has not been obtained or which, in any case or in the aggregate, if not obtained or made would have an adverse effect, financial or otherwise, on the business or property of the Company or render such execution, delivery or consummation illegal or invalid, or would constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the Company's properties.

(iv) There are no actions, suits, proceedings or investigations, criminal or civil, at law or in equity, or before any governmental agency or other person, pending or threatened against DRA (or its members), in any case or in the aggregate, which will have a materially adverse effect, financial or otherwise, on the business or property of the Company.

(d) In addition to the representations and warranties set forth in Sections 2.8(a) and 2.8(b), Operator hereby represents, warrants and covenants to DRA as follows:

(i) Operator is a limited liability company duly formed and validly existing under the laws of the State of Delaware, and has the power and authority to own its property and carry on its business as owned and carried on at the date hereof and as contemplated hereby.

(ii) There is no petition in Bankruptcy or any petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, liquidation or dissolution or similar relief under the U.S. Bankruptcy Code or any state law filed by or against or threatened to be filed by or against Operator.

(iii) Neither the execution and the delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement is subject to any requirement that Operator obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party which has not been obtained or which, in any case or in the aggregate, if not obtained or made would have an adverse effect, financial or otherwise, on the business or property of the Company or render such execution, delivery or consummation illegal or invalid, or would constitute a default under, or result in the creation of any lien, charge or encumbrance upon any of the Company's properties.

(iv) There are no actions, suits, proceedings or investigations, criminal or civil, at law or in equity, or before any governmental agency or other person, pending or threatened against Operator or, to the knowledge of Operator, the Property, in any case or in the aggregate, which will have a materially adverse effect, financial or otherwise, on the business or property of the Company.

(v) The Operator Principals, directly or indirectly, own at least three percent (3%) of the ownership interests of the Operator and, collectively, the Operator Principals control all decisions of Operator.

2.9. The Company shall not and shall not permit or cause Property Owner to perform any act in respect of Company or Property Owner in violation of any (a) applicable laws or regulations or (b) agreement between Property Owner and Administrative Agent or any Lender (including, without limitation, the Loan Documents).

ARTICLE 3.
MEMBERS' CAPITAL CONTRIBUTIONS

3.1. **Initial Capital Contributions**.

(a) On the date hereof, each of the Members shall make the initial Capital Contributions in cash to the Company as set forth on **Schedule 1** annexed hereto.

3.2. **Additional Capital Contributions.**

(a) The Members acknowledge that the Company may need additional funds from time to time in order to accomplish the purposes set forth in Article 2. In the event that DRA Manager determines in its reasonable discretion and in good faith that additional capital is required, it may send a notice (the **"Call Notice"**) to each Member stating the aggregate amount of the additional capital required (the **"Capital Call"**). Each Member shall within twenty (20) days from the date of the Call Notice (the **"Call Period"**) contribute to the Company in cash, its ratable share of the Capital Call. Each Member's ratable share (the **"Ratable Share"**) of the Capital Call shall be the amount determined by multiplying its Percentage Interest at the time of the Call Notice by the aggregate amount of the Capital Call (except that to the extent the Members have received actual distributions pursuant to Sections 8.2(e) or (f) hereof, in lieu of Percentage Interests, the Ratable Shares of the Members shall be determined based on the applicable Residual Percentages (rather than Percentage Interests) of the Members, until such time as the Members have made aggregate additional Capital Contributions pursuant to this sentence sufficient to return to the Company the aggregate distributions received pursuant to Sections 8.2(e) or (f) hereof (and, thereafter, the Members' respective Ratable Shares will be based on their respective Percentage Interests)).

(b) If a Member fails to contribute an amount (the **"Default Amount"**) equal to its Ratable Share of the Capital Call within the Call Period (the **"Failing Member"**), and the other Member (the **"Non-Failing Member"**) has made its entire required contribution, then the Non-Failing Member may, at the Non-Failing Member's option, elect one of the following: (i) withdraw from the Company its most recent proportionate contribution made pursuant to Section 3.2(a), in which case the Company shall promptly repay the amount of such withdrawn contribution to the Non-Failing Member, (ii) make a loan to the Failing Member (a **"Special Loan"**) in an amount equal to all or a portion of the Default Amount (which Special Loan to the Failing Member shall be made by paying the proceeds thereof directly to the Company) or (iii) make an additional Capital Contribution to the Company in an amount equal to all or a portion of the Default Amount (in which event the Non-Failing Member's aggregate contribution pursuant to such Capital Call shall be referred to herein as a **"Default Capital Contribution"**). In the event there is more than one Non-Failing Member, each Non-Failing Member shall have the right to make the Special Loan or the Default Capital Contribution in an amount equal to its Ratable Share of the Default Amount, or in such other proportions as the Non-Failing Members shall agree.

(c) In the event the Non-Failing Member elects pursuant to Section 3.2(b)(iii) to make a Default Capital Contribution, then at the Non-Failing Member's election either (i) such Default Capital Contribution made by the Non-Failing Member shall be entitled to a preferred return (the **"Default Preferred Return"**) on such Member's Default Capital Contribution Balance at a rate equal to fifteen percent (15%) per annum, compounded monthly, or (ii) the then Failing Member's Percentage Interests immediately following the making of the Non-Failing Member's most recent contribution pursuant to this Section shall be reduced (but not below zero percent) by the number of percentage points obtained by multiplying (x) the fraction (expressed as a percentage), the numerator of which is an amount equal to the Default Amount and the denominator of which is the then aggregate Unrecovered Capital Contributions (including Default Capital Contributions) made by all Members from the inception of the Company (but not less than one (1)), by (y) one and two-tenths (1.2) (and the Residual Percentages of such Member shall be reduced in proportion to the reduction of its Percentage

Interests); in which event the Percentage Interests and Residual Percentages of the Non-Failing Member shall be correspondingly increased by the number of percentage points by which the Failing Member's Percentage Interests and Residual Percentages were reduced pursuant to this Section 3.2(c)(ii). The Non-Failing Member may elect to treat part of its Default Capital Contribution in accordance with Section 3.2(c)(i) and part in accordance with Section 3.2(c)(ii).

(d) If made, a Special Loan shall bear interest at a rate equal to fifteen percent (15%) compounded monthly with interest payable on or before the fifth day of each and every month following the making of the Special Loan as provided in Section 8.3. No Special Loan shall constitute or be deemed to be a lien against the Property nor shall any Failing Member have any personal liability for such Special Loan other than as set forth in Section 8.3. Notwithstanding the foregoing, a Failing Member shall have the right to repay any Special Loan at any time without any penalty or premium.

3.3. Interest and Right to Property.

Except as provided herein, (i) no Member shall be paid interest on any Capital Contribution, nor shall any Member have the right to take and receive property other than cash in return for his or its Capital Contribution and (ii) no Member shall receive any salary or draw with respect to its Capital Contribution or its Capital Account or for services rendered on behalf of the Company or otherwise in its capacity as a Member.

3.4. Capital Accounts.

(a) A separate capital account ("**Capital Account**") shall be maintained in accordance with the following provisions:

(i) To each Member's Capital Account there shall be credited (x) such Member's Capital Contributions to the capital of the Company, (y) such Member's distributive share of Profits, and any items in the nature of income or gain that are specially allocated pursuant to Article 9 (other than Sections 9.1(c) or 9.1(d)), and (z) the amount of any Company liabilities that are assumed by such Member or that are secured by any Company property distributed to such Member.

(ii) To each Member's Capital Account there shall be debited (x) the amount of cash and the fair market value of any Company property (net of liabilities to which such property is subject or assumed by the Member, if any) distributed to such Member pursuant to any provision of this Agreement, (y) such Member's distributive share of Losses, and any items in the nature of expenses or losses that are specially allocated pursuant to Article 9 (other than Sections 9.1(c) or 9.1(d)), and (z) the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(b) In the event any interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(c) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b)(2)(iv), and shall be interpreted and applied in a manner consistent with such Treasury Regulations, including the making of adjustments required or permitted by such Treasury Regulations in addition to those specified in Section 3.4(a). In the event that the Accountants determine that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases thereto, are computed in order to comply with such Treasury Regulations, they shall recommend to DRA Manager that such modification be made. DRA Manager shall make such modification if such modification shall not have a material effect on the amounts distributable to, or the aggregate amount of taxable income or loss allocable to, any Member.

3.5. Computation of Amounts.

For purposes of computing the amount of any item of Profit or Losses to be reflected in Capital Accounts, the determination, recognition and classification of each such item shall be the same as its determination, recognition and classification for Federal income tax purposes; provided that:

(a) any income that is exempt from Federal income tax, as described in Section 705(a)(1)(B) of the Code, shall be added to such taxable income or losses;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code, or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-l(b)(2)(iv)(i) of the Treasury Regulations, shall be subtracted from such taxable income or losses;

(c) any item of income, gain, loss or deduction that is required to be allocated specially to the Members under Article 9 shall not be taken into account in computing Profits or Losses;

(d) in lieu of any depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be deducted Depreciation, computed in accordance with the definition of such term;

(e) if the Book Value of any Company property is adjusted pursuant to clause (b) or (c) of the definition of "Book Value", the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses, unless such gain or loss is specially allocated pursuant to Article 9;

(f) if property that is reflected on the books of the Company has a Book Value that differs from the adjusted tax basis of such property, depreciation, amortization and gain or loss with respect to such property shall be determined by reference to such Book Value;

(g) all items of gain or loss resulting from any disposition of the Company's property shall be determined upon the basis of the Book Value of such property rather than the adjusted tax basis thereof; and

(h) the computation of all items of Profit and Losses shall be made without regard to any election pursuant to Section 754 of the Code that may be made by the Company, unless the adjustment to basis of property of the Company pursuant to such election is reflected in Capital Accounts pursuant to Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

3.6. No Withdrawal from Capital Accounts. Except as otherwise expressly provided herein, no Member shall be permitted to make any withdrawals from its Capital Account.

3.7. Guaranteed Obligation. If any Member or an Affiliate of any Member enters into a guaranty of a loan or a loan related obligation, such as a rate lock agreement, or any indemnity obligation or other obligation relating to a loan or a prospective loan to the Company (the "**Guaranteed Obligation**") in favor of a lender of the Company or a subsidiary of the Company (the "**Guaranteeing Party**"), the Member who is not the Guaranteeing Party or an Affiliate of the Guaranteeing Party (the **"Non-Guaranteeing Member"**), the Non-Guaranteeing Member shall be responsible for its Ratable Share of the Guaranteed Obligation actually paid by the Guaranteeing Party, except that each Member shall be fully responsible for any misfeasance or malfeasance solely attributable to its or its Affiliates' actions or inactions. If the Guaranteeing Party pays all or a portion of the Guaranteed Obligation either (a) with the consent of the other Member or (b) because, in its reasonable determination, the Guaranteeing Party is required to make such payment, then the Non-Guaranteeing Member shall, within ten (10) business days of demand, reimburse the Guaranteeing Party for its Ratable Share and to the extent not paid by the Non-Guaranteeing Member or its Affiliate, the Company shall be responsible to pay to the Guaranteeing Party from the Cash Flow or Capital Proceeds that are distributable to the Non-Guaranteeing Members the amounts payable to the Guaranteeing Party from the Non-Guaranteeing Member under this Section 3.7 (it being expressly understood and agreed, however, that the Company's responsibility for such payment is not intended to replace, but rather is intended to supplement, the reimbursement obligation of the Non-Guaranteeing Member as set forth in this sentence). Any amounts paid by the Guaranteeing Party shall accrue interest at a rate of 15% per year commencing ten (10) business days after the later of (x) the date such amounts have been paid and (y) the date on which the Guaranteeing Party notified the Non-Guaranteeing Member of the amount paid on account of the Guaranteed Obligation. Notwithstanding anything in this Section 3.7 to the contrary, (x) if DRA Manager causes the Company to terminate the Management Agreement under Section 6(a) thereof, Operator shall not have any obligations under this Section 3.7 for any Guaranteed Obligations which accrue from and after the date of such termination except to the extent such obligations relate to the physical condition of the Property as of or prior to the date of such termination and (y) if, pursuant to the terms of Section 5.1(h), a Guaranteed Obligation requires the consent of the Members, the Non-Guaranteeing Member shall not have any obligations under this Section 3.7 unless such Member consented to the Guaranteed Obligation.

ARTICLE 4.
[INTENTIONALLY OMITTED]

ARTICLE 5.
MANAGEMENT OF THE COMPANY

5.1. Duties and Responsibilities of the DRA Manager. Except as otherwise expressly provided herein and subject to the limitations contained in Section 5.4, DRA Manager shall have the exclusive right and power to manage, operate and control the Company in accordance with the terms hereof and applicable law, which right and power shall include the right and power:

(a) To perform other obligations provided elsewhere in this Agreement to be performed by DRA Manager;

(b) To create reasonable reserves from Cash Flow and Capital Proceeds when required for capital improvements, tenant improvements, working capital or for the payment of the expenses or anticipated expenses of the Company;

(c) To open accounts and deposit and maintain funds in the name of the Company in banks, savings and loan associations or trust companies; provided, however, that the Company funds shall not be commingled with the funds of any other Person;

(d) To take all required action to qualify the Company to do business in any state or jurisdiction in which DRA Manager deems such qualification necessary or advisable;

(e) To amend this Agreement to reflect the permitted addition or substitution of Members;

(f) To select the Company's professionals including, without limitation, the Accountant and take action and make decisions in connection with all accounting and tax matters;

(g) Subject to the terms of Section 5.3, to terminate the agreements for the management and leasing of the Property in accordance with the terms thereof;

(h) To cause the borrowing of money, granting of mortgages (or deeds of trust), granting of pledges or other security interests by the Company or its Affiliates or issuance of preferred equity interests in the Company or any of the Company's Affiliates (provided that any issuance of preferred equity interests shall not have a disproportionate impact on either Member); to cause a prepayment or refinancing and to cause a recasting, increasing, modification, consolidation or extension any obligation affecting the Company or the Property or any interest therein, and in connection therewith to cause the Company and its Affiliates to enter into any documentation relating to any of the foregoing and to create and transfer the Property or the Company's interests in the Property to special purpose entities, which are directly or indirectly owned by the Company, with or without independent directors, independent managers and/or springing members on such terms and conditions as DRA Manager reasonably determines; provided that in no event may DRA Manager cause Operator or its Affiliates to incur any personal liability except pursuant to Section 3.7 above. DRA Manager agrees that, in connection with any financing obtained by the Company, the Operator shall not be obligated under Section 3.7 for any Guaranteed Obligations unless such Guaranteed Obligation is either (i)

a non-recourse carve-out guarantee and environmental indemnity consistent with market terms for institutional lenders or (ii) consented to by the Member. Operator, in entering into this Agreement, hereby consents to the Recourse Carve-Out Guaranty dated November 5, 2018 between Administrative Agent and DRA Growth and Income Master Fund IX, LLC and the Hazardous Substances Indemnity Agreement dated November 5, 2018 between Administrative Agent, Property Owner and DRA Growth and Income Master Fund IX, LLC;

(i) To cause the Company to enter into or terminate, or modify any Material Lease (including a modification of an existing lease such that such lease becomes a Material Lease) and to approve any other lease or other occupancy agreement for space at the Property that is outside the scope of Operating Manager's authority under Section 5.2(f);

(j) To purchase any portion of the Property;

(k) To cause the Company to sell all or any portion of the Property or the Company's direct or indirect interest therein, and in connection therewith to enter into sale, indemnity, financing, easement or other agreements relating thereto, and to cause a subdivision of a Property, all on terms and conditions satisfactory to DRA Manager in its sole discretion, provided, however, that if the Capital Proceeds to be realized by any prospective sale of the Property, after distribution pursuant to the provisions of Section 8.2, is insufficient to reduce Operator's Unrecovered Capital Contributions to zero, the Company may not initiate a sale of the Property without complying with the terms of Section 7.13 below;

(l) Intentionally Omitted;

(m) To approve the Operating Plan;

(n) To adjust, compromise, settle or refer to arbitration any claim in favor of or against the Company, or institute, prosecute or defend any legal action or proceeding or any arbitration proceeding for or on behalf of the Company; provided that Operator Manager may take any of the foregoing actions without the approval of DRA Manager if, in any such case, such claim, action or proceeding involves only a liquidated sum of uninsured expenses not in excess of $20,000 and does not otherwise involve a Material Lease;

(o) To take all actions on behalf of the Company relative to the Management Agreement (or any replacement thereof); and

(p) To execute and to cause the Company and its direct or indirect subsidiaries to acknowledge and deliver any and all instruments necessary or desirable in effectuating the foregoing.

5.2. Duties and Responsibilities of the Operating Manager. Except as otherwise expressly provided herein and subject to the limitations contained in Section 5.4, the exclusive rights granted to DRA Manager in Section 5.1 hereof and the Operating Plan, Operating Manager shall have the obligation, right and power to manage, operate and control the day-to-day operations of the Property, and to implement the Operating Plan in accordance with the terms hereof and thereof and applicable law, which obligation, right and power shall include the obligation, right and power:

(a) To prepare the Operating Plan in accordance with Section 5.12 below;

(b) To incur any expenses or costs contemplated by the budget made a part of the Operating Plan, so long as the expense or cost does not exceed one hundred five percent (105%) of the particular budgeted line item for such cost or expense or cause the entire budget to increase by more than three percent (3%) in the aggregate;

(c) To apply for and use diligent efforts to obtain any and all consents, approvals and permits required for the development, occupancy, maintenance, repair and operation of the Property;

(d) To the extent that cash flow from the Property is sufficient therefor, to pay or cause to be paid all taxes, assessments and other impositions applicable to the Property;

(e) To coordinate the development, redevelopment, operation and marketing of the Property (but nothing herein shall be deemed authority for Operator to expend funds other than as expressly set forth in the Operating Plan);

(f) To cause the Company to enter into leases and other occupancy agreements with respect to the Property to tenants whose credit and financial strength is equal or superior to that of other similar tenants then leasing premises in the Property, on terms and conditions consistent with the express leasing guidelines and procedures contained in the Operating Plan (but nothing herein shall be deemed authority for the Operating Manager to approve or execute, modify or terminate a Material Lease or modify an existing lease such that such lease becomes a Material Lease). Prior to executing any such lease or amendment, Operating Manager shall consult with DRA Manager and furnish DRA Manager with any information DRA Manager reasonably requests;

(g) To incur trade payables in the ordinary course of business;

(h) To prepare and/or supervise the preparation of all reports required by any public or governmental agency, any lender in connection with any financing, refinancing, operation and/or development of the Property, or by DRA Manager;

(i) To operate and maintain the Property, and to negotiate all agreements relating to the operation and the performance of the Company's obligations as the owner of the Property (but nothing herein shall be deemed authority for Operating Manager to execute any such agreements without DRA's prior written approval);

(j) To procure all licenses required to develop, operate and maintain the Property, including, without limitation, all business licenses and contractor licenses and permits required in connection with the re-tenanting and marketing of the Property; and

(k) To coordinate the issuance of all required governmental approvals for the development, redevelopment, operation and maintenance of the Property.

5.3. Agreements Relating to Management.

(a) **Management Agreement**. On the date hereof, the Company shall enter into a property management agreement with M & J Wilkow Properties, LLC, as the Property Manager, in the form attached hereto as Exhibit C (the "**Management Agreement**").

(b) **Reimbursement for Company Expenses**. To the extent provided in the Operating Plan, the DRA Manager and Operating Manager shall be entitled to reimbursement by the Company for all out-of-pocket expenses reasonably paid or incurred by them in connection with the discharge of their duties and obligations under this Agreement (including travel expenses) or otherwise reasonably paid and incurred by them on behalf of the Company. Neither DRA Manager nor Operating Manager shall be reimbursed for any costs or expenses relating to the general operation of its business (including payroll expenses).

5.4. Major Decision.

(a) Notwithstanding the grant of authority to DRA Manager under Section 5.1 hereof, and to the Operating Manager under Section 5.2, without the prior written approval of DRA Manager and Operating Manager, neither DRA Manager nor Operating Manager shall:

(i) Do any act in contravention of this Agreement;

(ii) Cause the Company to commence or consent to a filing of a bankruptcy proceeding by or against the Company;

(iii) Dissolve the Company;

(iv) Change the Company's accounting method in any manner which would result in material adverse tax consequences to the Operator;

(v) Amend this Agreement;

(vi) Change the purposes of the Company as set forth in Section 2.3 above;

(vii) Cause the re-domiciliation or re-domestication of the Company;

(viii) Admit additional Members to the Company; or

(ix) Employ, or permit the Company to employ, the funds or assets of the Company in any manner except for the exclusive benefit of the Company.

5.5. Duties; Reliance. In carrying out their duties, obligations and responsibilities under this Agreement, the Managers shall have a duty to act in good faith to carry out the purposes of the Company and to refrain from engaging in grossly negligent or reckless conduct or intentional misconduct or any knowing violation of law. In discharging their duties, the Managers shall be fully protected in relying in good faith upon the records maintained by the Company in the ordinary course of its business and upon such information, opinions, reports or statements by any of the Members or any agents of the Company, or by any other Person, as to

matters the applicable Manager reasonably believes are within such other Person's professional or expert competence.

5.6. DRA Manager's and Operating Manager's Time. The Managers and their respective directors, officers and employees, shall devote to the affairs of the Company so much of their time as they, in their discretion, deem necessary or advisable properly to carry on the Company's business. Except as specifically provided in this Agreement, DRA Manager and Operating Manager shall not receive any salary or similar fees in connection with their services hereunder.

5.7. No Liability and Indemnity. No Manager shall be liable, responsible or accountable to the Company or any Member for any act or omission performed or omitted pursuant to the authority granted to it hereunder or by law, or for any claim, loss, damage, liability or expense (including without limitation, reasonable attorneys' fees), resulting from the performance of its duties hereunder except in the case of gross negligence or bad faith. The Company shall indemnify the Managers and hold them harmless from any claim, loss, damage, liability or expense (including without limitation, reasonable attorneys' fees), incurred or sustained by it by reason of any act performed by it or any omission by it for or on behalf of the Company and in furtherance of its interest, consistent with the requirements of Section 5.5, but this indemnity shall not require the Members to make any Capital Contribution therefor. In no event shall a Member be liable for consequential, punitive, special or exemplary damages by reason of any term, condition or provision contained in this Agreement.

5.8. Reliance by Third Parties. Third parties dealing with the Company may rely conclusively upon the power and authority of DRA Manager and the Operating Manager to act as set forth herein and shall not be required to inquire into or ascertain the authority of DRA Manager or Operating Manager so to act.

5.9. General Authority. The Managers shall, except as otherwise provided in this Agreement and by the Act, have all the rights and powers and shall be subject to all the restrictions and liabilities of a manager in a limited liability company under the laws of the State of Delaware. The Managers shall use their best efforts to operate the Company and conduct its business and affairs in such a way as the Company assets will not be deemed to be "plan assets" for purpose of ERISA and the Department of Law Regulations, 29 C.F.R. Section 2510.3-101.

5.10. Non-Exclusivity and No Conflict. Subject to Sections 2.6(b), 2.6(c) and 2.6(d), any Member, regardless of whether such Member is a Manager, and/or any Affiliate thereof, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, operation, management, syndication, brokerage and development of other real property, and, except as expressly provided herein, neither the Company nor any Members thereof shall have any right by virtue of this Agreement in such independent ventures or to the income, profits or losses derived therefrom. The fact that a Member, regardless of whether such Member is a Manager, or any member of his family or any Affiliate thereof, as the case may be, is employed by, or is directly or indirectly interested in or connected with, any Person with which the Company transacts business shall not prohibit such Manager from dealing with such Person on market rate terms, and neither the Company nor any Members thereof, as such, shall have any rights in such Person,

or to any income, profits or losses derived therefrom. The duties of the Managers hereunder shall not prevent it from rendering similar services to other Persons, firms, trusts, corporations or other entities. The parties hereto acknowledge that the parties hereto or their Affiliates, and officers, directors, members, managers, principals and/or shareholders of the Managers or their Affiliates may have different financial interests in the Company due to different membership interests. Each party agrees that no conflict of interest exists and no conflict of interest or breach of fiduciary duty shall be asserted against any party hereto, their respective Affiliates or their officers, directors, members, managers, principals and/or shareholders of the Managers or its Affiliates, on account of acts or omissions influenced or driven by such different interests, goals or priorities. Neither Manager shall have any fiduciary obligations to the Company or the Members except the duty to act in conformance with the terms of this Agreement.

5.11. Limited Liability. Performance of one or more of the acts described in this Article 5 shall not in any way impose any personal liability on any Manager or Member. No Member or, in appropriate case, former Member shall be liable for any debts or obligations of the Company in excess of its Capital Contribution (subject to the obligation of a Member of the Company under the Act to repay any funds wrongfully distributed to it). All undistributed Cash Flow and Capital Proceeds which would otherwise be distributed to the Members shall be available to creditors to satisfy the debts and obligations of the Company prior to the time of actual distribution.

5.12. Operating Plan.

(a) Not less than ninety (90) days prior to the commencement of any calendar year, Operating Manager shall deliver to DRA Manager an operating plan for the Company and the Property (the **"Operating Plan"**), which shall include a good faith estimated budget for operating costs, including reasonable reserves to be incurred in the following calendar year, leasing guidelines for such year, any capital programs to be undertaken in such year, the day-to-day management and policies of the Company, and any other information which is appropriate for the operation of the Property and the Company for such year. Within fifteen (15) days of the receipt of the Operating Plan, DRA Manager shall approve or disapprove same, which approval shall not be unreasonably withheld or delayed. If DRA Manager fails to respond within such time frame, DRA Manager shall be deemed to have disapproved the Operating Plan.

(b) If the annual budget contained in the Operating Plan is disapproved by DRA Manager, DRA Manager shall identify the unacceptable portions and DRA Manager shall specify how such portions may be made acceptable to DRA Manager, and Operating Manager shall promptly revise such budget and resubmit same to DRA Manager until an Operating Plan is approved by DRA Manager, it being understood that Operating Manager shall use commercially reasonable efforts so as to cause the Operating Plan to be approved prior to the end of the then calendar year. Until such time as an Operating Plan is approved, the Operating Manager shall be entitled to use, as the budget for the calendar year in question, the line items in the submitted budget which were approved by DRA Manager and as to the line items which were not approved by DRA Manager, the Operating Manager shall be entitled to use the line items (excluding items relating to capital expenditures) in the budget contained in the last approved Operating Plan (or if no Operating Plan has ever been approved, the budget contained in the initially proposed Operating Plan) increased by five percent (5%) (provided the entire budget is increased by not

more than three percent (3%) in the aggregate) for each calendar year since such Operating Plan was approved except in cases of a life safety emergency. Operating Manager shall be authorized to increase any line item to meet such emergency. After DRA Manager shall have approved an Operating Plan, Operating Manager shall conform all expenditures for the year in question to the budget contained in the Operating Plan.

(c) Operating Manager shall carry out the Operating Plan and shall not exceed the amounts set forth in any approved or deemed approved budget, except as specifically provided herein. If at any time during a calendar year Operating Manager determines that it is necessary to increase the budget for such calendar year, Operating Manager shall give DRA Manager notice thereof along with such information as is necessary to substantiate the increased costs. Operating Manager pursuant to this Section 5.12, shall be authorized to increase any line item of the budget to meet such increased cost up to five percent (5%) of such line item provided the entire budget is increased by not more than two percent (2%), except (i) in the case of a life-safety emergency, in which case the Operating Manager may incur such amounts as are reasonably necessary to meet the emergency, or (ii) in the event such additional costs result from governmental authorities (for example real estate taxes or assessments), debt service on, and other amounts due pursuant to, loan documentation entered into in accordance with this Agreement evidencing authorized borrowings of the Company, insurance premiums and utilities as billed to and collectable from the Company, or costs payable by the tenants of the Property under their respective leases, the Operating Manager is authorized to pay any such costs with Company funds. Operating Manager shall promptly notify DRA Manager of any such emergency and any additional funds so expended shall not be considered for purposes of subsequent increased cost calculations.

5.13. <u>REIT Protection.</u>

(a) Without the prior consent of DRA, the Company shall not:

(i) acquire any stock or securities of another issuer, provided, however, that DRA Manager may, on behalf of the Company, acquire 100% of the interests in one or more subsidiary limited liability companies or limited partnerships, so long as such limited liability companies or limited partnerships are disregarded as entities for income tax purposes, and the respective limited liability company agreements or limited partnership agreements contain the provisions specified in this Section 5.13 of this Agreement, and provided further, that DRA Manager may, on behalf of the Company, acquire assets described in Code 856(c)(4)(A);

(ii) enter into any lease which provides for rent based upon any Person's net income or profits (as determined for purposes of Section 856(d)(2)(A) of the Code), excluding for this purpose a lease or sublease that provides for rent based in whole or in part on a fixed percentage or percentages of the tenant's gross receipts or gross sales;

(iii) enter into any lease which provides for the rental to others of personal property, except a lease which provides for the rental of both personal property and real property and in which the personal property accounts for less than 15% of the total rent attributable to the property subject to such lease (as determined pursuant to Section 856(d)(1) of

the Code);

(iv) acquire or hold debt unless (a) the amount of interest income received or accrued by the Company under such loan does not, directly or indirectly, depend in whole or in part on the income or profits of any person, and (b) the debt is fully secured by mortgages on real property or on interests in real property;

(v) engage in any sale or exchange of property that could result in the imposition of a prohibited transactions tax on any direct or indirect REIT investor in the Company pursuant to Section 857 of the Code in the reasonable opinion of the Company's lawyers;

(vi) make an election or take any action that would cause the Company to be treated as an entity that is not classified as a partnership for federal income tax purposes (including a publicly traded partnership as defined in Section 7704 of the Code);

(vii) enter into any agreement where the Company (or Property Owner) receives amounts, directly or indirectly, for rendering services to the tenants of the Property other than (a) amounts received for services that are customarily furnished or rendered in connection with the rental of real property of a similar class in the geographic areas in which the Property are located where such services are either provided by (x) an Independent Contractor (as defined in Section 856(d)(3) of the Code) who is adequately compensated for such services and from which the Company does not, directly or indirectly, derive revenue or (y) a Taxable REIT Subsidiary (as defined in Section 856(l) of the Code) of the Upstream REITs who is adequately compensated for such services or (b) amounts received for services that are customarily furnished or rendered in connection with the rental of space for occupancy only (as opposed to being rendered primarily for the convenience of the tenants at the Property);

(viii) enter into any agreement where more than five percent (5%) of the annual income received or accrued by the Company under such agreement, directly or indirectly, does not qualify as either (i) "rents from real property" or (ii) "interest on obligations secured by mortgages on real property or on interests in real property," in each case as such terms are defined in Section 856(c) of the Code;

(ix) hold cash of the Company available for operations or distribution in any manner other than a traditional bank checking account or money market account; or

(x) otherwise engage in any transaction which could reasonably be expected to adversely affect the ability of any direct or indirect REIT investor in the Company to continue to qualify as a REIT, or subject such REIT investor to additional taxes under Section 857, Section 4981 or other provisions of the Code.

(b) While Managers shall not be required independently to determine whether any transaction or arrangement would adversely affect the ability of any DRA Affiliate to qualify as a REIT or would result in the imposition of any taxes or penalties under Parts II and III of Subchapter I of Subtitle A of the Code, as now enacted or hereafter amended, if either Manager has actual knowledge, or is otherwise informed by any DRA Affiliate in the exercise of such DRA Affiliate's reasonable judgment, that a transaction or arrangement could have an adverse

effect on the DRA Affiliate's ability to qualify as a REIT or could result in the imposition of any taxes or penalties under Parts II and III of Subchapter I of Subtitle A of the Code, as now enacted or hereafter amended, such Manager shall take such actions (or refrain from taking such actions) as are reasonably required to protect the DRA Affiliate's REIT status; provided, however, that the terms of this paragraph shall not limit any of the specific restrictions on the authority of the Manager set forth elsewhere in this Agreement.

(c) The Members acknowledge and agree that, for so long as DRA G&I Fund IX Real Estate Investment Trust (the "**Upstream REIT**") owns any interest, directly or indirectly, in the Company, the Company shall, if requested by the Upstream REIT, form one or more subsidiary corporations that elects to be treated as a taxable REIT subsidiary under Section 856(l) of the Code (a **"TRS"**), and, in such event, the Company shall transfer such securities, contracts or other assets to the TRS, including ownership in the Company, as the Upstream REIT shall determine in good faith are necessary or advisable in order to protect or further the ability of an Upstream REIT to continue to qualify as a REIT, provided that the foregoing shall be structured in a manner as tax efficient as practicable in respect of the Members.

5.14. Removal of Operating Manager.

(a) Operator shall serve as the Operating Manager of the Company unless and until the occurrence of any one of the following events: (i) any fraud, willful misconduct or gross negligence by Operator (or any of the employees) in the discharge of its duties and obligations as Operating Manager (other than Excusable Employee Misconduct), (ii) any violation by Operator of any provision of this Agreement (including without limitation any material misrepresentation hereunder or under any assignment and assumption agreement) or any provision of applicable law which breach has not been cured within thirty (30) days of notice thereof, (iii) any act or omission by Operator that causes the Company to be in default of any loan document binding on the Company unless such default is attributable to insufficient Cash Flow, (iv) all Operator Principals become Incapacitated or no Operator Principal is in control of the Operator or the Property Manager, (v) in the event the Management Agreement between the Company and the Property Manager (who is an Affiliate of Operator) is terminated with cause, or (vi) Operator has a Percentage Interest less than five percent (5%) (each of the foregoing, a "**Manager Termination Event**").

(b) Upon the occurrence of a Manager Termination Event, DRA Manager, in its sole and absolute discretion, may terminate Operator as the Operating Manager and either assume the role of the Operating Manager under this Agreement or appoint a successor Operating Manager. Any termination and assumption or appointment shall be effective immediately upon Operator's receipt of notice from DRA Manager. In the event a Manager Termination Event occurs and DRA Manager terminates Operator as the Operating Manager, (x) Operator shall have no further right to participate in any way in the governance of the Company and DRA Manager shall have exclusive right to manage and operate the Company in all respects (including Major Decisions), and (y) distributions under Sections 8.2(e) and 8.2(f) shall be made in accordance with Percentage Interests in place of Residual Percentages and allocations of Profits and Losses under Article 9 shall be adjusted accordingly.

ARTICLE 6.
RIGHTS OF MEMBERS; LIMITED LIABILITY

6.1. **No Authority to Bind the Company**. Members (other than when acting in the capacity of DRA Manager or the Operating Manager, subject to Article 5) shall have no authority to act for or bind the Company, such powers being vested solely and exclusively in the DRA Manager and the Operating Manager. The rights of the Members (other than the DRA Manager and the Operating Manager) shall include only (i) such rights as are provided in Section 5.4 or are otherwise expressly provided in this Agreement and (ii) such other rights as may be granted under the Act to Members who are not Managers.

6.2. **No Manager Liability**. Neither Manager shall have any personal liability for the repayment of the Capital Contribution of any Member.

6.3. **Restrictions on Members**. Except as otherwise provided in this Agreement, no Member shall have the right or power to:

(a) Withdraw or reduce its Capital Contribution to the Company;

(b) Cause the dissolution of the Company;

(c) Except as provided herein, have priority over any other Member either as to the return of Capital Contributions or as to distributions. Other than upon the dissolution and Liquidation of the Company as provided by this Agreement, there has been no time agreed upon when the Capital Contribution of each Member may be returned; or

(d) Bring an action for partition against the Company.

6.4. **Press Release.** Neither Member shall be permitted to make disclosures regarding the transactions contemplated by this Agreement including the sale (directly or indirectly) of any Property (including issuing a tombstone, press release, advertisement or other written public statement that contains a description of the transactions) without the prior written consent of the other Member unless and to the extent such disclosures are required under applicable law.

ARTICLE 7.
TRANSFER OF COMPANY INTERESTS

7.1. **Withdrawal of Members**. Except as otherwise provided herein, no Member may resign, withdraw or retire voluntarily from the Company without the consent of the Managers.

7.2. **Additional Members**. Except as set forth in Sections 7.4, and 7.7, no additional Members shall be admitted to the Company.

7.3. **Intentionally Omitted**.

7.4. **Transfers by Members**.

(a) Except as set forth in Sections 7.11 and 7.12, no Member shall sell, assign, transfer, pledge, hypothecate, grant a security interest in, encumber or in any other manner dispose of all or any part of its direct or indirect interest in and to the Company, its capital, profits and losses, without (a) the prior written consent of the Managers, (b) a statement from the transferee of such Member's interest that the transferee intends to hold such interest for investment purposes, and (c) if required by either Manager, an opinion of its counsel, in form and substance reasonably acceptable to such Manager, to the effect that such transfer shall not violate or cause the Company to violate any loan agreement (evidencing or securing any indebtedness of the Company or Property Owner), any applicable Federal, state or local securities law, regulation or interpretive ruling. In the event that any Member at any time attempts to make a sale, assignment, transfer, pledge, hypothecation, mortgage, encumbrance or other disposition of his or its interest in and to the Company, its capital, profits and losses, or any part thereof, in violation of the provisions of this Agreement, the other Members or any one of them, in addition to all other rights and remedies which they may have in law, in equity or under the provisions of this Agreement, shall be entitled to a decree or order restraining and enjoining such attempted sale, assignment, transfer, pledge, hypothecation, mortgage, encumbrance or other disposition, and the offending Member shall not plead in defense thereto that there would be an adequate remedy at law, it being recognized and agreed that the injury and damage resulting from such a breach would be impossible to measure monetarily. DRA may transfer its Membership Interest pursuant to Sections 7.11, 7.12 or 7.13 below (or to an Affiliate if in its sole and absolute but good faith discretion it determines that such transfer is necessary to protect its, or its Affiliates, REIT status).

(b) Neither Manager's consent shall be required for:

(i) an assignment of interests (direct or indirect) in or by DRA to a Person or Persons so long as, after giving effect to such assignment, DRA Advisors LLC, or its successors or assigns, or some or all of its principals, or their successors or assigns, directly or indirectly, retains control of the decision making authority over the day-to-day management of the investments of such Person and own directly or indirectly at least 51% of the Membership Interests of DRA (a "**Permitted DRA Assignee**"). Upon an assignment of a Membership Interest to a Permitted DRA Assignee, subject to compliance with the other provisions of Section 7.4, the Permitted DRA Assignee shall be admitted as a Member. No assignment of DRA's Membership Interest will be permitted unless (a) such assignment is not prohibited by the documents evidencing any loan of the Company and would not cause a default under such documents, (b) the assignor pays any transfer or other taxes incurred pursuant to such assignment and (c) the assignor pays any cost or expense required to be paid to a lender of the Company in connection with such assignment; and

(ii) an assignment of interests (direct or indirect) in Operator to a Person or Persons so long as, after giving effect to such assignment, the Operator Principals, directly or indirectly, retain control of the decision making authority of Operator and own, directly or indirectly, at least ten percent (10%) of the ownership interests in Operator. No such assignment will be permitted unless (a) the DRA Manager receives written notice of such assignment within 10 days' after the effective date of such assignment, (b) such assignment is not prohibited by the documents evidencing any loan of the Company and would not cause a default under such documents, (c) the assignor pays any transfer or other taxes incurred pursuant

to such assignment, and (d) the assignor pays any cost or expense required to be paid to a lender of the Company in connection with such assignment. The foregoing restrictions shall not be deemed to apply to transfers by the Operator Principals for estate planning purposes, or to family members or to trusts for the benefit of family members.

7.5. Intentionally Omitted.

7.6. Death, Dissolution or Bankruptcy of a Member. The death, insanity, dissolution or Bankruptcy of a Member shall not, in and of itself, cause a dissolution of the Company. Upon the death, insanity, dissolution or Bankruptcy of a Member, the representative or successor-in-interest thereof, as the case may be, shall (subject to the election of the Manager appointed by the Member that is not dead, insane, dissolved or bankrupt set forth below) be deemed to be an assignee of the economic interest of the Member and may apply for admission to the Company as a Substituted Member upon compliance with Sections 7.4 and 7.7 unless the Manager appointed by the Member that is not dead, insane, dissolved or bankrupt (directly or through its designee) elects to purchase such Member's interest at its fair market value; provided, however, that in the event of Bankruptcy of a Member if such representative or successor-in-interest shall not comply with this Section 7.6, then the economic interest of that Member shall be dealt with in accordance with applicable law at the earliest practicable time.

7.7. Substituted Members. Anything herein contained to the contrary notwithstanding:

(a) No successor-in-interest of a Member and no assignee or transferee of all or any part of a Member's Membership Interest shall be admitted to the Company as a Member except upon compliance with the provisions of Section 7.4 and, in addition, only after:

(i) submitting to the Managers a duly executed and acknowledged counterpart of the instrument or instruments making such transfer, together with such other instrument or instruments, including, but not limited to, a counterpart of this Agreement as it then may have been amended, signifying such transferee's agreement to be bound by all of the provisions of the Agreement, including, but not limited to, the restrictions upon transfers of interests therein and thereto, all of the foregoing in such form and substance as shall be reasonably satisfactory to the Managers;

(ii) obtaining the Managers' consent which consent may be granted or withheld in its sole discretion with or without cause; and

(iii) agreeing to bear all costs and expenses, including reasonable legal fees of the Company, incurred in effecting such substitution.

Upon such transferee's compliance with the foregoing provisions, each of the Members shall take all actions reasonably required to effectuate the recognition of the effectiveness of such transfer and the admission of such transferee to the Company as a Substituted Member including, but not limited to, transferring such Membership Interest upon the books thereof and executing, acknowledging and causing to be filed any necessary or desirable amendment to this Agreement.

(b) The Managers may withhold consent to the admission of any such assignee as a Substituted Member for any reason and shall, in any event, not consent, if in the opinion of the Company's legal counsel, such admission:

(i) would jeopardize the treatment of the Company as a partnership for Federal income tax purposes,

(ii) would cause the Company to be treated as a "publicly traded" partnership under Code Sections 469(k) or 7704(b), or

(iii) would violate, or cause the Company to violate, any applicable law or governmental rule or regulation or loan agreement.

(c) No assignment to a minor or incompetent shall be effective in any respect.

(d) No interests in the Company shall be issued in a transaction that is (or transactions that are) registered or required to be registered under the Securities Act of 1933.

7.8. Non-Complying Assignments. Any assignment, sale, exchange or other transfer in contravention of any of the provisions of this Article 7 shall be void and ineffectual, and shall not bind or be recognized by the Company.

7.9. Consent to Admission. By executing or adopting this Agreement, each Member hereby consents to the admission of Substituted Members by the Managers and to any assignee of a Member becoming a Substituted Member subject to the provisions of this Article 7; provided that, in either event, the Managers have provided its written consent to such transfer pursuant to Section 7.4.

7.10. Obligations of Successors. Any Person who acquires an interest in the Company by assignment or is admitted to the Company as a Substituted Member shall be subject to and bound by all the provisions of this Agreement as if originally a party to this Agreement.

7.11. Drag-Along Rights. If a Member holding a majority of the Membership Interests in the Company shall desire to sell its Membership Interests to any Person who is not an Affiliate of such Member (a **"Third Party Offeror"**), such Member may require that the other Members sell, at the same time, all of their Membership Interests to the Third Party Offeror upon the terms and conditions as such Member is selling its Membership Interests to the Third Party Offeror (the "**Acquisition Proposal**"); provided, however, that the total net consideration paid by the Third Party Offeror shall be allocated among the Members in proportion to their Relative Adjusted Membership Interests (as defined in the next sentence) at the time of the sale. For purposes of this Section 7.11, the term **"Relative Adjusted Membership Interests"** shall mean the relative amounts that each Member would have received if, in lieu of purchasing Membership Interests in the Company, (i) the Third Party Offeror had directly purchased the Property pursuant to the applicable terms and conditions of the Acquisition Proposal and (ii) the Company then liquidated in accordance with the provisions of Section 11.3 hereof. Notwithstanding the foregoing, if a Member holding a majority of the Membership Interests in the Company shall desire to sell its Membership Interests to a Third Party Offeror and desires that the other Members do the same, on the terms set forth in this Section 7.11, if the proceeds to

be realized by any such sale are insufficient to reduce Operator's Unrecovered Capital Contributions to zero, such majority Member may not initiate a sale of such Membership Interests without complying with the terms of Section 7.13 below.

7.12. Tag-Along Rights. If DRA desires to sell in one or a series of related transactions all or substantially all of its Membership Interests (a "**Tag-Along Sale**"), DRA shall provide Operator with written notice setting forth the terms of such Tag Along Sale and Operator shall have the right, but not the obligation, to elect that DRA be obligated to require as a condition to such Tag-Along Sale, that the proposed purchaser purchase from Operator all of Operator's Membership Interests. The net purchase price proceeds from the Tag-Along Sale shall be allocated among the Members in proportion to the amounts that each of the Members would have received if the Company had sold all of its assets for a price equal to the value of the Property upon which the Tag Along Purchase Price was based, and distributed the net proceeds from such sale to the Members pursuant to Section 11.3 hereof. For purposes of the preceding sentence, any and all fees, consideration and/or other compensation payable to the DRA Member or any Affiliate in connection with such transaction shall be deemed to be a part of, and shall be taken into account in calculating, the "net purchase price proceeds". Any such sale by the Operator shall be on the same terms and conditions as applicable to the Tag-Along Sale. Operator shall be required to bear a proportionate share (based on the Percentage Interests [or the applicable Residual Percentages if distributions are then being made pursuant to Residual Percentages] to be sold by each party) of the third party expenses of the transaction, including, without limitation, reasonable legal and accounting expenses. If Operator desires to participate in the Tag-Along Sale, Operator shall provide written notice (the "**Tag-Along Notice**") to DRA not later than ten (10) days after the date DRA gives Operator notice of the terms and conditions of the Tag-Along Sale. The Tag-Along Notice given by Operator shall constitute Operator's binding agreement to sell all of its Membership Interests on the terms and conditions applicable to such sale. In the event that the proposed transferee does not purchase the Membership Interests of DRA for any reason, then the proposed Tag-Along Sale by Operator to such proposed transferee shall not take place. If the Tag-Along Notice from Operator is not received by DRA within the period specified above or if Operator fails to comply in all material respects with the terms and conditions of the Tag-Along Sale, DRA shall have the right to transfer its Membership Interest to the proposed transferee without any participation by Operator. The provisions of this Section shall not apply to a sale or transfer of DRA's Membership Interest to an Affiliate of DRA. Notwithstanding the foregoing, if DRA shall desire to sell its Membership Interests in a Tag-Along Sale, and if Operator was to participate therein on the terms set forth in this Section 7.12 but the proceeds to be realized by Operator due to any such sale would be insufficient to reduce Operator's Unrecovered Capital Contributions to zero, DRA may not initiate a Tag-Along Sale without complying with the terms of Section 7.13 below.

7.13. Right of First Offer.

(a) **Notice of Intent to Sell**. If, pursuant to the express terms of Section 5.1(k), the Company is not authorized to sell the Property without complying with the terms of Section 7.13, or if pursuant to the express terms of Section 7.11 or Section 7.12, DRA is not authorized to cause the sale of Membership Interests without complying with the terms of Section 7.13, DRA Manager (hereinafter referred to as a **"Selling Member"**) shall give written notice to Operator of its intention to sell the Property or DRA's intention to sell such Membership

Interests, as applicable (a **"Sale Notice"**). The Sale Notice shall set forth the proposed sale price for the Property or such Membership Interests, as applicable (the **"Offer Price"**), and the proposed closing date.

(b) **Response Period.** Operator shall have thirty (30) days after delivery of the Sale Notice (the **"Response Period"**) to give written notice to DRA Manager electing either to (i) accept DRA Manager's offer of the Offer Price (an **"Acceptance Notice"**) or (ii) reject DRA Manager's offer of the Property (or such Membership Interests, as applicable) for the Offer Price (a **"Rejection Notice"**). If Operator fails to deliver either an Acceptance Notice (together with the deposit required by Section 7.13(c)) or a Rejection Notice within the Response Period, then Operator shall be deemed to have delivered a Rejection Notice to DRA Manager.

(c) **Acceptance of Offer.** If Operator delivers an Acceptance Notice to DRA Manager in accordance with Section 7.13(b) hereof, then simultaneously with delivery of the Acceptance Notice, Operator shall deliver a deposit to the Escrow Agent in the amount of five (5%) percent of the Offer Price (by check drawn to the order of the Escrow Agent) and, in the Acceptance Notice, designate a closing date, time and place which shall be not less than thirty (30) and not more than one hundred twenty (120) days from the date of the Acceptance Notice.

(d) **Defaults.**

(i) If Operator fails to perform all of its obligations on the closing date designated by Operator in the Acceptance Notice despite a tender of performance by DRA Manager or DRA, as applicable, DRA Manager shall retain Operator's deposit as liquidated damages as its sole remedy for such default, in which case the Escrow Agent shall deliver Operator's deposit to DRA Manager and thereafter Operator shall have no further Right of First Offer under this Section 7.13.

(ii) If Operator elects to purchase the Property (or such Membership Interests, as applicable) pursuant to this Section 7.13 but DRA Manager or DRA, as applicable, fails to perform all its obligations on the closing date designated by Operator in the Acceptance Notice despite a tender of performance by Operator, Operator shall be entitled to compel the sale of the Property (or such Membership Interests, as applicable), by bringing an action for specific performance as its sole and exclusive remedy.

(e) **Closing.**

(i) Any closing for the purchase and sale of the Property (or such Membership Interests, as applicable) pursuant to this Section 7.13 shall be conducted in accordance with the terms and conditions described in this Section 7.13(e). All amounts deposited in escrow and the interest thereon pursuant to this Section 7.13 (and not returned hereunder) shall be applied to the purchase price at such closing and the remainder of the purchase price shall be paid in cash by wire transfer or by certified funds of the transferee Member, drawn on a bank which is a member of the New York Clearing House Association. The Operator may, in its sole discretion, designate a Person other than the purchasing Member to be the party to whom the Property (or such Membership Interests, as applicable) is transferred in accordance with the provisions of this Section 7.13.

(ii) At the closing of a sale and purchase of the Property (or such Membership Interests, as applicable) pursuant to this Section 7.13, the following transactions shall occur:

(A) the Operator shall pay or cause to be paid to DRA Manager (or DRA, as applicable) the Offer Price for the Property (or such Membership Interests, as applicable) being purchased;

(B) DRA Manager or DRA, as applicable, shall pay for transfer taxes and other closing costs customarily payable by sellers and the Operator shall be responsible for transfer taxes and other closing costs customarily payable by purchasers and filing fees, any fees payable to the lender of a loan secured by the Property due and payable in connection with the sale and purchase of the Property (or such Membership Interests, as applicable);

(C) the Operator and DRA Manager (or DRA, as applicable) shall make customary closing adjustments to the purchase price in order to reflect items of expense and income; and

(D) upon receipt of the Offer Price, as applicable, (i) DRA Manager shall cause the Property being sold to be transferred by special warranty deed (or such other deed used in the location where the Property being sold is located containing covenants of grantor against grantor's acts only) to Operator (or its designee) subject to all liens, claims and encumbrances in existence as of the giving of the Acceptance Notice, and DRA Manager and Operator shall execute and deliver such other closing documents as an assignment of leases, that are customarily used in such transactions, or (ii) DRA shall cause such Membership Interests to be transferred by an assignment in form acceptable to Operator (or its designee), free and clear of all liens and encumbrances, and DRA and Operator shall execute and deliver such other closing documents that are customarily used in such transactions.

(f) **Rejection of Offer.** If Operator delivers or is deemed to have delivered a Rejection Notice to DRA Manager, then DRA Manager (or DRA, as applicable) shall have the right to sell the Property (or such Membership Interests, as applicable) to any other Person (the **"Third-Party Purchaser"**), subject to the restrictions and conditions set forth in this Article 7, provided that (i) if the same relates to a sale of the Property, (A) such sale is for no less than ninety-two percent (92%) of the Offer Price and (B) the sale to the Third-Party Purchaser is consummated within one hundred twenty (120) days of the delivery or deemed delivery of the Rejection Notice, or (ii) if the same relates to a sale of Membership Interests, DRA shall then comply with the provisions of Section 7.11 or Section 7.12, as applicable. If the same relates to a sale of the Property and DRA Manager fails to make a sale to the Third-Party Purchaser that satisfies the conditions in clauses (1) and (2), then DRA Manager shall not consummate a sale to a Third-Party Purchaser without first delivering a new Sale Notice to Operator.

(g) **Limitation of Right of First Offer.** The Right of First Offer shall not apply to a sale or transfer of the Property to an Affiliate, provided that such Right of First Offer shall survive any such sale or transfer and shall be binding upon such Affiliate.

ARTICLE 8.
DISTRIBUTIONS

8.1. **Distributions of Cash Flow**. Within forty-five (45) days after the end of each calendar quarter, the Company shall distribute the Cash Flow with respect to such quarter, to the extent available, in the following order of priority:

(a) First, to the Members, *pro rata*, in accordance with and in payment of their respective Default Preferred Return Balances, if any, until their respective Default Preferred Return Balances have been reduced to zero; and

(b) Thereafter, all remaining Cash Flow shall be distributed to the Members, pro rata, in accordance with their respective Percentage Interests.

8.2. **Distributions of Capital Proceeds from a Capital Event and Proceeds in Liquidation**. Capital Proceeds from a Capital Event and proceeds in Liquidation shall be distributed, to the extent available, in the following order of priority:

(a) First, to the Members, *pro rata*, in proportion to and in payment of their respective Default Preferred Return Balances until their respective Default Preferred Return Balances have been reduced to zero;

(b) Second, to the Members, *pro rata*, in proportion to and in payment of their respective Default Capital Contribution Balances until their respective Default Capital Contribution Balances have been reduced to zero;

(c) Next, to the Members, *pro rata*, in proportion to and in payment of their respective Unrecovered Capital Contributions until their respective Unrecovered Capital Contributions have been reduced to zero;

(d) Next, to the Members, *pro rata*, in accordance with their respective Percentage Interests until such time as each Member receives a fifteen (15%) percent Internal Rate of Return with respect to its Capital Contributions to the Company;

(e) Next, to the Members, *pro rata*, in accordance with their respective Residual Percentages I until such time as each Member receives a eighteen (18%) percent Internal Rate of Return with respect to its Capital Contributions to the Company; and

(f) Then, to the Members, *pro rata*, in accordance with their respective Residual Percentages II.

8.3. **Special Loans**. Notwithstanding anything to the contrary contained herein, all Cash Flow which but for this Section 8.3 would be distributable to a Failing Member to whom a Special Loan was deemed to have been made pursuant to Section 3.2(b)(ii), shall instead be paid by the Company to the Non-Failing Member who made the Special Loan on account of and in payment of any interest then payable on the Special Loan, and all Capital Proceeds which but for this Section 8.3 would be distributable to said Failing Member to whom a Special Loan was

deemed to have been made, shall instead be paid by the Company to the Non-Failing Member who made the Special Loan on account of and in reduction of the outstanding principal balance of the Special Loan, in each case to the extent of such outstanding interest and unpaid principal balance, with any amounts remaining after the payment thereof being distributed to such Failing Member; provided, however, that solely for purposes of this Agreement, any amounts paid to such Non-Failing Member shall be treated as first having been distributed to such Failing Member and then as having been paid to the Non-Failing Member on account of the Special Loan.

ARTICLE 9.
ALLOCATION OF PROFITS AND LOSSES

9.1. Allocations of Profits and Losses.

(a) **In General**. Except as otherwise provided in Section 9.1(b) below, after taking into account any special allocations pursuant to Section 9.1(c) and Sections 9.2 through 9.7, and subject to any limitations contained therein, Profits, Losses, and, to the extent necessary, individual items of income, gain, loss, or deduction of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the hypothetical distributions that would be made to such Member if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value (taking into account any adjustments to such Book Values for all prior periods), all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Book Value of the assets securing such liability), and the net assets of the Company were distributed in accordance with Section 8.2 to the Members immediately after making such allocation, reduced by (ii) the sum of such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain computed immediately prior to the hypothetical sale of Company assets.

(b) **Special Allocation of Profits and Losses**. At any time when all of the Members' Capital Account balances have been reduced to zero or below, the following allocations shall apply:

(i) Losses shall be allocated (A) first, to the Members in proportion to and to the extent of the aggregate principal and interest balances on recourse borrowings by the Company (including Member loans) for which a Member or any Person related to such Member (within the meaning of Code Section 267(b) or 707(b)) bears the economic risk of loss; and (B) second, to the Members in accordance with the Members' respective Percentage Interests.

(ii) Profits shall be allocated (A) first, to the Members in proportion to and to the extent of the Losses previously allocated to the Members pursuant to Section 9.1(b)(i)(B); and (B) second, to the Members in proportion to and to the extent of the Losses previously allocated to the Members pursuant to Section 9.1(b)(i)(A).

(c) **Section 704(c) Special Allocations**. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect

to any property contributed to the capital of the Company or that is revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for Federal income tax purposes and its Book Value. Unless, upon advice of counsel or of the Accountants, the DRA Manager determines that such method results in a violation of, or is considered unreasonable under, relevant provisions of the Treasury Regulations, then the allocations described in the preceding sentence shall be made using the "traditional" method described in Section 1.704-3(b) of the Treasury Regulations. The Members agree that the traditional method will constitute a reasonable method as applied to the contemplated transaction. Subject to the foregoing, any elections or other decisions relating to such allocations shall be made by the Company in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are solely for purposes of Federal, state and local taxes and shall not affect, or in any way be taken account in computing any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

9.2. Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain for any fiscal year, each Member shall be specially allocated items of income and gain for such year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain during such year, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts required to be allocated to each of them pursuant to such Treasury Regulation. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6). This Section 9.2 is intended to comply with the "minimum gain chargeback" requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

9.3. Member Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement (except for Section 9.9), any Member Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to such Nonrecourse Debt in accordance with Treasury Regulations Section 1.704-2(i)(1).

9.4. Member Nonrecourse Debt Minimum Gain. If there is a net decrease during a fiscal year in the Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then each Member with a share of the Member Nonrecourse Debt Minimum Gain attributable to such debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the preceding sentence shall be made among the Members in proportion to the respective amounts to be allocated to each of them pursuant to such Treasury Regulation. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 9.4 is intended to comply with the provisions of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

9.5. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation or distribution described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations that causes or increases an Adjusted Capital Account Balance deficit (determined according to Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations) as of the end of any Fiscal Year, items of gross income or gain for such Fiscal Year shall be allocated to such Member in proportion to, and to the extent of, such Adjusted Capital Account Balance deficit. This Section 9.5 is intended to be a "qualified income offset" provision as described in Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted in a manner consistent therewith.

9.6. Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any fiscal year which is in excess of the sum of (i) the amount (if any) such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.6 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Section 9.6 have been made as if Section 9.5 and this Section 9.6 were not in the Agreement.

9.7. Treasury Regulation Compliance. The allocations described in Sections 9.2, through 9.6 are intended to comply with certain requirements of Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations and as such may not be consistent with the manner in which the Members intend to allocate items of Profit or Loss or make distributions. Accordingly, notwithstanding any other provision of Section 9.1, but subject to and to the extent permitted by the requirements of the Treasury Regulations, items of Profit or Loss in subsequent Fiscal Years shall be allocated among the Members in such a way as to reverse as quickly as possible the effects of any allocations described in Sections 9.2 through 9.6.

9.8. Amounts Withheld. All amounts which the Company is required by law to withhold pursuant to the Code or any provision of any state or local tax law with respect to any allocation or distribution to the Members shall be treated as amounts distributed to the Members pursuant to Article 8 and this Article 9 for all purposes under this Agreement.

9.9. Allocation of Nonrecourse Deductions and Nonrecourse Liabilities. Nonrecourse Deductions will be allocated among the Members in accordance with their Percentage Interests. Solely for purposes of allocating Excess Nonrecourse Liabilities of the Company among the Members, the Members agree that each Member's interest in Company profits shall be determined taking into account each Member's share of Section 704(c) Residual Gain, such that each Member's share of an Excess Nonrecourse Liability shall equal the sum of (1) the Member's share of Section 704(c) Residual Gain with respect to such liability, plus (2) the product of (x) the amount by which such Excess Nonrecourse Liability exceeds all of the Members' aggregate Section 704(c) Residual Gain with respect to such liability, and (y) the Member's Percentage Interest. The Members agree that for purposes of allocating nonrecourse liabilities under Treasury Regulation Section 1.752-3(a) and this Section 9.9, if any nonrecourse liability is secured by both property purchased by the Company and property contributed to the

Company, such nonrecourse liability shall be allocated between the purchased property and the contributed property based upon their relative fair market values on the date such nonrecourse liability becomes a Company liability.

9.10. Changes In Percentage Interests. Notwithstanding the foregoing, to the extent that any Member's Percentage Interest held by such Member changes during a fiscal year for any reason, the allocation of taxable income or loss under this Article 9 shall be appropriately adjusted to reflect the varying interests of the Members during such year using an interim closing of the books method as of the date of such change or such other reasonable methods as are approved by the DRA Manager.

ARTICLE 10.
RECORDS AND BOOKS OF ACCOUNT; FISCAL YEAR; BANKING; REPORTS TO MEMBERS

10.1. Records and Books of Account. The DRA Manager shall maintain or cause to be maintained (by the Accountants), at the Company's principal office or at such other place or places as the DRA Manager from time to time may determine, full and accurate records and books of account of the businesses of the Company. Such records and books of account shall be maintained on the method of accounting determined by the DRA Manager to be most advantageous to the Company. The Operating Manager shall cooperate with the DRA Manager in the maintaining of said records and books of account and shall provide, promptly upon request of the DRA Manager, all information in the Operator's possession relevant thereto. Each Member shall be afforded full and complete access to all such records and books of account during reasonable business hours and, at such hours, shall have the right of inspection and copying of such records and books of account, at its expense. Each Member and any partner therein shall have the right to audit such records and books of account by an accountant of its choice at its expense. The DRA Manager shall cooperate fully with any Member or its partners or agents in connection with any review or audit of the Company or its records and books. The DRA Manager shall retain all records and books relating to the Company for a period of at least six years after the termination of the Company and shall thereafter destroy such records and books only after giving at least 30 days' advance written notice to the Members and all partners therein.

10.2. Fiscal Year. The fiscal year of the Company shall be the calendar year.

10.3. Banking. An account or accounts in the name of the Company shall be maintained at such bank or banks as the DRA Manager may select. All uninvested funds of the Company shall be deposited in a bank account of the Company. All funds so credited to the Company in any such account shall be subject to withdrawal by checks made in the name of the Company and signed by the DRA Manager or such Person or Persons as the DRA Manager may designate from time to time. All Company funds and other Company assets shall be held in the name of the Company and shall be used only for the benefit of the Company.

10.4. Reports to Members.

(a) As soon as reasonably practical, but in no event later than ninety (90) days after the close of each fiscal year of the Company (provided that such date may be extended for a reasonable period in the event of business exigencies or if the Operating Manager or the Property Manager has not timely provided necessary reports and other information to DRA Manager), the DRA Manager shall cause to be prepared and furnished to each Member at the Company's expense:

(i) The information necessary for the preparation by such Member of its Federal, state and other income tax returns;

(ii) The amount in the Capital Account of such Member as of the last day of such fiscal year;

(iii) A balance sheet and income statement prepared in accordance with generally accepted accounting principles; and

(iv) Such other information as the DRA Manager deems reasonably necessary for the Members to be advised of the current status of the Company and its business.

(b) No later than sixty (60) days after the last day of each fiscal quarter, the DRA Manager shall cause to be prepared and furnished to each Member a report which includes with respect to the Company:

(i) a balance sheet and income statement prepared in accordance with GAAP; and

(ii) an income statement for such quarter and for the year-to-date, prepared in accordance with GAAP with respect to the Property, which statement shall include a line item for fees and distributions to DRA Manager and Affiliates.

10.5. Basis Election. In the event that a distribution of any of the Company's property is made in the manner provided in Code Section 734, or where a transfer of a Membership Interest in the Company permitted by this Agreement is made in the manner provided in Code Section 743, then, upon the request of any Member, the Company shall file an election under Code Section 754, in accordance with procedures set forth in the applicable Treasury Regulations. The Members' Capital Accounts shall be adjusted in accordance with Treasury Regulation § 1.704-1(b)(2)(iv)(m). Each Member shall provide the Company with all information necessary to give effect to any election under Code Section 754. Any additional expenses incurred by the Company as a result of such election (e.g., bookkeeping expenses) shall be borne by the transferee Member.

ARTICLE 11.
DISSOLUTION; LIQUIDATION AND TERMINATION

11.1. Dissolution. Subject to the provisions of the Act, the Company shall be dissolved upon the first to occur of any of the following events:

(a) The withdrawal, dissolution or Bankruptcy of DRA Manager unless the Company's business is continued as provided in Section 11.2

(b) The sale of all or substantially all of its assets and collection of proceeds of sale; or

(c) The election to dissolve the Company by the Members.

11.2. Right to Continue the Company's Business. Upon the withdrawal, dissolution or Bankruptcy of the DRA Manager, those Members holding at least seventy-five percent (75%) of the Percentage Interests (excluding the Percentage Interests of such last acting DRA Manager) shall have the right, but not the obligation, exercisable within ninety (90) business days from such withdrawal, dissolution or Bankruptcy to agree in writing to, admit a new Manager to the Company to serve as the DRA Manager upon such terms and conditions as they shall agree, and continue the Company's business as herein provided. In such event, the Company shall not be dissolved but shall continue, and the interest therein and thereto of such withdrawn, dissolved or Bankrupt Manager shall be converted into a Member's interest with otherwise equivalent benefits, and shall pass to such former Manager's successor-in-interest or legal representative.

11.3. Liquidation. In the year of Liquidation of the Company, (i) Profit and Loss shall be credited or charged to the Capital Accounts of the Members (which Capital Accounts shall first be adjusted to take into account all non-liquidating distributions made during such final year) in accordance with Section 9.1 and (ii) if any Company assets are distributed in kind to the Members, then Profit and Loss shall be computed by treating such assets as having been sold for their fair market value immediately before such distribution.

(a) Upon a dissolution of the Company, the DRA Manager shall take or cause to be taken a full account of the Company's assets and liabilities as of the date of such dissolution and shall proceed with reasonable promptness to liquidate the Company's assets and to terminate its business. The cash proceeds from the Liquidation, as and when available therefor, shall be applied and distributed in the following order:

(i) to the payment (or the making of reasonable provision for payment) of all taxes, debts and other obligations and liabilities of the Company (other than Special Loans), including the necessary expenses of Liquidation; and

(ii) all remaining proceeds in Liquidation of the Company shall be distributable to the Members in accordance with Section 8.2.

(b) Except as otherwise provided in this Agreement, no dissolution or termination of the Company shall relieve, release or discharge any Member, or any of its successors or assigns, from any previous breach or default of, or any obligation theretofore incurred or accrued under any provision of this Agreement, and any and all such liabilities, claims, demands or causes of action arising from any such breaches, defaults and obligations shall survive such dissolution and termination.

(c) If necessary, a special liquidator may be appointed by the Members holding a majority of the Percentage Interests in the Company. In connection with any such

winding up, an independent certified public accountant retained by the Company, if requested by Members holding a majority of the Percentage Interests, shall audit the Company as of the date of termination, and such audited statement shall be furnished to all Members.

11.4. Termination. Upon compliance with the foregoing plan of liquidation and distribution and the completion of the winding up of the affairs of the Company, the DRA Manager shall file or cause to be filed a Certificate of Cancellation of the Certificate of Formation as well as any and all other documents required to effectuate the dissolution and termination of the Company and the Company thereupon shall be terminated.

ARTICLE 12.
COMPANY STATUS

12.1. Company Status. Anything in this Agreement to the contrary notwithstanding, it is expressly intended that the entity formed hereby be a partnership for tax purposes only as determined by the applicable provisions of the Code, the rules and regulations promulgated thereunder, and other laws pertaining thereto, and that in every respect all of the terms and provisions hereof shall at all times be so construed and interpreted as to give effect to this intent. The DRA Manager shall take any reasonable action or make any election that, under applicable law and regulations, results in the Company being treated as a partnership for Federal or other applicable tax purposes. In the event that the Internal Revenue Service of the United States or any governmental authority having jurisdiction shall in any way or at any time determine that any provision or provisions of this Agreement affects the status of this entity, the DRA Manager shall use its best efforts and have the right to modify, amend or supplement the terms and provisions of this Agreement to the extent necessary to comply with the rules, regulations and requirements of the Internal Revenue Service of the United States or any other government authority having jurisdiction, in order that the entity formed hereby be treated as a partnership, be taxable as such, and the Members hereof taxable as partners of a partnership; which modification, amendment or supplement shall be retroactively applied to the date of this Agreement.

ARTICLE 13.
GENERAL

13.1. Notices. Unless otherwise provided herein, any offer, acceptance, election, approval, consent, certification, waiver, notice or other communication required or permitted to be given hereunder (hereinafter collectively refer as a **"Notice"**) shall be deemed to have been duly given or made: (a) if by hand, telex, email or facsimile, immediately upon receipt (provided that a copy of any such Notice is simultaneously delivered by one of the methods of service described in clause (b) or (c) below; (b) if by Federal Express, Express Mail or any other overnight delivery service, one (1) day after dispatch; and (c) if mailed by certified mail, return receipt requested, three (3) days after mailing. The Notice shall be addressed to the Company at its then principal office and to the Member or Members to whom any such Notice is addressed at the addresses herein set forth or at such other address as any Member or any attorney for any Member may hereafter designate to the others in accordance with the provisions of this Section 13.1.

DRA:	c/o DRA Advisors LLC 220 East 42nd Street, 27th Floor New York, NY 10017 Attention: Dean Sickles Facsimile: (212) 697-7403 Email: dsickles@draadvisors.com
With a copy to:	Blank Rome LLP 405 Lexington Avenue New York, NY 10174 Attention: Martin Luskin, Esq. Facsimile: (917) 332-3714 Email: mluskin@blankrome.com
Operator:	c/o M & J Wilkow, Ltd. 20 South Clark Street, Suite 3000 Chicago, Illinois 60603 Attention: Marc R. Wilkow Email: mwilkow@wilkow.com
With a copy to:	M & J Wilkow, Ltd. 20 South Clark Street, Suite 3000 Chicago, Illinois 60603 Attention: David S. Eisen Email: deisen@wilkow.com

13.2. Entire Agreement. This Agreement contains the entire agreement of the parties hereto and supersedes all prior agreements and understandings, oral or otherwise, among the parties hereto with respect to the matters contained herein and it cannot be modified or amended except by written agreement signed by all of the parties.

13.3. Waivers. Except as otherwise expressly provided herein, no purported waiver by any party of any breach by another party of any of his or its obligations, agreements or covenants hereunder, or any part thereof, shall be effective unless made in a writing subscribed by the party or parties sought to be bound thereby, and no failure to pursue or elect any remedy with respect to any default under or breach of any provision of this Agreement, or any part thereof, shall be deemed to be a waiver of any other subsequent similar or different default or breach, or any election of remedies available in connection therewith, nor shall the acceptance or receipt by any party of any money or other consideration due him or it under this Agreement, with or without knowledge of any breach hereunder, constitute a waiver of any provision of this Agreement with respect to such or any other breach.

13.4. Headings, Gender and Number. The section headings herein contained have been inserted only as a matter of convenience of reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement nor in any way affect any such provisions. Where appropriate as used herein, the masculine gender shall be deemed to include the feminine, the feminine gender shall be deemed to include the masculine, the singular number

shall be deemed to include the plural, the plural number shall be deemed to include the singular, and an impersonal pronoun shall be deemed to include a personal pronoun.

13.5. Separability. Each provision of this Agreement shall be considered to be separable and if, for any reason, any such provision or provisions, or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, but this Agreement shall be construed and enforced in all respects as if such invalid or unenforceable provision or provisions had been omitted, provided, however, that the status of this Company, as a limited liability company, shall not be prejudiced.

13.6. Counterparts. This Agreement may be executed in one or more counterparts and each of such counterparts, for all purposes, shall be deemed to be an original but all of such counterparts together shall constitute but one and the same instrument, binding upon all parties hereto, notwithstanding that all of such parties may not have executed the same counterpart.

13.7. Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators and successors, but shall not be deemed for the benefit of creditors of any other Persons, nor shall it be deemed to permit any assignment by a Member of any of his or its rights or obligations hereunder except as expressly provided herein.

13.8. Further Actions. Each of the Members hereby agrees that he or it shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms thereof.

13.9. Governing Law. This Agreement and all matters pertaining thereto shall be governed by the laws of the State of Delaware, and particularly the Act, excluding any conflict-of-laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. Each Member irrevocably submits to the nonexclusive jurisdiction of the United States District Court for the State of New York and the state courts of the State of New York (or at the DRA Manager's election to the United States District Court for the State of Delaware and the state courts of the State of Delaware) for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each Member irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the United States District Court for the State of New York or the state courts of the State of New York (or at the DRA Manager's election to the United States District Court for the State of Delaware and the state courts of the State of Delaware) and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in such court has been brought in an inconvenient forum.

13.10. Tax Matters Partner.

(a) The DRA Manager is hereby designated as the "Tax Matters Partner" under Code Section 6231(a)(7). During any Company income tax audit, examination or other income tax

controversy with any governmental agency, the Tax Matters Partner shall keep the Members and any partners therein informed of all material facts and developments on a timely basis, and shall consult with the Members and any partners therein at their request. Each Member shall give prompt notice to the other Member(s) of any and all notices which it receives from the Internal Revenue Service concerning the Company, including any notice of a thirty (30) day appeal letter and any notice of a deficiency in tax concerning the Company's federal income tax return.

(b) The DRA Manager shall serve as the "partnership representative" within the meaning of Section 6223(a) of the Code as in effect for the first taxable year beginning after December 31, 2017 and thereafter (in such capacity the "**Company Representative**"). The Members agree that the Company shall make the election under Section 6221(b) of the Code as in effect for its first taxable year beginning after December 31, 2017, and for each taxable year thereafter, if the election is available to the Company and the DRA Manager determines that the election is in the best interests of the Company. If such election is unavailable or the Company otherwise does not make such election, the Members acknowledge that the Company shall elect the application of Section 6226 of the Code as in effect for its first taxable year beginning after December 31, 2017, in the event that it receives a "notice of final partnership adjustment" that would otherwise permit collection from the Company of a deficiency of taxes, for each relevant year, unless the DRA Manager determines that the election under Section 6226 of the Code is not in the best interests of the Company or is unavailable, in which case the Company shall not make such election. This acknowledgement applies to each Member whether or not it owns a Membership Interest in both the reviewed year and the year of the adjustment. The Members covenant to take into account and report any adjustment, determined in accordance with Section 6226 of the Code and any Treasury Regulations adopted therewith, to their items for the reviewed year and succeeding years prior to the year of adjustment as notified to them by the DRA Manager on behalf of the Company in a statement, in the manner provided in Section 6226(b) of the Code as in effect for the Company's first taxable year beginning after December 31, 2017 if reasonably permitted, whether or not such Member owns a Membership Interest or remains a Member in the year of any such statement. Any Member that fails to report its share of such adjustments on its U.S. federal income tax return for its taxable year including the date of any such statement as described immediately above shall indemnify and hold harmless the Company and the other Members against any taxes, interest and penalties collected from the Company as a result of such Member's inaction, together with interest thereon at the rate of eighteen percent (18%) per annum. The foregoing covenants and indemnification obligation of the Members shall survive indefinitely and shall not terminate, without regard to any transfer of a Member's Membership Interest, withdrawal as a Member, or liquidation, dissolution or termination of the Company.

13.11. Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes to the Company or another Member that are then due may be deducted from that sum before payment and paid to the Company or the Member, as applicable.

13.12. Indemnity as to Representations, etc.

(a) Operator hereby agrees to indemnify and hold DRA harmless from and against any and all liabilities, losses, costs, damages and expenses (including reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of the matter)

which DRA may ever sustain, suffer or incur and which relate or arise out of or in connection with the material breach by Operator of any representation, warranty or covenant made by it in this Agreement.

(b) DRA hereby agrees to indemnify and hold Operator harmless from and against any and all liabilities, losses, costs, damages, and expenses (including reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of the matter) which Operator may ever sustain, suffer or incur and which relate or arise out of or in connection with the material breach by DRA of any representation, warranty or covenant made by them in this Agreement.

(c) Nothing in this Section 13.12 shall limit any remedy of a party at law or in equity, including specific performance or injunctive relief, upon the breach by another party of any representation, warranty or covenant made herein. In no event shall DRA or Operator be liable for consequential, punitive, special or exemplary damages by reason of any term, condition or provision contained in this Agreement.

13.13. Survival. The representations and warranties of Operator and DRA contained herein shall survive the consummation of the transactions contemplated hereby.

13.14. Exhibits. The Exhibits to this Agreement are an integral part of this Agreement, and all references to "this Agreement" shall be deemed to include the Exhibits hereto.

13.15. No Brokers. Each of the Members hereto represents and warrants to the other that there are no brokerage commissions or finder's fees (or any basis therefor) resulting from any action taken by such Member or any Person acting or purporting to act on such Member's behalf upon entering into this Agreement. Each Member agrees to indemnify and hold harmless the other Member for all costs, damages or other expenses arising out of a breach of the representation and warranty made in this Section 13.15.

13.16. Enforcement. Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member in accordance with its terms.

13.17. Waiver of Conflict of Interest Regarding Legal Counsel. Blank Rome LLP ("**BR LLP**") has represented DRA in connection with the preparation and negotiation of this Agreement. The Members acknowledge and agree that BR LLP may hereafter perform legal services for the Company, and that by doing so, BR LLP shall not establish any attorney-client relationship with Operator, and that BR LLP may continue to represent DRA in connection with its dealings with Operator. Operator hereby agrees to waive any conflict of interest that may arise as a result of BR LLP's representation of both DRA and the Company.

[THERE IS NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the Members have hereunto set their hands and seals the day and year first above written.

G&I IX INVESTMENT LAKE POINTE LLC,
a Delaware limited liability company

By: _____
Name: David Gray
Title: Vice President

M & J LP INVESTORS LLC,
a Delaware limited liability company

By: M & J LP Manager Inc.,
a Delaware corporation, its manager

By: _____
Name: Marc R. Wilkow
Title: President

IN WITNESS WHEREOF, the Members have hereunto set their hands and seals the day and year first above written.

G&I IX INVESTMENT LAKE POINTE LLC,
a Delaware limited liability company

By: _____
Name:
Title:

M & J LP INVESTORS LLC,
a Delaware limited liability company

By: M & J LP Manager Inc.,
a Delaware corporation, its manager

By: _____
Name: Marc R. Wilkow
Title: President

SCHEDULE 1

Initial Capital Contributions

DRA	$5,400,000.00
Operator	$600,000.00

EXHIBIT A

Property Description

PARCEL I:

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter Section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet; thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by D.O.T. plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument No. 87-105141 in the Office of the Recorder of Marion County, Indiana (the next seven courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of 305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 401.44 feet to a curve having a radius of 100.00 feet, the radius point of which bears South 00 degrees 38 minutes 30 seconds East; (6) thence Southwesterly along said curve, 82.98 feet to a point which bears North 48 degrees 11 minutes 15 seconds West from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears North 48 degrees 11 minutes 15 seconds West; (7) thence Southwesterly along said curve, 82.98 feet to the POINT OF BEGINNING, which point bears South 00 degrees 38 minutes 30 seconds East from said radius point; thence South 00 degrees 38 minutes 30 seconds East 473.16 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 385.13 feet to a point which bears North 89 degrees 11 minutes 38 seconds East 734.61 feet from the Southwest corner of said North Half Quarter Section; thence North 00 degrees 38 minutes 30 seconds West 315.15 feet; thence North 64 degrees 13 minutes 35 seconds East 39.25 feet to a curve having a radius of 81.00 feet, the radius point of which bears North 25 degrees 46 minutes 25 seconds West; thence Northeasterly along said curve, 91.71 feet to a point which bears North 89 degrees 21 minutes 30 seconds East from said radius point; thence North 00 degrees 38 minutes 30 seconds West 144.11 feet; thence North 89 degrees 21 minutes 30 seconds East 206.18 feet to a point on the Westerly right-of-way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 74 degrees 52 minutes 51 seconds East; thence Southeasterly along said curve 131.81 feet to the POINT OF BEGINNING.

PARCEL II:

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet, thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by DOT plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument 87-105141 in the Office of the Recorder of Marion County, Indiana (the next five courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius of 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of 305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 204.00 feet to the POINT OF BEGINNING, which point is also the Northwest corner of a 4.244 acre tract described in a Warranty Deed recorded June 4, 1990 as Instrument 90-54079 in said Recorder's Office; thence along the West line of said 4.244 acre tract South 00 degrees 38 minutes 30 seconds East 537.17 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 345.00 feet; thence North 00 degrees 38 minutes 30 seconds West 473.16 feet to a point on the Southerly right of way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 00 degrees 38 minutes 30 seconds West (the next three courses are along the Southerly line of said Allison Pointe Boulevard); (1) thence Easterly and Northeasterly along said curve. 82.98 feet to a point which bears South 48 degrees 11 minutes 15 seconds East from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears South 48 degrees 11 minutes 15 seconds East; (2) thence Northeasterly and Easterly along said curve, 82.98 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (3) thence North 89 degrees 21 minutes 30 seconds East 197.44 feet to the POINT OF BEGINNING.

PARCEL III (Easement Parcel)

A non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easements in Allison Lake dated October 28, 1992 and recorded December 31, 1992 as Instrument 92-174237 and rerecorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87- 112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as

modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006.

PARCEL IV (Easement Parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated October 28, 1992 and recorded December 31, 1992 as Instrument 92-174238 and rerecorded March 29, 1993 as Instrument #93-35747 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87- 112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006.

PARCEL V (Easement Parcel)

A non-exclusive easement for access as created in an Access Easement recorded August 5, 1997 as Instrument #97-108040.

PARCEL VI (Easement Parcel)

A non-exclusive easement for access reserved in a Limited Warranty Deed recorded March 25, 1997 as Instrument #97-44966.

PARCEL VII (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250.
(Benefits Parcels I and II).

EXHIBIT B

IRR Calculation

This Exhibit explains how to calculate an Internal Rate of Return for purposes of this Agreement. The examples used in this Exhibit are for illustration purposes only and do not represent the projected economics of the investment or the economics of the venture.

Internal Rate of Return (IRR) is defined as the discount rate which equates the present value of the project's cash flows to the present value of the project's costs. (PV cash inflows ~ PV cash outflows).

Alternatively the IRR can be expressed as the discount rate that equates the Net Present Value of all periodic cash flows including the initial investment to zero.

For purposes of this Agreement, the IRR is to be determined using the "XIRR" function in Microsoft Excel. In using this function, a Capital Contribution (as defined in the Agreement) will be credited on the date made and: (i) a distribution pursuant to Section 8.1 of the Agreement will be credited as of the last day of the calendar quarter in which such distribution was made; and (ii) a distribution pursuant to Sections 8.2 and 11.3 of the Agreement will be credited as of the last day of the calendar month in which such distribution was made; except that a distribution of Capital Proceeds made in the first 12 months after the date on which the Initial Capital Contribution was made shall be credited on the date which is 12 months after the date the Initial Capital Contribution was made. Only distributions made pursuant to Sections 8.1, 8.2 and 11.3 of the Agreement shall be used in calculating the IRR (but excluding distributions made pursuant to Sections 8.1(a), 8.2(a) and 8.2(b)).

Excel uses an iterative technique for calculating XIRR. Using a changing rate (starting with guess), XIRR cycles through the calculation until the result is accurate within 0.000001 percent. If XIRR can't find a result that works after 100 tries, the #NUM! error value is returned. The rate is changed until:

$$0 = \sum_{i=1}^{N} \frac{P_i}{(1+rate)^{\frac{(d_i - d_1)}{365}}}$$

where:

di = the ith, or last, payment date.
d1 = the 0th payment date.
Pi = the ith, or last, payment.

Example

	A	B
1	**Values**	**Dates**
2	-2,000,000	January 30, 2006
3	50,000	March 31, 2006
4	50,000	June 30, 2006
5	50,000	September 30, 2006
6	2,200,000	December 31 2006
	Formula	**Description (Result)**
	=XIRR(A2:A6,B2:B6,0.1)	The internal rate of return (0.2000 or 20.00%)

EXHIBIT C

Form of Property Management Agreement

[attached hereto]

PROPERTY MANAGEMENT AGREEMENT
8470 & 8520 Allison Pointe Boulevard, Indianapolis IN

THIS PROPERTY MANAGEMENT AGREEMENT is made as of the _____ day of October, 2018 (the "Effective Date"), by and between G&I IX MJW Lake Pointe III & IV LLC, a Delaware limited liability company ("Owner"), having an address c/o DRA Advisors LLC, 220 East 42nd Street (27th Floor), New York, New York 10017, and M & J WILKOW PROPERTIES, LLC, a Delaware limited liability company having an address at 20 South Clark Street, Suite 3000, Chicago, Illinois 60603 ("Manager").

W I T N E S S E T H :

WHEREAS, Owner is the fee owner of certain real property located at Lake Pointe Center III and IV, located at 8470 & 8520 Allison Pointe Boulevard, Indianapolis IN (the "Property"); and

WHEREAS, Owner desires to appoint Manager as the exclusive managing agent for the Property, and Manager desires to be appointed as the exclusive managing agent for the Property.

NOW, THEREFORE, in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Employment of Manager. Owner hereby appoints Manager as the exclusive managing agent for the Property, and Manager hereby accepts said appointment on the terms and conditions as hereinafter provided, with the term of appointment to commence as of the Effective Date (conditioned upon closing the acquisition of the Property by Owner on such date). The services of Manager hereunder are to be performed in a faithful and diligent manner with the professional skill and care of property managers in buildings commensurate in size, location, complexity and value to the Property and in the best interest of Owner. In connection therewith, Manager shall make available to Owner the full benefit of the judgment, experience and advice of the members of Manager's organization and staff with respect to the policies to be pursued by Owner in operating the Property. Manager shall provide maintenance and on-site and management using individuals experienced in the operation of properties of the size, character and quality of the Property and whose background and references shall be subject to Manager's customary standards.

2. Duties and Authority of Manager.

(a) It shall be the duty and responsibility of Manager at its sole cost and expense unless otherwise provided herein to:

(i) Inspect the Property at least once every week, meet with the tenants as necessary, and report to Owner on at least a monthly basis on Manager's findings. Manager agrees that all staff shall be employees of Manager and Manager shall supervise, and otherwise be responsible in all respects for, all such employees and Owner shall have no liability with respect thereto. Owner shall have the right to require that Manager replace any personnel, including without limitation the on-site manager, whom Owner reasonably believes to be unsuitable for the

services to be performed hereunder. Manager shall fully comply with all applicable laws and regulations relating to worker's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employment-employee related subjects. Manager represents that it is and will continue to be an equal opportunity employer. Manager and its employees shall be duly licensed, permitted and authorized under applicable state and local laws and regulations to provide Owner with the services provided for in this Agreement. Each of Manager's employees who drive a vehicle as part of his or her job duties shall carry valid and current driver's license in the State where the Property is located. Manager shall, at Manager's cost, conduct such background, reference, educational, criminal record and other checks in the hiring of its personnel as shall be appropriate to the positions for which such personnel are engaged, to the extent permissible by law. Manager shall, at Manager's cost, and in a manner consistent with Manager's internal policies and procedures, provide corporate training resources and industry standard policies and procedures to its personnel to facilitate the management of the property.

(ii) Monitor and report to Owner, as fully as reasonably practicable, the non-compliance of tenants with the terms, covenants and conditions of their respective leases and the non-compliance of the owners of any adjacent properties with any restrictions contained in any recorded declaration affecting the Property. Manager shall keep all tenants informed of all rules and regulations governing the use and occupation of space in the Property which Owner may alter or supplement from time to time; and Manager shall use commercially reasonable efforts to cause its services hereunder to be consistent with such rules and regulations. Service requests of tenants, when received shall be considered and handled by Manager and systematic records shall be maintained showing the action taken with respect to each request. Complaints of a serious nature shall be reported to Owner as soon as reasonably practicable with all relevant details and Manager shall thereafter investigate the complaint and make appropriate recommendations. In addition to the foregoing, and not by way of limitation, Manager shall promptly report to Owner and respond to all complaints received by Manager dealing with moisture intrusion, leaks or other types of water penetration, and any damage and conditions that may result therefrom ("Moisture Intrusion Matters"). All such complaints shall be documented, addressed, and/or repaired by Manager at Owner's expense pursuant to the protocols prepared by the Manager and accepted by the Owner in writing from time to time. Such protocols shall provide for (i) clear lines of responsibility on the part of Manager's personnel with officers of sufficient authority assigned to evaluate the nature and priority of the complaint, (ii) training of and minimum experience requirements for appropriate personnel in dealing with Moisture Intrusion Matters, and (iii) compliance with applicable nationally recognized standards, or applicable statutes and regulations, for dealing with Moisture Intrusion Matters (as such standards, statutes, and regulations may be amended or adopted from time to time). Owner shall have the right from time to time to establish mandatory criteria and protocols to deal with specific maintenance and/or operating issues, including but not limited to environmental and security protocols and procedures. Manager shall comply with such criteria and protocols as reasonably established by the Owner.

(iii) Collect from tenants in the Property all base rents, additional rents, real estate taxes, insurance premiums, operating expenses, and other charges as and when required by each tenant's lease. Such rent and other charges shall be deposited into the Project Account (as hereinafter defined). Manager shall prepare, in a form acceptable to Owner, and submit to the tenants of the Property, such statements of escalation charges, operating expense computations, comparative statements and other statements as are required by the terms of their leases. Within eight (8) weeks of the close of each calendar year (or within such earlier time period necessary for

Owner to meet its deadlines to deliver annual CAM reconciliation statements to tenants under the terms of applicable leases), Manager shall prepare a CAM/Escalation Expense Reconciliation and electronically submit pertinent documentation to Owner for review and approval, including tenant billing worksheets, CAM pools, a reconciliation of expenses from the general ledger to the CAM pools, base year details, a billing summary for all tenants and gross-up details if applicable. Real estate taxes are payable in arrears; therefore the foregoing provisions shall also apply to reconciliations for real estate taxes, subject to such extensions of time as may, from time to time, be reasonably needed, based upon when the actual real estate tax bills are issued by the county assessor's office. Upon Owner approval such agreed upon amounts shall be billed promptly as appropriate under the leases. Manager will, at Owner's expense and in Owner's name, but only after consultation with, and approval by Owner, institute legal actions or other proceedings for the collection of such rent or charges due from tenants or for the eviction of tenants, and such expenses may include the employment of collection agencies and/or the engaging of counsel approved or designated by Owner for such matters; provided, that Manager shall not be required to obtain Owner's consent to serve demand or other notices necessary to enforce leases (but copies of default notices shall be sent only upon prior consultation with and approval of Owner). Manager shall, at the reasonable request of Owner and at no additional cost to Owner, cause the appropriate personnel of its organization to testify in any legal actions concerning any tenancies or the Property (provided that such personnel are, at the time testimony is required, still members of Manager's organization). Except as otherwise provided pursuant that certain Limited Liability Company Operating Agreement of G&I IX MJW Lake Pointe JV LLC dated as of the _____ day of October, 2018 (the "LLC Agreement") between G&I IX Investment Lake Pointe LLC and M & J LP Investors LLC, Manager shall have no authority to settle, compromise or take any other action with respect to litigation relating to the Property or the tenancies of the Property without Owner's express approval.

(iv) Deposit all tenant security deposits in the Project Account. Manager shall have no authority to withdraw any sums from the security deposit account. It is expressly understood and agreed that all disbursements, transfers or refunds of tenant security deposits made by Manager, if authorized by Owner, shall be made by a check drawn on said account or appropriate journal or bookkeeping entries and shall be substantiated by appropriate records and accounting procedures. Security deposits that are in the form of a letter of credit shall be held by Owner.

(v) No later than October 1 of each calendar year, submit to Owner annual budget for the forthcoming calendar year in the form required by Owner for Owner's approval (such budgets submitted annually, and approved in writing by Owner, being referred to herein as the "Operating Budget"). Thereafter, Manager agrees to work with Owner in good faith to refine the Operating Budget until the Operating Budget is accepted by Owner prior to December 15th of each calendar year. Unless otherwise designated by Owner, the Property shall be operated on a calendar year basis for reporting and budgeting purposes. In accordance with the schedule on Exhibit A attached hereto and made a part hereof, Manager will prepare and submit to Owner for the review of Owner the property reports so indicated on Exhibit A (Manager may close the Property's books by the 25th day of the prior month). Each annual budget shall show, by category, all anticipated items of income and expenditures and shall include any capital expenditures recommended or anticipated by Manager. Each Operating Budget shall be approved by Owner before it shall become effective. After approval, subject to the possibility that uncontrollable expenses, such as snow removal and utility costs, may exceed budgeted expectations, Manager

shall use commercially reasonable efforts to operate the Property within the constraints of the Operating Budget and shall not make any expenditure during a budgeted period which is in excess of one hundred five percent (105%) of the budgeted amount for such expenditure for any particular line item, or one hundred three percent (103%) of the aggregate of all budgeted expenditures, except with the express written approval of Owner. When appropriate, or when requested by Owner, Manager will prepare, for Owner's consideration and approval, an update of the annual Operating Budget to reflect actual or anticipated deviations. In the case of a delay in Owner's approval of an Operating Budget prior to the commencement of a given calendar year, pending approval thereof, Manager shall be entitled to continue to operate the Property in accordance with the standards set forth herein at levels of expenditures for the preceding calendar year, exclusive of capital improvements for such continued operations.

(vi) Bond or insure to the equivalent of a fidelity bond for malfeasance all its employees who handle, deal with, or are responsible for Owner's money in an amount not less than $1,000,000 and deliver to Owner a bond or insurance policy (from an insurance company reasonably acceptable to Owner) naming Owner as loss payee under Manager's insurance policy. The cost of such insurance or bond shall be borne by Manager. All such insurers must be rated "A-X" or higher by A.M. Best. Manager shall use commercially reasonable efforts to obtain an endorsement to such policies, providing that they shall not be canceled or otherwise modified without thirty (30) days' prior written notice to Owner. At least ten (10) days prior to the expiration of any such policy, Manager shall furnish Owner with evidence that the insurance policies required hereunder have been renewed.

(vii) To the extent consistent with the Operating Budget or as otherwise approved by Owner, pay from the Disbursement Account, as herein defined, when due, all taxes, assessments, rents and other levies applicable to the Property, operating expenses, property management fees and Manager's approved expenses.

(viii) Subject to the availability of funds provided by Owner, cause the Property to comply with all terms of any mortgages, deeds of trust or other similar liabilities or documents relating to the Property (collectively "Mortgages") and pay from the Disbursement Account on a timely basis all amounts due under Mortgages, before such amounts shall become delinquent.

(ix) Cause the buildings, appurtenances and grounds of the Property to be maintained, repaired and replaced, at Owner's expense, according to standards reasonably acceptable to Owner, including, but not limited to, interior and exterior cleaning, painting, decorating, landscaping, plumbing, alterations, carpentry, and such other normal maintenance, preventive maintenance and repair work (including, but not limited to, structural repair work) as may be necessary. Other than capital projects or repairs costing in excess of $5,000 ("Major Capital Projects"), Manager has the authority to make repairs, replacements, alterations and improvements in accordance with the annual Operating Budget. With respect to Major Capital Projects, prior to initiating any Major Capital Project (including Major Capital Projects contemplated by the annual Operating Budget), Manager shall (A) submit for Owner's approval a capital improvement request form, (B) obtain at least three (3) qualified bids (unless the competitive bid requirement is waived by Owner) for all items comprising such Major Capital Project (i.e., to the extent not covered by bids submitted by prospective general contractors) and provide Owner with all relevant information in connection with such bid process, and (C) obtain Owner's written approval prior to

making any expenditure out of the Disbursement Account with respect thereto and shall furnish Owner with all documentation and information as Owner may require with respect to such expenditure. Manager shall require that all vendors and contractors performing work on the Property maintain insurance in accordance with standards set forth on Exhibit B attached hereto.

(x) Negotiate, on behalf of Owner, on the most favorable terms that Manager using its commercially reasonable efforts can then obtain, contracts, at Owner's expense, for water, electricity, gas, steam, fuel, oil, telephone, rubbish removal, vermin extermination, and other necessary services, or such other contracts, as Manager shall deem advisable; provided, however, that Manager may only execute such contracts on behalf of Owner with Owner's prior written approval and in a manner which discloses Owner's interest and Manager's relationship to Owner (Owner reserves the right to execute the contracts) and, when possible, such contracts shall be for a period not to exceed twelve (12) months, and terminable on not more than thirty (30) days' notice by Owner or Manager without cause or penalty. Anything in the foregoing to the contrary notwithstanding, Owner acknowledges that the rates and terms for utilities and certain other services may be set by published tariff and/or rate schedules and that the terms of the contracts for such utilities and/or services may be standardized and not subject to negotiation. Manager shall act at all times under the direction of Owner and shall allocate to Owner any rebate, commission or discount obtained as result of such purchases, and any such commissions or rebates are to be remitted to Owner.

(xi) Maintain, in a manner and pursuant to an MRI computer software system, a system of office records, books and accounts with respect to the Property, which records shall be the sole property of Owner and shall be subject to examination by Owner or its authorized agents and employees at all reasonable hours, and which records, books and accounts are the property of Owner. Manager shall, upon request of Owner, make all of said books and records available to Owner and its officers, accountants, attorneys and other representatives and shall deliver same to Owner or its agents or representatives on demand. Upon the termination of this Agreement, and Owner's request, Manager shall deliver all books and records and computer files to Owner. Manager understands that the particular accounting and data systems specified by Owner from time to time for the Property are essential to the uniformity and efficacy of Owner's overall database and reporting systems, and, accordingly, Manager shall not change its accounting/reporting system from MRI without the express approval of Owner in each instance.

(xii) At Owner's expense, prepare and implement such other commercially prudent business strategies, subject to the approval of Owner, so as to increase the profitability and value of the Property, including without limitation, promotional, marketing and expansion plans.

(xiii) Coordinate and supervise the performance of capital improvements and landlord's and tenant's work as required by any lease for space at the Property, at Owner's expense, in accordance with Section 4(c) hereof.

(xiv) Cooperate and provide support to Owner and its accountants in connection with the preparation of financial statements and tax returns and during annual audits including, but not limited to, preparing schedules relating to accruals, rent adjustments, minimum rent, depreciation of fixed assets and cash reconciliations of all accounts as well as all other supporting documentation requested by Owner or its auditor. In this connection, it is understood

and agreed that if, following the expiration or sooner termination of this Agreement, Owner shall request that Manager provide accounting and/or other services, Owner shall be obligated to compensate Manager for such services at prevailing rates.

(xv) Develop and maintain a system for keeping track of, and reporting to Owner adequately in advance of, all important dates under leases of the Property and all important notice requirements under leases, including without limitation dates for the exercise of renewal options; termination dates; and notice requirements for expansions, rights of first refusal and the like.

(xvi) Render reasonable assistance to Owner in connection with any financing, refinancing or sale of the Property, including without limitation the preparation and submission of information relating to the Property and the leases thereof as well as the preparation of tenant estoppel certificates; and use its diligent efforts to secure the execution by tenants of such estoppel certificates, subordination and non-disturbance agreements and other required documents.

(xvii) Use commercially reasonable efforts to generally perform such other functions as are incidental to or reasonably necessary to effectuate the proper management, upkeep and operation of the Property within the scope of Manager's services under this Agreement, and keep Owner advised of all matters having a material bearing on the use and operation thereof that become known to Manager.

(xviii) Manage any park association of which the Property is a part.

(b) Manager shall also have the following duties and responsibilities:

(i) Subject to applicable Lender requirements, Manager shall on a timely basis: (A) deposit all rent and other payments received from tenants in a local insured account in the name of Owner or its designee at a bank designated by Owner in Owner's name, with all interest accruing to Owner (the "Project Account"), and (B) pay all Property expenses set forth in the Operating Budget (evidenced by appropriate substantiation by Manager) from an account in the name of Owner, at a bank designated by Owner or its lender (the "Disbursement Account"), to the extent the Disbursement Account contains the amounts required to pay such expenses, in the order of priority set forth below (except that Manager shall not make any expenditures (i) requiring Owner's consent under Section 2(a)(ix) above, or (ii) relating to the payment of a tenant improvement allowance or similar payment under a lease without Owner's prior written consent). Owner shall have sole signature authority over the Project Account and the funds contained therein. All funds in the Project Account and the Disbursement Account shall at all times be and remain the property of Owner and shall be indicated as such on Manager's records and shall be segregated from the funds of Manager. Upon the execution hereof, Manager and Owner shall agree upon an initial amount to fund the Disbursement Account. Manager is authorized to issue checks upon the Disbursement Account to pay for all obligations and expenditures incurred by Manager for and on account of Owner in connection with the management and operation of the Property as set forth in the Operating Budget or as otherwise approved in writing by Owner, subject to Manager's compliance with Owner's disbursement funding systems and procedures. It is expressly understood and agreed by Manager that all disbursements of funds authorized pursuant to this Agreement and/or otherwise authorized by

Owner to be made by Manager shall be made by a check, electronic transfer (including virtual credit card payments) or ACH drawn on the Disbursement Account. All disbursements of funds shall be substantiated by appropriate records and accounting procedures. In addition, in the event of an emergency requiring the disbursements of funds, Manager shall use its commercially reasonable efforts to contact Owner, but, if such contact cannot be made, Manager shall be deemed authorized to make the disbursements necessary to remedy the emergency condition. If the Disbursement Account at the time of an emergency does not contain funds sufficient to remedy said emergency, Manager may, but shall not be required to, use its own funds to do so, and Owner shall promptly reimburse Manager upon presentation of receipts for Manager's expenditures made in connection with such emergency. Each month, Property expenses shall be paid by Manager from the Disbursement Account in the following order (unless otherwise directed by Owner): (a) First, to the payment of any debt service, real estate taxes and insurance premiums for the Property, (b) Second, to payment of all other operating expenses (in accordance with the Operating Budget) due and payable from the 26th day of the immediately preceding month through the 25th day of such month, and (c) Third, subject to the terms of Section 4 below, to the payment of Manager's management fee for the prior month. At the end of each fiscal quarter (or as otherwise directed by Owner), the balance of proceeds in the Disbursement Account shall be distributed to Owner in accordance with instructions furnished by Owner to Manager (subject to any reserves set forth in the Operating Budget or as otherwise determined by Owner or as directed by the Lender).

(ii) Subject to the availability of funds provided by Owner, and only to the extent provided in the Operating Budget or as otherwise approved by Owner in writing and subject to limitations on Manager's authority hereunder, Manager, in accordance herewith and to the extent of its authority, shall use commercially reasonable efforts to perform or cause to be performed all such acts and things as shall be necessary to effect compliance with all laws, rules, regulations, ordinances, statutes, regulations and requirements of any federal, state or municipal government or any agency thereof having jurisdiction respecting the use or manner of use of the Property or the maintenance or operation thereof, and the requirements of any insurance companies covering any of the risks against which the Property is insured. Manager will make recommendations to Owner regarding compliance with all notices and, at Owner's request and expense, shall contract for and supervise the completion of all work necessary to assure such compliance.

(c) Manager is hereby authorized to engage attorneys, architects, accountants, engineers or other professional persons subject to Owner's prior written approval, at Owner's expense, to assist Manager in the performance of its obligations hereunder.

(d) Manager shall deliver promptly to Owner copies of all notices or other communications which are material and relate to this Agreement, the Property, or the duties to be performed by Manager hereunder.

(e) Manager shall notify Owner of all legal requirements, claims or actual or potential problems of which Manager becomes aware regarding hazardous materials or substances, including, but not limited to any hazardous material or substance which is or becomes defined as a "hazardous waste," "hazardous substance," "hazardous material," pollutant, mold, or contaminant under any federal, state, or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601), as amended, and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901) (collectively, "Hazardous Materials"), and agrees to

promptly notify Owner if it becomes aware of any violation of any such laws regarding Hazardous Materials. Owner acknowledges that Manager is not an environmental consultant and does not possess any expertise in the field of Hazardous Materials or with respect to the detection, control, handling, removal or supervision of activities related to Hazardous Materials or Moisture Intrusion Matters, and that such matters are or may become the subject of local, state or federal laws and/or regulations requiring special handling, control or removal. Therefore, with respect to any environmental conditions or issues pertaining to Hazardous Materials at the Property, Owner and Owner's officers, directors, partners, shareholders, agents, employees and contractors agree and acknowledge that Manager and its agents, officers, directors, partners, shareholders and employees are not and shall not be deemed "operators" of the Property or any tenant operations therein or thereon (or have any comparable legal status) for purposes of current or pending federal, state or local laws pertaining to Hazardous Materials. Furthermore, unless agreed to in a separate writing signed by both Owner and Manager, Manager shall not be responsible for the storage, transportation, disposal, abatement, cleanup or removal of Hazardous Materials below, on, under, about or affecting the Property.

(f) Manager shall keep Owner informed of any change in the amount of real or personal property assessments or taxes relating to the Property, and upon request, consult with Owner regarding the contesting of either the validity or the amount thereof; and forward to Owner's attention, all official receipts evidencing the payment of the foregoing charges. Upon Owner's request therefor, Manager will reasonably cooperate and assist the professionals engaged by Owner for such contests or appeals in the preparation of any application for the correction or appeal of any tax or assessment made or to be made in connection with the Property, including, providing supporting testimony at any hearing in connection with such contest or appeal.

(g) Manager shall promptly investigate and timely make a full written report (with the prior written approval of Owner as to the contents of any such report) to the applicable insurance company of Owner to which a claim is being made, with a copy submitted electronically to Owner, as to all accidents, claims or damages relating to the ownership, operation and maintenance of the Property, any damage or destruction to the Property and the estimated cost of repair thereof, and shall prepare any and all reports (with the prior written approval of Owner as to the contents thereof) as may be required by the terms of the applicable insurance policy or by any applicable insurance company in connection therewith. Except as otherwise provided pursuant to the LLC Agreement, Manager shall have no right to settle, compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without the prior written consent of Owner.

(h) Manager acknowledges receipt of that certain Water Intrusion Prevention, Operations and Management Program developed with respect to the Property and attached hereto as Exhibit C ("O&M Program"). The O&M Program is intended to be the minimum guidelines and requirements for Manager for the maintenance of the building envelope and weather tightness of the Property, the prevention of water intrusion into interior spaces, the removal of water that may have intruded into spaces or resulted from excess humidity, and the prevention of mold, bacteria and other contamination (collectively, "Microbial Contamination"). Manager agrees that it shall be solely responsible for the implementation of the O&M Program for the Property and that it shall train its employees and manage, maintain and repair the Property in strict accordance therewith (as same may be revised and/or amended in accordance with this paragraph). Manager shall develop, have approved by the Owner, and implement, such more stringent and protective

measures and guidelines as appropriate for the Property, based on its age, type and quality of construction, history of water intrusion, unique or problematic design elements, and local climate and conditions, and as necessary to comply with federal, state and local laws, regulations, ordinances and codes, adopted from time to time, applicable to the management of water intrusion and Microbial Contamination. Manager agrees to similarly observe and maintain, at Owner's expense, any operation and management program developed with respect to any other environmental issue at the Property. If requested by Owner, Manager will coordinate with Owner's consultants to formulate any such operation and maintenance program acceptable to Owner.

(i) Manager shall not solicit any tenant of the Property (or with any parent, subsidiary or affiliate of such tenant of which such Manager has knowledge) to lease any commercial space in another building located in the same market area as the Property that is not owned, directly or indirectly, by Owner with the intent to cause such tenant to vacate the Property.

3. Limitations and Authority.

(a) Notwithstanding any other provisions of this Agreement, Manager shall have no authority to take any of the following actions, unless it has received the prior written approval of Owner:

(i) Sell, assign or otherwise transfer or mortgage, pledge, hypothecate, alienate or grant a security interest in the Property or any portion thereof or interest therein or allow due to any act or omission of Manager the placing or suffering of any other encumbrance on the Property or any portion hereof or interest therein except for tenant leases as provided in this Agreement. For avoidance of doubt, any construction lien filed against the Property or any part thereof as a result of Owner's failure to pay any sum claimed by any contractor, subcontractor or supplier shall not be deemed to have been filed due to the act or omission of Manager. Further, Manager shall not be deemed in default under this Agreement if Manager shall be diligently contesting, at Owner's expense and request, any wrongfully lien filed against the Property;

(ii) Issue any press release or public announcement relating to the Property other than as may be approved by Owner;

(iii) Enter into any contract for any service, materials or the like with a party which is affiliated with Manager or in which any partner, member or shareholder of Manager holds a direct or indirect beneficial interest (with the understanding that, if such contract is approved by Owner, it must be at competitive rates);

(iv) Vary or change any portion of the insurance carried by Owner; or

(v) Make any other decision or take any action which by any provision of this Agreement is required to be first approved by Owner.

(b) Single Purpose Covenants. Manager shall at all times take all steps necessary and appropriate to maintain its own and its affiliates' separateness from Owner and the Property. Manager shall also conduct its activities in a manner which maintains the separateness of the assets (including revenues) and expenses relating to the Property from the assets (including revenues) and expenses relating to other properties managed by Manager for its own account or the account of others. Manager will not (i) hold its credit out as available to pay or support as

guarantor or otherwise any of Owner's obligations, (ii) pay Owner's obligations or expenses from Manager's funds (other than to advance the costs of an emergency repair to the Property for which Owner will promptly reimburse Manager), (iii) make any loans to or borrow any funds or property from Owner (except as provided in paragraph (ii) above), or (iv) permit Owner's assets to be included in or consolidated within Manager's financial statements. Manager's only role, with respect to Owner and the Property, is to manage the Property in accordance with this Agreement. Notwithstanding any provisions to the contrary in this Agreement, Manager agrees that:

(i) Manager acknowledges that the Owner is a "single purpose entity" and that Owner must maintain such status as set forth in Owner's organizational documents. To insure that Manager's actions do not jeopardize the separateness of Owner from other persons, Manager shall:

(A) hold itself out to the public as an independent contractor of the Owner, legally distinct from the Owner, and shall conduct its duties and obligations on behalf of the Owner in its own name (or in the Owner's name and as independent contractor therefor, as appropriate), and shall correct any known misunderstanding regarding its separate identity from the Owner, and shall not identify itself as an affiliate, division or partner of the Owner;

(B) in the management of the Property, indicate in all material correspondence with third parties that Manager is acting as agent for Owner; and

(C) pay the Owner's liabilities solely from the Disbursement Account (other than to advance the costs of an emergency repair to the Property for which Owner will promptly reimburse Manager).

(ii) Any legal proceedings brought by Manager to collect rent or other income from the Property, or to oust or dispossess a tenant or persons therefrom, shall be brought only in the name of Owner.

(iii) To the extent Manager is authorized to make or cause to be made repairs to the Property and to purchase supplies for the operation of the Property, it shall do so only in the name of and at the expense of Owner; provided, however, that the foregoing is not intended to preclude the occasional use of Manager's corporate American Express Card to purchase supplies.

(iv) All leases and amendments thereto shall be submitted to Owner for execution by Owner, and Manager agrees not to bind Owner in respect of any term or condition of a lease or lease amendment except in leases or lease amendments that are executed by Owner.

4. Compensation of Manager.

(a) From the Effective Date to the date of the expiration of earlier termination of this Agreement, Manager's compensation for its services rendered shall be an amount equal to three percent (3.0%) of the monthly Gross Revenue (as defined below) actually received from space tenants at the Property. Manager's compensation shall be paid monthly in arrears in accordance with the terms of Section 2(b)(i) of this Agreement. (If the effective date of commencement or expiration or earlier termination of this Agreement is not the last day of a month, the compensation payable shall be pro-rated based upon the number of days in such month

prior to the effective date of termination). If Manager fails to timely submit the property reports indicated in Exhibit A attached hereto for any month, Manager shall not be authorized to withdraw its compensation from the Disbursement Account until all such reports have been submitted to Owner. "Gross Revenue" means all minimum rents, additional rents, percentage rent, payments in lieu of rent (e.g., proceeds from rent loss insurance), license fees paid by licensees, and receipts from public telephones, storage lockers and vending machines, and payments by tenants for charges for insurance, real estate taxes, and operating expenses, but excluding all other receipts or income including, but not limited to:

(i) receipts arising out of the sale of assets of the Property or condemnation proceeds or items of a similar nature;

(ii) any payments made by tenants for over standard tenant improvements or capital improvements made on behalf of tenants unless amortized as additional rental payments under leases and any payments made by tenants on account of damages or default;

(iii) income derived from interest on investments, security deposits or utility deposits;

(iv) proceeds of claims under insurance policies (including all funds currently held in escrow by the Lender, but not including rent insurance);

(v) abatements or reductions of taxes;

(vi) security deposits made by tenants (unless applied in lieu of rent);

(vii) credits given to tenants for overpayments of insurance, real estate taxes and operating expenses (and the next due payment to the Manager for compensation hereunder shall be reduced by one hundred (100%) percent of the property management fee on such credits);

(viii) any taxes (including sales taxes), impositions or assessments based on rentals or occupancy by tenants of space at the Property;

(ix) cancellation or penalty payments for lease termination rights; and

(x) real estate taxes paid by any tenant directly to the local taxing authority in accordance with the terms of its lease.

(b) Owner shall, at its expense, within a reasonable period of time following the Effective Date, provide Manager with an improved, appropriately equipped, on-site office and shall reimburse Manager for all reasonable expenses, including travel expenses incurred by Manager in performance of its duties under this Agreement which are either in accordance with the then Operating Budget or which have been approved in writing by Owner or have been incurred in accordance with this Agreement. At Owner's request, Manager shall enter into a lease covering the on-site office as long as the rental costs are reimbursed by Owner. Such expenses shall not include (w) Manager's general office expenses and administrative overhead or the costs of any off-site office, (x) any training, educational or outing expenses unless set forth in the Operating Budget or otherwise approved by Owner, (y) the insurance premiums for Manager's insurance

described in Section 7(a) below, or (z) any other costs which are stated in this Agreement to be borne by Manager.

(c) Unless otherwise directed by Owner, Manager shall provide construction management services for (i) capital improvements made to the Property by Owner and (ii) landlord's work performed by Owner (but expressly excluding tenant improvement work performed by a tenant at the Property) to prepare space for a tenant as required by a lease for space at the Property ((i) and (ii) collectively, "Owner's Work"). Manager's responsibilities with respect to construction management shall be performed with the professional skill and care of construction managers in buildings commensurate in size, location, complexity and value to the Property, and will include, but not be limited to, performing the following: coordination of space planning; definition of and detailed scope of work; acquisition of city or other governmental approvals and permits; acquisition of competitive bids from contractors; bid summary and recommendations for review by Owner; negotiation of construction contracts; handling relations with tenants of the Property; coordination of change orders; securing and, if required by applicable law, recording conditional and unconditional lien releases (whether partial or final) from all contractors, subcontractors, materialmen, suppliers and the like prior to or concurrent with the making of any payments, including, without limitation, disbursements for tenant improvements and providing for such other arrangements as may be reasonably prudent under the circumstances to assure the appropriate application of construction funds; inspection of construction to ensure quality and completion prior to payment; timely executing, where applicable, filing or recording of notices of commencement and terminations thereof and posting of notices of non-responsibility (on behalf of, and as executed and supplied by, Owner) as well as otherwise taking all steps reasonably necessary to comply with all laws and procedures relating to keeping the Property free of, or causing to be promptly discharged at Owner's expense, liens; preparation of a final punch list with the tenant (if applicable) and contractors, and supervising the completion of any punch list items of remaining or defective work; coordination of inspections upon completion; securing certificates of occupancy; obtaining final lien waivers; and review, approval, and submittal to Owner of all payment applications; and, such other services as are reasonable and necessary in connection with completion of the work. Manager shall make available to Owner the advice, consultation and expertise of Manager's technical staff, and render such periodic progress reports to Owner as they shall request.

If a lease requires Owner to perform the Owner's Work, then so long as Manager is performing the construction management work (and not an independent third party construction manager engaged by or on behalf of Owner to perform such services, which may occur on larger projects), if such Owner's Work costs in excess of Twenty Five Thousand Dollars ($25,000) and less than One Hundred Thousand Dollars ($100,000), Manager shall be compensated for the construction management services for each project constituting Owner's Work in an amount equal to three percent (3%) of the "hard costs" for such Owner's Work. If the Owner's Work costs Twenty Five Thousand Dollars ($25,000) or less, or if the Lease requires the tenant to perform the tenant improvements, then no fee shall be paid to Manager. If Manager is requested by Owner to provide construction management services for projects costing at least $100,000, Manager's compensation shall be subject to mutual approval (it being understood and agreed that if the parties do not agree on the compensation amount, Manager will not be required to provide the construction management services being requested). The construction management fee shall not include architectural or permit fees or general contractor's overhead or profit, whether or not stated. If general contractor's overhead and profit is not stated, it will be assumed to be ten percent (10%).

Notwithstanding anything in the foregoing to the contrary, any construction management fee payable to Manager by Owner shall be reduced by the amount of fees paid (i) to Manager by a tenant of the Property, if a tenant requests Manager's supervision of Tenant's construction and (ii) to third-party consultants and experts hired by Owner in connection with the supervision of any such construction.

(d) Manager shall receive no compensation or reimbursement of any kind or nature except as expressly provided in this Article 4. Manager further agrees that, notwithstanding any other writing or agreement to the contrary, neither Manager nor any Affiliate or principal thereof shall be entitled to any acquisition fee, commission or other compensation on account of Owner's acquisition of the Property. Notwithstanding the foregoing, nothing herein shall prohibit Manager from receiving a leasing commission for lease renewals or extensions from any broker for the Property pursuant to a side agreement between Manager and such broker provided Manager was actively engaged in negotiating such lease renewal or extension with such tenant (but nothing herein shall require Owner to pay any amounts in excess of the amounts payable by the third-party broker).

5. Term. Subject to Article 6, the employment of Manager shall commence on the Effective Date and shall continue for a period of two (2) years (the "Initial Expiration Date"). If this Agreement has not been terminated in accordance with the provisions in this Article 5 or Article 6, it will be deemed renewed on an annual basis, subject to the termination rights in Article 6.

6. Termination.

(a) Anything herein to the contrary notwithstanding, from and after the Initial Expiration Date, this Agreement and Manager's term of employment under this Agreement may be terminated by Owner for any reason, in its sole and absolute discretion, at any time, upon not less than thirty (30) days prior written notice to Manager.

(b) This Agreement and Manager's term of employment under this Agreement may be terminated by Owner at any time immediately (including prior to the Initial Expiration Date) upon the occurrence of any of the following events:

(i) the fraud, gross negligence or willful misconduct on the part of Manager; or

(ii) the sale of all, or substantially all of the Property by Owner; or

(iii) default by Manager in the performance of a particular obligation under this Agreement which is not cured within thirty (30) days written notice thereof; or

(iv) as required by a Lender (as defined below); or

(v) a "Manager Termination Event" occurs under the operating agreement for Owner.

(c) Manager may terminate this Agreement in the event of a default by Owner which is not cured within thirty (30) days written notice thereof, provided that such default is

capable of being cured within a thirty (30) day period. If the default cannot be cured within a thirty (30) day period, the right to cure shall continue for as long as necessary to cure said default, provided that the defaulting party begins to cure within thirty (30) days and continues its efforts in good faith.

(d) Upon termination of Manager or expiration of this Agreement, all management fees accrued through the effective date of termination shall be paid to Manager, and all property of Owner in Manager's possession or control, including all security deposits, bank deposits, books of account and records, computer files, leases, correspondence, service contracts, warranties and all invoices (together with copies of all checks in payment thereof) shall be delivered to Owner within three (3) business days after such termination or expiration and Manager's authority to act for Owner shall immediately cease.

(e) Notwithstanding the foregoing, the assignment for the benefit of creditors, appointment of a receiver, or filing of a voluntary petition in bankruptcy by Manager shall immediately terminate this Agreement with no right to cure. If a petition in bankruptcy is filed against a party hereto, such party shall have ninety (90) days to dismiss such petition before the other party may terminate this Agreement.

7. Owner’s and Manager's Insurance Coverage.

(a) Manager shall procure and maintain, at Manager's sole cost and expense, general liability insurance covering the on-site management office and off-site operations, issued by an insurance company licensed in the State in which the Property is located and acceptable to Owner, which has combined single limit coverage of $2,000,000 for bodily injury and property damage, per occurrence, with a $2,000,000 general aggregate.

(b) Manager shall, at Manager's sole cost and expense, provide and maintain throughout the term hereof workmen's compensation and unemployment compensation for Manager’s employees in full compliance with all applicable state and federal laws and regulations.

(c) Manager shall, at Manager's sole cost and expense, maintain in full force and effect comprehensive automobile liability insurance coverage for Manager’s employees which has combined single limit coverage of $2,000,000, per occurrence. The comprehensive automobile liability policy shall include blanket non-owned coverage.

(d) Manager shall, at Manager's sole cost and expense, maintain in full force and effect an “umbrella” liability coverage providing coverage in the amount of $5,000,000 (if such amount can be obtained pursuant to applicable state law) in excess of the coverages to be maintained pursuant to Subparagraphs 7(a), (b), and (c) hereof.

(e) Owner shall have the right to require Manager to obtain and maintain, at Manager's sole cost and expense, such other insurance as Owner may from time to time deem reasonably necessary and which insurance is normal and customary and generally available for managing agents for properties similar to and located in the vicinity of the Property.

(f) Manager shall furnish Owner with certificates of insurance evidencing the insurance coverage required to be obtained and maintained by Manager pursuant to the terms of this Agreement. Owner shall be named as additional insured on the Commercial General Liability

Policy. Such policies shall not be canceled or otherwise modified without thirty (30) days' prior written notice to Owner. At least fifteen (15) days prior to the expiration of any such policy Manager shall furnish Owner with evidence that the insurance policies required hereunder have been renewed.

(g) Owner, at Owner's expense, shall cause to be placed and kept in force property damage insurance including windstorm coverage in the amount of the full replacement cost of the Property, and such other property insurance as Owner may elect, at Owner's expense. Owner, at Owner's expense, shall carry and maintain primary commercial general liability insurance and blanket contractual liability insurance on an "occurrence" basis, naming Manager as an additional insured (through endorsements in form and substance satisfactory to Manager), with limits of not less than Five Million Dollars ($5,000,000) per occurrence. Owner shall provide to Manager a Certificate of Insurance evidencing such coverage. Owner shall provide to Manager a Certificate of Insurance evidencing such coverage upon Manager's request therefor. Owner's policies shall be primary to any and all separate insurance policies maintained by Manager, and any such separate insurance by Manager shall not contribute with such insurance policies maintained by Owner with respect thereto. Such policies shall not be canceled or otherwise modified without thirty (30) days' prior written notice to Manager. At least fifteen (15) days prior to the expiration of any such policy, Owner shall furnish Manager with evidence that the insurance policies required hereunder have been renewed.

8. Indemnity.

(a) Owner hereby agrees to indemnify and hold Manager, its members, principals, officers, directors, agents, and employees harmless from and against any and all liabilities, claims, suits, fines, penalties, damages, judgments, losses, fees, costs and expenses (including reasonable attorneys' fees and court costs) incurred by or asserted against Manager, its members, principals, officers, directors, agents or employees which arise out of the management, operation or condition of Property or Manager's performance of Manager's duties and activities when Manager is acting in accordance with or pursuant to the terms and provisions of this Agreement or acting under the express direction of Owner.

(b) Manager hereby agrees to indemnify and hold Owner and its members, principals, officers, directors, agents and employees, harmless from and against any and all liabilities, claims, suits, fines, damages, judgments, losses, fees, costs and expenses (including reasonable attorneys' fees and court costs) incurred by or asserted against Owner, its members, principals, officers, directors, agents or employees to the extent (i) caused by any acts by Manager which are either not authorized by this Agreement or by Owner or are in default of the terms of this Agreement, or (ii) caused by Manager's gross negligence hereunder.

(c) Notwithstanding anything to the contrary contained in this Agreement, Owner and Manager, for themselves and their respective insurers or any other party claiming through or under them by way of subrogation or otherwise, hereby waive and release each other of and from any and all right of recovery, claim, action, or cause of action against each other, their agents, officers and employees, for any loss or damage that may occur to the Property, improvements to the Property, or personal property within the Property, by reason of fire or the elements, or other casualty, regardless of cause or origin, including the negligence of the Owner indemnitees or the Manager indemnitees described above, to the extent the same is insured against

under insurance policies carried by Owner or Manager (or required to be carried hereunder) and agree that no insurer shall have any right of subrogation against the other such party.

(d) The provisions of this Section 8 shall survive the expiration or earlier termination of this Agreement.

9. Human Rights. Manager shall, in its procurement of goods and services, comply with all applicable Human Rights Laws (as defined herein). Manager acknowledges that pursuant to certain federal, state and local laws and the rules and regulations promulgated thereunder or pursuant thereto ("Human Rights Laws") applicable to the Property, it is illegal for an owner of property or the property manager acting on behalf of such owner to refuse to lease property or procure goods and services from any person because of personal characteristics, which characteristics may include race, color, religion, national origin, sex, marital status, sexual orientation, age or physical disability, as specified in the Human Rights Laws applicable to the Property. Owner and Manager each agree to comply with all Human Rights Laws applicable to the Property.

10. Lender Provisions. All fees payable to Manager shall be subordinate to the payment of all debt service obligations under any loan or preferred equity investment (any such loan or investment, a "Loan") secured by the Property or an indirect or direct interest in the Property, if required by any mortgage lender, mezzanine lender or preferred equity investor (any such party, a "Lender"). Manager will reasonably cooperate in executing any additional agreements to document the above if required by a Lender. Subject to the terms of this Section 10 hereof, Manager agrees that a Lender shall have the right, upon notice to Manager and Owner at any time after the occurrence and during the continuance of an event of default under a loan, to be substituted for Owner under this Agreement and to continue to employ Manager in accordance with the terms of this Agreement. A Lender shall have the right to terminate this Agreement upon notice to Manager and Owner at any time as more particularly set forth in the loan documents securing such Loan.

11. Avoidance of UBTI. Notwithstanding any provision to the contrary, any provision of this Agreement or any action by Manager that might cause a direct or indirect beneficial owner in Owner to recognize "unrelated business taxable income" within the meaning of Internal Revenue Code ("Code") Sections 511-514 ("UBTI") as a result of its direct or indirect investment in Owner shall be (i) void and of no effect or (ii) reformed, as necessary, to avoid such potential recognition of UBTI. Manager shall use its commercially reasonable efforts not to cause UBTI to occur, provided that Manager shall not be liable for any income or other taxes, damages or costs incurred by Owner be reason of recognition of UBTI.

12. REIT Protection.

(a) While the Manager shall not be required independently to determine whether any transaction or arrangement would adversely affect the ability of any "Owner Affiliate" (as defined below) to qualify as a REIT or would result in the Owner holding any assets other than "real estate assets" as defined in Section 856(c)(5)(B) of the Code ("Non-REIT Assets") or generating income which would not qualify under Section 856(c)(3) and 856(d) of the Code ("Non-REIT Income") if such income were earned by any Owner Affiliate directly, if the Manager has actual knowledge, or is otherwise informed by any Owner Affiliate in the exercise of such

Owner Affiliate's reasonable judgment, that a transaction or arrangement could have an adverse effect on Owner Affiliate's ability to qualify as a REIT or could result in the Owner holding Non-REIT Assets or generating Non-REIT Income, the Manager shall take such actions (or refrain from taking such actions) as are reasonably required to protect the Owner Affiliate's REIT status or to avoid the Owner's receipt of such Non-REIT Income and/or Non-REIT assets (as the case may be); provided, however, that: (i) the Manager shall not be required to incur any expense or liability hereunder; and (ii) the terms of this paragraph shall not limit any of the specific restrictions on the authority of the Manager set forth elsewhere in this Agreement.

(b) For purposes of this Section 12, "Owner Affiliate" shall mean, when used with reference to the Owner, (a) any Person (as defined below) that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Owner, and (b) any Person which directly or indirectly is the beneficial owner of ten percent (10%) or more of any class of equity securities, partnership interests or other ownership interests in the Owner or of which the specified Person is directly or indirectly the owner of ten percent (10%) or more of any class of equity securities, partnership interests or other ownership interests. For the purposes of this definition, "control" means the power to direct the management and policies of such Person, directly or through one or more intermediaries, whether through the ownership of voting securities, by agreement or otherwise, and the term "controlled" has the meaning correlative to the foregoing. "Person" shall mean any corporation, trust, business trust, or association and the assigns thereof, where the context so requires.

13. General Provisions.

(a) Notices. All notices hereunder to Owner or Manager shall be sent by certified or registered mail, return receipt requested, or may be sent by Federal Express or other nationally recognized overnight courier which obtain signature upon delivery.

OWNER:	c/o DRA Advisors LLC 220 East 42nd Street (27th Floor) New York, New York 10017 Attention: Dean Sickles Facsimile: 212-697-7403
With a copy to:	Blank Rome LLP 405 Lexington Avenue New York, New York 10174 Attention: Martin Luskin, Esquire Facsimile: (917) 332-3714
MANAGER:	c/o M & J Wilkow Properties, LLC 20 South Clark Street, Suite 3000, Chicago, Illinois 60603 Attention: Marc R. Wilkow Email: mwilkow@wilkow.com
With a copy to:	c/o M & J Wilkow Properties, LLC 20 South Clark Street, Suite 3000,

Chicago, Illinois 60603
Attention: David S. Eisen
Email: deisen@wilkow.com

Notices shall be deemed served three (3) days after mailing, and in the case of overnight courier on the date actually delivered to the intended recipient, except for notice(s) which advise the other party of a change of address of the party sending such notice, which notice shall not be deemed served until actually received by the party to whom such notice is addressed or delivered if refused by such party.

(b) Limitation of Liability. Notwithstanding any provision contained herein to the contrary: (i) the liability of Owner arising under or in connection with this Agreement is strictly limited to and shall be enforceable only out of the Property and the income and rents therefrom and Owner shall not have any personal liability hereunder, and (ii) in no event shall any employee, agent, attorney, officer, director, shareholder or other principal of Manager have any personal liability under this Agreement.

(c) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(d) No Partnership. Owner shall not and by this Agreement in any way or for any purpose become a partner of Manager in the conduct of its business, or otherwise, or a joint venture of or a member of a joint enterprise with Manager or vice versa. It is agreed by the parties that either party may engage in any other business or investment, including the ownership or investment in real estate and the operation and management of property similar to the Project, and that the other party hereto shall have no rights in and to any such business or investment or the income or profit derived therefrom.

(e) Modifications. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall there be any waiver of any term or conditions in the future, unless such change or modification or waiver shall be in writing and signed by both parties.

(f) Binding Effect. Subject to the provisions hereof, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their legal representatives, transferees, successors and assigns.

(g) Waiver of Liens. To the extent permitted by law, Manager hereby waives all right to assert a lien against the Property under any mechanic's lien law or similar law in the state in which the Property is located.

(h) Captions and Definitions. The captions to the paragraphs in this Agreement are included for convenience only and are not intended and shall not be deemed to modify or explain any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in separate counterparts, each of which shall be an original of this Agreement and all of which, taken together, will constitute the entire Agreement between the parties hereto.

(j) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(k) Assignment. Manager may not assign this Agreement or delegate any of its duties hereunder without the prior written consent of Owner in each instance, which consent Owner may withhold in its sole discretion. No assignment of this Agreement shall relieve Manager from any obligations set forth herein. Owner may assign this Agreement to any purchaser of the Property or any other person or entity without the consent of Manager.

(l) Attorneys' Fees. If any party obtains a judgment against any other party by reason of breach of this Agreement, a reasonable attorneys' fee as fixed by the court shall be included in such judgment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

OWNER:

G&I IX MJW LAKE POINTE III & IV LLC,
a Delaware limited liability company

By: G&I IX INVESTMENT LAKE POINTE LLC, its managing member

By: _____
Name: Valla Brown
Title: Vice President

MANAGER:

M & J WILKOW PROPERTIES, LLC
By: M & J Wilkow, Ltd., its manager

By: _____
Name: Marc R. Wilkow
Title: President

EXHIBIT A

Manager shall submit the following reports to Owner in accordance with the schedule outlined below. All reports shall be submitted electronically and (or some other electronic format reasonably acceptable to Owner) uploaded to Owner's website:

On or before ten (10) days after the closing of the Property's books for a month

1. An electronic copy of the computer Data Base from the MRI System for Windows of Property Management Records and (closed for the previous month) GL/AP Records.

By the 10th Day of the Month

1. Executive Summary, which shall include, but not be limited to, the following sections:

a. Operational/General Occupancy Issues
b. Financial overview snapshot
c. Year End Forecast Summary
d. Variance Analysis-- for the month and YTD as presented in the Comparative Income Statement, to include detailed explanations and indications of timing vs. permanent status
e. Leasing narrative overview including market information
f. Leasing Activity Report, to include prospects, terms, probability
g. Accounts receivable narrative
h. Litigation/Claims Status
i. Tenant Issues
j. Construction Update—status of capital and tenant improvements with comparison of act to budget
k. Special Items
l. Monthly Property Inspection checklist, if applicable
m. Vacant Space Condition Report
n. Tenant Insurance Status
o. Parking Report (either internal or from Garage Operator if applicable)

2. Financial Statements and Support, including:

a) Comparative Income Statement (single property and consolidated) showing year to date and current month results, including detailed Profit and Loss Statement showing (i) income and expense amounts and (ii) capital expenses compared to budget.
b) Balance Sheet (single property and consolidated)
c) Receivables Ledger

d) Cash Receipts Journal
e) Cash Flow-Detail
f) Check Register
g) Year-to-Date General Ledger
h) Trial Balance (single property and consolidated)
i) Delinquency Aging Report
j) Management Fee – Detail and support for current month and YTD
k) Statement Reconciliation Report & Bank Statements
l) Monthly Reforecast Net Cash Flow Summary
m) Copies of Invoices above $1,000

3. Tenant Information
   a) Rent Roll
   b) Lease Options Report
   c) Lease Expiration Report

<u>By the end of each Calendar Quarter</u>

1. Quarterly Budget Variance Report with explanations for deviations from approved budget
2. Trial Balance (in excel)

<u>Annually</u>

1. CAM/Operating Escalation Reconciliation with all pertinent back-up documentation by February 10 (on the form provided by Owner)

2. Operating and Capital Budgets by October 1 or date set by Owner

3. Audit support schedules including but not limited to:
   a) accruals
   b) straight-line rent adjustments
   c) minimum rent
   d) depreciation of fixed assets and amortization of deferred costs
   e) cash reconciliation of all accounts as of December 31st
   f) 12/31 Trial Balance with activity for the year

EXHIBIT B

Vendors Insurance Requirements

• Coffee and snack services • Delivery of restroom paper products and janitorial supplies (delivery to on-floor janitor's closets and stock rotation, rather than drop-ship at dock) • Office supplies and copy paper	• Information system installation and maintenance services • Emergency generator maintenance • Portable handheld radio maintenance • Office equipment maintenance (Management Office) • Tenant Improvement or base building work exclusive of work performed by General Contractors or MEP Prime Contractors. (Interior work only. No work affecting the building structure). • Movers • Overhead garage door maintenance • Pest control services • Landscaping services (no heavy equipment and/or use of chemicals) • Carpet cleaning services • Credit/personal background investigation and verification • Payroll services • Incident/accident investigation • Sign Installation (contemplates small signage with little or no possibility of bodily injury or significant property damage) • IS technical services	• Roof maintenance • HVAC maintenance • Security services • Parking service • Water treatment • Janitorial services • Landscaping services (use of heavy equipment and/or chemicals) • Sign Installation (contemplates large signage where possibility of bodily injury or significant property damage exists) • Paring facility consultants • MEP Engineering Consultants • Architects/Architectural Consultants • Structural Engineering Consultants	• Elevator maintenance • Elevator consultants • Window washing and rig maintenance • Life safety maintenance • Fire sprinkler systems • Central safety monitors • General Construction: Tenant Improvement or base building work performed by General Contractors or MEP Prime Contractors. (Interior work only. No work affecting the building structure.) • Environmental remediation including, but not limited to, asbestos, lead paint and underground storage	• General Construction: Exterior work or work affecting the building structure.

	• IS technical services • Energy/utility service consultants • Management consultants • Human resources consultants • Legal service consultants • Access control system maintenance • Locksmith • Lobby arts • Employee leasing, staffing or personnel agencies			

Minimum Limits:	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits***
Commercial General Liability: $1,000,000 Each Occurrence $2,000,000 General Aggregate – Per Location/Project $2,000,000 Products/Completed Operations Aggregate **Workers Compensation:** Statutory Limits Employers Liability: $1,000,000 Bodily Injury for Each Accident/$1,000,000 Bodily Injury by Disease for Each Employee/$1,000,000 Bodily Injury Disease Aggregate Including Waiver of Subrogation in Favor of Additional Insureds shown below **Automobile Liability:** $1,000,000 Combined Single Limit – Each Accident for owned, non owned & hired autos **Umbrella Liability:** $1,000,000 per Occurrence/Aggregate. **Additional Insureds** to be included on all policies except Workers' Compensation/Employers Liability: DRA Advisors, Building Owner and any other party specified by DRA on a primary basis. **On All Policies:** 30 Days notice of cancellation, except 10 Days for non-payment of premium.	**Commercial General Liability:** $1,000,000 Each Occurrence $2,000,000 General Aggregate – Per Location/Project $2,000,000 Products/Completed Operations Aggregate **Workers Compensation:** Statutory Limits Employers Liability: $1,000,000 Bodily Injury for Each Accident/$1,000,000 Bodily Injury Disease for Each Employee/$1,000,000 Bodily Injury Disease Aggregate Including Waiver of Subrogation in Favor of Additional Insureds shown below **Automobile Liability:** $1,000,000 Combined Single Limit – Each Accident for owned, non owned & hired autos **Umbrella Liability:** $2,000,000 per Occurrence/Aggregate. **Special Requirement for IS installation and maintenance:** Errors and Omissions Liability, $2,000,000 per Occurrence/Aggregate, if they could disrupt operations and cause lost business. **Special Requirement for locksmith:** $2,000,000 Fidelity Bond, naming DRA Advisors, Building Owner and	**Commercial General Liability:** $1,000,000 Each Occurrence $2,000,000 General Aggregate – Per Location/Project $2,000,000 Products/Completed Operations Aggregate **Workers Compensation:** Statutory Limits Employers Liability: $1,000,000 Bodily Injury for Each Accident/$1,000,000 Bodily Injury Disease for Each Employee/$1,000,000 Bodily Injury Disease Aggregate Including Waiver of Subrogation in Favor of Additional Insureds shown below **Automobile Liability:** $1,000,000 Combined Single Limit – Each Accident for owned, non owned & hired autos **Umbrella Liability:** $5,000,000 per Occurrence/Aggregate. **Special Requirement for security services:** 1) Commercial General and Umbrella Liability policies must include Personal Injury coverage with same limits as required above. 2) $2,000,000 Fidelity Bind, naming DRA Advisors, Building Owner and any other party specified by DRA as obligee. 3) Errors & Omissions: $5,000,000 per Occurrence &	**Commercial General Liability:** $1,000,000 Each Occurrence $2,000,000 General Aggregate – Per Location/Project $2,000,000 Products/Completed Operations Aggregate (Pollution liability exclusion must not apply to products/completed operations coverage or a separate Pollution Liability policy must be provided.) **Workers Compensation:** Statutory Limits Employers Liability: $1,000,000 Bodily Injury for Each Accident/$1,000,000 Bodily Injury by Disease for Each Employee/$1,000,000 Bodily Injury Disease Aggregate Including Waiver of Subrogation in Favor of Additional Insureds shown below **Automobile Liability:** $1,000,000 Combined Single Limit – Each Accident for owned, non owned & hired autos **Umbrella Liability:** $10,000,000 per Occurrence/Aggregate. **Special Requirement for contractors that present pollution exposure** (i.e., hydraulic elevators, environmental contracts, construction projects where asbestos, lead paint, etc. is present.): a separate pollution liability policy should be required with minimum limits of $5,000,000	**Commercial General Liability:** $1,000,000 Each Occurrence $2,000,000 General Aggregate – Per Location/Project $2,000,000 Products/Completed Operations Aggregate (Pollution liability exclusion must not apply to products/completed operations coverage or a separate Pollution Liability policy must be provided.) **Workers Compensation:** Statutory Limits Employers Liability: $1,000,000 Bodily Injury for Each Accident/$1,000,000 Bodily Injury by Disease for Each Employee/$1,000,000 Bodily Injury Disease Aggregate Including Waiver of Subrogation in Favor of Additional Insureds shown below **Automobile Liability:** $1,000,000 Combined Single Limit – Each Accident for owned, non owned & hired autos **Umbrella Liability:** $10,000,000 - $25,000,000 per Occurrence/Aggregate – Property Managers to evaluate limit requirements in coordination with Regional Manager of Property Management and Regional Manager of Construction based upon work being performed. **Special Requirement for contractors that present**

Minimum Limits:	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits***
All Insurers to be rated "A-VIII"or higher by A.M. Best.	any other party specified by DRA as obligee **Special Requirement for lobby arts** If responsible for transport, a Fine Arts Floater to cover the actual value in excess of the bill of lading **Special Requirement for employee leasing, staffing or personnel agencies** Employment Practices Liability $3,000,000 per Occurrence & Aggregate **Special Requirement for movers** Bailee's floater to the full replacement cost of DRA property in care, custody and control of mover. **Special Requirement for credit/personal background investigation and verification:** Commercial General Liability and Umbrella Liability policies must include Personal Injury coverage with same limits as required above **Special Requirement for payroll services:** $2,000,000 Fidelity Bond, naming DRA Advisors Building Owner and any other party specified by DRA as obligee. **Special Requirement for HR consultants, IS programmers, management consultants, legal consultants, risk management consultants:** Error & Omissions Liability: $5,000,000 per Occurrence/Aggregate ("Claims-made" coverage acceptable with 3	Aggregate. ("Claims-made" coverage is acceptable with 3 year extended reporting and coverage.) **Special Requirement for parking services:** 1) $1,000,000 Garage Liability in lieu of General Liability and Automobile Liability (Must be scheduled onto the Umbrella with Additional Insured included) 2) $1,000,000 Garage keepers Legal Liability 3) If parking services include collecting money: $2,000,000 Fidelity Bond, naming DRA Advisor, Building Owner and any other party specified by DRA as obligee. **Special Requirement for contractors that present pollution exposure** (i.e., landscaping with the use of chemicals, water treatment contracts, etc.) : a separate pollution liability policy should be required with minimum limits of $5,000,000 per occurrence/aggregate. ("Clams-made" coverage acceptable with 3 year extended reporting and coverage) **Additional Insureds** to be included on all policies except Workers' Compensation/Employers Liability: DRA Advisors, Building Owner and any other party specified by DRA on a primary basis. **On All Policies:** 30 Days notice of cancellation, except 10 Days for non-payment of premium.	per occurrence/aggregate. ("Clams-made" coverage acceptable with 3 year extended reporting and coverage) **Additional Insureds** to be included on all policies except Workers' Compensation/Employers Liability: DRA Advisors, Building Owner and any other party specified by DRA on a primary basis. **On All Policies:** 30 Days notice of cancellation, except 10 Days for non-payment of premium. **All Insurers to be rated "A-VIII"or higher by A.M. Best.**	**pollution exposure** (i.e., construction projects where asbestos, lead paint, etc. is present.): a separate pollution liability policy should be required with minimum limits of $5,000,000 per occurrence/aggregate. ("Claims-made" coverage acceptable with 3 year extended reporting and coverage) **Additional Insureds** to be included on all policies except Workers' Compensation/Employers Liability: DRA Advisors, Building Owner and any other party specified by DRA on a primary basis. **On All Policies:** 30 Days notice of cancellation, except 10 Days for non-payment of premium. **All Insurers to be rated "A-VIII"or higher by A.M. Best.**

Minimum Limits:	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits:***	***Minimum Limits***
	year extended reporting and coverage) **Special Requirement for human resource consultants:** If the human resource consultant could be accused of libel or slander, verify that Personal Injury is provided in the CGL and the Umbrella. **Additional Insureds** to be included on all policies except Workers' Compensation/Employers Liability: DRA Advisors, Building Owner and any other party specified by DRA on a primary basis. **On All Policies:** 30 Days notice of cancellation, except 10 Days for non-payment of premium. **All Insurers to be rated "A-VIII"or higher by A.M. Best.**	**All Insurers to be rated "A-VIII"or higher by A.M. Best.**		

EXHIBIT C

O & M Plan

WATER INTRUSION AND ENVIRONMENTAL HAZARD PREVENTION, OPERATION AND MANAGEMENT PROGRAM FOR DESIGNATED COMMERCIAL PROPERTIES

For the Project identified as:

8470 & 8520 Allison Pointe Boulevard, Indianapolis IN

and the Property Manager identified as:

M & J Wilkow Properties, LLC

TABLE OF CONTENTS

WATER INTRUSION AND ENVIRONMENTAL HAZARD PREVENTION, OPERATION AND MANAGEMENT PROGRAM FOR DESIGNATED OFFICE PROPERTIES

Section I

Introduction

A. This Water Intrusion and Environmental Hazard Prevention, Operations and Management Program for Designated Office Properties ("O&M Program") is intended to be the minimum guidelines and requirements for the property manager ("Manager") for the office and shopping center project identified on the cover page hereto ("Project") for the maintenance of the building envelope and weather-tightness of the Project, the prevention of water intrusion into interior spaces, the removal of water that may have intruded into spaces or resulted from excess humidity, and the prevention of mold, bacteria, and other contamination ("Microbial Contamination") and the prevention of contamination of the Project by other environmental hazards (collectively, the foregoing are referred to herein as the "Environmental Hazards"). The Manager is solely responsible for the implementation of the O&M Program for the Project.

B. The Manager shall develop, have approved by the Owner, and implement such more stringent and protective measures and guidelines as appropriate for the Project, based on its age, type and quality of construction, history of water intrusion, unique or problematic design elements, uses or tenants which may present particular concerns, and local climate and conditions, and as necessary to comply with federal, state, and local ("Governmental Authority") laws, regulations, ordinances and codes, adopted from time to time, applicable to the management of water intrusion, Microbial Contamination, and other Environmental Hazards ("Applicable Laws").

Section II

Mandatory Lease Provisions and Educational Manual

A. The Manager shall ensure that all leases for spaces within the Project entered into following the Effective Date ("**Leases**") incorporate terms reasonably acceptable to Owner regarding Tenant's responsibilities for water intrusion and environmental hazard prevention.

B. The Manager shall make periodic recommendations to the Owner for any modifications to the O&M Program based upon the Manager's experience at the Project or through the implementation of the O&M Program.

Section III

Training and Appointment of Key Personnel

A. The Manager shall designate persons at the Project and in Manager's regional office responsible for the Project to be responsible for the implementation and supervision of this O&M Program ("**Key Personnel**"). The Key Personnel shall act as a team to implement and supervise this O&M Program and the Manager shall appoint at least two (2) of the Key Personnel to be "Supervisors" responsible for the performance of the Key Personnel and to address all water intrusion, Microbial Contamination, Environmental Hazards, and other emergency events at the Project. The Supervisors must have management level supervision and shall not be administrative or clerical personnel. The Manager shall notify the Owner in writing of all Key Personnel, the Supervisors, and their contact information, including after-hours and weekend contact information.

B. The Manager shall enroll the Key Personnel in training programs for prevention and management of water intrusion and for the prevention and management of Microbial Contamination and other Environmental Hazards. The training programs shall be accredited by recognized organizations specializing in such issues. The Key Personnel shall also attend any periodic educational programs or seminars that the Owner may elect, in its sole discretion, to sponsor or recommend for its property managers. If mandatory certification or licensing requirements are imposed by Governmental Authority for assessment or remediation of Microbial Assessment, at least one of the Key Personnel for the Project shall be so certified or licensed unless such requires substantial experience in the assessment or remediation of Microbial Contamination.

C. The Manager shall provide on-site staff that are not Key Personnel with training necessary to carry out their responsibilities with respect to addressing reports of water intrusion, building envelope defects and Microbial Contamination, Environmental Hazards, communicating with Tenants, and internal procedures for the implementation of the O&M Program. Untrained staff shall not communicate with tenants as to the assessment, management or remediation of Microbial Contamination.

Section IV

Inspections and Reporting

A The Manager shall cause the Key Personnel to perform periodic inspections of the Project looking for evidence of defects in or a breach of the building envelope, water intrusion events or evidence of Microbial Contamination or other Environmental Hazards at such intervals as appropriate for the age type, quality of construction, history of water intrusion, unique or problematic design elements, uses and tenants, and local climate conditions. The Manager shall maintain reports showing the results of such inspections. The Manager shall promptly forward a copy of such report to the Owner in substantially the form annexed hereto as **Exhibit "B"** ("**Inspection Report(s)**"). Delivery of the reports to the Owner shall not relieve the Manager of its obligation to implement and comply with this O&M Program. The inspections shall, as appropriate for the level and type of Microbial Contamination or other Environmental Hazard found, include the tasks set forth on **Exhibit "C"** annexed hereto.

B. If the Manager should discover a water intrusion event, evidence of a breach of the building envelope, or evidence of Microbial Contamination or other Environmental Hazard, or if any of such should be reported by a Tenant, the Manager shall immediately implement the Maintenance Procedures or the Response Protocol, as applicable, as defined in and described in Section V.

Section V

Maintenance Procedures and Response Reporting

A If the Manager discovers as part of its inspections a breach of the building envelope or a water intrusion event or if such shall be reported to the Manager by a tenant or Manager's maintenance personnel, the Manager shall take immediate measures in accordance with good workmanship and practice to repair or correct the breach or defect and to remove any water intrusion.

B Except for minor, insubstantial water intrusion events that Manager reasonably determines may be removed and dried out by Manager's personnel, or due to events that are the sole responsibility of the tenant under the applicable lease, all water intrusion should be removed and the premises dried out by a licensed and qualified restoration or "dry out" company. All porous, absorbent, and cellulose-based products, components, including without limitation, carpet, drywall, cabinets, furnishings and wood components should be immediately dried or, if the water absorption is too great to dry out, such shall be removed and replaced if such indicates the possible presence of significant Microbial Contamination. If such event is the responsibility of the tenant to remedy, the Manager shall cause the tenant to engage such licensed and qualified restoration or "dry out" company. The Manager shall require that the restoration or "dry out" company deliver a final clearance report showing that it has successfully dried the water intrusion. Such report shall be promptly forward to the Owner.

C If the Manager should discover or if a tenant or maintenance personnel should report or claim that a portion of the Project should contain or is alleged to contain Microbial Contamination or other Environmental Hazard, the Manager shall issue an Environmental Response Report to the Owner identifying that such discovery or report and shall follow the procedures set forth on **Exhibit "D"** annexed hereto. Upon receipt of the Environmental Response Report, if such indicates the possible presence of significant Microbial Contamination, the Owner shall direct the Manager of the procedures to be followed in the event of such Microbial Contamination.

D In the event of such minor Microbial Contamination (such as small areas of mold on drywall resulting from small leaks which has not spread and does not contaminate any wall cavity), Manager shall cause such to be removed in accordance with the more stringent of the New York City Department of Health & Mental Hygiene Bureau of Environmental & Occupational Disease Epidemiology Guidelines on Assessment and Remediation of Fungi in Indoor Environments ("New York City Guidelines") a copy of which are annexed hereto as **Exhibit "E"**, as such may be amended from time to time, such industry standards as may become accepted in connection with the remediation of Microbial Contamination, and any Applicable Laws. A report of the completion of such remediation shall be delivered to the Owner.

E Upon the receipt of the Environmental Response Report which indicates the possible presence of significant Microbial Contamination or other Environmental Hazard, the Owner will elect the preferred methods of investigating the condition. If after reviewing the Environmental Response Report, the Owner elects to have the Manager to perform any necessary remediation, the Manager shall follow the procedures set forth on **Exhibit "F"** annexed hereto.

EXHIBIT “A”

INTENTIONALLY DELETED

EXHIBIT “B’

INSPECTION AND INCIDENT REPORTING FORM

Apt. #	**Reported by:**	**Date**	**Condition Reported**	**Action Taken**	**Follow-Up Date**	**Follow Up Action**

EXHIBIT C

INSPECTION ITEMS

Look for leaky plumbing, water heaters, washer drain lines.

Look for leaks in the building envelope, at windows, doors, roofs.

Look for condensation and wet spots, particularly on ceilings, on walls, AC vents.

Address excessive humidity levels in units, which must be maintained below 60% relative humidity (RH), but preferably between 40-50%, if possible.

Look for condensation, or evidence of mold in heating, ventilation, and air conditioning (HVAC) drip pans and check condensate lines to ensure that such are clean, flowing properly, and unobstructed.

Make sure that moisture-generating appliances are properly vented to the outside.

Look for staining or indicators of Microbial Contamination.

Make sure filters are replaced regularly with high-quality filters.

Clean and dry wet or damp spots within 48 hours.

Check irrigation pipes close to walls, sprinkler spray radii, foundation leaks, and planter leaks.

Identify extent conditions favorable for mold growth, including moisture intrusion in porous materials, such as ceiling tiles, gypsum wallboard, cardboard, duct liner, wood, carpet, paper, and other cellulose-based materials. The use of a moisture meter, to measure the saturation in building materials, is useful in evaluating the extent of water damage and determining when the appropriate moisture level has been restored. Under further investigation, it may be necessary to look inside of wall cavities or filter areas to determine the extent at any water damage or mold growth.

Look for visible evidence of mold on drywall, vents, on ceilings and other areas prone to water intrusion or excessive humidity. Identify any earthy or musty odor, which may also indicate that mold is present.

Check for improperly cycling HVAC systems, or improper use by the residents. Verify compliance with maintenance guidelines based on manufacturer’s specifications (including appropriate settings, filter changes, proper filter types and cleaning).

Look for access points into building envelope in which birds may enter. Look for signs of bird droppings or fecal matter.

Look for evidence of improper disposal of chemicals by tenants, such as drycleaners, hair and nail salons, and other tenants that use chemicals in their business operations.

Tenants which engage in any medical practice must comply with all requirements of applicable medical waste disposal laws, regulations and guidelines. Manager shall require that such tenants engage duly licensed and qualified companies specializing in removal of such waster and all containers for such waste shall be maintained by tenant and be secured from tampering.

EXHIBIT D

REPORTING REQUIREMENTS

Fill out a service request form and in doing so, record the observations of the Tenant regarding water intrusion events or other conditions that may be favorable to mold growth, or whether the Tenant believes mold growth is present. If a health concern is expressed or property damage is reported, immediately contact the Owner and submit a Environmental Response Report. If the Tenant has obtained any test reports or studies, try to obtain a copy and immediately deliver a copy to the Owner.

All reports of alleged Microbial Contamination or Environmental Hazards must be treated as a priority and all communications to the Owner shall be by overnight courier or fax.

Complete the Incident Tracking Log annexed as **Exhibit "D".**

As noted above, identify the nature and extent of conditions favorable for Microbial Contamination or the presence of Microbial Contamination or other Environmental Hazard, if any. Determine the source of any water intrusion or excessive moisture.

If a source of water intrusion or excessive moisture is found, repair immediately and dry out in accordance with the procedures noted above.

EXHIBIT "E"

NEW YORK CITY GUIDELINES

New York City Department of Health & Mental Hygiene
Bureau of Environmental & Occupational Disease Epidemiology

(m)Guidelines on Assessment and Remediation of Fungi in Indoor Environments

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Executive Summary

On May 7, 1993, the New York City Department of Health (DOH), the New York City Human Resources Administration (HRA), and the Mt. Sinai Occupational Health Clinic convened an expert panel on *Stachybotrys atra* in Indoor Environments. The purpose of the panel was to develop policies for medical and environmental evaluation and intervention to address *Stachybotrys atra* (now known

as *Stachybotrys chartarum* (SC)) contamination. The original guidelines were developed because of mold growth problems in several New York City buildings in the early 1990's. This document revises and expands the original guidelines to include all fungi (mold). It is based both on a review of the literature regarding fungi and on comments obtained by a review panel consisting of experts in the fields of microbiology and health sciences. It is intended for use by building engineers and management, but is available for general distribution to anyone concerned about fungal contamination, such as environmental consultants, health professionals, or the general public.

We are expanding the guidelines to be inclusive of all fungi for several reasons:

- Many fungi (e.g., species of *Aspergillus, Penicillium, Fusarium, Trichoderma,* and *Memnoniella*) in addition to SC can produce potent mycotoxins, some of which are identical to compounds produced by SC. Mycotoxins are fungal metabolites that have been identified as toxic agents. For this reason, SC cannot be treated as uniquely toxic in indoor environments.

- People performing renovations/cleaning of widespread fungal contamination may be at risk for developing Organic Dust Toxic Syndrome (ODTS) or Hypersensitivity Pneumonitis (HP). ODTS may occur after a *single heavy* exposure to dust contaminated with fungi and produces flu-like symptoms. It differs from HP in that it is not an immune-mediated disease and does not require repeated exposures to the same causative agent. A variety of biological agents may cause ODTS including common species of fungi. HP may occur after repeated exposures to an allergen and can result in permanent lung damage.

- Fungi can cause allergic reactions. The most common symptoms are runny nose, eye irritation, cough, congestion, and aggravation of asthma.

Fungi are present almost everywhere in indoor and outdoor environments. The most common symptoms of fungal exposure are runny nose, eye irritation, cough, congestion, and aggravation of asthma. Although there is evidence documenting severe health effects of fungi in humans, most of this evidence is derived from ingestion of contaminated foods (i.e., grain and peanut products) or occupational exposures in agricultural settings where inhalation exposures were very high. With the possible exception of remediation to very heavily contaminated indoor environments, such high-level exposures are not expected to occur while performing remedial work.

There have been reports linking health effects in office workers to offices contaminated with moldy surfaces and in residents of homes contaminated with fungal growth. Symptoms, such as fatigue, respiratory ailments, and eye irritation were typically observed in these cases. Some studies have suggested an association between SC and pulmonary hemorrhage/hemosiderosis in

infants, generally those less than six months old. Pulmonary hemosiderosis is an uncommon condition that results from bleeding in the lungs. The cause of this condition is unknown, but may result from a combination of environmental contaminants and conditions (e.g., smoking, fungal contaminants and other bioaerosols, and water-damaged homes), and currently its association with SC is unproven.

The focus of this guidance document addresses mold contamination of building components (walls, ventilation systems, support beams, etc.) that are chronically moist or water damaged. Occupants should address common household sources of mold, such as mold found in bathroom tubs or between tiles with household cleaners. Moldy food (e.g., breads, fruits, etc.) should be discarded.

Building materials supporting fungal growth must be remediated *as rapidly as possible* in order to ensure a healthy environment. Repair of the defects that led to water accumulation (or elevated humidity) should be conducted in conjunction with or prior to fungal remediation. Specific methods of assessing and remediating fungal contamination should be based on the extent of visible contamination and underlying damage. The simplest and most expedient remediation that is reasonable, and properly and safely removes fungal contamination, should be used. Remediation and assessment methods are described in this document.

The use of respiratory protection, gloves, and eye protection is recommended. Extensive contamination, particularly if heating, ventilating, air conditioning (HVAC) systems or large occupied spaces are involved, should be assessed by an experienced health and safety professional and remediated by personnel with training and experience handling environmentally contaminated materials. Lesser areas of contamination can usually be assessed and remediated by building maintenance personnel. In order to prevent contamination from recurring, underlying defects causing moisture buildup and water damage must be addressed. Effective communication with building occupants is an essential component of all remedial efforts.

Fungi in buildings may cause or exacerbate symptoms of allergies (such as wheezing, chest tightness, shortness of breath, nasal congestion, and eye irritation), especially in persons who have a history of allergic diseases (such as asthma and rhinitis). Individuals with persistent health problems that appear to be related to fungi or other bioaerosol exposure should see their physicians for a referral to practitioners who are trained in occupational/environmental medicine or related specialties and are knowledgeable about these types of exposures. Decisions about removing individuals from an affected area must be based on the

results of such medical evaluation, and be made on a case-by-case basis. Except in cases of widespread fungal contamination that are linked to illnesses throughout a building, building-wide evacuation is not indicated.

In summary, prompt remediation of contaminated material and infrastructure repair is the primary response to fungal contamination in buildings. Emphasis should be placed on preventing contamination through proper building and HVAC system maintenance and prompt repair of water damage.

This document is not a legal mandate and should be used as a guideline. Currently there are no United States Federal, New York State, or New York City regulations for evaluating potential health effects of fungal contamination and remediation. These guidelines are subject to change as more information regarding fungal contaminants becomes available.

top of page

Introduction

On May 7, 1993, the New York City Department of Health (DOH), the New York City Human Resources Administration (HRA), and the Mt. Sinai Occupational Health Clinic convened an expert panel on *Stachybotrys atra* in Indoor Environments. The purpose of the panel was to develop policies for medical and environmental evaluation and intervention to address *Stachybotrys atra* (now known as *Stachybotrys chartarum* (SC)) contamination. The original guidelines were developed because of mold growth problems in several New York City buildings in the early 1990's. This document revises and expands the original guidelines to include all fungi (mold). It is based both on a review of the literature regarding fungi and on comments obtained by a review panel consisting of experts in the fields of microbiology and health sciences. It is intended for use by building engineers and management, but is available for general distribution to anyone concerned about fungal contamination, such as environmental consultants, health professionals, or the general public.

This document contains a discussion of potential health effects; medical evaluations; environmental assessments; protocols for remediation; and a discussion of risk communication strategy. The guidelines are divided into four sections:

1. Health Issues; 2. Environmental Assessment; 3. Remediation; and 4. Hazard Communication.

We are expanding the guidelines to be inclusive of all fungi for several reasons:

- Many fungi (e.g., species of *Aspergillus*, *Penicillium*, *Fusarium*, *Trichoderma*, and *Memnoniella*) in addition to SC can produce potent mycotoxins, some of which are identical to compounds produced by SC.[1, 2, 3, 4] Mycotoxins are fungal metabolites that have been identified as toxic agents. For this reason, SC cannot be treated as uniquely toxic in indoor environments.

- People performing renovations/cleaning of widespread fungal contamination may be at risk for developing Organic Dust Toxic Syndrome (ODTS) or Hypersensitivity Pneumonitis (HP). ODTS may occur after a *single heavy* exposure to dust contaminated with fungi and produces flu-like symptoms. It differs from HP in that it is not an immune-mediated disease and does not require repeated exposures to the same causative agent. A variety of biological agents may cause ODTS including common species of fungi. HP may occur after repeated exposures to an allergen and can result in permanent lung damage.[5, 6, 7, 8, 9, 10]

- Fungi can cause allergic reactions. The most common symptoms are runny nose, eye irritation, cough, congestion, and aggravation of asthma.[11, 12]

Fungi are present almost everywhere in indoor and outdoor environments. The most common symptoms of fungal exposure are runny nose, eye irritation, cough, congestion, and aggravation of asthma. Although there is evidence documenting severe health effects of fungi in humans, most of this evidence is derived from ingestion of contaminated foods (i.e., grain and peanut products) or occupational exposures in agricultural settings where inhalation exposures were very high.[13, 14] With the possible exception of remediation to very heavily contaminated indoor environments, such high level exposures are not expected to occur while performing remedial work.[15]

There have been reports linking health effects in office workers to offices contaminated with moldy surfaces and in residents of homes contaminated with fungal growth.[12, 16, 17, 18, 19, 20] Symptoms, such as fatigue, respiratory ailments, and eye irritation were typically observed in these cases.

Some studies have suggested an association between SC and pulmonary hemorrhage/hemosiderosis in infants, generally those less than six months old. Pulmonary hemosiderosis is an uncommon condition that results from bleeding in the lungs. The cause of this condition is unknown, but may result from a combination of environmental contaminants and conditions (e.g., smoking, other microbial contaminants, and water-damaged homes), and currently its association with SC is unproven.[21, 22, 23]

The focus of this guidance document addresses mold contamination of building components (walls, ventilation systems, support beams, etc.) that are chronically moist or water damaged. Occupants should address common household sources of mold, such

as mold found in bathroom tubs or between tiles with household cleaners. Moldy food (e.g., breads, fruits, etc.) should be discarded.

This document is not a legal mandate and should be used as a guideline. Currently there are no United States Federal, New York State, or New York City regulations for evaluating potential health effects of fungal contamination and remediation. These guidelines are subject to change as more information regarding fungal contaminants becomes available.

top of page

1. Health Issues

1.1 Health Effects

Inhalation of fungal spores, fragments (parts), or metabolites (e.g., mycotoxins and volatile organic compounds) from a wide variety of fungi may lead to or exacerbate immunologic (allergic) reactions, cause toxic effects, or cause infections.[11, 12, 24]

There are only a limited number of documented cases of health problems from indoor exposure to fungi. The intensity of exposure and health effects seen in studies of fungal exposure in the indoor environment was typically much less severe than those that were experienced by agricultural workers but were of a long-term duration.[5-10, 12, 14, 16-20, 25-27] Illnesses can result from both high level, short-term exposures and lower level, long-term exposures. The most common symptoms reported from exposures in indoor environments are runny nose, eye irritation, cough, congestion, aggravation of asthma, headache, and fatigue.[11, 12, 16-20]

The presence of fungi on building materials as identified by a visual assessment or by bulk/surface sampling results does not necessitate that people will be exposed or exhibit health effects. In order for humans to be exposed indoors, fungal spores, fragments, or metabolites must be released into the air and inhaled, physically contacted (dermal exposure), or ingested. Whether or not symptoms develop in people exposed to fungi depends on the nature of the fungal material (e.g., allergenic, toxic, or infectious), the amount of exposure, and the susceptibility of exposed persons. Susceptibility varies with the genetic predisposition (e.g., allergic reactions do not always occur in all individuals), age, state of health, and

concurrent exposures. For these reasons, and because measurements of exposure are not standardized and biological markers of exposure to fungi are largely unknown, it is not possible to determine "safe" or "unsafe" levels of exposure for people in general.

1.1.1 Immunological Effects

Immunological reactions include asthma, HP, and allergic rhinitis. Contact with fungi may also lead to dermatitis. It is thought that these conditions are caused by an immune response to fungal agents. The most common symptoms associated with allergic reactions are runny nose, eye irritation, cough, congestion, and aggravation of asthma.[11, 12] HP may occur after repeated exposures to an allergen and can result in permanent lung damage. HP has typically been associated with repeated heavy exposures in agricultural settings but has also been reported in office settings.[25, 26, 27] Exposure to fungi through renovation work may also lead to initiation or exacerbation of allergic or respiratory symptoms.

1.1.2 Toxic Effects

A wide variety of symptoms have been attributed to the toxic effects of fungi. Symptoms, such as fatigue, nausea, and headaches, and respiratory and eye irritation have been reported. Some of the symptoms related to fungal exposure are non-specific, such as discomfort, inability to concentrate, and fatigue.[11, 12, 16-20] Severe illnesses such as ODTS and pulmonary hemosiderosis have also been attributed to fungal exposures.[5-10, 21, 22]

ODTS describes the abrupt onset of fever, flu-like symptoms, and respiratory symptoms in the hours following a *single, heavy* exposure to dust containing organic material including fungi. It differs from HP in that it is not an immune-mediated disease and does not require repeated exposures to the same causative agent. ODTS may be caused by a variety of biological agents including common species of fungi (e.g., species of *Aspergillus* and *Penicillium*). ODTS has been documented in farm workers handling contaminated material but is also of concern to workers performing renovation work on building materials contaminated with fungi.[5-10]

Some studies have suggested an association between SC and pulmonary hemorrhage/hemosiderosis in infants, generally those less than six months old. Pulmonary hemosiderosis is an uncommon condition that results from bleeding in the lungs. The cause of this condition is unknown, but may result from a combination of environmental contaminants and conditions

(e.g., smoking, fungal contaminants and other bioaerosols, and water-damaged homes), and currently its association with SC is unproven.[21, 22, 23]

1.1.3 Infectious Disease

Only a small group of fungi have been associated with infectious disease. Aspergillosis is an infectious disease that can occur in immunosuppressed persons. Health effects in this population can be severe. Several species of *Aspergillus* are known to cause aspergillosis. The most common is *Aspergillus fumigatus*. Exposure to this common mold, even to high concentrations, is unlikely to cause infection in a healthy person.[11, 24]

Exposure to fungi associated with bird and bat droppings (e.g., *Histoplasma capsulatum* and *Cryptococcus neoformans*) can lead to health effects, usually transient flu-like illnesses, in healthy individuals. Severe health effects are primarily encountered in immunocompromised persons.[24, 28, 29]

1.2 Medical Evaluation

Individuals with persistent health problems that appear to be related to fungi or other bioaerosol exposure should see their physicians for a referral to practitioners who are trained in occupational/environmental medicine or related specialties and are knowledgeable about these types of exposures. Infants (less than 12 months old) who are experiencing non-traumatic nosebleeds or are residing in dwellings with damp or moldy conditions and are experiencing breathing difficulties should receive a medical evaluation to screen for alveolar hemorrhage. Following this evaluation, infants who are suspected of having alveolar hemorrhaging should be referred to a pediatric pulmonologist. Infants diagnosed with pulmonary hemosiderosis and/or pulmonary hemorrhaging should not be returned to dwellings until remediation and air testing are completed.

Clinical tests that can determine the source, place, or time of exposure to fungi or their products are not currently available. Antibodies developed by exposed persons to fungal agents can only document that exposure has occurred. Since exposure to fungi routinely occurs in both outdoor and indoor environments this information is of limited value.

1.3 Medical Relocation

Infants (less than 12 months old), persons recovering from recent surgery, or people with immune suppression, asthma, hypersensitivity pneumonitis, severe allergies, sinusitis, or other chronic inflammatory lung diseases may be at greater risk

for developing health problems associated with certain fungi. Such persons should be removed from the affected area during remediation (see Section 3, Remediation). Persons diagnosed with fungal related diseases should not be returned to the affected areas until remediation and air testing are completed.

Except in cases of widespread fungal contamination that are linked to illnesses throughout a building, a building-wide evacuation is not indicated. A trained occupational/environmental health practitioner should base decisions about medical removals in the occupational setting on the results of a clinical assessment.

top of page

2. Environmental Assessment

The presence of mold, water damage, or musty odors should be addressed immediately. In all instances, any source(s) of water must be stopped and the extent of water damaged determined. Water damaged materials should be dried and repaired. Mold damaged materials should be remediated in accordance with this document (see Section 3, Remediation).

2.1 Visual Inspection

A visual inspection is the most important initial step in identifying a possible contamination problem. The extent of any water damage and mold growth should be visually assessed. This assessment is important in determining remedial strategies. Ventilation systems should also be visually checked, particularly for damp filters but also for damp conditions elsewhere in the system and overall cleanliness. Ceiling tiles, gypsum wallboard (sheetrock), cardboard, paper, and other cellulosic surfaces should be given careful attention during a visual inspection. The use of equipment such as a boroscope, to view spaces in ductwork or behind walls, or a moisture meter, to detect moisture in building materials, may be helpful in identifying hidden sources of fungal growth and the extent of water damage.

2.2 Bulk/Surface Sampling

a. Bulk or surface sampling is not required to undertake a remediation. Remediation (as described in Section 3, Remediation) of visually identified fungal contamination should proceed without further evaluation.

b. Bulk or surface samples may need to be collected to identify specific fungal contaminants as part of a medical evaluation if occupants are experiencing symptoms which may be related to fungal exposure or to identify the presence or absence of mold if a visual inspection is equivocal (e.g., discoloration, and staining).

c. An individual trained in appropriate sampling methodology should perform bulk or surface sampling. Bulk samples are usually collected from visibly moldy surfaces by scraping or cutting materials with a clean tool into a clean plastic bag. Surface samples are usually collected by wiping a measured area with a sterile swab or by stripping the suspect surface with clear tape. Surface sampling is less destructive than bulk sampling. Other sampling methods may also be available. A laboratory specializing in mycology should be consulted for specific sampling and delivery instructions.

2.3 Air Monitoring

d. Air sampling for fungi should not be part of a routine assessment. This is because decisions about appropriate remediation strategies can usually be made on the basis of a visual inspection. In addition, air-sampling methods for some fungi are prone to false negative results and therefore cannot be used to definitively rule out contamination.

e. Air monitoring may be necessary if an individual(s) has been diagnosed with a disease that is or may be associated with a fungal exposure (e.g., pulmonary hemorrhage/hemosiderosis, and aspergillosis).

f. Air monitoring may be necessary if there is evidence from a visual inspection or bulk sampling that ventilation systems may be contaminated. The purpose of such air monitoring is to assess the extent of contamination throughout a building. It is preferable to conduct sampling while ventilation systems are operating.

g. Air monitoring may be necessary if the presence of mold is suspected (e.g., musty odors) but cannot be identified by a visual inspection or bulk sampling (e.g., mold growth behind walls). The purpose of such air monitoring is to determine the location and/or extent of contamination.

h. If air monitoring is performed, for comparative purposes, outdoor air samples should be collected concurrently at an air intake, if possible, and at a location representative of outdoor air. For additional information on air sampling, refer to the American Conference of Governmental Industrial Hygienists' document, "Bioaerosols: Assessment and Control."

i. Personnel conducting the sampling must be trained in proper air sampling methods for microbial contaminants. A laboratory specializing in mycology should be consulted for specific sampling and shipping instructions.

2.4 Analysis of Environmental Samples

Microscopic identification of the spores/colonies requires considerable expertise. These services are not routinely available from commercial laboratories. Documented quality control in the laboratories used for analysis of the bulk/surface and air samples is necessary. The American Industrial Hygiene Association (AIHA) offers accreditation to microbial laboratories (Environmental Microbiology Laboratory Accreditation Program (EMLAP)). Accredited laboratories must participate in quarterly proficiency testing (Environmental Microbiology Proficiency Analytical Testing Program (EMPAT)).

Evaluation of bulk/surface and air sampling data should be performed by an experienced health professional. The presence of few or trace amounts of fungal spores in bulk/surface sampling should be considered background. Amounts greater than this or the presence of fungal fragments (e.g., hyphae, and conidiophores) may suggest fungal colonization, growth, and/or accumulation at or near the sampled location.[30] Air samples should be evaluated by means of comparison (i.e., indoors to outdoors) and by fungal type (e.g., genera, and species). In general, the levels and types of fungi found should be similar indoors (in non-problem buildings) as compared to the outdoor air. Differences in the levels or types of fungi found in air samples may indicate that moisture sources and resultant fungal growth may be problematic.

top of page

3. Remediation

In all situations, the underlying cause of water accumulation must be rectified or fungal growth will recur. Any initial water infiltration should be stopped and cleaned immediately. An immediate response (within 24 to 48 hours) and thorough clean up, drying, and/or removal of water damaged materials will prevent or limit mold growth. If the source of water is elevated humidity, relative humidity should be maintained at levels below 60% to inhibit mold growth.[31] Emphasis should be on ensuring proper repairs of the building infrastructure, so that water damage and moisture buildup does not recur.

Five different levels of abatement are described below. The size of the area impacted by fungal contamination primarily determines the type of remediation. The sizing levels below are based on professional judgement and practicality; currently there is not adequate data to relate the extent of contamination to frequency or severity of health effects. **The goal of remediation is to remove or clean contaminated materials in a way that prevents the emission of fungi and dust contaminated with fungi**

from leaving a work area and entering an occupied or non-abatement area, while protecting the health of workers performing the abatement. The listed remediation methods were designed to achieve this goal, however, due to the general nature of these methods it is the responsibility of the people conducting remediation to ensure the methods enacted are adequate. The listed remediation methods are not meant to exclude other similarly effective methods. Any changes to the remediation methods listed in these guidelines, however, should be carefully considered prior to implementation.

Non-porous (e.g., metals, glass, and hard plastics) and semi-porous (e.g., wood, and concrete) materials that are structurally sound and are visibly moldy can be cleaned and reused. Cleaning should be done using a detergent solution. Porous materials such as ceiling tiles and insulation, and wallboards with more than a small area of contamination should be removed and discarded. Porous materials (e.g., wallboard, and fabrics) that can be cleaned, can be reused, but should be discarded if possible. A professional restoration consultant should be contacted when restoring porous materials with more than a small area of fungal contamination. All materials to be reused should be dry and visibly free from mold. Routine inspections should be conducted to confirm the effectiveness of remediation work.

The use of gaseous, vapor-phase, or aerosolized biocides for remedial purposes is **not** recommended. The use of biocides in this manner can pose health concerns for people in occupied spaces of the building and for people returning to the treated space if used improperly. Furthermore, the effectiveness of these treatments is unproven and does not address the possible health concerns from the presence of the remaining non-viable mold. For additional information on the use of biocides for remedial purposes, refer to the American Conference of Governmental Industrial Hygienists' document, "Bioaerosols: Assessment and Control."

3.1 *Level I*: Small Isolated Areas (10 sq. ft or less) - e.g., ceiling tiles, small areas on walls

a. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

b. Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection should be worn.

c. The work area should be unoccupied. Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons recovering from recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies).

d. Containment of the work area is not necessary. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

e. Contaminated materials that cannot be cleaned should be removed from the building in a sealed plastic bag. There are no special requirements for the disposal of moldy materials.

f. The work area and areas used by remedial workers for egress should be cleaned with a damp cloth and/or mop and a detergent solution.

g. All areas should be left dry and visibly free from contamination and debris.

3.2 *Level II*: Mid-Sized Isolated Areas (10 - 30 sq. ft.) - e.g., individual wallboard panels.

h. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

i. Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection should be worn.

j. The work area should be unoccupied. Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies).

k. The work area should be covered with a plastic sheet(s) and sealed with tape before remediation, to contain dust/debris.

l. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

m. Contaminated materials that cannot be cleaned should be removed from the building in sealed plastic bags. There are no special requirements for the disposal of moldy materials.

n. The work area and areas used by remedial workers for egress should be HEPA vacuumed (a vacuum equipped with a High-Efficiency Particulate Air filter) and cleaned with a damp cloth and/or mop and a detergent solution.

o. All areas should be left dry and visibly free from contamination and debris.

3.3 *Level III*: Large Isolated Areas (30 - 100 square feet) - e.g., several wallboard panels.

A health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities to provide oversight for the project.

The following procedures *at a minimum* are recommended:

p. Personnel trained in the handling of hazardous materials and equipped with respiratory protection, (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection should be worn.

q. The work area and areas directly adjacent should be covered with a plastic sheet(s) and taped before remediation, to contain dust/debris.

r. Seal ventilation ducts/grills in the work area and areas directly adjacent with plastic sheeting.

s. The work area and areas directly adjacent should be unoccupied. Further vacating of people from spaces near the work area is recommended in the presence of infants (less than 12 months old), persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies).

t. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

u. Contaminated materials that cannot be cleaned should be removed from the building in sealed plastic bags. There are no special requirements for the disposal of moldy materials.

v. The work area and surrounding areas should be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution.

w. All areas should be left dry and visibly free from contamination and debris.

If abatement procedures are expected to generate a lot of dust (e.g., abrasive cleaning of contaminated surfaces, demolition of plaster walls) or the visible concentration of the fungi is heavy (blanket coverage as opposed to patchy), then it is recommended that the remediation procedures for Level IV are followed.

3.4 *Level IV*: Extensive Contamination (greater than 100 contiguous square feet in an area)

A health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities to provide oversight for the project. The following procedures are recommended:

x. Personnel trained in the handling of hazardous materials equipped with:

   i. Full-face respirators with high efficiency particulate air (HEPA) cartridges
   ii. Disposable protective clothing covering both head and shoes
   iii. Gloves

y. Containment of the affected area:

   i. Complete isolation of work area from occupied spaces using plastic sheeting sealed with duct tape (including ventilation ducts/grills, fixtures, and any other openings)
   ii. The use of an exhaust fan with a HEPA filter to generate negative pressurization
   iii. Airlocks and decontamination room

z. Vacating people from spaces adjacent to the work area is not necessary but is recommended in the presence of infants (less than 12 months old), persons having undergone recent surgery, immune suppressed people, or people with chronic inflammatory lung diseases (e.g., asthma, hypersensitivity pneumonitis, and severe allergies).

aa. Contaminated materials that cannot be cleaned should be removed from the building in sealed plastic bags. The outside of the bags should be cleaned with a damp cloth and a detergent solution or HEPA vacuumed in the decontamination chamber prior to their transport to uncontaminated areas of the building. There are no special requirements for the disposal of moldy materials.

bb. The contained area and decontamination room should be HEPA vacuumed and cleaned with a damp cloth and/or mop with a detergent solution and be visibly clean prior to the removal of isolation barriers.

cc. Air monitoring should be conducted prior to occupancy to determine if the area is fit to reoccupy.

3.5 *Level V*: Remediation of HVAC Systems

3.5.1 A Small Isolated Area of Contamination (<10 square feet) in the HVAC System

dd. Remediation can be conducted by regular building maintenance staff. Such persons should receive training on proper clean up methods, personal protection, and potential health hazards. This training can be performed as part of a program to comply with the requirements of the OSHA Hazard Communication Standard (29 CFR 1910.1200).

ee. Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended. Gloves and eye protection should be worn.

ff. The HVAC system should be shut down prior to any remedial activities.

gg. The work area should be covered with a plastic sheet(s) and sealed with tape before remediation, to contain dust/debris.

hh. Dust suppression methods, such as misting (not soaking) surfaces prior to remediation, are recommended.

ii. Growth supporting materials that are contaminated, such as the paper on the insulation of interior lined ducts and filters, should be removed. Other contaminated materials that cannot be cleaned should be removed in sealed plastic bags. There are no special requirements for the disposal of moldy materials.

jj. The work area and areas immediately surrounding the work area should be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution.

kk. All areas should be left dry and visibly free from contamination and debris.

ll. A variety of biocides are recommended by HVAC manufacturers for use with HVAC components, such as, cooling coils and condensation pans. HVAC manufacturers should be consulted for the products they recommend for use in their systems.

3.5.2 Areas of Contamination (>10 square feet) in the HVAC System

A health and safety professional with experience performing microbial investigations should be consulted prior to remediation activities to provide oversight for remediation projects involving more than a small isolated area in an HVAC system. The following procedures are recommended:

mm. Personnel trained in the handling of hazardous materials equipped with:

i. Respiratory protection (e.g., N95 disposable respirator), in accordance with the OSHA respiratory protection standard (29 CFR 1910.134), is recommended.
ii. Gloves and eye protection
iii. Full-face respirators with HEPA cartridges and disposable protective clothing covering both head and shoes should be worn if contamination is greater than 30 square feet.

nn. The HVAC system should be shut down prior to any remedial activities.

oo. Containment of the affected area:

i. Complete isolation of work area from the other areas of the HVAC system using plastic sheeting sealed with duct tape.
ii. The use of an exhaust fan with a HEPA filter to generate negative pressurization.
iii. Airlocks and decontamination room if contamination is greater than 30 square feet.

pp. Growth supporting materials that are contaminated, such as the paper on the insulation of interior lined ducts and filters, should be removed. Other contaminated materials that cannot be cleaned should be removed in sealed plastic bags. When a decontamination chamber is present, the outside of the bags should be cleaned with a damp cloth and a detergent solution or HEPA vacuumed prior to their transport to uncontaminated areas of the building. There are no special requirements for the disposal of moldy materials.

qq. The contained area and decontamination room should be HEPA vacuumed and cleaned with a damp cloth and/or mop and a detergent solution prior to the removal of isolation barriers.

rr. All areas should be left dry and visibly free from contamination and debris.

ss. Air monitoring should be conducted prior to re-occupancy with the HVAC system in operation to determine if the area(s) served by the system are fit to reoccupy.

tt. A variety of biocides are recommended by HVAC manufacturers for use with HVAC components, such as, cooling coils and condensation pans. HVAC manufacturers should be consulted for the products they recommend for use in their systems.

top of page

4. Hazard Communication

When fungal growth requiring large-scale remediation is found, the building owner, management, and/or employer should notify occupants in the affected area(s) of its presence. Notification should include a description of the remedial measures to be taken and a timetable for completion. Group meetings held before and after remediation with full disclosure of plans and results can be an effective communication mechanism. Individuals with persistent health problems that appear to be related to bioaerosol exposure should see their physicians for a referral to practitioners who are trained in occupational/environmental medicine or

related specialties and are knowledgeable about these types of exposures. Individuals seeking medical attention should be provided with a copy of all inspection results and interpretation to give to their medical practitioners.
top of page

Conclusion

In summary, the prompt remediation of contaminated material and infrastructure repair must be the primary response to fungal contamination in buildings. The simplest and most expedient remediation that properly and safely removes fungal growth from buildings should be used. In all situations, the underlying cause of water accumulation must be rectified or the fungal growth will recur. Emphasis should be placed on preventing contamination through proper building maintenance and prompt repair of water damaged areas.

Widespread contamination poses much larger problems that must be addressed on a case-by-case basis in consultation with a health and safety specialist. Effective communication with building occupants is an essential component of all remedial efforts. Individuals with persistent health problems should see their physicians for a referral to practitioners who are trained in occupational/environmental medicine or related specialties and are knowledgeable about these types of exposures.
top of page

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top of page

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Dr. Chin Yang	P&K Microbiology Services, Inc
Dr. Harriet Burge	Harvard School of Public Health
Dr. Dorr Dearborn	Rainbow Children's Hospital
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Dr. Judith Schreiber	The New York State Department of Health
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Christopher D'Andrea, M.S. of the Environmental and Occupational Disease Epidemiology Unit, was the editor of this document. For further information regarding this document please contact the New York City Department of Health at (212) 788-4290 / 4288.

(April 2000) January 2002

EXHIBIT “F”

REMEDIATION PROCEDURES

- If Owner directs the Manager to remediate any alleged Microbial Contamination, all such remediation shall be performed by an Owner-approved mold remediator in accordance with the most stringent of the New York City Guidelines, such other accepted industry standard, or Applicable Laws.

- Sampling and testing are to proceed only upon the written direction of the Owner. All directed sampling or testing shall be conducted solely by an Owner-approved mold or environmental assessor.

TABLE OF CONTENTS

Exhibits

EXHIBIT Q

CERTIFICATE OF GOOD STANDING OF JV

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "G&I IX MJW LAKE POINTE JV LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "G&I IX MJW LAKE POINTE JV LLC" WAS FORMED ON THE FIFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.

7088529 8300

Authentication: 203711853

SR# 20187394548

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT R

CERTIFICATE OF FORMATION OF BORROWER

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "G&I IX MJW LAKE POINTE III & IV LLC", FILED IN THIS OFFICE ON THE FIFTH DAY OF OCTOBER, A.D. 2018, AT 12:18 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

7088516 8100
SR# 20187007017

Authentication: 203560528
Date: 10-05-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:18 PM 10/05/2018
FILED 12:18 PM 10/05/2018
SR 20187007017 - File Number 7088516

CERTIFICATE OF FORMATION

OF

G&I IX MJW LAKE POINTE III & IV LLC

In compliance with the requirements of Section 18-201 of the Delaware Limited Liability Company Act, relating to the formation of a limited liability company, the undersigned, desiring to form a limited liability company, hereby certifies that:

1. The name of the limited liability company is:

   G&I IX MJW Lake Pointe III & IV LLC

2. The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

IN TESTIMONY WHEREOF, the undersigned has executed this Certificate of Formation this 5th day of October, 2018.

/s/ Cristina Gomez
Name: CRISTINA GOMEZ
Title: Authorized Person

EXHIBIT S

LIMITED LIABILITY COMPANY AGREEMENT FOR BORROWER

LIMITED LIABILITY COMPANY AGREEMENT

OF

G&I IX MJW LAKE POINTE III & IV LLC

LIMITED LIABILITY COMPANY AGREEMENT
OF
G&I IX MJW LAKE POINTE III & IV LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company ("Company"), is made as of November 5, 2018, but effective as of the date of the filing to the Certificate of Formation, by G&I IX MJW LAKE POINTE JV LLC, a Delaware limited liability company ("Lake Pointe Member"), as the sole member of Company (Lake Pointe Member, or any successor thereto, admitted as a member of Company, "Sole Member"), and Julia McCullough as Independent Director (as defined below).

BACKGROUND:

WHEREAS, Company was formed as a Delaware limited liability company by the filing of a Certificate of Formation on October 5, 2018 (the "Certificate") in the office of the Secretary of State of Delaware pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et. seq., as amended from time to time (the "Act"); and

WHEREAS, Sole Member and Independent Director desire to enter into this Agreement to define formally and express the terms of Company and its rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Sole Member, for itself, its heirs, executors, administrators, successors and assigns, and Independent Director hereby agree as follows:

1. Formation/Place of Business.

1.1. Company was formed pursuant to the Act by the filing of the Certificate by an authorized person. The terms and provisions hereof will be construed and interpreted in accordance with the terms and provisions of the Act; provided, that, if any of the terms and provisions of this Agreement should be deemed inconsistent with those of the Act, this Agreement will be controlling to the extent permitted by the Act.

1.2. Sole Member will execute such certificates and documents and will file and record such other certificates and documents, as may be necessary or appropriate to comply with the requirements for the operations of a limited liability company under the Act.

1.3. The principal place of business of Company shall be c/o DRA Advisors LLC, 220 East 42nd Street, 27th Floor, New York, New York, 10017, or at such other place or places as Sole Member may from time to time determine.

2. Company's Activities

2.1. Business and Purpose of Company. Company intends to obtain a mortgage loan (hereinafter, the "Loan") in the original principal amount of up to Thirteen Million Eight Hundred Fifteen Thousand and 00/100 Dollars ($13,815,000.00), from the Lender (as hereinafter defined), and in connection therewith will enter into loan documents securing and evidencing the Loan (the "Loan Documents"), including, without limitation, that certain Loan Agreement dated as of the date

hereof (the "Loan Agreement") by and among CIBC, Inc., acting through its New York Branch, as administrative agent (the "Administrative Agent" together with its successors and assigns, "Lender"). Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement. Until the Loan has been paid in full or until such time, if ever, that the Property (as hereinafter defined) is released from the lien of the Mortgage, Company's permitted activities set forth in this Section 2.1 shall be subject to the provisions of the Loan Documents and Section 2.2 below. The sole purpose of Company has been, is and will be, to acquire, own, hold, maintain, and operate the Property, together with such other activities as may be necessary or advisable in connection with the ownership and operation of the Property. Company has not engaged, and does not and shall not engage, in any business, and it has and shall have no purpose, unrelated to the Property. Company has not owned, does not own and shall not acquire, any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of Company. The Company shall not perform any act in violation of any (a) applicable laws or regulations or (b) agreement between Company and Administrative Agent or any Lender (including, without limitation, the Loan Documents). The organizational documents of Sole Member of Company, as applicable, shall provide that neither Company nor Sole Member, as applicable, shall perform any act in respect of Company in violation of any (a) applicable laws or regulations or (b) agreement between Company and Administrative Agent or any Lender (including, without limitation, the Loan Documents).

2.2. Limitations on Company's Activities.

(a) Subject to the limitations set forth in this Section 2.2, Company shall not:

(i) make any loans to any Equity Holder, any Affiliate of Company or any Affiliate of any Equity Holder;

(ii) except as expressly permitted by Administrative Agent in writing, sell, encumber (except with respect to Administrative Agent) or otherwise transfer or dispose of all or substantially all of the properties of Company (a sale or disposition will be deemed to be "all or substantially all of the properties of Company" if the sale or disposition includes the Property or if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of Company's total assets as of the end of the most recently completed fiscal year of Company);

(iii) to the fullest extent permitted by law, dissolve, wind-up, or liquidate Company;

(iv) merge or consolidate with, or acquire all or substantially all of the assets of, an Affiliate of Company or any other Person;

(v) change the nature of the business conducted by Company; or

(vi) except as permitted by Administrative Agent in writing, amend, modify or otherwise change the Organizational Documents of Company (which approval, after a Secondary Market Transaction with respect to the Loan, may be conditioned upon Administrative Agent's receipt of a Rating Confirmation with respect thereto) pertaining

to separateness or Company's status as a single-purpose entity or any other respect that could materially and adversely affect the Loan or the Property.

(b) Company shall not, and no Equity Holder or other Person on behalf of Company shall, without the prior written affirmative vote of both (1) one hundred percent (100%) of the members (excluding the Special Member), partners or stockholders of Company and (2) of the Independent Director, undertake any Bankruptcy Action with respect to Company.

(c) Company shall have no indebtedness or incur any liability other than (i) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business of operating the Property; provided, however, that such unsecured indebtedness or liabilities (A) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed two percent (2%) of the amount of the Loan to be advanced hereunder, and (B) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred, (ii) Permitted Equipment Leases, (iii) Company's obligations and liabilities under the Interest Rate Cap Agreement or any Replacement Interest Rate Cap Agreement, and/or (iv) the Debt. No indebtedness other than the Loan shall be secured (senior, subordinated or pari passu) by the Property.

(d) A Bankruptcy Action by or against any partner or member of Company, as applicable, shall not cause such partner or member of Company, as applicable, to cease to be a partner or member of Company and upon the occurrence of a Bankruptcy Action, Company shall continue without dissolution. Additionally, to the fullest extent permitted by law, if any partner or member of Company, as applicable, ceases to be a partner or member of Company, as applicable, such event shall not terminate Company and Company shall continue without dissolution.

(e) Company shall at all times observe in all material respects the applicable legal requirements for the recognition of Company as a legal entity separate from any Equity Holder or Affiliates of Company or of any Equity Holder, including, without limitation, as follows:

(i) It shall either (A) maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of itself or of any Equity Holder and shall conspicuously identify such office and numbers as its own, or (B) shall allocate by fairly and reasonably any rent, overhead and expenses for shared office space.

(ii) It shall maintain correct and complete financial statements, accounts, books and records and other Organizational Documents separate from those of any Affiliate of itself or of any Equity Holder or any other Person; provided, however, that Company's assets may be included in a consolidated financial statement of its affiliates provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Company and such affiliates and to indicate that Company's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (ii) such assets shall be listed on Company's own separate balance sheet. Company has maintained and will maintain its own books, records, resolutions and agreements as official records.

(iii) It shall maintain its own separate bank accounts and correct, complete and separate books of account.

(iv) It shall file or cause to be filed its own separate tax returns, if required to do so.

(v) It shall hold itself out to the public (including any of its Affiliates' creditors) under its own name and as a separate and distinct Person and not as a department, division or otherwise of any Affiliate of itself or of any Equity Holder.

(vi) It shall observe all customary formalities regarding its existence, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of itself or of any Equity Holder.

(vii) It shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate of itself or of any Equity Holder shall be appointed or act as its agent, other than as a property manager or leasing agent with respect to the Property.

(viii) Investments shall be made in its name directly by it or on its behalf by brokers engaged and paid by it.

(ix) Except as required by Administrative Agent, it shall not guarantee, pledge or assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Equity Holder or any Affiliate, nor shall it make any loan, except as permitted in the Loan Documents.

(x) It shall not make any distribution or dividend if doing so would cause it not to be solvent.

(xi) Its assets shall be separately identified, maintained and segregated. Its assets shall at all times be held by it (or on its behalf) and if held on its behalf by another Person, shall at all times be kept identifiable (in accordance with customary usages). This restriction requires, among other things, that (A) its funds shall be deposited or invested in its name, (B) its funds shall not be commingled with the funds of any Affiliate of it or of any Equity Holder, (C) it shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate of it or of any Equity Holder, and (D) its funds shall be used only for its business.

(xii) It shall maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate of itself or of any Equity Holder.

(xiii) It shall pay or cause to be paid its own liabilities and expenses of any kind, including but not limited to salaries of its employees (if any), but only to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses of the Property and all amounts due under the Loan and the foregoing shall not require any equity owner to make additional capital contributions to Company.

(xiv) It shall not make any distribution or dividend to any Equity Holder if doing so would cause it not to be adequately capitalized to perform its reasonably foreseeable obligations.

(xv) Intentionally omitted.

(xvi) Intentionally omitted.

(xvii) None of its funds shall be invested in securities issued by, nor shall it acquire the indebtedness or obligation of, an Affiliate of itself or of an Equity Holder.

(xviii) It shall maintain an arm's length relationship with each of its Affiliates and may enter into contracts or transact business with its Affiliates only on commercially reasonable terms that are no less favorable to it than is obtainable in the market from a Person that is not an Affiliate of itself or of any Equity Holder.

(xix) It shall correct any misunderstanding that is known by it regarding its name or separate identity.

Notwithstanding the foregoing, in no event shall any beneficial owner of Company be required to contribute capital to satisfy any of the foregoing single purpose covenants.

(f) Any indemnification obligation of Company to any Equity Holder shall (i) be fully subordinated to the Loan, and (ii) not constitute a claim against Company or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged.

Failure of Company or Sole Member on behalf of Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of Company as a separate legal entity or the limited liability of Sole Member.

The provisions of this Section 2.2 shall apply until the Loan has been paid in full or until the Property is released from the lien of the Mortgage in accordance with the terms of the Loan Documents, or as otherwise set forth in the Loan Agreement.

2.3. Tax Protections.

(1) It is intended by Sole Member that Company's assets not be deemed "plan assets" for purposes of Department of Labor Regulation 29 C.F.R. § 2510.3-101. It is intended by Sole Member that Company be operated in a manner intended to minimize the unrelated business taxable income within the meaning of Section 511-514 of the Internal Revenue Code incurred by Company.

(2) Notwithstanding any provision to the contrary herein, Sole Member agrees to manage and operate Company in a manner that will neither jeopardize the status of any direct or indirect owner of Sole Member (an "Upper-Tier Member") as a real estate investment trust under Section 856 of the Internal Revenue Code of 1986, as amended (the "Code"), nor result in the recognition by any tax-exempt Upper-Tier Member or any direct or indirect tax-exempt beneficial

owner of any Upper-Tier Member of "unrelated business taxable income" (within the meaning of Sections 511-514 of the Code).

3. Term.

Company shall be effective from and after the date on which the Certificate evidencing formation of Company was filed in the office of the Secretary of State of Delaware. Company shall continue in existence in perpetuity, unless earlier dissolved and its affairs wound up in accordance with this Agreement and/or the Act.

4. Membership.

4.1. Sole Member. G&I IX MJW Lake Pointe JV LLC is the sole member and has an address at c/o DRA Advisors LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017.

4.2. Assignments. If Sole Member assigns all of its limited liability company interest in Company pursuant to this Section 4.2, the assignee shall be admitted to Company as a member of Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the assignment and, immediately following such admission, the transferor member shall cease to be a member of Company. Notwithstanding the foregoing, as long as any portion of the Debt remains outstanding, except as expressly permitted pursuant to the terms of the Loan Agreement, (i) Sole Member may not resign or assign its interests in the Company and (ii) no additional member shall be admitted to Company.

4.3. Resignation. Pursuant to Section 4.2 above, an assignee shall be admitted to Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning sole member shall cease to be a member of Company.

5. Capital Contribution.

Sole Member shall contribute at least $100 to the capital of Company.

6. Management.

6.1. Sole Member. The business and affairs of Company shall be managed by Sole Member. Sole Member shall have such rights, duties and powers as are specified in this Agreement and, unless expressly provided to the contrary in this Agreement, are conferred upon a manager or a member pursuant to the Act. For the avoidance of doubt, the term "Sole Member" shall not include the Special Member (as hereinafter defined).

6.2. Sole Member as Agent of Company. Sole Member is an agent of Company for the purpose of its business, for the purpose of the execution in the name of Company of any instrument and for apparently carrying on in the usual way the business of Company and Sole

Member's acts bind Company, unless such act is in contravention of the Act, the Certificate or this Agreement.

6.3. Acts of Sole Member as Conclusive Evidence of Authority. Subject to Section 6.2, every contract, deed, mortgage, deed of trust, pledge, lease and other credit agreement or instrument executed by Sole Member, shall be conclusive evidence in favor of every person or entity relying thereon or claiming thereunder that at the time of the delivery thereof: (a) Company was in existence, (b) neither this Agreement nor the Certificate had been amended in any manner except as otherwise set forth in any such instrument and (c) the execution and delivery of such instrument was duly authorized by Company. Any person or entity may always rely on a certificate addressed to such person or entity and signed by Sole Member hereunder: (i) as to the existence or non-existence of any fact which constitutes a condition precedent to acts by Sole Member or in any other manner germane to the affairs of Company, (ii) setting forth the persons and/or entities who are authorized to execute and deliver any instrument or document on behalf of Company, (iii) certifying as to the authenticity of any copy of the Certificate of Company, this Agreement, any amendments thereto and hereto and any other document relating to the conduct of the affairs of Company or (iv) as to any action taken or not taken by Company or as to any other matter whatsoever involving Company or Sole Member. Sole Member shall have no authority to perform any act in respect of Company in violation of any provisions of this Agreement, applicable laws, codes, rules or regulations.

6.4. Distributions. Distributions shall be made to Sole Member at the times and in the aggregate amounts determined by Sole Member. Notwithstanding any provision to the contrary contained in this Agreement, Company shall not make a distribution to Sole Member on account of its interest in Company if such distribution would violate the Act.

6.5. Independent Director. So long as any portion of the Debt remains outstanding, there shall be at least one (1) Independent Director designated by Sole Member (the "Independent Director"), who (a) has prior experience as an independent director, independent manager or independent member, with at least three years of employment experience; and (b) is provided by a Recognized Independent Manager Provider; and (c) is not, and has never been, and while serving as Independent Director will not be, any of the following:

(1) a member (other than as a Special Member), partner, equityholder, manager, director, officer or employee of Company (or, if applicable, the Sole Member) or any of their respective equityholders or Affiliates (other than as an Independent Director that does not own any Equity Interest in the Company or any Affiliate and that is required by a creditor to be a single purpose bankruptcy remote entity);

(2) a creditor, supplier (other than a nationally recognized professional service company) or service provider (including provider of professional services) to Company or any of its equityholders or Affiliates (other than in connection with such person's employment by the related Recognized Independent Manager Provider) to Company (or, if applicable, to the Sole Member) or Affiliates, in each case in the ordinary course of its business), provided that the fees that such individual earns in any given year from serving as Independent Director of Company and any Affiliates (or, if applicable, the portion of the salary paid to such person by the related Recognized Independent Manager Provider from such service) constitutes (in the aggregate) less than five percent (5%) of such individual's annual income for that year;

(3) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(4) a Person that controls (whether directly, indirectly or otherwise) or is controlled by any of (1), (2) or (3) above. The initial Independent Director designated by Sole Member is Julia McCullough.

6.6. So long as any portion of the Debt remains outstanding, Company, or any Member, manager or other person on behalf of Company, will not, without the prior unanimous written consent of Independent Director, (i) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally on behalf of or for the Company, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Company or for all or a substantial portion of Company's properties, (iii) make any assignment for the benefit of Company's creditors, or (iv) take any action in furtherance of any of the foregoing.

6.7. Each Independent Director shall be, and is hereby designated as a "manager" within the meaning of Section 18-101(10) of the Act, and all rights, powers and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties as specifically provided for in this Agreement. To the fullest extent permitted by applicable law (including Section 18-1101(c) of the Act) and notwithstanding any duty otherwise existing at law or in equity, (a) Independent Director shall consider only the interests of Company and its creditors in acting or otherwise voting on the matters provided for in Section 2.2.(b) or Section 6.6 above (which such duties to the Members and Company (including Company's creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Company exclusive of (1) all other interests (including, without limitation, all other interests of the Members), (2) the interests of other Affiliates of Company and (3) the interests of any group of Affiliates of which Company is a part); (b) other than as provided in clause (a) above, Independent Directors shall not have any fiduciary duties to any Members, any directors of Company or any other Person; (c) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (d) to the fullest extent permitted by applicable law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to any member, the Company or any other Person bound by the organizational documents for breach of contract or breach of duties (including fiduciary duties), unless Independent Director acted in bad faith or engaged in willful misconduct.

6.8. The Company shall indemnify and advance expenses incurred by the Independent Director, Springing Member or Special Member and any affiliate of the Independent Director, Springing Member or Special Member, to the fullest extent provided by law and as agreed to in writing by the Company and pursuant to that certain service agreement between the Company and Corporation Service Company. Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and the Independent Director, Springing Member and Special Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being an Independent Director, Springing Member or Special Member of the Company.

6.9 No Independent Director shall resign or be removed or replaced, in each case unless Lender receives, from the Company, not less than five (5) business days' prior written notice of (a) any proposed resignation or removal or replacement of such Independent Director, and (b) the identity of the proposed replacement Independent Director, together with evidence satisfactory to Administrative Agent that such replacement satisfies the applicable requirements to be an Independent Director, in each case except for removal of an Independent Director by reason of (y) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director's duties, in accordance with the standards set forth herein, or (z) such Independent Director having engaged in or having been charged with, or having been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, in which case a replacement Independent Director shall be identified and elected or appointed within five (5) business days after the Company knows of such occurrence.

7. Special Member. So long as any portion of the Debt remains outstanding:

7.1. Upon the occurrence of any event that causes Sole Member to cease to be a member of Company (other than upon continuation of the Company without dissolution upon (i) an assignment by Sole Member of all of its limited liability company interest in Company and the admission of the transferee, if permitted pursuant to the organizational documents of Company and the Loan Documents, or (ii) the resignation of Sole Member and the admission of an additional member of Company, if permitted pursuant to the organizational documents of Company and the Loan Documents), the person or entity designated as the Springing Member (defined below) in Section 7.2 below without any action of any Person and simultaneously with Sole Member ceasing to be a member of Company, automatically be admitted as a member of Company (the "Special Member") and shall preserve and continue the existence of Company without dissolution.

7.2. No Special Member may resign or transfer its rights as Special Member unless (x) a successor Special Member has been admitted to Company as a Special Member, and (y) such successor Special Member has also accepted its appointment as an Independent Director pursuant to Section 6.5; provided, however, the Special Member shall automatically cease to be a member of Company upon the admission to Company of a substitute Member (it being understood that the ongoing status of the Special Member as an Independent Director shall continue and shall not be affected by the Special Member ceasing to be a member of Company). The Special Member shall be a member of Company that has no interest in the profits, losses and capital of Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, the Special Member shall not be required to make any capital contributions to Company and shall not receive a limited liability company interest in Company. The Special Member, in his or her capacity as Special Member, may not bind Company. Except as required by any mandatory provision of the Act, the Special Member, in his or her capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Company, including, without limitation, the merger, consolidation or conversion of Company. In order to implement the admission to Company of the Special Member, Julia McCullough ("Springing Member") the Person(s) acting as Independent Directors pursuant to Section 6.5, shall execute counterparts to this Agreement. Prior to his or her admission to Company as Special Member, Julia McCullough, the Person(s) acting as Springing Member and/or Independent Director(s) pursuant to Section 6.5, shall not be a member of Company.

8. Termination and Dissolution.

8.1. Company shall be dissolved and its affairs shall be wound up on the earliest to occur of (a) the election of Sole Member to dissolve Company; or (b) dissolution by operation of law.

8.2. So long as any portion of the Debt remains outstanding:

(1) Notwithstanding Section 8.1 hereof, Company shall be dissolved, and its affairs shall be wound up only upon the first to occur of the following: (y) the termination of the legal existence of the last remaining member of Company or the occurrence of any other event which terminates the continued membership of the last remaining member of Company in Company unless the business of Company is continued in a manner permitted by this Agreement or the Act, or (z) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

(2) Upon the occurrence of any event that causes the last remaining member of Company to cease to be a member of Company or that causes Sole Member to cease to be a member of Company (other than upon continuation of the Company without dissolution upon (x) an assignment by Sole Member of all of its limited liability company interest in Company and the admission of the transferee, if permitted pursuant to the organizational documents of Company and the Loan Documents, or (y) the resignation of Sole Member and the admission of an additional member of Company, if permitted pursuant to the organizational documents of Company and the Loan Documents), to the fullest extent permitted by law, the personal representative of such member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in Company, agree in writing (A) to continue the existence of Company and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Company, effective as of the occurrence of the event that terminated the continued membership of such member in Company;

(3) The bankruptcy of Sole Member or a Special Member shall not cause such Sole Member or Special Member, respectively, to cease to be a member of Company and upon the occurrence of such an event, the business of Company shall continue without dissolution;

(4) In the event of dissolution of Company, Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of Company in an orderly manner), and the assets of Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and

(5) To the fullest extent permitted by law, each of Sole Member and the Special Members shall irrevocably waive any right or power that they might have to cause Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of Company, to compel any sale of all or any portion of the assets of Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of Company.

8.3. On completion of the distribution of Company's assets as provided herein, Company shall be terminated, and Sole Member (or such other person or persons as the Act may require or permit, if necessary) shall file a certificate of cancellation with the Secretary of State of Delaware,

cancel any other filings made pursuant to this Agreement and take such other actions as may be necessary to terminate Company.

9. Profits and Losses.

Sole Member intends that Company be a disregarded entity for federal income tax purposes, in accordance with Treasury Regulation Section 301.7701-3(b)(ii), and all items of income, gain, loss, deduction and credit of Company as determined for federal income tax purposes shall be reported on a consistent basis with such tax classification.

10. Registered Agent.

The registered agent of Company in the State of Delaware shall be Corporation Service Company, having an address at 251 Little Falls Drive, Wilmington, Delaware 19808, or such other office or person(s) as Sole Member may designate from time to time in the manner provided by law.

11. Miscellaneous.

11.1. No waiver or modification of the terms hereof shall be valid unless (y) in writing signed by the person(s) charged and only to the extent therein set forth and (z) so long as the Debt is outstanding, permitted under the Loan Documents.

11.2. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts made and performed entirely within such state.

11.3. When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(a) This Agreement (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and (b) is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder. Except as specifically provided herein, no alteration, modification, amendment or addition to this Agreement shall be valid unless in each instance such alteration, modification, amendment or addition is expressed in writing and signed by or on behalf of each of the parties hereto. Notwithstanding anything to the contrary in this Agreement, so long as any portion of the Debt remains outstanding, this Agreement and Company's other organizational documents may not be amended, modified or otherwise changed in any manner that violates or is inconsistent with the single purpose covenants set forth in Section 4.27 of the Loan Agreement, nor may any provision of this Agreement or Company's other organizational documents that by its terms cannot be modified at any time when the Loan is outstanding or by its terms cannot be modified without Lender's consent be amended, modified or otherwise changed, including, without limitation, Sections 2.1, 2.2, 3, 4.1, 4.2, 4.3, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 11.1, 11.3, 11.7 and 11.8 hereof (inclusive of all definitions used therein), unless (A) Lender has consented and (B) following a Securitization of the Loan, the applicable Rating Agencies have issued a Rating Agency Confirmation in connection therewith.

11.4. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any person or entity or any circumstance, is found to be invalid or unenforceable in any jurisdiction, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

11.5. This Agreement may be signed in more than one counterpart, each of which shall be binding and all of which taken together shall be one and the same agreement.

11.6. Sole Member shall not have any interest in any specific assets of Company, and Sole Member shall not have the status of a creditor of Company with respect to any distribution pursuant to Section 6.4 hereof. The limited liability company interest of Sole Member in Company is personal property.

11.7. Except for Lender, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of Company or by any creditor of Sole Member or any Special Member. Lender is an intended third-party beneficiary of the "special purpose" provisions of this Agreement and may enforce the "special purpose" provisions of this Agreement, including, without limitation, Sections 2.1, 2.2, 3, 4.1, 4.2, 4.3, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 11.1, 11.3, 11.7 and 11.8 hereof (inclusive of all definitions used therein).

11.8. Notwithstanding any other provision of this Agreement, Sole Member agrees that this Agreement, including, without limitation Sections 2.1, 2.2, 3, 4.2, 4.3, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 11.1, 11.3, 11.7 and 11.8 hereof, constitutes a legal, valid and binding agreement of Sole Member, and is enforceable against Sole Member by the Independent Directors, in accordance with its terms. In addition, the Independent Directors shall be intended beneficiaries of this Agreement.

11.9. Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, so long as the Debt is outstanding, each of Sole Member and the Special Members hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company.

11.10. The following definitions shall apply:

"**Affiliate**" shall mean any Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified Person. For purposes of the definition of "Affiliate", the terms "control", "controlled", or "controlling" with respect to a specified Person shall include, without limitation, (A) the ownership, control or power to vote more than fifteen percent (15%) of (1) the outstanding shares of any class of voting securities or (2) beneficial interests, of any such Person, as the case may be, directly or indirectly, or acting through one or more

Persons, (B) the control in any manner over the general partner(s) or manager or managing member or the election of more than one director or trustee (or Persons exercising similar functions) of such Person, or (C) the power to exercise, directly or indirectly, control over the management or policies of such Person.

"**Bankruptcy Action**" shall mean that a Person shall have undertaken, or been the subject of, any of the following: (i) the institution of proceedings to be adjudicated bankrupt or insolvent; (ii) consent to the institution of bankruptcy or insolvency proceedings against it; (iii) the filing of a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property; (v) the making of any assignment for the benefit of creditors; (vi) the admission in writing of its inability to pay its debts generally as they become due or declare or effect a moratorium on its debts; or (vii) take any action in furtherance of any such action.

"**Equity Interest**" shall mean any direct or indirect equity interest in Company.

"**Person**" shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other entity, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"**Recognized Independent Manager Provider**" shall mean one or more of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or another nationally-recognized company approved by Administrative Agent (which approval shall not unreasonably be withheld if such company is then generally acceptable both to the Rating Agencies and in the market for secondary market transactions involving loans comparable to the Loan), in each case that is not an Affiliate of the Company or the Sole Member and that provides professional independent directors, independent managers and other corporate services in the ordinary course of its business.

[**SIGNATURES ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first indicated above.

SOLE MEMBER:

G&I IX MJW LAKE POINTE JV LLC,
a Delaware limited liability company

By: G&I IX Investment Lake Point LLC,
a Delaware limited liability company,
its Managing Member

By: _____
Name: David Gray
Title: Vice President

INDEPENDENT DIRECTOR/SPRINGING MEMBER:

_____
JULIA McCULLOUGH

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date first indicated above.

SOLE MEMBER:

G&I IX MJW LAKE POINTE JV LLC,
a Delaware limited liability company

By: G&I IX Investment Lake Point LLC,
a Delaware limited liability company,
its Managing Member

By: _____
Name: _____
Title: _____

INDEPENDENT DIRECTOR/SPRINGING MEMBER:

_____
JULIA McCULLOUGH

EXHIBIT T

APPLICATION FOR CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN INDIANA FOR THE BORROWER

State of Indiana
Office of the Secretary of State

Foreign Registration Statement
of

G&I IX MJW LAKE POINTE III & IV LLC

I, CONNIE LAWSON, Secretary of State, hereby certify that an Registration Statement of the above Foreign Limited Liability Company has been presented to me at my office, accompanied by the fees prescribed by law and that the documentation presented conforms to law as prescribed by the provisions of the Indiana Code.

NOW, THEREFORE, with this document I certify that said transaction will become effective Wednesday, October 17, 2018.

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, October 19, 2018

Connie Lawson

CONNIE LAWSON
SECRETARY OF STATE

201810171284843 / 8060585

To ensure the certificate's validity, go to https://bsd.sos.in.gov/PublicBusinessSearch

Approved and Filed
20181017128484 3/8060585
Filing Date: 10/19/2018
Effective :10/17/2018 16:01
CONNIE LAWSON
Indiana Secretary of State

FOREIGN REGISTRATION STATEMENT

State Form 56369 (R4 / 7-18)

Indiana Code 23-0.5-5-3
23-0.5-9-26
23-0.5-9-29
23-1.5-2-3

FILING FEE:
For-Profit Entities: $125.00
Foreign Master LLCs: $250.00
Nonprofit Corporations: $75.00

FOREIGN REGISTRATION STATEMENT

The undersigned, desiring to register a foreign entity with the Secretary of State pursuant to the provisions of Indiana Code 23-0.5-5-3, executes the following Foreign Registration Statement.

ARTICLE I – NAME OF ENTITY

Legal name of the entity *(The name must comply with Indiana Code 23-0.5-3-1.)*
G&I IX MJW Lake Pointe III & IV LLC

If the name does not comply with Indiana Code 23-0.5-3-1, the alternate name of the entity adopted under Indiana Code 23-0.5-5-6

ARTICLE II – ENTITY INFORMATION

Entity type *(select one)*
☐ Corporation, including Benefit Corporation and Professional Corporation ☐ Nonprofit Corporation ☑ Limited Liability Company
☐ Master Limited Liability Company ☐ Series ☐ Limited Liability Partnership ☐ Limited Partnership

If the entity is a nonprofit corporation, indicate if the corporation will have members.
☐ Yes ☐ No members

If the corporation had been incorporated in Indiana, it would be a *(select one)*:
☐ Public Benefit Corporation ☐ Mutual Benefit Corporation ☐ Religious Corporation

If the entity is a Limited Liability Company or Master Limited Liability Company, the Limited Liability Company will be managed by its manager or managers.
☑ Yes ☐ No ☐ The LLC will be a single-member LLC. *(optional)*

If the entity is a Master Limited Liability Company, the Master LLC is authorized transact business in Indiana in accordance with Indiana Code 23-18.1 and is organized under a law that allows for the designation of one (1) or more series.

The jurisdiction of formation
Delaware

Date the entity was formed in its jurisdiction of formation *(month, day, year)*
October 5, 2018

ARTICLE III – STREET ADDRESS

The street address of the foreign entity:

Number and street	City	State	ZIP code
8470 and 8520 Allison Pointe Boulevard	Indianapolis	IN	46250

ARTICLE IV – REGISTERED AGENT INFORMATION

To determine if your Registered Agent is a Commercial Registered Agent (CRA), go to INBIZ.in.gov.

Electronic Service of Process Information

Sending an e-mail to the e-mail address provided by a registered agent is NOT sufficient to effectuate valid service of process.

The Secretary of State is currently collecting a service of process e-mail address for registered agents under IC 23-0.5-4-3. Until the Indiana Supreme Court writes rules and develops a technical solution, valid service may not be effectuated electronically.

If you do not want to provide a service of process e-mail address, you may choose to use a commercial registered agent. Because all commercial registered agents are required to have a service of process e-mail address on record with the Secretary of State, choosing to use a commercial registered agent means that you are not required to provide another service of process e-mail address.

Provide either commercial registered agent or noncommercial registered agent information below.

☑ Commercial registered agent — Name of registered agent *(Do not provide address.)*: Corporation Service Company

OR

☐ Noncommercial registered agent — Name of registered agent:

Address *(number and street) (A P.O. Box is not acceptable unless accompanied by a Rural Route number.)*	City	State	ZIP code
		IN	

E-mail address of the registered agent at which the registered agent will accept electronic service of process

☑ By checking the box, the Signator(s) represent(s) that the Registered Agent named in this Foreign Registration Statement has consented to the appointment of Registered Agent.

IN SEC OF STATE RCVD
OCT 17 '18 PM3:59

Approved and Filed
201810171284843/8060585
Filing Date: 10/19/2018
Effective :10/17/2018 16:01
CONNIE LAWSON
Indiana Secretary of State

In Witness Whereof, the undersigned duly authorized representative of the entity executes this Foreign Registration Statement and verifies, subject to penalties of perjury, that the statements contained herein are true, this 17th day of October, 20 18.

Signature

Printed name DAVID GRAY

Title Manager

Approved and Filed
20181017128484 3/8060585
Filing Date: 10/19/2018
Effective :10/17/2018 16:01
CONNIE LAWSON
Indiana Secretary of State

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "G&I IX MJW LAKE POINTE III & IV LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWELFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "G&I IX MJW LAKE POINTE III & IV LLC" WAS FORMED ON THE FIFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.

IN SEC OF STATE RCVD
OCT 17 '18 PM3:59

7088516 8300
SR# 20187113867
You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203599848
Date: 10-12-18

EXHIBIT U

CERTIFICATE OF GOOD STANDING OF BORROWER ISSUED BY THE SECRETARY OF STATE OF THE STATE OF DELAWARE

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "G&I IX MJW LAKE POINTE III & IV LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE THIRTIETH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "G&I IX MJW LAKE POINTE III & IV LLC" WAS FORMED ON THE FIFTH DAY OF OCTOBER, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.

Jeffrey W. Bullock, Secretary of State

7088516 8300

Authentication: 203711849

SR# 20187394543

Date: 10-30-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT V

INDIANA CERTIFICATE OF GOOD STANDING OF BORROWER

State of Indiana
Office of the Secretary of State

CERTIFICATE OF EXISTENCE

To Whom These Presents Come, Greeting:

I, CONNIE LAWSON, Secretary of State of Indiana, do hereby certify that I am, by virtue of the laws of the State of Indiana, the custodian of the corporate records and the proper official to execute this certificate.

I further certify that records of this office disclose that

G&I IX MJW LAKE POINTE III & IV LLC

duly filed the requisite documents to commence business activities under the laws of the State of Indiana on October 17, 2018, and was in existence or authorized to transact business in the State of Indiana on October 31, 2018.

I further certifiy this Foreign Limited Liability Company has filed its most recent report required by Indiana law with the Secretary of State, or is not yet required to file such report, and that no notice of withdrawal, dissolution, or expiration has been filed or taken place. All fees, taxes, interest, and penalties owed to Indiana by the domestic or foreign entity and collected by the Secretary of State have been paid.

In Witness Whereof, I have caused to be affixed my signature and the seal of the State of Indiana, at the City of Indianapolis, October 31, 2018

Connie Lawson

CONNIE LAWSON
SECRETARY OF STATE

201810171284843 / 2018775839

All certificates should be validated here: https://bsd.sos.in.gov/ValidateCertificate

Expires on November 30, 2018.

EXHIBIT W

WRITTEN CONSENT IN LIEU OF MEETING OF MANAGECO MANAGER LLC

WRITTEN CONSENT IN LIEU OF
MEETING OF MANAGECO MANAGER LLC
("CONSENT")

MANAGECO MANAGER LLC, a Delaware limited liability company, being the sole and managing member of MANAGECO IX, LLC, a Delaware limited liability company ("Manageco"), which is the managing member of DRA GROWTH AND INCOME MASTER FUND IX, LLC, a Delaware limited liability company ("Guarantor"), which is the sole member of DRA FUND IX ACQUISITION LLC, a Delaware limited liability company ("Acquisition"), which is the sole member G&I IX INVESTMENT LAKE POINTE LLC, a Delaware limited liability company ("Investment"), which is the managing member of G&I IX MJW LAKE POINTE JV LLC, a Delaware limited liability company ("JV"), which is the sole member of G&I IX MJW LAKE POINTE III & IV LLC, a Delaware limited liability company ("Borrower"), does hereby consent to the following actions:

1. In connection with (i) that certain Purchase and Sale Agreement dated as of September 28, 2018 (the "Agreement"), between Lake Pointe Fee Owner LLC, as Seller, and DRA Fund IX LLC, a Delaware limited liability company (the "Original Purchaser"), as assigned by that certain Assignment and Assumption of Purchase and Sale Agreement from Original Purchaser to Borrower, for the acquisition by Borrower of that certain real property, together with all improvements erected thereon and appurtenances thereof commonly known as Lake Pointe Center III & IV, Indianapolis, Indiana (the "Acquisition") and (ii) that certain mortgage loan being made by CANADIAN IMPERIAL BANK OF COMMERCE, acting through its New York Branch ("Administrative Agent") for the benefit of the lenders party to the Loan Agreement (as defined on Schedule 1 attached hereto) ("Lenders"), to Borrower in the original principal amount of up to $13,815,000.00.00 (the "Loan" and together with the Acquisition, the "Transaction"), each of Manageco's officers, acting alone, be, and each of them hereby is, authorized and directed, to execute, on behalf of Manageco, in its capacity as the managing member of Guarantor, any and all instruments and documents necessary to consummate the Transaction, including, without limitation, (i) the Recourse Carve-Out Guaranty in favor of Administrative Agent, as Exhibit A and (ii) the Hazardous Substances Indemnity Agreement by Guarantor in favor of Administrative Agent in the form attached hereto as Exhibit B; and

2. Each officer of Investment be, and each of them hereby is, authorized and directed, on behalf of Investment, in its capacity as the managing member of JV as the sole member of the Borrower, to execute, deliver, carry out and consummate any and all instruments and documents necessary to consummate the Transaction;

3. In connection with the Transaction, the officers of Investment, David Luski, President; Jean Marie Apruzzese, Senior Vice President and Secretary; Andrew E. Peltz, Vice President and Assistant Secretary; David Gray, Vice President and

Treasurer; Valla Brown, Vice President; Jason Borreo, Vice President; and Adam Breen, Vice President; be, and each of them hereby is, authorized and directed, acting alone, on behalf of Investment, in its capacity as the managing member of JV, in its capacity as the sole member of Borrower, to execute, deliver, carry out and consummate any and all instruments and documents necessary to consummate the Transaction, including, but not limited to, those Loan documents and instruments identified on Schedule 1 attached hereto and made a part hereof, and to take all such other action as they may deem to be necessary or advisable or convenient or proper to carry out the intent of the foregoing on behalf of Borrower, and to fully perform the provisions of any and all instruments and documents executed on behalf of Borrower by Investment in its capacity as aforesaid, pursuant to this Consent (such necessity, advisability convenience or appropriateness being conclusively evidenced by the taking of any such action);

4. In connection with the Transaction, the officers of Manageco, David Luski, President; Jean Marie Apruzzese, Senior Vice President and Secretary; Andrew E. Peltz, Vice President and Assistant Secretary; David Gray, Vice President and Treasurer; Valla Brown, Vice President; Jason Borreo, Vice President; and Adam Breen, Vice President; be, and each of them hereby is, authorized and directed, acting alone, on behalf of Manageco, in its capacity as the managing member of Guarantor, to execute, deliver, carry out and consummate any and all instruments and documents necessary to consummate the Transaction, and to take all such other action as they may deem to be necessary or advisable or convenient or proper to carry out the intent of the foregoing on behalf of Guarantor, and to fully perform the provisions of any and all instruments and documents executed on behalf of Guarantor by Manageco in its capacity as aforesaid, pursuant to this Consent (such necessity, advisability convenience or appropriateness being conclusively evidenced by the taking of any such action);

5. To the ratification, confirmation, approval and adoption, in the name and on behalf of Borrower, JV and/or Investment, in its capacity as aforesaid, of any acts of any officer of Investment and of any person or persons designated and authorized to act by any officer of Investment, which acts would have been authorized by the foregoing Consent except that such acts were taken prior to the adoption of such Consent;

6. To the ratification, confirmation, approval and adoption, in the name and on behalf of Guarantor and/or Manageco, in its capacity as aforesaid, of any acts of any officer of Manageco and of any person or persons designated and authorized to act by any officer of Manageco, which acts would have been authorized by the foregoing Consent except that such acts were taken prior to the adoption of such Consent; and

7. To the execution of this Consent via .PDF signature, which shall be deemed to be an original hereof.

[**SIGNATURE APPEARS ON THE FOLLOWING PAGE.**]

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the 5th day of November, 2018.

MANAGECO MANAGER LLC,
a Delaware limited liability company

By: _____
Name: David Luski
Title: Manager

[Signature Page to Written Consent of Manageco Manager LLC (Lake Pointe III & IV)]

EXHIBIT A

[See Attached]

RECOURSE CARVE-OUT GUARANTY

THIS RECOURSE CARVE-OUT GUARANTY (this "**Guaranty**") is made as of the ____ day of November, 2018 by **DRA GROWTH AND INCOME MASTER FUND IX, LLC,** a Delaware limited liability company ("**Guarantor**"), to and for the benefit of **CANADIAN IMPERIAL BANK OF COMMERCE**, acting through its New York Branch, as administrative agent for the Lenders (as hereinafter defined) (together with its successors and assigns in such capacity, "**Administrative Agent**").

W I T N E S S E T H:

WHEREAS, G&I IX MJW Lake Pointe III & IV LLC, a Delaware limited liability company ("**Borrower**"), the lenders party thereto (each a "**Lender**" and collectively, the "**Lenders**") and Administrative Agent have entered into a Loan Agreement, dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "**Loan Agreement**"), pursuant to which the Lenders are making a secured loan to Borrower in the principal amount of up to **THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS ($13,815,000.00)** (the "**Loan**");

WHEREAS, the Loan is secured, inter alia, by an Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, consolidated or modified from time to time the "**Security Instrument**"), made by Borrower, as grantor, to Administrative Agent (for the benefit of the Lenders), as grantee, encumbering the Property (as defined in the Loan Agreement);

WHEREAS, Guarantor directly or indirectly owns an interest in Borrower and, as a result of such interests, Guarantor shall derive material financial benefit from the Loan; and

WHEREAS, the Lenders are relying upon the statements and agreements contained herein in agreeing to make the Loan and the execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by the Lenders.

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees with Administrative Agent, for the benefit of the Lenders and their respective successors and assigns, as follows:

1. Capitalized terms used and not defined herein shall have the respective meanings given to such terms in the Loan Agreement or, if not defined therein, the Security Instrument.

2. Guarantor hereby absolutely, unconditionally and irrevocably:

(a) guarantees to Administrative Agent, for the benefit of the Lenders, the full and prompt payment of, and agrees to pay, protect, guarantee and indemnify and defend Administrative Agent and the Lenders from and against, any actual loss (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent by Borrower, Guarantor, Property Manager, their respective

Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party) and reasonable costs and expenses (including legal fees and disbursements) suffered by Administrative Agent and/or the Lenders and caused by, or related to or as a result of the occurrence of a Partial Recourse Event (as defined on Exhibit A attached hereto);

(b) guarantees to Administrative Agent, for the benefit of the Lenders, the full and prompt payment of the Debt upon the occurrence of a Full Recourse Event (as defined on Exhibit A attached hereto); and

(c) guarantees the full and prompt payment of any Enforcement Costs (as hereinafter defined in **Section 7** hereof).

All obligations described in clauses (a), (b) and (c) of this **Section 2** are referred to herein as the "**Obligations**". Any and all amounts required to be paid by Guarantor hereunder shall be paid to Administrative Agent, for the benefit of the Lenders, in United States currency at such place as Administrative Agent may, from time to time, in writing appoint. Any amounts received by Administrative Agent in respect of the Obligations from any source may be applied by Administrative Agent toward payment of the Obligations in such order of application as Administrative Agent, in its sole discretion, may from time to time elect.

3. (a) In the event of any default by Borrower in the payment or performance of any of the Obligations, Guarantor agrees, on demand by Administrative Agent, to pay and/or perform (subject to the limitations set forth therein) all the Obligations, regardless of any defense, right of set-off or claims which Borrower or either Guarantor may have against Administrative Agent, any Lender or the holder of the Note.

(b) All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Administrative Agent and the choice by Administrative Agent of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Administrative Agent to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Administrative Agent from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies provided herein in part because they recognize that the choice of remedies upon an Event of Default hereunder will necessarily be and should properly be a matter of good-faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Administrative Agent, for the benefit of the Lenders, at the lowest cost to Borrower and/or Guarantor. It is the intention of the parties hereto that such good-faith choice by Administrative Agent be given conclusive effect regardless of such subsequent developments.

4. Guarantor hereby waives (a) notice of acceptance of this Guaranty by Administrative Agent or the Lenders and except as expressly required in this Guaranty or the Loan Documents, any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) any defense, right of set-off or other claim which Guarantor may have against Borrower or which Guarantor or Borrower may have against Administrative

Agent, the Lenders or the holder of the Note, (c) presentment for payment, demand for payment (other than as provided in **Section 2** hereof), notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, (d) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal, (e) any right of Administrative Agent or the Lenders, as a condition of payment or performance by Guarantor, to proceed against Borrower, any other guarantor of the Obligations, including Guarantor or any other Person, and (f) any failure by Administrative Agent or the Lenders to inform Guarantor of any facts Administrative Agent or the Lenders may now or hereafter know about Borrower, the Property, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that neither Administrative Agent nor the Lenders have a duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonpayment or nonperformance of the Obligations. Guarantor agrees that any claims which Guarantor may have against Borrower must be brought in a separate action, which action shall not be consolidated with any action brought by Administrative Agent, for the benefit of the Lenders, unless such consolidation is required by law. Credit may be granted or continued from time to time by Administrative Agent, for the benefit of the Lenders, to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation. Neither Administrative Agent nor the Lenders shall have an obligation to disclose or discuss with Guarantor their assessment of the financial condition of Borrower. Guarantor acknowledges that no representations of any kind whatsoever have been made to Guarantor by Administrative Agent or the Lenders. No modification or waiver of any of the provisions of this Guaranty shall be binding upon Administrative Agent or the Lenders except as expressly set forth in a writing duly signed and delivered on behalf of Administrative Agent for the benefit of the Lenders. Guarantor further agrees that any exculpatory language contained in the Note, in the Loan Agreement, in the Security Instrument or in any other Loan Document shall in no event apply to this Guaranty and will not prevent Administrative Agent, for the benefit of the Lenders, from proceeding against Guarantor to enforce this Guaranty.

5. Guarantor hereby agrees that Guarantor's liability as guarantor shall not be impaired or affected in any way by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor, of the time for payment of interest or principal under the Note or by any forbearance or delay in collecting interest or principal under the Note, or by any waiver by Administrative Agent under the Loan Agreement, the Security Instrument or any other Loan Documents, or by Administrative Agent's failure or election not to pursue any other remedies it may have against Borrower or Guarantor, or by any change or modification in the Note, the Loan Agreement, the Security Instrument or any other Loan Document, or by the acceptance by Administrative Agent, for the benefit of the Lenders, of any additional security or any increase, substitution or change therein, or by the release by Administrative Agent of any security or any withdrawal thereof or decrease therein, or by the application of payments received in respect of the Obligations from any source to the payment of any obligation other than the indebtedness due under the Note (the "**Indebtedness**"), even though Administrative Agent might lawfully have elected to apply such payments to any part or all of the Indebtedness, it being the intent hereof that Guarantor shall remain liable for payment and performance of the Obligations, notwithstanding any act or thing which might otherwise

operate as a legal or equitable discharge of a surety. Guarantor hereby further agrees that Administrative Agent, for the benefit of the Lenders, may at any time enter into agreements with Borrower to amend and modify the Note, the Loan Agreement, the Security Instrument or other Loan Documents, and may waive or release any provision or provisions of the Note, the Loan Agreement, the Security Instrument and the other Loan Documents any thereof, and, with reference to such instruments, may make and enter into any such amendments or agreements as Administrative Agent, for the benefit of the Lenders, and Borrower may deem proper and desirable, and may apply any monies received in respect of the Obligations by Administrative Agent, for the benefit of the Lenders, regardless of the purpose for which the same paid to Administrative Agent, to cure any default or to apply on account of the Indebtedness which is owing to Administrative Agent and the Lenders, in such order and priority as Administrative Agent, in its sole discretion, may elect, without in any manner impairing or affecting this Guaranty or any of Administrative Agent's rights hereunder or Guarantor's obligations hereunder.

6. This is an absolute, present and continuing guaranty of payment and performance and not of collection. Guarantor agrees that this Guaranty may be enforced by Administrative Agent, for the benefit of the Lenders, without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Security Instrument or otherwise, or resorting to any other guaranties, and Guarantor hereby waives any right to require Administrative Agent to join Borrower in any action brought hereunder or to continue any action against or obtain any judgment against Borrower or to pursue any other remedy or enforce any other right against Borrower, any other guarantor of the Obligations or any other Person, as a condition of Guarantor's payment and performance of the Obligations under the Guaranty. Guarantor further agrees that nothing contained herein or otherwise shall prevent Administrative Agent from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity or under the Note, the Loan Agreement, the Security Instrument or any other Loan Documents, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of any of Guarantor's obligations hereunder, including, without limitation, the Obligations, it being the purpose and intent of Guarantor that the obligations of Guarantor hereunder, including, without limitation, the Obligations, shall be absolute, independent and unconditional under any and all circumstances whatsoever. Neither Guarantor's obligations under this Guaranty, including, without limitation, the Obligations, nor any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower under the Note, the Loan Agreement, the Security Instrument or other Loan Documents or by reason of the bankruptcy of Borrower or by reason of any creditor or bankruptcy proceeding instituted by or against Borrower. This Guaranty shall continue to be effective or be reinstated (as the case may be) if at any time payment of all or any part of the Obligations is rescinded or otherwise required to be returned by Administrative Agent upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of Borrower, or upon or as a result of the appointment of a receiver, intervenor, custodian or conservator of or trustee or similar officer for, Borrower or any substantial part of its property, or otherwise, all as though such payment to Administrative Agent had not been made, regardless of whether Administrative Agent contested the order requiring the return of such payment. In the event of the foreclosure

of the Security Instrument and of a deficiency with respect to the Obligations, Guarantor hereby promises and agrees forthwith to pay the amount of such deficiency with respect to the Obligations, notwithstanding the fact that recovery of said deficiency against Borrower would not be allowed by applicable law; however, the foregoing shall not be deemed to require that Administrative Agent institute foreclosure proceedings or otherwise resort to or exhaust any other collateral or security prior to or concurrently with enforcing this Guaranty.

7. If (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding, (b) an attorney is retained to represent Administrative Agent, for the benefit of the Lenders, and the Lenders in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under the Loan or this Guaranty, (c) an attorney is retained to provide advice or other representation with respect to the Loan or this Guaranty, or (d) an attorney is retained to represent Administrative Agent, for the benefit of the Lenders, and the Lenders in any other proceeding whatsoever in connection with the Loan or this Guaranty, then Guarantor shall pay to Administrative Agent, for the benefit of the Lenders, upon demand, all reasonable attorney's fees and reasonable costs and expenses, including, without limitation, court costs, filing fees, recording costs, expenses of foreclosure, title insurance premiums, survey costs, minutes of foreclosure, and all other costs and expenses incurred in connection therewith (all of which are referred to herein as "**Enforcement Costs**"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce the Loan or this Guaranty and any or all of the other Loan Documents.

8. Notwithstanding the satisfaction by Guarantor of any liability hereunder, so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, Guarantor expressly waives any rights to enforce any remedy which Administrative Agent and the Lenders may have against Borrower, any rights to participate in any security for the Loan and any rights of indemnity, reimbursement, contribution or subrogation which Guarantor may have against Borrower with respect to the Loan. In addition to and without in any way limiting the foregoing, so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, Guarantor hereby subordinates any and all indebtedness of Borrower to Guarantor now or hereafter owed to Guarantor to all indebtedness of Borrower to Administrative Agent and the Lenders under the Loan Documents, and agrees with Administrative Agent and the Lenders that Guarantor will not seek, accept, or retain for its own account, any payment from Borrower on account of such subordinated debt. Any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Administrative Agent, for the benefit of the Lenders, and shall be paid over to Administrative Agent, for the benefit of the Lenders, on account of the Indebtedness without impairing or releasing the obligations of Guarantor hereunder.

9. Guarantor hereby covenants and agrees that, so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any

obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, it will not at any time institute against Borrower, or join in any institution against Borrower of, any bankruptcy proceedings under any United States Federal or state bankruptcy or similar law. In addition, for so long as the Indebtedness remains outstanding, Guarantor (a) waives and releases any claim (within the meaning of 11 U.S.C. § 101) which Guarantor may have against Borrower arising from a payment made by Guarantor under this Guaranty, and (b) agrees not to assert or take advantage of any subrogation rights of Guarantor or any right of Guarantor to proceed against Borrower for reimbursement. It is expressly understood that the waivers and agreements of Guarantor set forth in this **Section 9** constitute additional and cumulative benefits given to Administrative Agent, for the benefit of the Lenders, for its security and as an inducement to the Lenders to extend credit to Borrower.

10. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been validly given or served (a) by delivery of the same in person to the intended addressee, or (b) by depositing the same with Federal Express or another reputable private courier service for next Business Day delivery, or (c) by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth below:

If to Guarantor:

DRA Growth and Income Master Fund IX, LLC
c/o DRA Advisors LLC
220 East 42nd Street
New York, New York 10017
Attention: Jean Marie Apruzzese

and to:

DRA Advisors LLC
220 East 42nd Street
New York, New York 10017
Attention: Dean Sickles
Email: dsickles@draadvisors.com

and to:

Blank Rome LLP
405 Lexington Avenue
New York, NY 10174
Attn: Martin Luskin, Esq. with a concurrent copy to Samantha Wallack, Esq.
Email: mluskin@blankrome.com
Email : szweig@blankrome.com

If to Administrative Agent:

Canadian Imperial Bank of Commerce
One South Wacker Drive
Suite 3500
Chicago, Illinois 60606
Attn: US Loan Services Group

with a copy to:

CIBC INC.
425 Lexington Avenue
4th Floor
New York, New York 10017
Attn: Real Estate Group

and to:

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Attn: Gary A. Goodman

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. All notices, demands and requests shall be effective upon such personal delivery, or one (1) Business Day after being deposited with the private courier service, or two (2) Business Days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) Business Days' prior written notice in accordance with the provisions hereof, each party hereto shall have the right from time to time to change its address to any other address within the United States of America.

11. In order to induce the Lenders to make the Loan, Guarantor makes the representations and warranties to Administrative Agent and the Lenders set forth in this **Section 11**. Guarantor acknowledges that but for the truth and accuracy of the matters covered by the following representations and warranties, the Lenders would not have agreed to make the Loan.

(a) As of the date hereof, Guarantor maintains an office at the address set forth for in **Section 10** of this Guaranty.

(b) Any and all balance sheets, net worth statements, and other financial data with respect to Guarantor which have been furnished to Administrative Agent or the Lenders by or on behalf of Guarantor fairly and accurately present in all material respects the financial condition of Guarantor as of the respective dates thereof. The financial statements given to Administrative Agent or the Lenders by or on behalf of Guarantor separately state the assets owned solely by Guarantor and the assets, if any, which are held jointly with others as of the respective dates thereof, and, as of the date hereof, there has been no material adverse change in the financial condition of Guarantor since the respective dates thereof.

(c) The execution, delivery, and performance by Guarantor of this Guaranty does not and will not contravene or conflict with (i) any law, order, rule, regulation, writ, injunction or decree in effect as of the date hereof of any government, governmental instrumentality court having jurisdiction over Guarantor or (ii) any contractual restriction binding on or affecting Guarantor or its property or assets which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty.

(d) This Guaranty creates legal, valid, and binding obligations of Guarantor and is enforceable against Guarantor in accordance with its terms.

(e) Except as disclosed in writing to Administrative Agent or the Lenders, as of the date hereof, there is no action, proceeding, or investigation pending or, to the knowledge of Guarantor, threatened or affecting Guarantor, which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty. As of the date hereof, there are no judgments or orders for the payment of money rendered against Guarantor for an amount in excess of $25,000, which have been undischarged for a period of ten (10) or more consecutive days and the enforcement of which is not stayed by reason of a pending appeal or otherwise. As of the date hereof, Guarantor is in default under any agreements which default may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty.

(f) As of the date hereof, Guarantor has disclosed all events, conditions, and facts known to Guarantor, which are more likely than not to have a material adverse effect on the financial condition of Guarantor. As of the date hereof, no representation or warranty by Guarantor contained herein, or any schedule, certificate or other document furnished to Administrative Agent or the Lenders by or on behalf of Guarantor in connection with this Guaranty or the Loan contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading in any material respect.

(g) As of the date hereof, there are no facts or circumstances of any kind or nature of which either Guarantor is aware, which are more likely than not to in any way impair or prevent Guarantor from performing its obligations under this Guaranty in any material respect.

(h) Intentionally omitted.

Guarantor hereby agrees to severally indemnify and hold Administrative Agent and the Lenders free and harmless from and against all loss, cost, liability, damage (excluding any punitive or special damage, except to the extent any such punitive or special damage is asserted against Administrative Agent or any Lender by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party), and expense, including attorney's fees and costs, which Administrative Agent or the Lenders may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties.

12. (a) Guarantor hereby covenants to and for the benefit of Administrative Agent and the Lenders that any and all balance sheets, net worth statements and other financial data which may hereafter be given to Administrative Agent or the Lenders with respect to Guarantor

will at the time of such delivery fairly and accurately present the financial condition of Guarantor as of the date thereof (or, if undated, as of the date of delivery) in all material respects.

(b) Until the Loan is indefeasibly paid in full, Guarantor hereby covenants and agrees to and for the benefit of Administrative Agent and the Lenders to maintain the following (collectively, the "**Financial Covenants**"): (i) a Net Worth of the Guarantor, in the aggregate, of at least THIRTY-FIVE MILLION AND NO/100 DOLLARS ($35,000,000.00), and (ii) Liquid Assets of the Guarantor, in the aggregate, of at least THREE MILLION AND NO/100 DOLLARS ($3,000,000.00);

(c) Until the Loan is indefeasibly paid in full, Guarantor hereby covenants and agrees as follows:

(i) to deliver to Administrative Agent a Financial Covenants Certification within sixty (60) days of the end of each calendar quarter;

(ii) to deliver to Administrative Agent a Financial Covenants Certification within sixty (60) days of the end of each calendar year;

(iii) to deliver to Administrative Agent annual financial statements in substantially the same form and substance as Guarantor provided to Administrative Agent in connection with the closing of the Loan (including a detailed balance sheet, income statement, cash flow statement and contingent liability schedule (which such contingent liability schedule shall include, without limitation, any full and/or partial guarantees of loan repayment or indemnifications for "bad acts" in connection with any loans)) for Guarantor within one hundred twenty (120) days of the end of each calendar year, certified by the chief financial officer of Guarantor (or such other officer of Guarantor reasonably acceptable to Administrative Agent), in form and substance reasonably acceptable to Administrative Agent;

(iv) Intentionally omitted.

(d) [reserved].

(e) As used herein, the terms:

"**Financial Covenants Certification**" shall mean a statement of Guarantor, if Guarantor is a natural person, or by the principal financial or accounting officer of Guarantor, if Guarantor is an entity, in form and substance reasonably acceptable to Administrative Agent, certifying (a) (i) the Net Worth and Liquid Assets of Guarantor as of the end of the prior calendar quarter or calendar year, as applicable and (ii) whether Guarantor is in compliance with the Financial Covenants as of the quarterly or annual calculation thereof, and (b) that, to Guarantor's knowledge, there are no undisclosed facts or circumstances that would make the information set forth therein true and not misleading in any material respect.

"**Liquid Asset**" shall mean any of the following, but only to the extent owned individually, free of all security interests, liens, pledges, charges or any other encumbrance: (a)

cash, (b) certificates of deposit (with a maturity of two years or less) issued by, or savings account with, any bank or other financial institution reasonably acceptable to Administrative Agent or (c) marketable securities listed on a national or international exchange reasonably acceptable to Administrative Agent, marked to market.

"**Net Worth**" shall mean at any date of determination, an amount equal to the aggregate of (a) the total assets of Guarantor determined in accordance with generally accepted accounting principles (or such other method of accounting reasonably acceptable to Administrative Agent), minus (b) the total liabilities of Guarantor determined in accordance with generally accepted accounting principles (or such other method of accounting reasonably acceptable to Administrative Agent), and minus (c) the value of Guarantor's collective interest (including, without limitation, any equity interest) in Borrower and the Property.

(f) Prior to effectuating any dissolution of DRA Guarantor pursuant to its operating agreement, DRA Guarantor shall establish commercially reasonable adequate reserves in order to meet its contingent liabilities arising with respect to its obligations under this Guaranty.

13. Guarantor shall, within five (5) Business Days after receipt thereof, deliver to Administrative Agent copies of any notices of default served on Guarantor pursuant to the terms of any other material agreement to which Guarantor is a party.

14. This Guaranty shall be governed by, construed and enforced under the internal laws (without regard to principles of conflicts of laws) of the State of New York pursuant to Section 5-1401 of the New York General Obligations Law and any applicable laws of the United States of America.

15. GUARANTOR HEREBY IRREVOCABLY SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEW YORK FOR THE ENFORCEMENT OF THIS GUARANTY AND WAIVES ANY AND ALL PERSONAL RIGHTS TO OBJECT TO SUCH JURISDICTION FOR THE PURPOSES OF LITIGATION TO ENFORCE THIS GUARANTY. GUARANTOR HEREBY SUBMITS TO JURISDICTION OF EITHER THE COURTS IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK, OR (IN A CASE DIVERSITY OF CITIZENSHIP) THE UNITED STATES DISTRICT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK, IN ANY ACTION, OR PROCEEDING WHICH ADMINISTRATIVE AGENT MAY AT ANY TIME WISH TO FILE IN CONNECTION WITH THIS GUARANTY OR ANY RELATED MATTER. GUARANTOR HEREBY AGREES THAT AN ACTION, SUIT, OR PROCEEDING TO ENFORCE THIS GUARANTY MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK AND HEREBY WAIVES ANY ACTION WHICH GUARANTOR MAY HAVE TO THE LAYING OF ANY SUCH ACTION, SUIT, OR PROCEEDING IN ANY SUCH COURT; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS **SECTION 15** SHALL NOT BE DEEMED TO PRECLUDE ADMINISTRATIVE AGENT FROM FILING ANY SUCH ACTION, OR PROCEEDING IN ANY OTHER APPROPRIATE FORUM.

16. GUARANTOR, ADMINISTRATIVE AGENT AND THE LENDERS HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THIS GUARANTY AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

17. This Guaranty contains the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein. This Guaranty may not be changed, modified, terminated or discharged, in whole or in part, except by an agreement in writing, executed by the party against whom enforcement of the change, modification, termination or discharge is to be sought.

18. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision of this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision or such portion of such provision of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such provision or portion of such provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, and that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable provision or portion of such provision were not contained herein, and that the rights, obligations and interest of Administrative Agent, the Lenders or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

19. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor.

20. Notwithstanding anything to the contrary contained in this Guaranty or in any other Loan Document, this Guaranty shall continue in full force and effect until full indefeasible payment of the Debt (as defined in the Loan Agreement).

21. This Guaranty may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument. Any signature page of this Guaranty may be detached from any counterpart of this Guaranty without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Guaranty identical in form hereto but having attached to it one or more additional signature pages.

22. Except as expressly set forth in **Section 11** of this Guaranty, this Guaranty shall constitute the joint and several obligations of Guarantor. Guarantor acknowledges that Guarantor is responsible for all amounts due under this Guaranty and that Administrative Agent,

for the benefit of the Lenders, has the power to release any or all of the other Guarantor from liability hereunder without obtaining the consent of Guarantor.

[Balance of page intentionally blank; signatures appear on following pages]

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first written above.

GUARANTOR:

DRA GROWTH AND INCOME MASTER FUND IX, LLC,
a Delaware limited liability company

By: Manageco IX, LLC,
a Delaware limited liability company,
its managing member

By: _____
Name:
Title:

EXHIBIT A

RECOURSE EVENTS

(a) The occurrence of any or all of the following shall constitute a "**Partial Recourse Event**":

(i) Intentional misappropriation or conversion of any Rents and Profits, or other funds constituting proceeds of the Property in violation of the Loan Documents (which misappropriation may include, without limitation, (A) rent and other payments received from Tenants paid more than one month in advance, and not applied in accordance with the Loan Documents or paid to Administrative Agent upon an Event of Default; and/or (B) failure to apply Rents and Profits in accordance with the terms of the Loan Agreement and the other Loan Documents), or failure to otherwise deposit rents in accordance with the terms of the Loan Agreement, in each case to the full extent of the funds misappropriated or misapplied;

(ii) any security deposits not delivered to Administrative Agent upon foreclosure of the Mortgage (or similar sale pursuant to the terms thereof) or an action or conveyance in lieu thereof, except to the extent previously applied in accordance with the terms of the related Lease;

(iii) proceeds (A) paid under any insurance policies (or paid as a result of any other claim or cause of action against any person or entity) by reason of damage, loss or destruction to all or any portion of the Property, or (B) resulting from the condemnation or other taking in lieu of condemnation of all or any portion of the Property, or any of them, in each case to the full extent of such proceeds, which were received by Borrower, not previously delivered to Administrative Agent, but which, under the terms of the Loan Documents, should have been delivered to Administrative Agent;

(iv) any willful misconduct by Borrower or Guarantor, or any Person acting Controlled by Borrower or Guarantor (including, without limitation, removal of any portion of the Property in violation of the terms of the Loan Documents) that materially impairs (A) the security provided to Administrative Agent and the Lenders, or (B) the recovery by Administrative Agent and/or any Lender of all Debt and other obligations owing under the Loan Documents, or (C) the performance by Borrower of its non-monetary obligations under the Loan Documents;

(v) intentional material physical waste committed on the Property by Borrower or Guarantor, or any Person controlled by either of them; or intentional damage to the Property by Borrower or Guarantor, or any Person controlled by either of them, except for normal wear, tear and casualty (not intentionally caused by Borrower, Guarantor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them), and condemnation;

(vi) failure to pay or make deposits to the Impound Account as required under the Loan Agreement on account of, any (A) Taxes or Other Charges, or other amounts which (if unpaid) could create liens on any portion of the Property which would be superior to the lien or security title granted to Administrative Agent pursuant to the Loan Documents, or (B) premiums on insurance policies required under the Loan Documents to be maintained by Borrower or with respect to the Property; provided that Borrower shall not have liability under this Exhibit A, **Section (a)(vi)** to the extent that revenue from the Property is insufficient to pay such amounts;

(vii) fraud or intentional material misrepresentation or failure to disclose a material fact by Borrower or Guarantor, or any person controlled by Borrower or Guarantor in connection with the Loan;

(viii) damages arising from a breach of the Hazardous Substances Indemnity Agreement; or

(ix) any Minor Transfer Violation.

(b) The occurrence of any or all of the following shall constitute a "**Full Recourse Event**":

(i) the filing by Borrower of a voluntary bankruptcy petition or for the assignment for the benefit of creditors (or any similar state law insolvency proceeding), or the filing of an involuntary bankruptcy petition against Borrower: (A) by Guarantor or Borrower, as the case may be, or by any or Affiliate thereof (each a "**Restricted Entity**"); (B) by any Person acting at the direction or request of, or in collusion or by agreement with, Borrower, Guarantor or any Restricted Entity; or (C) by any other Person if Borrower or Guarantor, as the case may be, fails to oppose in court such filing in good faith, or Borrower, Guarantor or any Restricted Entity otherwise consents to, agrees with, files court papers in any way supportive of, or joins in such filing;

(ii) any Transfer (other than a Minor Transfer Violation) occurs without the prior written consent of Administrative Agent if such consent is required by the Loan Agreement and/or otherwise violates the requirements of the Loan Documents; or

(iii) Borrower fails to obtain Administrative Agent's prior written consent to any subordinate financing or other voluntary lien encumbering the Property (excluding mechanic's and/or materialman's liens) if such consent is required by the Loan Documents.

EXHIBIT B

[See Attached]

HAZARDOUS SUBSTANCES INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES INDEMNITY AGREEMENT (this "**Agreement**"), is made as of the ____ day of November, 2018 by **DRA GROWTH AND INCOME MASTER FUND IX, LLC,** a Delaware limited liability company **("Guarantor")**, whose address is 220 East 42nd Street, 27th Floor, New York, New York 10017, and by **G&I IX MJW LAKE POINTE III & IV LLC,** a Delaware limited liability company ("**Borrower**"), whose address is c/o DRA Advisors, LLC, 220 East 42nd Street, 27th Floor, New York, New York 10017 (Borrower and Guarantor are collectively referred to herein as "**Indemnitors**", and Borrower and Guarantor are individually referred to herein as an "**Indemnitor**"), jointly and severally, to and for the benefit of **CANADIAN IMPERIAL BANK OF COMMERCE**, acting through its New York Branch, as administrative agent for the Lenders (as hereinafter defined) (together with its successors and assigns in such capacity, "**Administrative Agent**"), whose address is One South Wacker Drive, Suite 3500, Chicago, Illinois 60606, Attn: Real Estate Group.

W I T N E S S E T H:

WHEREAS, simultaneously with the execution and delivery of this Agreement, Borrower, the lenders party thereto (each a "**Lender**" and collectively, the "**Lenders**") and Administrative Agent have entered into a Loan Agreement, dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "**Loan Agreement**"), pursuant to which the Lenders are making a secured loan to Borrower in the principal amount of up to **THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS ($13,815,000.00)** (the "**Loan**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. The Loan is evidenced by one or more Promissory Notes, dated as of the date hereof, made by Borrower to the respective order of each Lender in the aggregate principal amount of **THIRTEEN MILLION EIGHT HUNDRED FIFTEEN THOUSAND AND NO/100 DOLLARS ($13,815,000.00)** (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, extended, or supplemented from time to time, individually or collectively as the context requires, the "**Note**");

WHEREAS, the Note is secured, inter alia, by an Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, consolidated or modified from time to time the "**Security Instrument**"), made by Borrower, as grantor, for the benefit of Administrative Agent (for the benefit of the Lenders), as grantee, encumbering that certain real property commonly known as Lake Pointe Center III & IV, located at 8470 & 8520 Allison Pointe Blvd., Indianapolis, Indiana 46250, in Marion County, State of Indiana, as is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Real Estate**"), and the buildings, structures and other improvements now or hereafter located thereon (said real property, buildings, structures and other improvements collectively, the "**Improvements**") (the Real Estate and the Improvements are hereinafter sometimes collectively referred to as the "**Property**"), and by other documents and instruments (the Note, the Loan Agreement, the Security Instrument and such other documents and instruments, as the same may from time to time be amended, consolidated, renewed or replaced, being collectively referred to herein as the "**Loan Documents**");

WHEREAS, as a condition to making the Loan to Borrower, the Lenders and Administrative Agent have required that Indemnitors indemnify Administrative Agent and the Lenders with respect to hazardous substances on, in under or affecting the Property as set forth herein; and

WHEREAS, Guarantor is the holder of a direct or indirect beneficial interest in Borrower, the extension of the Loan to Borrower is of substantial benefit to Guarantor and, therefore, Indemnitors desire to indemnify Administrative Agent and the Lenders with respect to hazardous substances on, in under or affecting the Property as set forth herein.

NOW, THEREFORE, to induce the Lenders to extend the Loan to Borrower and Administrative Agent to serve in its capacity as such pursuant to the Loan Documents, and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Indemnitors hereby jointly and severally covenant and agree for the benefit of Administrative Agent and the Lenders, as follows:

1. Indemnity. Indemnitors hereby, jointly and severally assume liability for, and hereby agree to pay, protect, defend (at trial and appellate levels) and with attorneys, consultants and experts reasonably acceptable to Administrative Agent, and save Administrative Agent and the Lenders harmless from and against, and hereby indemnify Administrative Agent and the Lenders from and against any and all present or future liens, damages (excluding any punitive or special damages, except to the extent any such punitive or special damages are asserted against Administrative Agent by Borrower, any Indemnitor, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, or any third-party), losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims (excluding any claims for actual diminution in value, except to the extent such diminution in value would result in Administrative Agent's failure to recover any amount of the entire outstanding Debt), litigation, demands, defenses, judgments, suits, proceedings, reasonable costs, disbursements and expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) (collectively, "**Costs**"), which may at any time be imposed upon, incurred by or asserted or awarded against Administrative Agent, any Lender or the Property, and arising directly or indirectly from or out of, except solely if and to the extent, in each case, same arises from the gross negligence or willful misconduct of Administrative Agent or any Lender or their respective successors, assigns, shareholders, directors, officers, employees and/or agents and not from any actions by Borrower, Indemnitors, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them (the matters addressed in the following subparagraphs (i) through (v) are hereinafter referred to collectively as the "**Environmental Indemnity Triggers**"): (i) the violation of any present or future local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up (collectively, "**Environmental Laws**"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq. and 40 CFR (§302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and 40 CFR (§ 116.1 et seq.), and the Hazardous Materials Transportation Act (49 U.S.C.

§ 1801 et seq.), and those relating to Lead Based Paint (as hereinafter defined), all as same have been or may be amended, relating to or affecting the Property, whether or not caused by or within the control of Indemnitors; (ii) the actual presence, release or threat of release of any hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, paint containing more than 0.5% lead by dry weight ("**Lead Based Paint**"), infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws, or any molds, spores or fungus or harmful microbial matter (collectively, "**Hazardous Substances**") (except those substances used by Borrower and Tenants in the ordinary course of their respective businesses and, in each case, in compliance with all Environmental Laws), now or hereafter on, in, under or affecting all or any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas, regardless of whether or not caused by or within the control of Indemnitors; (iii) the failure by Indemnitors to comply fully with the terms and conditions of this Agreement; (iv) the material breach of any representation or warranty contained in this Agreement; or (v) the enforcement of this Agreement, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or (to the extent such Hazardous Substances were released from, or migrated from, the Property) any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property (to the extent such Hazardous Substances were released from, or migrated from, the Property) or any surrounding areas. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, the indemnity set forth in this **Section 1** shall not apply to any Hazardous Substances used by Borrower and Tenants in the ordinary course of their respective businesses and, in each case, in compliance with all Environmental Laws or Environmental Indemnity Triggers that are not directly or indirectly caused by Borrower, Indemnitors, Property Manager, their respective Affiliates, successors, assigns, shareholders, directors, officers, employees and/or agents, or any Person acting at the direction of any of them, and that first occurred after (i) Administrative Agent or any Lender takes fee title to the entire Property following the occurrence of any Event of Default, or any court appointed receiver takes possession of the Property, and (ii) Borrower, Indemnitor, Property Manager, or any of their Affiliates, no longer control, operate, possess and/or manage the Property in any way; provided however, notwithstanding the foregoing, each Indemnitor, and not Administrative Agent or any Lender, shall bear the burden of proof regarding which party or parties directly and/or indirectly caused any such Environmental Indemnity Triggers and the time at which any such Environmental Indemnity Triggers first occurred in any dispute that may hereafter arise concerning the scope of liability under the indemnity set forth in this **Section 1**.

2. Representations Regarding Hazardous Substances. Indemnitors hereby represent and warrant to and covenant and agree with Administrative Agent and the Lenders as follows:

(a) To Indemnitors' knowledge, except as expressly set forth in the environmental report prepared for Administrative Agent in connection with the Loan (the "**Environmental Report**"), the Property is not in direct or indirect violation of any Environmental Law;

(b) To Indemnitors' knowledge, except as expressly set forth in the Environmental Report, no Hazardous Substances are located on or have been handled, generated, stored, processed or disposed of on or released or discharged from the Property (including underground contamination) except for those substances used by Borrower or Tenants (as defined in the Loan Agreement) in the ordinary course of their respective businesses and in compliance with all Environmental Laws;

(c) The Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances;

(d) To Indemnitors' knowledge, except as expressly set forth in the Environmental Report, there are no existing or closed underground storage tanks or other underground storage receptacles for Hazardous Substances on the Property;

(e) Indemnitors have received no written notice of, and to Indemnitors' knowledge, there exists no investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property nor do Indemnitors know of any basis for such a claim; and

(f) Indemnitors have received no written notice that, and to Indemnitors' knowledge, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property nor do Indemnitors know of any basis for such a claim.

3. Covenants of Indemnitors.

(a) Indemnitors shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower and Tenants in the ordinary course of their respective businesses and, in each case, in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all Tenants, and, without limiting the generality of the foregoing, during the term of this Agreement, shall not install in the Improvements or permit to be installed in the Improvements any asbestos containing materials ("**ACMs**") or any substance containing ACMs. Borrower shall, if required under applicable Environmental Laws, maintain all applicable Material Safety Data Sheets with respect to the Property, and make same available to Administrative Agent, the Lenders and their respective consultants upon reasonable notice. Indemnitors acknowledge their responsibility to be aware of, and fully versed in, all Environmental Laws in effect during the term of the Loan. Indemnitors further acknowledge and agree that neither Administrative Agent nor any Lender has a duty to

provide Indemnitors with any information regarding the Environmental Laws or any interpretation thereof.

(b) Indemnitors shall promptly notify Administrative Agent should Indemnitors, or any of them, become aware of: (i) any Hazardous Substances, or other potential environmental liability, with respect to the Property; (ii) any lien, action or notice affecting the Property or Borrower resulting from any violation or alleged violation of the Environmental Laws; (iii) the institution of any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances; or (iv) the discovery of any occurrence, condition or state of facts which would render any representation or warranty contained in this Agreement incorrect in any material respect if made at the time of such discovery. Indemnitors shall, promptly and when and as required and regardless of the source of the contamination, at their own expense, take all actions as shall be necessary or advisable for the clean-up of any and all portions of the Property or other property affected as a result of the migration of Hazardous Substances from the Property, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws, and shall further pay or cause to be paid, at no expense to Administrative Agent or the Lenders, all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Indemnitors fail to take such actions, (1) Administrative Agent may, but shall not be obligated to, cause the Property or other property affected as a result of the migration of Hazardous Substances from the Property to be freed from any Hazardous Substances and brought into conformance with Environmental Laws and any cost incurred in connection therewith shall be included in Costs and shall be paid by Indemnitors in accordance with the terms of **Section 4(c)** hereof, and (2) in furtherance of the foregoing, Indemnitors hereby grant to Administrative Agent and its agents access to the Property and an irrevocable license to remove any items deemed by Administrative Agent to be Hazardous Substances and to do all things Administrative Agent shall deem necessary to bring the Property into conformance with Environmental Laws.

(c) Upon the request of Administrative Agent, at any time and from time to time after the occurrence of an Event of Default under this Agreement or an Event of Default under the Loan Agreement or at such other time as Administrative Agent has reasonable grounds to believe that Hazardous Substances are or have been released, stored or disposed of on the Property or any surrounding areas in violation of Environmental Laws or that the Property may be in violation of the Environmental Laws, Indemnitors shall provide, at Indemnitors' sole expense, an inspection or audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant reasonably approved by Administrative Agent indicating the presence or absence of Hazardous Substances on the Property or an inspection or audit of the improvements located on the Property prepared by an engineering or consulting firm reasonably approved by Administrative Agent indicating the presence or absence of friable asbestos or substances containing asbestos on the Property. If Indemnitors fail to provide such inspection or audit within sixty (60) days after such request, Administrative Agent may order the same, and Indemnitors hereby grant to Administrative Agent access to the Property and an irrevocable license to undertake such inspection or audit. The reasonable cost of such inspection or audit shall be included in Costs and shall be paid by Indemnitors in accordance with the terms of **Section 4(c)** hereof.

(d) Prior to effectuating any dissolution of Guarantor pursuant to its operating agreement, Guarantor shall establish commercially reasonable adequate reserves in order to meet its contingent liabilities arising with respect to its obligations under this Agreement.

4. Indemnification Procedures.

(a) If any action shall be brought against Administrative Agent or any Lender based upon any of the matters for which Administrative Agent and the Lenders are indemnified hereunder, Lender shall notify Indemnitors in writing thereof and Indemnitors shall promptly assume the defense thereof, including, without limitation, the employment of counsel reasonably acceptable to Administrative Agent and the negotiation of any settlement; provided, however, that any failure of Administrative Agent to notify Indemnitors of such matter shall not impair or reduce the obligations of Indemnitors hereunder. Administrative Agent shall have the right, at the expense of Indemnitors (which expense shall be included in Costs), to employ separate counsel in any such action and to participate in the defense thereof. In the event Indemnitors shall fail to discharge or undertake to defend Administrative Agent and the Lenders against any claim, loss or liability for which Administrative Agent and the Lenders are indemnified hereunder, Administrative Agent, for itself and for the benefit of the Lenders, may, at its sole option and election, defend or settle such claim, loss or liability. The liability of Indemnitors to Administrative Agent and the Lenders hereunder shall be conclusively established by such settlement, provided such settlement is made in good faith, the amount of such liability to include both the settlement consideration and the reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Administrative Agent and the Lenders in effecting such settlement. In such event, such settlement consideration, reasonable costs and expenses shall be included in Costs and Indemnitors shall pay the same as hereinafter provided. Administrative Agent's good faith in any such settlement shall be conclusively established if the settlement is made on the advice of independent legal counsel for Administrative Agent.

(b) Indemnitors shall not, without the prior written consent of Administrative Agent: (i) settle or compromise any action, suit, proceeding or claim or consent to the entry of any judgment that does not include as an unconditional term thereof the delivery by the claimant or plaintiff to Administrative Agent of a full and complete written release of Administrative Agent and each Lender (in form, scope and substance reasonably satisfactory to Administrative Agent) from all liability in respect of such action, suit, proceeding or claim and a dismissal with prejudice of such action, suit, proceeding or claim; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect Administrative Agent or any Lender or obligate Administrative Agent or any Lender to pay any sum or perform any obligation as determined by Administrative Agent in its sole discretion.

(c) All Costs shall be reimbursable to Administrative Agent when and as incurred and, in the event of any litigation, claim or other proceedings without any requirement of waiting for the ultimate outcome of such litigation, claim or other proceedings and Indemnitors shall pay to Administrative Agent any and all Costs within fifteen (15) days after written notice from Administrative Agent itemizing the amounts thereof incurred to the date of such notice. In addition to any other remedy available for the failure of Indemnitors to periodically pay such Costs, such Costs, if not paid within said fifteen (15) day period, shall bear

interest at the Default Rate (as defined in the Loan Agreement) and such costs and interest shall be additional indebtedness of Borrower secured by the Security Instrument and by the other Loan Documents securing all or part of the Loan.

5. Reinstatement of Obligations. If at any time all or any part of any payment made by Indemnitors or received by Administrative Agent or any Lender from Indemnitors under or with respect to this Agreement is or must be rescinded or returned for any reason whatsoever (including, but not limited to, the insolvency, bankruptcy or reorganization of either Indemnitor), then the obligations of Indemnitors hereunder shall, to the extent of the payment rescinded or returned, be deemed to have continued in existence, notwithstanding such previous payment made by Indemnitors, or receipt of payment by Administrative Agent or any Lender, and the obligations of Indemnitors hereunder shall continue to be effective or be reinstated, as the case may be, as to such payment, all as though such previous payment by Indemnitors had never been made.

6. Waivers by Indemnitors. To the extent permitted by law, Indemnitors hereby waive and agree not to assert or take advantage of:

(a) Any right to require Administrative Agent or any Lender to proceed against any other person or to proceed against or exhaust any security held by Administrative Agent (for the benefit of the Lenders) at any time or to pursue any other remedy in Administrative Agent's power or under any other agreement before proceeding against Indemnitors hereunder;

(b) The defense of the statute of limitations in any action hereunder;

(c) Any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Administrative Agent to file or enforce a claim against the estate (in administration, bankruptcy or any other proceedings) of any other person or persons);

(d) Demand, presentment for payment, notice of nonpayment, protest, notice of protest and all other notices of any kind, or the lack of any thereof, including, without limiting the generality of the foregoing, notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Administrative Agent, any endorser or creditor of any Indemnitor or any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Lenders;

(e) Any defense based upon an election of remedies by Administrative Agent;

(f) Any right or claim of right to cause a marshalling of the assets of any Indemnitor;

(g) Any principle or provision of law, statutory or otherwise, which is or might be in conflict with the terms and provisions of this Agreement;

(h) Any duty on the part of Administrative Agent or any Lender to disclose to Indemnitors any facts Administrative Agent or any Lender may now or hereafter know about the Property, regardless of whether Administrative Agent or any Lender has reason to believe that any such facts materially increase the risk beyond that which Indemnitors intend to assume or has reason to believe that such facts are unknown to Indemnitors or has a reasonable opportunity to communicate such facts to Indemnitors, it being understood and agreed that Indemnitors are fully responsible for being and keeping informed of the condition of the Property and of any and all circumstances bearing on the risk that liability may be incurred by Indemnitors hereunder;

(i) Any lack of notice of disposition or of manner of disposition of any collateral for the Loan except for notices expressly required hereunder or under the Loan Documents;

(j) Any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Loan Documents;

(k) Any lack of commercial reasonableness in dealing with the collateral for the Loan;

(l) Any deficiencies in the collateral for the Loan or any deficiency in the ability of Administrative Agent to collect or to obtain performance from any persons or entities now or hereafter liable for the payment and performance of any obligation hereby guaranteed;

(m) An assertion or claim that the automatic stay provided by 11 U.S.C. §362 (arising upon the voluntary or involuntary bankruptcy proceeding of Borrower or Guarantor) or any other stay provided under any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent to enforce any of its rights, whether now or hereafter required, which Administrative Agent may have against any of the Indemnitors or the collateral for the Loan;

(n) Any modifications of the Loan Documents or any obligation of Borrower relating to the Loan by operation of law or by action of any court, whether pursuant to the Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, or otherwise; and

(o) Any action, occurrence, event or matter consented to by Indemnitors under **Section 7(h)** hereof, under any other provision hereof, or otherwise.

7. General Provisions.

(a) Fully Recourse. All of the terms and provisions of this Agreement are recourse obligations of Indemnitors and not restricted by any limitation on personal liability.

(b) Unsecured Obligations. Indemnitors hereby acknowledge that Administrative Agent's appraisal of the Property is such that Administrative Agent is not willing to accept the consequences of the inclusion of Indemnitors' indemnity set forth herein among the

obligations secured by the Security Instrument and the other Loan Documents and that the Lenders would not make the Loan but for the unsecured personal liability undertaken by Indemnitors herein. Indemnitors further hereby acknowledge that even though the representations, warranties, covenants or agreements of Indemnitors contained herein may be identical or substantially similar to representations, warranties, covenants or agreements of Borrower set forth in the Loan Agreement, the Security Instrument and secured thereby, the obligations of Indemnitors under this Agreement are not secured by the lien of the Security Instrument or the security interests or other collateral described in the Security Instrument or the other Loan Documents, it being the intent of Administrative Agent and the Lenders to create separate obligations of Indemnitors hereunder which can be enforced against Indemnitors without regard to the existence of the Security Instrument or other Loan Documents or the liens or security interests created therein.

(c) Survival. This Agreement shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the payment of the indebtedness evidenced and secured by the Loan Documents and the exercise of any remedy by Administrative Agent under the Security Instrument, the Loan Agreement or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof, even if, as a part of such remedy, the Loan is paid or satisfied in full. Notwithstanding the foregoing, in the event (i) (A) payment is made in full of the Loan, accrued interest thereon and other sums and costs due and payable in accordance with the Loan Documents (the date of the full payment of all of the foregoing is hereinafter referred to as the "**Repayment Date**"), or (B) Administrative Agent or any Lender takes fee title to the entire Property following the occurrence of any Event of Default, or any court appointed receiver takes possession of the Property, and Borrower, Indemnitors, Property Manager, or any of their Affiliates, no longer control, operate, possess and/or manage the Property in any way (the date upon which the following conditions are satisfied is hereinafter referred to as the "**Transfer Date**"), (ii) Administrative Agent shall have received a new environmental report of substantially the same scope and detail as the Environmental Report, performed on or after the Repayment Date or the Transfer Date, as applicable, by an environmental consultant selected by Lender (the "**New Environmental Report**"), at the sole cost and expense of Indemnitors, (iii) Administrative Agent shall have received such other information as Administrative Agent may require in its reasonable discretion (the "**Additional Information**"), at the sole cost and expense of Indemnitors, (iv) neither the New Environmental Report or the Additional Information show any environmental issues and the New Environmental Report concludes that there is no evidence that the Property contains any Hazardous Substances, that the Property is not subject to any significant risk of contamination from any off site Hazardous Substances, and that there is no required environmental remediation of the Property, and (v) no Event of Default exists and is continuing under this Agreement or in any of the other Loan Documents, Indemnitor shall be released from its obligations set forth herein on the second (2nd) anniversary of the date on which items (i)-(v) above are fully satisfied.

(d) No Subrogation; No Recourse Against Administrative Agent and the Lenders. Notwithstanding the satisfaction by Guarantor of any liability hereunder, so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, no Guarantor shall have any right of subrogation,

contribution, reimbursement or indemnity whatsoever or any right of recourse to or with respect to the assets or property of Borrower or to any collateral for the Loan. In connection with the foregoing, so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, Guarantor expressly waives any and all rights of subrogation to Administrative Agent and the Lenders against Borrower, and Guarantor hereby waives any rights to enforce any remedy which Administrative Agent or the Lenders may have against Borrower and any right to participate in any collateral for the Loan. In addition to and without in any way limiting the foregoing, Guarantor hereby subordinates any and all indebtedness of Borrower now or hereafter owed to Guarantor to all indebtedness of Borrower to Administrative Agent and the Lenders so long as any amount due to Administrative Agent or any Lender in connection with the Loan remains unpaid or any obligation due to Administrative Agent or any Lender in connection with the Loan remains outstanding or Borrower or Guarantor remains liable to Administrative Agent or any Lender under the Loan Documents, and Guarantor agrees with Administrative Agent and the Lenders that such Guarantor shall not demand or accept any payment of principal or interest from Borrower, shall not claim any offset or other reduction of such Guarantor's obligations hereunder because of any such indebtedness and shall not take any action to obtain any of the collateral from the Loan. Further, no Indemnitor shall have any right of recourse against Administrative Agent or the Lenders by reason of any action Administrative Agent or any Lender may take or omit to take under the provisions of this Agreement or under the provisions of any of the Loan Documents.

(e) Reservation of Rights. Nothing contained in this Agreement shall prevent in any way, diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Administrative Agent or any Lender may have against Indemnitor or any other Person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. § 9601 et seq.), as it may be amended from time to time, or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.

(f) Financial Statements. Each Indemnitor hereby agrees, as a material inducement to the Lenders to make the Loan to Borrower, to furnish to Administrative Agent the financial statements required to be furnished by such Indemnitor under **Section 4.16** of the Loan Agreement. Each Indemnitor hereby warrants and represents as to itself unto Administrative Agent and the Lenders that any and all balance sheets, net worth statements and other financial data which have heretofore been given to Administrative Agent with respect to such Indemnitor did at the time of such delivery fairly and accurately present the financial condition of such Indemnitor in all material respects and covenants as to itself that any financial data hereafter delivered to Administrative Agent and the Lenders shall fairly and accurately present the financial condition of such Indemnitor in all material respects.

(g) Rights Cumulative; Payments. Administrative Agent's and the Lenders' rights under this Agreement shall be in addition to all rights of Administrative Agent and the Lenders under the Note, the Loan Agreement, the Security Instrument and the other Loan Documents. Further, payments made by Indemnitors under this Agreement shall not reduce in

any respect Borrower's obligations and liabilities under the Note, the Loan Agreement, the Security Instrument and the other Loan Documents.

(h) No Limitation on Liability. Indemnitors hereby consent and agree that Administrative Agent may at any time and from time to time without further consent from Indemnitors do any of the following acts or events, and the liability of Indemnitors under this Agreement shall be unconditional and absolute and shall in no way be impaired or limited by any of the following acts or events, whether occurring with or without notice to Indemnitors or with or without consideration: (i) any extensions of time for performance required by any of the Loan Documents or extension of the maturity date of the Loan or renewal of the Note; (ii) any sale, assignment or foreclosure of the Note, the Loan Agreement, the Security Instrument or any of the other Loan Documents or any sale or transfer of the Property; (iii) any change in the composition of Borrower, including, without limitation, the withdrawal or removal of Guarantor from any current or future position of ownership, management or control of Borrower; (iv) the accuracy or inaccuracy of the representations and warranties made by Indemnitors herein or by Borrower in any of the Loan Documents; (v) the release of Borrower or of any other Person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, Administrative Agent's voluntary act or otherwise; (vi) the release or substitution in whole or in part of any security for the Loan; (vii) Administrative Agent's failure to record the Security Instrument or to file any financing statement (or Administrative Agent's improper recording or filing thereof) or to otherwise perfect, protect, secure or insure any lien or security interest given as security for the Loan; (viii) the modification of the terms of any one or more of the Loan Documents; or (ix) the taking or failure to take any action of any type whatsoever. No such action which Administrative Agent shall take or fail to take in connection with the Loan Documents or any collateral for the Loan, nor any course of dealing with Borrower or any other person, shall limit, impair or release Indemnitors' obligations hereunder, affect this Agreement in any way or afford Indemnitors any recourse against Administrative Agent or any Lender. Nothing contained in this **Section 7(h)** shall be construed to require Administrative Agent or any Lender to take or refrain from taking any action referred to herein.

(i) Entire Agreement; Amendment; Severability. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes (except as to the Loan Agreement and the Security Instrument) all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(j) Governing Law; Binding Effect; Waiver of Acceptance. THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY INDEMNITOR AND ACCEPTED BY ADMINISTRATIVE AGENT IN THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTIONS

EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF INDEMNITOR AND ADMINISTRATIVE AGENT AND EACH LENDER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT AND THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW. This Agreement shall bind each Indemnitor and the successors and assigns of each Indemnitor and shall inure to the benefit of Administrative Agent and the Lenders, their respective officers, directors, shareholders, agents and employees and their respective heirs, successors and assigns. Notwithstanding the foregoing, Indemnitors shall not assign any of their respective rights or obligations under this Agreement without the prior written consent of Administrative Agent, which consent may be withheld by Administrative Agent in its sole discretion. Each Indemnitor hereby waives any acceptance of this Agreement by Administrative Agent, and this Agreement shall immediately be binding upon Indemnitors.

(k) Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next Business Day (as hereinafter defined) delivery to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth on the first page of this Agreement or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) Business Day after being deposited with the private courier service, or two (2) Business Days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

(l) No Waiver; Time of Essence; Business Days. The failure of Administrative Agent to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against Administrative Agent or any Lender nor excuse Indemnitors from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by Administrative Agent. This Agreement is subject to enforcement at law or in equity, including actions for

damages or specific performance. Time is of the essence hereof. The term "**Business Day**" as used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in the State of New York are authorized by law to be closed.

(m) Captions for Convenience. The captions and headings of the sections and paragraphs of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.

(n) Attorneys' Fees. In the event it is necessary for Administrative Agent to retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion thereof, Indemnitors agree to pay to Administrative Agent any and all reasonable costs and expenses, including, without limitation, attorneys' fees, incurred by Administrative Agent and the Lenders as a result thereof and such costs, fees and expenses shall be included in Costs.

(o) Successive Actions. A separate right of action hereunder shall arise each time Administrative Agent or any Lender acquires knowledge of any matter indemnified by Indemnitors under this Agreement. Separate and successive actions may be brought hereunder to enforce any of the provisions hereof at any time and from time to time. No action hereunder shall preclude any subsequent action, and Indemnitors hereby waive and covenant not to assert any defense in the nature of splitting of causes of action or merger of judgments.

(p) Joint and Several Liability. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by Indemnitors herein, and the liability of Indemnitors hereunder, are joint and several.

(q) Reliance. The Lenders would not make the Loan to Borrower without this Agreement. Accordingly, Indemnitors intentionally and unconditionally enter into the covenants and agreements as set forth above and understand that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

(r) Counterparts. This Agreement may be executed in any number of one or more counterparts, each of which shall be effective only upon delivery and thereafter so executed and delivered shall be deemed an original, and all of which shall be taken to be together shall constitute but one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

(s) SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(1) INDEMNITORS, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF STATE OF NEW YORK OVER ANY SUIT, ACTION

OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT, (B) AGREE THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER THE CITY OF NEW YORK, COUNTY OF NEW YORK, STATE OF NEW YORK, (C) SUBMIT TO THE JURISDICTION OF SUCH COURTS AND, (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREE THAT NONE OF THEM WILL BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF ADMINISTRATIVE AGENT TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). INDEMNITORS FURTHER CONSENT AND AGREE TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO INDEMNITORS AT THE ADDRESS FOR NOTICES DESCRIBED IN **SECTION 7(k)**, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(2) ADMINISTRATIVE AGENT, THE LENDERS AND INDEMNITORS, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF ADMINISTRATIVE AGENT, THE LENDERS OR INDEMNITORS, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ADMINISTRATIVE AGENT, THE LENDERS OR INDEMNITORS, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(t) Waiver by Indemnitors. Borrower and Guarantor covenant and agree that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, neither Borrower nor Guarantor shall seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the Bankruptcy Reform Act of 1978 as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Administrative Agent or any Lender to enforce any rights of Administrative Agent or any Lender against any of the Indemnitors by virtue of this Agreement or otherwise.

(u) Decisions. Wherever pursuant to this Agreement (i) Administrative Agent exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory or acceptable to Administrative Agent, or (iii) any other decision or determination is to be made by Administrative Agent, the decision of Administrative Agent to approve or disapprove or to accept or not accept, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Administrative Agent, shall

be in the sole and absolute discretion of Administrative Agent and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS HEREOF, Indemnitors have executed this Hazardous Substances Indemnity Agreement as of the day and year first above written.

BORROWER:

G&I IX MJW LAKE POINTE III & IV LLC,
a Delaware limited liability company

By: G&I IX MJW Lake Pointe JV LLC,
a Delaware limited liability company,
its sole member

By: G&I IX Investment Lake Pointe LLC
a Delaware limited liability company,
its managing member

By:_____
Name:
Title:

[SIGNATURES ON FOLLOWING PAGE]

GUARANTOR:

DRA GROWTH AND INCOME MASTER FUND IX, LLC,
a Delaware limited liability company

By: Manageco IX, LLC,
a Delaware limited liability company,
its managing member

By: _____
Name:
Title:

ACKNOWLEDGEMENT

COUNTY OF _____
STATE OF _____

On the ____ day of November in the year 2018, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [s/he] executed the same in [his/her] capacity as _____, of G&I IX Investment Lake Pointe LLC, a Delaware limited liability company, the managing member of G&I IX MJW Lake Pointe JV LLC, a Delaware limited liability company, the sole member of G&I IX MJW Lake Pointe III & IV LLC, a Delaware limited liability company, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My commission expires: _____

ACKNOWLEDGEMENT

COUNTY OF _____
STATE OF _____

On the ____ day of November in the year 2018, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that [s/he] executed the same in [his/her] capacity as _____, of Manageco IX, LLC, a Delaware limited liability company, the managing member of DRA Growth and Income Master Fund IX, LLC, a Delaware limited liability company, and that by [his/her] signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

TRACT 1:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter Section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet; thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by D.O.T. plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument No. 87-105141 in the Office of the Recorder of Marion County, Indiana (the next seven courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of 305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 401.44 feet to a curve having a radius of 100.00 feet, the radius point of which bears South 00 degrees 38 minutes 30 seconds East; (6) thence Southwesterly along said curve, 82.98 feet to a point which bears North 48 degrees 11 minutes 15 seconds West from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears North 48 degrees 11 minutes 15 seconds West; (7) thence Southwesterly along said curve, 82.98 feet to the POINT OF BEGINNING, which point bears South 00 degrees 38 minutes 30 seconds East from said radius point; thence South 00 degrees 38 minutes 30 seconds East 473.16 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 385.13 feet to a point which bears North 89 degrees 11 minutes 38 seconds East 734.61 feet from the Southwest corner of said North Half Quarter Section; thence North 00 degrees 38 minutes 30 seconds West 315.15 feet; thence North 64 degrees 13 minutes 35 seconds East 39.25 feet to a curve having a radius of 81.00 feet, the radius point of which bears North 25 degrees 46 minutes 25 seconds West; thence Northeasterly along said curve, 91.71 feet to a point which bears North 89 degrees 21

minutes 30 seconds East from said radius point; thence North 00 degrees 38 minutes 30 seconds West 144.11 feet; thence North 89 degrees 21 minutes 30 seconds East 206.18 feet to a point on the Westerly right-of-way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 74 degrees 52 minutes 51 seconds East; thence Southeasterly along said curve 131.81 feet to the POINT OF BEGINNING.

Parcel II: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated November 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5,1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel III: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated November 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development

Standards, Covenants and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6,1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in an Access Easement recorded August 5, 1997 as Instrument #97-108040 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel V: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel IV: (Easement parcel)

A non-exclusive easement for access as created in a Limited Warranty Deed recorded March 25, 1997 as Instrument #97-44966 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

TRACT 2:

Parcel I: (Fee parcel)

Part of the Northwest Quarter of Section 21, Township 17 North, Range 4 East in Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northwest Quarter section; thence along the South line thereof, South 89 degrees 06 minutes 37 seconds West (assumed bearing) 1199.71 feet thence North 00 degrees 00 minutes 52 seconds West 12.57 feet to a point on the centerline of East 82nd Street as located by DOT plans for Project ST-05-004A, which point is also the Southwest corner of the Grant of Right of Way for Allison Pointe Boulevard as recorded September 9, 1987 as Instrument 87-105141 in the Office of the Recorder of Marion County, Indiana (the next five courses are along the Westerly and Southerly lines of said Grant of Right of Way); (1) thence continuing North 00 degrees 00 minutes 52 seconds West 536.80 feet to a curve having a radius of 385.00 feet, the radius point of which bears North 89 degrees 59 minutes 08 seconds East; (2) thence Northerly and Northeasterly along said curve 212.52 feet to a point which bears North 58 degrees 23 minutes 15 seconds West from said radius point; (3) thence North 31 degrees 36 minutes 45 seconds East 762.23 feet to a curve having a radius of

305.00 feet, the radius point of which bears North 58 degrees 23 minutes 15 seconds West; (4) thence Northerly, Northwesterly and Westerly along said curve 650.79 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (5) thence South 89 degrees 21 minutes 30 seconds West 204.00 feet to the POINT OF BEGINNING, which point is also the Northwest corner of a 4.244 acre tract described in a Warranty Deed recorded June 4, 1990 as Instrument 90-54079 in said Recorder's Office; thence along the West line of said 4.244 acre tract South 00 degrees 38 minutes 30 seconds East 537.17 feet to a point on the South line of the North Half of said Northwest Quarter Section; thence along said South line, South 89 degrees 11 minutes 38 seconds West 345.00 feet; thence North 00 degrees 38 minutes 30 seconds West 473.16 feet to a point on the Southerly right of way line of said Allison Pointe Boulevard, which point is on a curve having a radius of 100.00 feet, the radius point of which bears North 00 degrees 38 minutes 30 seconds West (the next three courses are along the Southerly line of said Allison Pointe Boulevard); (1) thence Easterly and Northeasterly along said curve. 82.98 feet to a point which bears South 48 degrees 11 minutes 15 seconds East from said radius point, and which point is on a reverse curve having a radius of 100.00 feet, the radius point of which bears South 48 degrees 11 minutes 15 seconds East; (2) thence Northeasterly and Easterly along said curve, 82.98 feet to a point which bears North 00 degrees 38 minutes 30 seconds West from said radius point; (3) thence North 89 degrees 21 minutes 30 seconds East 197.44 feet to the POINT OF BEGINNING.

Parcel II: (Easement Parcel)

A non-exclusive easement for shared access as created in a Cross Traffic (Shared Access) Easement Agreement recorded September 19, 1997 as Instrument #97-135250 in the Office of the Recorder of Marion County, Indiana. (Benefits Parcel I)

Parcel III: (Easement parcel)

Non-exclusive easement for drainage of storm water, recreational and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Lake dated November 28, 1992 and recorded December 31, 1992 as Instrument #92-174237 and re-recorded March 29, 1993 as Instrument #93-35746 and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987, as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5,1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Declaration of Development

Standards dated January 30, 1998 and recorded February 6, 1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98- 95006.

Parcel IV: (Easement parcel)

A non-exclusive easement for landscaping and signage and other purposes for the benefit of Parcel I as created and granted in a declaration of easement in Allison Pointe Boulevard Buffer Tracts dated November 28, 1992 and recorded December 31, 1992 as Instrument #92-174238 and re-recorded March 29, 1993 as Instrument #93-35747, and as further provided in the Declaration of Development Standards, Covenants and Restrictions for Allison Pointe as set out and fully described in Instrument dated September 8, 1987 and recorded September 9, 1987 as Instrument No. 87-105148, as amended by First Amendment to Declaration of Development Standards dated September 25, 1987 and recorded September 28, 1987 as Instrument No. 87-112389, as further amended by Second Amendment to Declaration of Development Standards, Covenants, and Restrictions for Allison Pointe, recorded November 5, 1992 as Instrument No. 92-147049, as modified by Assignment dated June 16, 1996 and recorded July 5, 1996 as Instrument No. 96-91794, as modified by Third Amendment to Declaration of Development Standards, Covenants and Restrictions for Allison Pointe dated March 14, 1997 and recorded March 25, 1997 as Instrument No. 97-44965, as modified by Fourth Amendment to Development Standards dated January 30, 1998 and recorded February 6,1998 as Instrument No. 98-19003, and further modified by Fifth Amendment to Declaration of Development Standards dated May 28, 1998 and recorded June 5, 1998 as Instrument No. 98-95006 in the Office of the Recorder of Marion County, Indiana.

Schedule 1

List of Loan documents

1. Loan Agreement among Borrower, the Lenders and Administrative Agent (the "Loan Agreement");

2. Promissory Notes in the aggregate principal sum of $13,815,000.00 made by Borrower in favor of Administrative Agent;

3. Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing made by Borrower for the benefit of Administrative Agent;

4. Assignment of Rents and Leases from Borrower to Administrative Agent;

5. Assignment of Contracts, Governmental Approvals and other Project Documents by Borrower to Administrative Agent;

6. Hazardous Substances Indemnity Agreement made by Borrower and Guarantor in favor of Administrative Agent;

7. Recourse Carve-Out Guaranty made by Guarantor in favor of Administrative Agent;

9. Deposit Account Control Agreement among Borrower, Administrative Agent and CIBC Bank USA.

10. Notice of Final Agreement executed by Borrower.

11. Certificate as to Lease Form executed by Borrower.

12. Fee Letter executed by Borrower.

13. Certificate of Taxpayer Identification Number and Nonforeign Status executed by Borrower.

14. Closing Certificate executed by Borrower and Guarantor (as to Guarantor, solely with respect to Sections 8, 9 and 10).

15. Disbursement Instructions executed by Borrower.