O'DONNELL INDUSTRIAL FUND LLC

LIMITED LIABILITY COMPANY AGREEMENT

This is an Agreement, entered into effective on September 1, 2025, by and among O'Donnell Industrial Fund LLC, a Delaware limited liability company (the "Company"), The O'Donnell Group, Inc., a California corporation ("The O'Donnell Group"), and the persons who purchase Class A Shares following the date of this Agreement (the "Class A Members"), which will include The O'Donnell Group or its affiliates. The Class A Members and The O'Donnell Group are sometimes referred to as "Members" in this Agreement.

Background

The Members own all of the limited liability company interests of the Company and wish to set forth their understandings concerning the ownership and operation of the Company in this Agreement, which they intend to be the limited liability company agreement of the Company within the meaning of 6 Del. C. §18-101(9).

NOW, THEREFORE, acknowledging the receipt of adequate consideration and intending to be legally bound, the parties agree as follows:

ARTICLE 1: CONTINUATION OF LIMITED LIABILITY COMPANY

1.1 **Continuation of Limited Liability Company**. The Members agree to continue the Company in accordance with and pursuant to the Delaware Limited Liability Company Act (the "Act") for the purposes set for the below. The rights and obligations of the Members to one another and to third parties shall be governed by the Act except that, in accordance with 6 Del. C. §18-1101(b), conflicts between provisions of the Act and provisions in this Agreement shall be resolved in favor of the provisions in this Agreement except where the provisions of the Act may not be varied by contract as a matter of law.

1.2 **Name**. The name of the Company shall be "O'Donnell Industrial Fund LLC" and all of its business shall be conducted under that name or such other name(s) as may be designated by the Manager.

1.3 **Fiscal Year**. The fiscal and taxable year of the Company shall be the calendar year, or such other period as the Manager determines.

1.4 **Operating and Organizational Expenses and Placement Fees**.

1.4.1 **In General**. The Company will pay all Operating Expenses, Organizational Expenses, and Placement Fees, and will reimburse the Manager or any of its affiliates, as applicable, for its or their payment of Operating Expenses, Organizational Expenses, and Placement Fees paid on behalf of the Company. However, the Manager shall not be reimbursed for any costs and expenses relating to the general operation of its businesses.

1.4.2 **Definitions**. The following definitions shall apply for purposes of this Agreement:

(a) **Operating Expenses**. The term "Operating Expenses" means all third-party costs and expenses of maintaining the operations of the Company, including, without limitation, taxes, fees and other governmental charges; insurance; appraisal fees; administrative and research fees; expenses of custodians, outside advisors, counsel, accountants, auditors, administrators and other consultants and professionals; expenses associated with forming and operating other entities pursuant to this Agreement; technological expenses; interest on and fees, costs and expenses arising out of all financings entered into by the Company (including, without limitation, those of lenders, investment banks, and other financing sources); travel expenses; brokerage commissions; custodial expenses; litigation expenses (including the amount of any judgments or settlements); winding up and liquidation expenses; expenses incurred in connection with any tax audit, investigation, settlement or review; the cost of preparing and distributing reports, financial statements, tax returns and K-1s to Members; indemnification and other unreimbursed expenses; the fees payable to the Manager; and any extraordinary expenses to the extent not reimbursed or paid by insurance.

(b) **Organizational Expenses**. The term "Organizational Expenses" means all out-of-pocket expenses incurred in connection with the organization and formation of the Manager, the Company, and any investment vehicle formed pursuant to this Agreement, including, without limitation, legal and accounting fees and expenses; printing costs; filing fees; and the transportation, meal and lodging expenses of the personnel of the Manager.

(c) **Placement Fees**. The term "Placement Fees" means amounts payable to any placement agent, financial advisor, or finder retained by the Manager in connection with the offering and sale of interests in the Company or any investment vehicle formed pursuant to this Agreement.

1.5 **Provisions for Lender.** The provisions of Exhibit A captioned "SPE Provisions" are hereby incorporated into this Agreement as if set forth in their entirety in this section 1.5.

ARTICLE 2: BUSINESS AND PURPOSE; OTHER INVESTMENT VEHICLES

2.1 **Purpose**.

2.1.1 **In General**. The purpose of the Company is to invest in industrial real estate and related assets (each a "Portfolio Investment") as more fully described in the Confidential Investor Disclosure Document of the Company dated September 1, 2025 (the "Disclosure Document"), and to engage in any other acts necessary or related to the foregoing. In carrying on its business, the Company may (i) borrow money or otherwise incur indebtedness, secured by liens on the Company's assets or otherwise; (ii) acquire, hold, lease, sell, or otherwise deal with or dispose of real estate and other property; (iii) enter into partnerships and other joint ventures; (iv) enter into, perform and carry out contracts and agreements of any kind; (v) form one or more subsidiaries; (vi) bring, prosecute, defend, settle or compromise actions and proceedings at law or in equity or before any governmental authority; and (vii) take any other acts that the Manager determines.

2.1.2 **Targeted Hold Period**. The Manager shall use commercially reasonable efforts to hold each Portfolio Investment for between three (3) and five (5) years but may accelerate or delay the disposition of Portfolio Investments based on market conditions.

2.1.3 **Targeted Term**. The Manager shall use commercially reasonable efforts to sell all remaining Portfolio Investments by August 31, 2031, but may extend that date for up to one (1) year based on market conditions, to avoid undue loss.

2.2 **Alternative Investment Vehicles**.

2.2.1 **Formation of Alternative Investment Vehicles**. If the Manager determines at any time that for legal, tax, regulatory or other similar considerations, all or a portion of one or more potential or existing Portfolio Investments be made or held through an alternative investment structure, the Manager shall notify the Members and may create one or more separate entities for that purpose (each, an "Alternative Investment Vehicle").

2.2.2 **Alternative Investment Conditions**. Each Member shall have the same economic interest in all material respects in Portfolio Investments held or made pursuant to section 2.2 as such Member would have if such Portfolio Investment had been held or made solely by the Company, and the other terms of such Alternative Investment Vehicle shall be substantially similar in all material respects to those of the Company, subject to the applicable legal, tax, regulatory and other similar considerations, provided that the pre-tax gains and losses of any such Alternative Investment Vehicle shall be treated as having been realized by the Company for all economic calculations under this Agreement with respect to the Members who participate in such Alternative Investment Vehicle, unless the Manager elects otherwise based on its determination that such treatment increases the risk of or otherwise imposes on the Company, the Members or such Alternative Investment Vehicle adverse tax consequences, legal or regulatory constraints or undesirable contractual or business risks. With respect to any Portfolio Investment, if an Alternative Investment Vehicle invests with the Company in a particular Portfolio Investment, subject to the applicable legal, tax, regulatory and other similar considerations (i) the Company and such Alternative Investment Vehicle shall invest and divest on economic terms that are the same, and at the same time, in all material respects, and (ii) the respective interests of the Company and such Alternative Investment Vehicle generally shall be as determined by the Manager in accordance with the purposes of this section 2.2.

2.2.3 **Mechanics of Formation of Alternative Investment Vehicles**. Each Alternative Investment Vehicle shall be controlled by the Manager or an affiliate of the Manager. The governing documents of each Alternative Investment Vehicle shall be substantially similar in all material respects to those of the Company, including this Agreement, with such differences as the Manager determines are necessary or advisable in respect of the applicable legal, tax, regulatory and other similar considerations, and will be executed on behalf of the Members by the Manager pursuant to the power of attorney granted by the Members in this Agreement.

2.3 **Co-investment Opportunities**. The Manager may, but shall not be required to, offer opportunities to invest in Portfolio Investments alongside the Company (a "Co-investment Opportunity") to certain Members or other persons on such terms and conditions as shall be determined by the Manager. The Manager or its affiliates may, but shall not be obligated to, form a separate investment vehicle for the purpose of investing in one or more Co-investment Opportunities (a "Co-Investment Vehicle"). The Manager may offer a Co-investment Opportunity to one or more Members or other persons without offering such Co-investment Opportunity to others. Co-investment Opportunities may be allocated to such persons that may provide a benefit to the Company in the Manager's sole discretion. No Member shall have any obligation to participate in any Co-investment Opportunity. Each Member hereby acknowledges that the Manager and/or its affiliates may receive a carried interest and management or other fees in respect of any Co-investment Opportunity.

2.4 **Parallel Vehicles**.

2.4.1 **Formation of Parallel Vehicles**. To accommodate legal, tax, regulatory or other similar considerations of certain types of Members, the Manager may establish one or more additional collective investment vehicles for such investors to invest in Portfolio Investments with the Company (each, a "Parallel Vehicle"). The Manager may, at any time, with the consent of the applicable Member (i) transfer all or a portion of such Member's interest in the Company (including but not limited to such Member's obligation to contribute capital) to an interest in the Parallel Vehicle, or vice-versa.

2.4.2 **Parallel Vehicle Investment Conditions**. To the extent the Company and one or more Parallel Vehicles participate in the same Portfolio Investment, subject to the applicable legal, tax, regulatory or other similar considerations, (i) the Company and any Parallel Vehicle shall invest and divest on economic terms that are the same, and at the same time, in all material respects and (ii) the respective interests of the Company and any Parallel Vehicle in any Portfolio Investment generally shall be as determined by the Manager in accordance with the purposes of this section 2.4.

2.4.3 **Mechanics of Formation of Parallel Vehicles**. Each Parallel Vehicle shall be controlled by the Manager or an affiliate of the Manager. The governing documents of each Parallel Vehicle shall contain terms substantially the same as those contained herein, including this Agreement, except to the extent reasonably necessary or desirable to address the applicable legal, tax, regulatory or other considerations of the Parallel Vehicle or one or more Parallel Vehicle Investors.

2.5 **Feeder Vehicles**. The Manager may establish one or more vehicles to facilitate investment in the Company by certain investors (each such vehicle, a "Feeder Vehicle"). Each Feeder Vehicle shall be controlled by the Manager or an affiliate of the Manager.

ARTICLE 3: CONTRIBUTIONS AND LOANS BY MEMBERS

3.1 **Initial Contributions**. The O'Donnell Group shall not be required to contribute capital to the Company in exchange for its Class B Shares. Each Class A Member, including The O'Donnell Group and its affiliates, will contribute to the capital of the Company the amount specified in his, her, or its Investment Agreement. The O'Donnell Group and/or its affiliates shall contribute to the capital of the Company the lower of five percent (5%) of the contributions of the other Class A Members or Two Million Dollars ($2,000,000). The capital contributions of Members are referred to in this Agreement as "Capital Contributions."

3.2 **Other Required Contributions**. No Member shall be obligated to contribute any capital to the Company beyond the Capital Contributions described in Section 3.1. Without limitation, no such Member shall, upon dissolution of the Company or otherwise, be required to restore any deficit in such Member's capital account.

3.3 **Loans**.

3.3.1 **Generally**. The Manager or its affiliates may, but shall not be required to, lend money to the Company in the Manager's sole discretion. No other Member may lend money to the Company without the prior written consent of the Manager. Subject to applicable state laws regarding maximum allowable rates of interest, loans made by any Member to the Company ("Member Loans") shall bear interest at the higher of (i) eight percent (8%) per annum, compounded monthly; or (ii) the minimum rate necessary to avoid "imputed interest" under section 7872 or other applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"). Such loans shall be payable on demand and shall be evidenced by one or more promissory notes.

3.3.2 **Repayment of Loans**. After payment of (i) current and past due debt service on liabilities of the Company other than Member Loans, and (ii) all operating expenses of the Company, the Company shall pay the current and past due debt service on any outstanding Member Loans before distributing any amount to any Class A Member pursuant to Article 5. Such loans shall be repaid *pro rata*, paying all past due interest first, then all past due principal, then all current interest, and then all current principal.

3.4 **Other Provisions on Capital Contributions**. Except as otherwise provided in this Agreement or by law:

3.4.1 No Member shall be required to contribute any capital to the Company;

3.4.2 No Member may withdraw any part of his capital from the Company;

3.4.3 No Member shall be required to make any loans to the Company;

3.4.4 Loans by a Member to the Company shall not be considered a contribution of capital, shall not increase the capital account of the lending Member, and shall not increase or decrease the number of Shares owned by a Member, and the repayment of such loans by the Company shall not decrease the capital account of the Member making the loans;

3.4.5 No interest shall be paid on any initial or additional capital contributed to the Company by any Member;

3.4.6 Under any circumstance requiring a return of all or any portion of a Capital Contribution, no Member shall have the right to receive property other than cash; and

3.4.7 No Member shall be liable to any other Member for the return of his, her, or its capital.

3.5 **No Third-Party Beneficiaries**. Any obligation or right of the Members to contribute capital under the terms of this Agreement does not confer any rights or benefits to or upon any person who is not a party to this Agreement.

ARTICLE 4: SHARES; CAPITAL ACCOUNTS

4.1 **Shares**.

4.1.1 **In General**. The limited liability company interests of the Company shall consist of Five Million Ten Thousand (5,010,000) "Shares." As of the date of this Agreement, Five Million (5,000,000) Shares are designated as "Class A Shares" and Ten Thousand (10,000) as "Class B Shares." Class A Shares shall be offered and sold to such persons as may be determined by the Manager in its sole discretion, including the Manager itself and its affiliates. All the Class B Shares shall be, and are, owned by The O'Donnell Group. The Manager may create additional classes of Shares in the future, with such rights and preferences as the Manager may determine in its sole discretion ("New Shares").

4.2 **Preemptive Rights for Class A Shares**. In the event the Manager seeks to raise more capital through the sale of additional Class A Shares, the Manager may, but shall not be required to, offer to sell such additional Class A Shares to existing Members. However, no holder of any membership interests shall have the right to acquire such membership interests, *i.e.*, no such holder shall have preemptive rights.

4.3 **Preemptive Rights for New Shares**.

4.3.1 **In General**. Before issuing New Shares, the Manager shall notify each Class A Member, including in such notice the rights and preferences of the New Shares, the price of each New Share, the aggregate number of New Shares the Manager is seeking to sell, each Class A Member's *pro rata* number of New Shares (based on the number of Class A Shares owned by each Class A Member), and how the proceeds from the sale of New Shares will be used. Each Class A Member shall, within fifteen (15) business days of such notice, notify the Manager of the aggregate number of New Shares such Class A Member wishes to purchase, if any. If a Class A Member fails to respond to the Manager's notice by the close of business on the fifteenth (15^{th}) business day following the date of the Manager's notice, such Class A Member shall be deemed to have declined to purchase any New Shares.

4.3.2 **Allotment**.

(a) **Class A Members Choose to Purchase Fewer Than All New Shares**. If the Class A Members wish to purchase fewer than all of the New Shares the Manager offered, then (i) each Class A Member shall purchase the number of New Shares such Class A Member specified in his, her, or its response; and (ii) the remaining New Shares may be sold to third parties.

(b) **Class A Members Choose to Purchase More Than All New Shares**. If the Class A Members wish to purchase more than all of the New Shares the Manager offered then (i) each Regular Purchaser shall purchase the number of New Shares he, she, or it specified; and (ii) each Excess Purchaser shall purchase the Excess Allocation Amount.

(c) **Definitions**. The following definitions shall apply for purposes of section 3.2.2(a):

(1) "Allotted Number" means, for each Class A Member, the total number of New Shares offered multiplied by a fraction, the numerator of which is the number of Class A Shares owned by such Class A Member and the denominator of which is the total number of Class A Shares issued and outstanding.

(2) "Excess Allocation Amount" means, for each Excess Purchaser (i) the number of New Shares specified in such Excess Purchaser's notice, minus (ii) the Excess Shares multiplied by a fraction, the numerator of which is the aggregate number of New Shares requested by all Excess Purchasers other than such Excess Purchaser and the denominator of which is the aggregate number of New Shares requested by all Excess Purchasers.

(3) "Excess Purchaser" means a Class A Member who requests to purchase a number of New Shares greater than his, her, or its Allotted Number.

(4) "Excess Shares" means the excess of the aggregate number of Shares specified in notices from Class A Members over the number of New Shares offered by the Manager.

(5) "Regular Purchaser" means a Class A Member who requests to purchase a number of New Shares no greater than his, her, or its Allotted Number.

(d) **Restrictions Based on Offering Requirements**. The Manager may limit the rights described in in this section 4.3 to Class A Members who satisfy the requirements of an exemption used to offer and sell the New Shares without registration under section 5 of the Securities Act of 1933. For example, if the New Shares are being offered under 17 CFR §230.506(c), the Manager may limit the rights described in this section 4.3 to Class A Members who are then "accredited investors" under 17 CFR §230.501(a).

4.3.3 **Certificates**. The Shares of the Company shall not be evidenced by written certificates unless the Manager determines otherwise. If the Manager determines to issue certificates representing Shares, the certificates shall be subject to such rules and restrictions as the Manager may determine.

4.3.4 **Registry of Shares**. The Company shall keep or cause to be kept on behalf of the Company a register of the Class A Members of the Company. The Company may, but shall not be required to, appoint a transfer agent registered with the Securities and Exchange Commission as such.

4.3.5 **Price Per Class A Share**. Initially, the Class A Shares will be sold for Twenty Dollars ($20.00) each. From time to time the Manager may, but shall not be required to, increase or decrease the price of the Class A Shares based on changes in the values of the Company's Portfolio Investments and other assets. The Manager may use any reasonable method to calculate the value of Portfolio Investments and other assets, and may, but shall not be required to, engage the services of appraisers, investment bankers, accountants, and other third parties to assist in the determination of value, provided that the Manager shall not reduce the share price except on the basis of an appraisal from a licensed appraiser experienced in the appraisal of industrial properties. Absent fraud, the determination of the Manager and its professionals, including appraisers, shall be final.

4.4 **Capital Accounts**. A capital account shall be established and maintained for each Member. Each Member's capital account shall initially be credited with the amount of his, her, or its Capital Contribution. Thereafter, the capital account of a Member shall be increased by the amount of any additional contributions of the Member, if any, and the amount of income or gain allocated to the Member, and decreased by the amount of any distributions to the Member and the amount of loss or deduction allocated to the Member, including expenditures of the Company described in section 705(a)(2)(B) of the Internal Revenue Code of 1986, as amended (the "Code"). Unless otherwise specifically provided herein, the capital accounts of Members shall be adjusted and maintained in accordance with Code section 704 and the regulations thereunder.

ARTICLE 5: DISTRIBUTIONS AND ALLOCATIONS

5.1 **Definitions**.

5.1.1 "Allocable Capital" means the portion of a Class A Member's Capital Contributions attributable to a Portfolio Investment that is the subject of a Capital Transaction.

5.1.2 "Capital Transaction" means any sale, refinancing, or other transaction customarily considered as capital in nature.

5.1.3 "Distributable Capital Proceeds" means the cash available for the Company to distribute to its Members consisting of Net Capital Proceeds, whether such Net Capital Proceeds were realized directly by the Company or distributed to the Company from entities in which the Company owns an interest.

5.1.4 "Distributable Cash Flow" means the cash available for the Company to distribute to its Members consisting of Operating Cash Flow, whether such Operating Cash Flow as realized directly by the Company or distributed to the Company from entities in which the Company owns an interest.

5.1.5 "Net Capital Proceeds" means the proceeds from a Capital Transaction (including proceeds from condemnation or insurance from damage or destruction to the extent not reinvested, other than business interruption or rental loss insurance proceeds) minus (i) expenses incurred with respect to the Capital Transaction, (ii) any repayments of debt made in connection with the Capital Transaction, (iii) brokerage commissions, (iv) other costs customarily taken into account in calculating net proceeds, and (v) amounts added to Reserve Accounts.

5.1.6 "Operating Cash Flow" means cash flow from ordinary rental operations (not from Capital Transactions), as determined in the sole discretion of the Manager, taking into account all associated revenue and expenses and any additions to or withdrawals from Reserve Accounts.

5.1.7 "Investor IRR" means, for each Class A Member and each Portfolio Investment, the IRR of such Class A Member taking into account his, her, or its Allocable Capital with respect to such Portfolio and all distributions he, she, or it has received with respect to such Portfolio, and assuming that he, she, or it will receive no further distributions with respect to such Portfolio Investment.

5.1.8 "IRR" means internal rate of return, calculated using the XIRR function in Microsoft Excel.

5.1.9 "Preferred Return" means, with respect to each Class A Member and each Portfolio Investment, a cumulative, non-compounded return of eight percent (8%) on such Class A Member's Unreturned Allocable Investment, measured from the date the Company acquires a Portfolio Investment, but no earlier than the date of a Class A Member's Capital Contribution.

5.1.10 "Reserve Accounts" means accounts established and maintained to fund anticipated cash needs.

5.1.11 "Unreturned Allocable Investment" means, with respect to any Class A Member and any Portfolio Investment, the amount of such Class A Member's Allocable Capital with respect to such Portfolio Investment reduced by the aggregate amount of any distributions such Class A Member has received pursuant to section 5.2.2(b).

5.2 **Distributions**.

5.2.1 **Distributable Cash Flow**. Within forty-five (45) days after the end of each calendar quarter or at such other times as the Manager shall determine, the Company shall distribute its Distributable Cash Flow to the Class A Members.

5.2.2 **Distributable Capital Proceeds**. Within sixty (60) days after a Capital Transaction or at such other times as the Manager shall determine, the Company shall distribute its Distributable Capital Proceeds with respect to each Portfolio Investment:

(a) First, such Distributable Capital Proceeds shall be distributed to the Class A Members until each Class A Member has received the Preferred Return accrued through the date of the distribution, taking into account all distributions made pursuant to section 5.2.1 and this section 5.2.2(b).

(b) Second, any balance of such Distributable Capital Proceeds shall be distributed to the Class A Members in proportion to each Class A Member's Unreturned Allocable Investment, until the Unreturned Allocable Investment of all Class A Members in the Portfolio Investment has been reduced to zero.

(c) Fourth, any balance of such Distributable Capital Proceeds shall be distributed eighty percent (80%) to the Class A Members and twenty percent (20%) to holders of the Class B Shares until each Class A Member has achieved an Investor IRR of fourteen percent (14%).

(d) Fifth, any balance of such Distributable Capital Proceeds shall be distributed seventy percent (70%) to the Class A Members and thirty percent (30%) to holders of the Class B Shares.

5.2.3 **Reinvestments**. The Manager may, in its sole discretion, reinvest amounts that would otherwise be treated as Distributable Cash Flow or Distributable Capital Proceeds, in either new or existing Portfolio Investments.

5.2.4 **Distributions Among Class A Members**. Unless otherwise indicated, all distributions to the Class A Members as a group shall be *pro rata* based on the number of Class A Shares owned by each.

5.2.5 **Distributions to Fund Tax Liability**. In the event that the Company recognizes net gain or income for any taxable year, the Company shall, taking into account its financial condition and other commitments, make a good faith effort to distribute to each Member, no later than April 15th of the following year, an amount equal to the net gain or income allocated to such Member, multiplied by the highest marginal tax rate for individuals then in effect under section 1 of the Code plus the highest rate then in effect under applicable state law, if such amount has not already been distributed to such Member pursuant to this section 4.1. If any Member receives a smaller or larger distribution pursuant to this section than he would have received had the same aggregate amount been distributed pursuant to section 4.1, then subsequent distributions shall be adjusted accordingly.

5.2.6 **Tax Withholding**. To the extent the Company is required to pay over any amount to any federal, state, local or foreign governmental authority with respect to distributions or allocations to any Member, the amount withheld shall be deemed to be a distribution in the amount of the withholding to that Member. If the amount paid over was not withheld from an actual distribution (i) the Company shall be entitled to withhold such amounts from subsequent distributions, and (ii) if no such subsequent distributions are anticipated for six (6) months, the Member shall, at the request of the Company, promptly reimburse the Company for the amount paid over.

5.2.7 **Other Classes of Interest**. If, pursuant to section 3.1, the Manager creates additional classes of limited liability company interest in the future, the holders of such additional classes shall have such rights to distributions as are set forth when such additional classes are created, notwithstanding sections 5.2.1 and 5.2.2.

5.2.8 **Manner of Distribution**. All distributions to the Members will be made as Automated Clearing House (ACH) deposits or wire transfers into an account designated by each Member. If a Member does not authorize the Company to make such ACH distributions or wire transfers into a designated Member account, distributions to such Member will be made by check and mailed to such Member after deduction by the Company from each check of a Fifty Dollar ($50) processing fee.

5.2.9 **No In-Kind Distributions**. All distributions to the Members will be in cash or cash equivalents. The Company will not make any distributions in kind.

5.2.10 **Other Rules Governing Distributions**. No distribution prohibited by 6 Del. C. §18-607 or not specifically authorized under this Agreement shall be made by the Company to any Member in his or its capacity as a Member. A Member who receives a distribution prohibited by 6 Del. C. §18-607 shall be liable as provided therein.

5.3 **Allocations of Profits and Losses**.

5.3.1 **General Rule: Allocations Follow Cash**. The Company shall seek to allocate its income, gains, losses, deductions, and expenses ("Tax Items") in a manner so that (i) such allocations have "substantial economic effect" as defined in section 704(b) of the Code and the regulations issued thereunder (the "Regulations") and otherwise comply with applicable tax laws; (ii) each Member is allocated income equal to the sum of (A) the losses he, she, or it is allocated, and (B) the cash profits he, she, or it receives; and (iii) after taking into account the allocations for each year as well as such factors as the value of the Company's assets, the allocations likely to be made to each Member in the future, and the distributions each Member is likely to receive, the balance of each Member's capital account at the time of the liquidation of the Company will be equal to the amount such Member is entitled to receive pursuant to this Agreement. That is, the allocation of the Company's Tax Items, should, to the extent reasonably possible, follow the actual and anticipated distributions of cash, in the discretion of the Manager. In making allocations the Manager shall use reasonable efforts to comply with applicable tax laws, including without limitation through incorporation of a "qualified income offset," a "gross income allocation," and a "minimum gain chargeback," as such terms or concepts are specified in the Regulations. The Manager shall be conclusively deemed to have used reasonable effort if it has sought and obtained advice from counsel.

5.3.2 **Section 754 Election**. The Company may, but shall not be required to, make an election under section 754 of the Code at the request of any Member. The Company may condition its consent to make such an election on the agreement of the requesting Member to pay directly or reimburse the Company for any costs incurred in connection with such election or the calculations required as a result of such an election.

ARTICLE 6: MANAGEMENT

6.1 **Management by Manager**.

6.1.1 **In General**. The business and affairs of the Company shall be directed, managed, and controlled by The O'Donnell Group as the "manager" within the meaning of 6 Del. C. §18-101(12). In that capacity The O'Donnell Group is referred to in this Agreement as the "Manager."

6.1.2 **Powers of Manager**. The Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, to execute any contracts or other instruments on behalf of the Company, and to perform any and all other acts or activities customary or incidental to the management of the Company's business.

6.1.3 **Examples of Manager's Authority**. Without limiting the grant of authority set forth in section 6.1.2, the Manager shall have the power, on behalf of the Company, to:

(a) Select, manage, and dispose of Portfolio Investments;

(b) Subject to section 4.3.5, issue Class A Shares and other classes of limited liability company interest to such persons and on such terms as it may designate in its sole discretion;

(c) Enter into contracts of any kind, including but not limited to a management, joint venture or similar agreement with another person or entity pursuant to which such other person or entity would have certain control rights with respect to the Company;

(d) Incur indebtedness, whether to banks or other lenders;

(e) Hire consultants, advisors, custodians, attorneys, accountants, placement agents, and employees;

(f) Make short-term investments in money markets, certificates of deposits, obligations guaranteed by the United States, and similar instruments;

(g) Make any and all elections under the Code or any state or local tax law, including pursuant to sections 734(b), 743(b) and 754 of the Code, provided that the Manager shall not cause the Company to make an election to be treated as other than a partnership for Federal income tax purposes;

(h) Maintain and release reserve accounts;

(i) Determine the timing and amount of distributions;

(j) Determine the information to be provided to the Members;

(k) Grant liens and other encumbrances on the Company's assets, including but not limited to Portfolio Investments;

(l) File, prosecute, defend, and settle lawsuits and governmental investigations and actions;

(m) Discontinue the business of the Company; and

(n) Dissolve the Company.

6.1.4 **Limitations on Manager**.

(a) **Loans to Affiliates**. Notwithstanding section 6.1.2, the Manager shall not cause the Company to lend money to any person related to the Manager.

(b) **Purchase and Sales with Affiliates**. Notwithstanding section 6.1.2, the Manager shall not cause the Company to purchase Portfolio Investments from or sell Portfolio Investments to a person related to the Manager unless (i) the Manager gives the Members no less than ninety (90) days' notice before the transaction, including in such notice the nature of the relationship between the Manager and the related person and other proposed terms and conditions of the purchase; (ii) the purchase price does not exceed (in the case of purchases) and is no less than (in the case of sales) the fair market value of the Portfolio Investment, as reflected on an appraisal of the Portfolio Investment by a qualified appraiser; (iii) Members are given the opportunity to challenge the fair market value as provided in section 9.7.3; (iv) the purchase reflects customary terms and conditions between unrelated parties dealing at arm's length.

(c) **Merger with Another Entity**. Notwithstanding section 6.1.2, the Manager shall not cause the Company to be merged with or into another entity, other than a merger where the Company is the surviving entity governed by this Agreement, unless (i) the Manager gives the Members no less than ninety (90) days' notice before such merger, including in such notice all the terms and conditions of such merger; (ii) no Member is required to make Capital Contributions or assume personal liability in connection with such merger; (iii) the merger reflects customary terms and conditions between unrelated parties dealing at arm's length, and (iv) and each Member is given the opportunity to sell all (but not less than all) of such Member's Share's to the Company for a price no less than the amount such Member would receive if the Net Asset Value (as defined in section 9.7.1) were distributed in complete liquidation of the Company.

(d) **Related Person Defined**. A person shall be treated as "related" to the Manager if such person bears a relationship to the Manager described in section 267(b) of the Code or in section 707(b) of the Code, determined by substituting the phrase "at least 10%" for the phrase "more than 50%" each place it appears in such sections.

6.2 **Transfer or Resignation by the Manager**. The O'Donnell Group may not resign as the manager of the Company without the consent of Investors owning more than fifty percent (50%) of the Class A Shares then issued and outstanding. However, The O'Donnell Group, may, without the consent of any Investor (i) be reconstituted as or converted into a corporation or other form of entity (any such reconstituted or converted entity being deemed to be The O'Donnell Group for all purposes hereof) by merger, consolidation, conversion or otherwise; or (ii) transfer all of its duties and responsibilities as the Manager to an entity under common control with The O'Donnell Group so long as, in either case, (A) such reconstitution or transfer does not have material adverse tax or legal consequences for the Company, and (B) such other entity agrees in writing to all of the terms and conditions of this Agreement and any other related agreements to which The O'Donnell Group is a party (including the operative documents of any Parallel Vehicles).

6.3 **Act of Insolvency, Resignation, or Dissolution of Manager**.

6.3.1 **In General**. If the Manager should commit an Act of Insolvency, resign in violation of section 6.2, or dissolve, then (i) the Manager shall no longer be the manager of the Company, and (ii) a successor manager shall be elected by Class A Members owning more than fifty percent (50%) of the Class A Shares then issued and outstanding. If a successor manager is not elected within ninety (90) days, the Company shall be dissolved.

6.3.2 **Act of Insolvency**. The Manager shall be treated as having committed an "Act of Insolvency" if it (i) executes an assignment for the benefit of creditors; (ii) becomes a debtor in bankruptcy; (iii) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator; (iv) fails, within ninety (90) days after the appointment, without its consent or acquiescence, of a trustee, receiver, or liquidator, to have the appointment vacated or stayed, or fails within ninety (90) days after the expiration of a stay to have the appointment vacated.

6.4 **Standard of Care**. The Manager shall conduct the Company's business using its business judgment.

6.5 **Reliance by Third Parties**. Anyone dealing with the Company shall be entitled to assume that the Manager and any officer authorized by the Manager to act on behalf of and in the name of the Company has full power and authority to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any contracts on behalf of the Company, and shall be entitled to deal with the Manager or any officer as if it were the Company's sole party in interest, both legally and beneficially. No Member shall assert, vis-à-vis a third party, that such third party should not have relied on the apparent authority of the Manager or any officer authorized by the Manager to act on behalf of and in the name of the Company, nor shall anyone dealing with the Manager or any of its officers or representatives be obligated to investigate the authority of such person in a given instance.

6.6 **Restrictions on Members**. Except as expressly provided otherwise in this Agreement, Members who are not also the Manager shall not be entitled to participate in the management or control of the Company, nor shall any such Member hold himself out as having such authority. Unless authorized to do so by the Manager, no attorney in fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have any power or authority to bind the Company unless the Member has been authorized by the Manager in writing to act as an agent of the Company in accordance with the previous sentence.

6.7 **Officers**. The Manager may, from time to time, designate officers of the Company, with such titles, responsibilities, compensation, and terms of office as the Manager may designate. Any officer may be removed by the Manager with or without cause. The appointment of an officer shall not in itself create contract rights.

6.8 **Time Commitment**. The Manager shall devote such time to the business and affairs of the Company as the Manager may determine in its sole and absolute discretion.

6.9 **Formation Expenses**. The Company shall reimburse the Manager for the cost of forming the Company and offering Class A Shares to investors, including legal and accounting expenses.

6.10 **Compensation of Manager and its Affiliates**.

6.10.1 **Asset Management Fee**. The Manager shall be entitled to an annual asset management fee equal to one percent (1.0%) of the aggregate Capital Contributions of the Class A Members that have been deployed into Portfolio Investments, payable monthly.

6.10.2 **Acquisition Fee**. The Manager shall be entitled to an acquisition fee equal to one percent (1.0%) of the gross acquisition price of each Portfolio Investment, including the purchase price and renovation costs, payable upon the acquisition of each Portfolio Investment.

6.10.3 **Disposition Fee**. The Manager shall be entitled to a disposition fee equal to one percent (1.0%) of the gross selling price of each Portfolio Investment, payable upon the sale of each Portfolio Investment.

6.10.4 **Financing Fee**. The Manager shall be entitled to a financing fee equal to fifty basis points (0.5%) of all debt financing of the Company, payable upon the closing of such financing.

6.10.5 **Leasing Fee**. The Manager or its affiliates shall be entitled to a leasing fee equal to (i) in the case of a new lease, one percent (1%) of the total lease consideration; or (ii) in the case of a lease renewal (A) one percent (1%) of the total lease consideration, if a broker is involved; or (B) two percent (2%) of the total lease consideration, if a broker is not involved, in all cases payable at the time of signing.

6.10.6 **Property Management Fee**. The Manager or its affiliates shall be entitled to a property management fee equal to four percent (4%) of gross rental income, payable monthly.

6.10.7 **Construction Management Fee**. The Manager or its affiliates shall be entitled to a construction management fee equal to five percent (5%) of the cost of any construction or rehabilitation of Portfolio Investments, payable as the construction or rehabilitation is completed.

6.10.8 **Development Fee**. Where the Company engages in the development rather than the purchase of Portfolio Investments, the Manager or its affiliates shall be entitled to a development fee equal to five percent (5%) of the total project cost, payable as the Portfolio Investment is developed and built, but without duplicating the construction management fee.

6.10.9 **Other Compensation**. The Manager and its affiliates may be engaged to perform other services on behalf of the Company and shall be entitled to receive compensation for such services provided that such compensation is (i) fair to the Company, (ii) consistent with the compensation that would be paid between unrelated parties, and (iii) promptly disclosed to all of the Members.

6.10.10 **No Duplication of Fees**. In the event the Company invests in another entity controlled by the Manager, the Company shall not duplicate any fees paid by such entity to the Manager.

6.11 **Fees Charged to Capital Accounts**. The fees described in section 6.12, and any other fees paid to the Manager or its affiliates, shall be charged individually to the capital accounts of the Investor Members, *pro rata* in proportion to the number of Investor Shares owned by each Investor Member. However (i) fees shall not be charged to the capital account of Class A Members who are affiliates of the Manager, and (ii) the Manager may agree, *via* side letter, to reduce or waive any or all such fees for individual Class A Members for such reasons as the Manager may determine in its sole discretion, including the amount of a Class A Member's Capital Contribution, provided that the foregoing shall have the effect of reducing the aggregate fees paid to the Manager and not increasing the fees charged to the capital account of any other Class A Member.

6.12 **Removal of Manager by Class A Members**.

6.12.1 **In General**. The Manager may be removed by the affirmative vote of Class A Members holding more than fifty percent (50%) of the total number of Class A Shares then issued and outstanding (a "Majority Vote"), but only if the Class A Members have "cause" to remove the Manager, as defined in section 6.12.3, and follow the procedure set forth in section 6.12.2.

6.12.2 **Procedure**.

(a) **Notice and Response**. A Class A Member who wishes to remove the Manager and believes there is "cause" for doing so within the meaning of section 6.12.3 shall notify the Manager, referencing this section 6.12 and setting forth in detail the reasons for his, her, or its belief. Within thirty (30) days after receiving such a notice, the Manager shall respond by acknowledging the receipt of the notice and (i) stating that the Manager does not believe there is merit in the Class A Member's allegations, (ii) explaining why the Manager does not believe "cause" exists for removal, or (iii) stating that while "cause" may exist for removal, the Manager does not believe removal would be in the best interest in the Company. If the Manager fails to respond, the Manager shall be deemed to have stated that it does not believe there is merit in the Class A Member's allegations. In the event the Class A Member communicates with any third party concerning his request for removal, including any other Class A Member but not including his, her, or its own legal counsel, he, she, or it shall include a copy of the Manager's response. The failure of the Manager to include in its response any defense, facts, or arguments shall not preclude the Manager from including such defense, facts, or arguments in subsequent communications or proceedings.

(b) **Vote**. After following the procedure described in section 6.12.2(a), Class A Members owning at least twenty five percent (25%) of the Class A Shares then issued and outstanding (the "Dissident Members") may call for a vote of the Class A Members. The Manager and a single representative chosen by the Dissident Members shall cooperate in sending to all Class A Members a package of materials bearing on whether "cause" exists under section 6.12.3 and whether it is in the best interest of the Company to remove the Manager, and a vote shall be taken by electronic means, with responses due within thirty (30) days. The failure of the Manager or the Dissident Members to include in this package any defense, facts, or arguments shall not preclude them from including such defense, facts, or arguments in subsequent communications or proceedings.

(c) **Arbitration**. In the event of a Majority Vote to remove the Manager within the thirty (30) day period described in section 6.12.2(b), then the question as to whether "cause" exists to remove the Manager shall be referred to a single arbitrator in arbitration proceedings held in Wilmington, Delaware in conformance with the then-current rules and procedures of the American Arbitration Association. The removal of the Manager shall not become effective until the arbitrator determines that "cause" exists; the decision of the arbitrator shall be binding and non-appealable. In the event there is no Majority Vote to remove the Manager within the thirty (30) day period described in section 6.12.2(b), then the Manager shall not be removed and no subsequent proceeding to remove the Manager shall be held with respect to substantially similar grounds.

6.12.3 **Cause Defined**. For purposes of this section 6.12, "cause" shall be deemed to exist if any only if:

(a) **Uncured Breach**. The Manager breaches any material provision of this Agreement and the breach continues for more than (30) days after the Manager has received written notice, or, in the case of a breach that cannot be cured within thirty (30) days, the Manager fails to begin curing the breach within thirty (30) days or the breach remains uncured for ninety (90) days; or

(b) **Bankruptcy**. The Manager makes a general assignment for the benefit of its creditors; or is adjudicated a bankrupt; or files a voluntary petition in bankruptcy; or files a petition or answer seeking reorganization or an arrangement with creditors, or to take advantage of any insolvency, readjustment of loan, dissolution or liquidation law or statute; or an order, judgment, or decree is entered without the Manager's consent appointing a receiver, trustee or liquidator for the Manager; or

(c) **Bad Acts**. The Manager engages in willful misconduct or acts with reckless disregard to its obligations, in each case causing material harm to the Company, or engages in bad faith in activities that are beneficial to itself and cause material harm to the Company, and the individual responsible for such actions is not terminated within thirty (30) days after the Manager becomes aware of such actions.

6.13 **Removal of Manager by Lender**. In connection with a loan made to the Company, the Manager may agree that the lender may remove and replace The O'Donnell Group as the manager in the event of a default. The removal of The O'Donnell Group as the manager pursuant to this section 6.12 shall not affect its ownership of Class B Shares.

ARTICLE 7: OTHER RIGHTS OF MEMBERS; INDEMNIFICATION

7.1 **Other Businesses**.

7.1.1 **In General**. Each Member and Manager may engage in any business whatsoever, including a business that is competitive with the business of the Company, and the other Members shall have no interest in such businesses and no claims on account of such businesses, whether such claims arise under the doctrine of "corporate opportunity," an alleged fiduciary obligation owed to the Company or its members, or otherwise. Without limiting the preceding sentence, the Members acknowledge that the Manager and/or its affiliates intend to sponsor, manage, invest in, and otherwise be associated with other entities and business investing in the same assets class(es) as the Company, some of which could be competitive with the Company. No Member shall have any claim against the Manager or its affiliates on account of such other entities or businesses.

7.1.2 **Restriction on Manager**. If (i) before the fifth (5^{th}) anniversary of this Agreement, the Manager becomes aware of an industrial asset that fits the Company's investment criteria, and (ii) the Company has sufficient capital to purchase such asset without borrowing more than sixty-five percent (65%) of the estimated cost to purchase such asset and perform any required renovations, then neither the Manager nor any person under common control with the Manager shall purchase such asset, other than the Company.

7.2 **Exculpation and Indemnification.**

7.2.1 **Exculpation**.

(a) **Covered Persons**. As used in this section 7.2, the term "Covered Person" means (i) the Manager and its affiliates, (ii) the members, managers, officers, employees, and agents of the Manager and its affiliates, and (iii) the officers, employees, and agents of the Company, each acting within the scope of his, her, or its authority.

(b) **Standard of Care**. No Covered Person shall be liable to the Company for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in the good-faith business judgment of such Covered Person, so long as such action or omission does not constitute fraud or willful misconduct by such Covered Person.

(c) **Good Faith Reliance**. 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 (including financial statements and information) of the following persons: (i) another Covered Person; (ii) any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the Company; or (iii) any other person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Covered Person reasonably believes to be within such other person's professional or expert competence. The preceding sentence shall in no way limit any person's right to rely on information to the extent provided in the Act.

7.2.2 **Liabilities and Duties of Covered Persons**.

(a) **Limitation of Liability**. This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each Member and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law, and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(b) **Duties**. Whenever a Covered Person is permitted or required to make a decision, the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other person. Whenever in this Agreement a Covered Person is permitted or required to make a decision in such Covered Person's "good faith," the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other applicable law.

7.2.3 **Indemnification**.

(a) **Indemnification**. To the fullest extent permitted by the Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "Losses") to which such Covered Person may become subject by reason of any act or omission or alleged act or omission performed or omitted to be performed by such Covered Person on behalf of the Company in connection with the business of the Company; provided, that (i) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his conduct was unlawful, and (ii) such Covered Person's conduct did not constitute fraud or willful misconduct, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud or willful misconduct.

(b) **Reimbursement**. The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this section 7.2.3; provided, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this section

7.2.3, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(c) **Entitlement to Indemnity**. The indemnification provided by this section 7.2.3 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this section 7.2.3 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this section 7.2.3 and shall inure to the benefit of the executors, administrators, and legal representative of such Covered Person.

(d) **Insurance**. To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Manager may determine; provided, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

(e) **Funding of Indemnification Obligation**. Any indemnification by the Company pursuant to this section 7.2.3 shall be provided out of and to the extent of Company assets only, and no Member shall have personal liability on account thereof or shall be required to make additional capital contributions to help satisfy such indemnification obligation.

(f) **Savings Clause**. If this section 7.2.3 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this section 7.2.3 to the fullest extent permitted by any applicable portion of this section 7.2.3 that shall not have been invalidated and to the fullest extent permitted by applicable law.

7.2.4 **Amendment**. The provisions of this section 7.2 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this section is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this section that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

7.2.5 **Survival**. The provisions of this section 7.2 shall survive the dissolution, liquidation, winding up, and termination of the Company.

7.3 **Confidentiality**.

7.3.1 **In General**. Each Class A Member shall maintain the confidentiality of all Confidential Information, as defined below, using no less care than such Class A Member uses to protect such Class A Member's own confidential or proprietary information, and shall not use any Confidential Information for such Investor's own benefit or the benefit of any other person. Notwithstanding the foregoing, a Class A Member may disclose Confidential Information if required by legal process, provided that if a Class A Member receives a request or demand for the disclosure of Confidential Information the Class A Member shall (i) promptly notify the Company and the Manager of the existence, terms and circumstances surrounding such request, (ii) consult with the Company and the Manager regarding taking steps to resist or narrow such request, (iii) if disclosure of such information is required, furnish only such portion of such information as such Class A Member is advised by counsel is legally required to be disclosed, and (iv) cooperate with the Company and the Manager in their efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the information that is required to be disclosed.

7.3.2 **Confidential Information**. The term "Confidential Information" means (i) information regarding the Company, the Manager, or any Portfolio Investment that a reasonable person would understand to be confidential or proprietary, including but not limited to financial information, business plans, and the names of customers, employees, and suppliers; (ii) any information subject to a confidentiality agreement binding upon the Manager or the Company of which the Class A Member has been provided written notice; and (iii) the names and other identifying information of Members.

ARTICLE 8: BANK ACCOUNTS; BOOKS OF ACCOUNT; REPORTS

8.1 **Bank Accounts**. Funds of the Company may be deposited in accounts at banks or other institutions selected by the Manager. Withdrawals from any such account or accounts shall be made in the Company's name upon the signature of such persons as the Manager may designate. Funds in any such account shall not be commingled with the funds of any Member.

8.2 **Books and Records of Account**. The Company shall keep at its principal offices books and records of account of the Company which shall reflect a full and accurate record of each transaction of the Company.

8.3 **Financial Statements and Reports**. Within a reasonable period after the close of each fiscal quarter, the Company shall furnish to each Member with respect to such fiscal quarter (i) a statement showing in reasonable detail the computation of the amount distributed under section 4.1, and the manner in which it was distributed (ii) a balance sheet of the Company, (iii) a statement of income and expenses, (iv) the most recent Net Asset Value, and (v) such additional information as may be required by law. Within a reasonable period after the close of each fiscal year, the Company shall furnish to each Member the same information with respect to such fiscal year, as well as K-1 schedules. The financial statements of the Company need not be audited by an independent certified public accounting firm unless the Manager so elects or the law so requires.

8.4 **Right of Inspection**.

8.4.1 **In General**. If a Member wishes additional information or to inspect the books and records of the Company for a *bona fide* purpose, the following procedure shall be followed: (i) such Member shall notify the Manager, setting forth in reasonable detail the information requested and the reason for the request; (ii) within sixty (60) days after such a request, the Manager shall respond to the request by either providing the information requested or scheduling a date (not more than 90 days after the initial request) for the Member to inspect the Company's records; (iii) any inspection of the Company's records shall be at the sole cost and expense of the requesting Member; and (iv) the requesting Member shall reimburse the Company for any reasonable costs incurred by the Company in responding to the Member's request and making information available to the Member.

8.4.2 **Bona Fide Purpose**. The Manager shall not be required to respond to a request for information or to inspect the books and records of the Company if the Manager believes such request is made to harass the Company or the Manager, to seek confidential information about the Company, or for any other purpose other than a *bona fide* purpose.

8.4.3 **Representative**. An inspection of the Company's books and records may be conducted by an authorized representative of a Member, provided such authorized representative is an attorney or a licensed certified public accountant and is reasonably satisfactory to the Manager.

8.4.4 **Restrictions**. The following restrictions shall apply to any request for information or to inspect the books and records of the Company:

(a) No Member shall have a right to a list of the Class A Members or any information regarding the Class A Members without the prior written consent of each Class A Member.

(b) Before providing additional information or allowing a Member to inspect the Company's records, the Manager may require such Member to execute a confidentiality agreement satisfactory to the Manager.

(c) No Member shall have the right to any trade secrets of the Company or any other information the Manager deems highly sensitive and confidential.

(d) No Member may review the books and records of the Company more than once during any twelve (12) month period.

(e) Any review of the Company's books and records shall be scheduled in a manner to minimize disruption to the Company's business.

(f) A representative of the Company may be present at any inspection of the Company's books and records.

(g) If more than one Member has asked to review the Company's books and records, the Manager may require the requesting Members to consolidate their request and appoint a single representative to conduct such review on behalf of all requested Members.

(h) The Manager may impose additional reasonable restrictions for the purpose of protecting the Company and the Members.

8.5 **Tax Matters**.

8.5.1 **Designation**. The Manager shall be designated as the "company representative" (the "Company Representative") as provided in Code section 6223(a). Any expenses incurred by the Company Representative in carrying out its responsibilities and duties under this Agreement shall be an expense of the Company for which the Company Representative shall be reimbursed.

8.5.2 **Tax Examinations and Audits**. The Company Representative is authorized to represent the Company in connection with all examinations of the affairs of the Company by any taxing authority, including any resulting administrative and judicial proceedings, and to expend funds of the Company for professional services and costs associated therewith. Each Member agrees to cooperate with the Company Representative and to do or refrain from doing any or all things reasonably requested by the Company Representative with respect to the conduct of examinations by taxing authorities and any resulting proceedings. Each Member agrees that any action taken by the Company Representative in connection with audits of the Company shall be binding upon such Members and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company. The Company Representative shall have sole discretion to determine whether the Company (either on its own behalf or on behalf of the Members) will contest or continue to contest any tax deficiencies assessed or proposed to be assessed by any taxing authority.

8.5.3 **BBA Elections and Procedures**. In the event of an audit of the Company that is subject to the Company audit procedures enacted under Code sections 6225, *et seq*, (the "Audit Procedures"), the Company Representative, in its sole discretion, shall have the right to make any and all elections and to take any actions that are available to be made or taken by the Company, including any election under Code section 6226. If an election under Code section 6226(a) is made, the Company shall furnish to each Member for the year under audit a statement of the Member's share of any adjustment set forth in the notice of final Company adjustment, and each Member shall take such adjustment into account as required under Code section 6226(b).

8.5.4 **Tax Returns and Tax Deficiencies**. Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes and any tax deficiency imposed pursuant to Code section 6226) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member.

8.5.5 **Tax Returns**. The Manager shall cause to be prepared and timely filed all tax returns required to be filed by or for the Company.

ARTICLE 9: TRANSFERS OF SHARES

9.1 **Transfers by Investors**.

9.1.1 **In General**. A Class A Member (a "Transferor") may sell, transfer, dispose of, or encumber (each, a "Transfer") Class A Shares (the "Transferred Shares") only with the consent of the Manager, which may not be unreasonably withheld. Any attempted sale, transfer, or encumbrance not permitted in this Article 9 shall be null and void and of no force or effect.

9.1.2 **First Right of Refusal**.

(a) **In General**. In the event a Class A Member (the "Selling Member") receives an offer from a third party to acquire all or a portion of his, her, or its Class A Shares (the "Transfer Shares"), then he, she, or it shall notify the Manager, specifying the Class A Shares to be purchased, the purchase price, the approximate closing date, the form of consideration, and such other terms and conditions of the proposed transaction that have been agreed with the proposed purchaser (the "Sales Notice"). Within thirty (30) days after receipt of the Sales Notice the Manager shall notify the Selling Member whether the Manager or a person designated by the Manager elects to purchase the entire Transfer Shares on the terms set forth in the Sales Notice.

(b) **Exception for Sales to Existing Class A Members**. Section 9.1.2 shall not apply to a sale to an existing Class A Member, but only to the extent that, following the sale, the existing Class A Member will own no more than twenty percent (20%) of the Class A Shares then issued and outstanding.

(c) **Special Rules**. The following rules shall apply for purposes of this section:

(1) If the Manager elects not to purchase the Transfer Shares or fails to respond to the Sales Notice within the thirty (30) day period described above, the Selling Member may proceed with the sale to the proposed purchaser, subject to section 9.1.1.

(2) If the Manager elects to purchase the Transfer Shares, it shall do so within thirty (30) days.

(3) If the Manager elects not to purchase the Transfer Shares, or fails to respond to the Sales Notice within the thirty (30) day period described above, and the Selling Member and the purchaser subsequently agree to a reduction of the purchase price, a change in the consideration from cash or readily tradeable securities to deferred payment obligations or nontradeable securities, or any other material change to the terms set forth in the Sales Notice, such agreement between the Selling Member and the purchaser shall be treated as a new offer and shall again be subject to this section.

(4) If the Manager elects to purchase the Transfer Shares in accordance with this section, such election shall have the same binding effect as the then-current agreement between the Selling Member and the proposed purchaser. Thus, for example, if the Selling Member and the purchaser have entered into a non-binding letter of intent but have not entered into a binding definitive agreement, the election of the Manager shall have the effect of a non-binding letter of intent with the Selling Member. Conversely, if the Selling Member and the purchaser have entered into a binding definitive agreement, the election of the Manager shall have the effect of a binding definitive agreement. If the Selling Member and the Manager are deemed by this subsection to have entered into only a non-binding letter of intent, neither shall be bound to consummate a transaction if they are unable to agree to the terms of a binding agreement.

9.1.3 **Application to Entities**. In the case of a Class A Member that is a Special Purpose Entity, the restrictions set forth in section 9.1.1 and section 9.1.2 shall apply to indirect transfers of interests in the Company by transfers of interests in such entity (whether by transfer of an existing interest or the issuance of new interests), as well as to direct transfers. A "Special Purpose Entity" means (i) an entity formed or availed of principally for the purpose of acquiring or holding an interest in the Company, and (ii) any entity if the purchase price of its interest in the Company represents at least seventy percent (70%) of its capital.

9.1.4 **Exempt Transfers**. The following transactions shall be exempt from the provisions of section 9.1.1 and section 9.1.2:

(a) A transfer to or for the benefit of any spouse, child or grandchild of a Transferor who is an individual, or to a trust for their exclusive benefit;

(b) Any transfer pursuant to an effective registration statement filed by the Company under the Securities Act of 1933, as amended; and

(c) The sale of all or substantially all of the interests of the Company (including pursuant to a merger or consolidation) to a third party;

provided, however, that in the case of a transfer pursuant to section 9.1.4(a) (i) the Transferred Shares shall remain subject to this Agreement, (ii) the transferee shall, as a condition to such transfer, deliver to the Company a written instrument confirming that such transferee shall be bound by all of the terms and conditions of this Agreement, and (iii) the Transferred Shares shall not thereafter be transferred further in reliance on section 9.1.4(a).

9.1.5 **Rights of Assignee**. Until and unless a person who is a transferee of Class A Shares is admitted to the Company as a Class A Member pursuant to section 9.1.6 below, such transferee shall be entitled only to the allocations and distributions with respect to the Transferred Shares in accordance with this Agreement and, to the fullest extent permitted by applicable law, including but not limited to 6 Del. C. §18-702(b), shall not have any non-economic rights of a Member of the Company, including, without limitation, the right to require any information on account of the Company's business, inspect the Company's books, or vote on Company matters.

9.1.6 **Conditions of Transfer**. A transferee of Transferred Shares shall have the right to become a Class A Member pursuant to 6 Del. C. §18-704 if and only if all of the following conditions are satisfied:

(a) The transferee has executed a copy of this Agreement, agreeing to be bound by all of its terms and conditions;

(b) A fully executed and acknowledged written transfer agreement between the Transferor and the transferee has been filed with the Company;

(c) All costs and expenses incurred by the Company in connection with the transfer are paid by the transferor to the Company, without regard to whether the proposed transfer is consummated; and

(d) The Manager determines, and such determination is confirmed by an opinion of counsel satisfactory to the Manager stating, that (i) the transfer does not violate the Securities Act of 1933 or any applicable state securities laws, (ii) the transfer will not require the Company or the Manager to register as an investment company under the Investment Company Act of 1940, (iii) the transfer will not require the Manager or any affiliate that is not registered under the Investment Advisers Act of 1940 to register as an investment adviser, (iv) the transfer would not pose a material risk that (A) all or any portion of the assets of the Company would constitute "plan assets" under ERISA, (B) the Company would be subject to the provisions of ERISA, section 4975 of the Code or any applicable similar law, or (C) the Manager would become a fiduciary pursuant to ERISA or the applicable provisions of any similar law or otherwise, and (v) the transfer will not violate the applicable laws of any state or the applicable rules and regulations of any governmental authority; *provided*, that the delivery of such opinion may be waived, in whole or in part, at the sole discretion of the Manager.

9.1.7 **Admission of Transferee**. Any permitted transferee of Class A Shares shall be admitted to the Company as a Member on the date agreed by the transferor, the transferee, and the Manager.

9.2 **Involuntary Withdrawal by Transferors**. Upon the death, bankruptcy, disability, legal incapacity, legal dissolution, or any other voluntary or involuntary act of a Class A Member, neither the Company nor the Manager shall have the obligation to purchase the Class A Shares owned by such Class A Member, nor shall such Class A Member have the obligation to sell his, her, or its Class A Shares. Instead, the legal successor of such Class A Member shall become an assignee of the Class A Member pursuant to section 9.1.5, subject to all of the terms and conditions of this Agreement.

9.3 **Mandatory Redemptions**.

9.3.1 **Based on ERISA Considerations**. The Manager may, at any time, cause the Company to purchase all or any portion of the Class A Shares owned by a Member whose assets are governed by Title I of the Employee Retirement Income Security Act of 1974, Code section 4975, or any similar Federal, State, or local law, if the Manager determines that all or any portion of the assets of the Company would, in the absence of such purchase, more likely than not be treated as "plan assets" or otherwise become subject to such laws.

9.3.2 **Based on Other Bona Fide Business Reasons**. The Manager may, at any time, cause the Company to purchase all of the Class A Shares owned by a Member if the Manager determines that (i) such Member made a material misrepresentation to the Company; (ii) legal or regulatory proceedings are commenced or threatened against the Company or any of its members arising from or relating to the Member's interest in the Company; (iii) the Manager believes that such Member's ownership has caused or will cause the Company to violate any law or regulation; (iv) such Member has violated any of his, her, or its obligations to the Company or to the other Members; or (ii) such Member is engaged in, or has engaged in conduct (including but not limited to criminal conduct) that (A) brings the Company, or threatens to bring the Company, into disrepute, or (B) is adverse and fundamentally unfair to the interests of the Company or the other Members.

9.3.3 **Purchase Price and Payment**. In the case of any purchase of Class A Shares described in this section 9.3 (i) the purchase price of the Class A Shares shall be ninety percent (90%) of the amount the Member would receive with respect to such Class A Shares if the Net Asset Value were distributed in liquidation of the Company; and (ii) the purchase price shall be paid by wire transfer or other immediately-available funds at closing, which shall be held within sixty (60) days following written notice from the Manager.

9.4 **Incorporation**. If the Manager determines that the business of the Company should be conducted in a corporation rather than in a limited liability company, whether for tax or other reasons, each Member shall cooperate in transferring the business to a newly formed corporation and shall execute such agreements as the Manager may reasonably determine are necessary or appropriate, consistent with the terms of this Agreement. In such event each Member shall receive stock in the newly formed corporation equivalent to his, her, or its Shares.

9.5 **Pledge of Class A Shares**. In the event the Manager determines that the Company should borrow money and the lender requires a pledge of the equity securities of the Company as collateral, then each Class A Member shall execute such instruments as the lender may require to pledge all of such Class A Member's Class A Shares to or for the benefit of the lender and represent that he, she, or its owns such Class A Shares free from all liens and other encumbrances, provided that no Class A Member shall be required to assume personal liability for the indebtedness, pledge any other assets, or assume any other obligations.

9.6 **Drag-Along Right**.

9.6.1 **In General**. In the event the Manager approves a sale or other disposition of all of the issued and outstanding Shares of the Company or, alternatively, all of the issued and outstanding Class A Shares, then, upon notice of the sale or other disposition, each Member, or each Class A Member, shall execute such documents or instruments as may be requested by the Manager to effectuate such sale or other disposition and shall otherwise cooperate with the Manager.

9.6.2 **Special Rules**. The following rules shall apply to any sale or other disposition described in section 9.6.1:

(a) If the sale or other disposition is to the Manager or any person related to the Manager within the meaning of section 6.1.4(d), the selling price shall not be less than the selling Members, or Class A Members, would receive if the Net Asset Value were distributed among the Members in liquidation of the Company;

(b) Each Member, or Class A Member, shall represent that he, she, or it owns his, her, or its Shares free and clear of all liens and other encumbrances, that he, she, or it has the power to enter into the transaction, and whether he, she, or it is a U.S. person, but shall not be required to make any other representations or warranties;

(c) Each Member, or Class A Member, shall grant to the Manager a power of attorney to act on behalf of such Class A Member, in connection with such sale or other disposition; and

(d) Each Member, or Class A Member, shall receive, as consideration for such sale or other disposition, the same amount he, she, or it would have received had all or substantially all of the assets of the Company been sold, the liabilities of the Company satisfied, and the net proceeds distributed among the Members in liquidation of the Company.

9.7 **Net Asset Value**.

9.7.1 **In General**. The "Net Asset Value" of the Company means the aggregate, net amount that would be available for distribution to the Members if all the assets of the Company were sold for their fair market value and all the liabilities, obligations, and expenses of the Company paid and satisfied. The Manager shall calculate the Net Asset Value from time to time in its sole discretion, but no less than as of the last day of each calendar quarter.

9.7.2 **Manner of Calculation**. The Manager may calculate the fair market value of the Company's assets using any method or combination of methods the Manager may determine in its sole discretion, including but not limited to (i) methods using the capitalization rates of comparable assets (typically used for stabilized, income-producing assets); (ii) methods using the sales or offering prices of comparable assets; (iii) estimates obtained from appraisers, real estate brokers, or other qualified persons; (iv) recent offerings of the Company's securities; and (v) other methods the Manager deems appropriate in the circumstances, including the purchase price and/or book value of assets. In the absence of actual fraud, the Manager's determination of the fair market value of the Company's assets shall be final and not subject to dispute.

9.7.3 **Disputes**.

(a) **In General**. If, pursuant to a transaction described in section 6.1.4(b), section 6.1.4(c), section 9.3.3, or section 9.6, the selling Member disputes the calculation of the fair market values of the Company's assets, such Member shall notify the Manager. If such Member and the Manager cannot agree, then the fair market values shall be determined by a single qualified appraiser chosen by the mutual agreement of such Member and the Manager. If they cannot agree on a single appraiser, then they shall each select a qualified appraiser to determine the fair market value. Within forty-five (45) days, each such appraiser shall determine the fair market value, and if the two values so determined differ by less than ten percent (10%) then the arithmetic average of the two values shall, subject to section 9.7.3(b), conclusively be deemed to be the fair market value of the assets. If the two values differ by more than ten percent (10%), then the two appraisers shall be instructed to work together for a period of ten (10) days to reconcile their differences, and if they are able to reconcile their differences to within a variation of ten percent (10%), the arithmetical average shall, subject to section 9.7.3(b), conclusively be deemed to be the fair market value. If they are unable to so reconcile their differences, then the two appraisers shall, within ten (10) additional days, pick a third appraiser. The third appraiser shall, within an additional ten (10) days, review the appraisals performed by the original two, and select the one that he believes most closely reflects the fair market value of the Company's assets, and that appraisal shall, subject to section 9.7.3(b), conclusively be deemed to be the fair market value.

(b) **No Change for 5% Variance**. If the actual aggregate fair market value of the Company's assets, as determined pursuant to section 9.7.3(a), differs by no more than five percent (5.00%) from the value determined by the Manager, then the value determined by the Manager shall apply notwithstanding section 9.7.3(a).

(c) **Special Rules**.

(1) **Designation of Representative**. If the Shares of more than one Class A Member are being purchased, then all such Members shall select a single representative, voting on the basis of the number of Class A Shares owned by each, and such single representative (who may but need not be one of the Members in question) shall speak and act for all such Members.

(2) **Cost of Appraisals**. The Company on one hand and the Class A Member(s) whose Shares are being purchased on the other hand shall each pay for the appraisal such party obtains pursuant to section 9.7.3(a). If a third appraiser is required, the parties shall share the cost equally.

9.8 **Waiver of Appraisal Rights**. Each Member hereby waives any contractual appraisal rights such Member may otherwise have pursuant to 6 Del. C. §18-210 or otherwise, as well as any "dissenter's rights."

9.9 **Transfers of Class B Shares**. Nothing in this Agreement shall be construed to limit, restrict, or prohibit any transfer of Class B Shares.

9.10 **Withdrawal**. A Class A Member may withdraw from the Company by giving at least ninety (90) days' notice to the Manager. The withdrawing Class A Member shall be entitled to no distributions or payments from Company on account of his, her, or its withdrawal, nor shall he, she, or it be indemnified against liabilities of Company. For purposes of this section, A Class A Member who transfers a Class A Shares pursuant to (i) a transfer permitted under section 9.1, or (ii) an involuntary transfer by operation of law, shall not be treated as thereby withdrawing from Company.

ARTICLE 10: POWER OF ATTORNEY

10.1 **In General**. The Manager shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Class A Member, with power and authority to act in the name and on behalf of each such Class A Member, to execute, acknowledge, and swear to in the execution, acknowledgement and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

10.1.1 This Agreement and any amendment of this Agreement authorized under Article 12;

10.1.2 Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Manager shall deem it advisable to file;

10.1.3 Any instrument or document that may be required to effect the continuation of the Company, the admission of new Members, or the dissolution and termination of the Company; and

10.1.4 Any and all other instruments as the Manager may deem necessary or desirable to effect the purposes of this Agreement and carry out fully its provisions.

10.2 **Terms of Power of Attorney**. The special and limited power of attorney of the Manager (i) is a special power of attorney coupled with the interest of the Manager in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Class A Member, and is limited to those matters herein set forth; (ii) may be exercised by the Manager by an through one or more of the officers of the Manager for each of the Members by the signature of the Manager acting as attorney-in-fact for all of the Class A Members, together with a list of all Class A Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and (iii) shall survive an assignment by a Class A Member of all or any portion of his, her, or its Class A Shares except that,

where the assignee of the Class A Shares owned by the Class A Member has been approved by the Manager for admission to the Company, the special power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument or document necessary to effect such substitution.

10.3 **Notice to Members**. The Manager shall promptly furnish to each Class A Member a copy of any amendment to this Agreement executed by the Manager pursuant to a power of attorney from such Class A Member.

ARTICLE 11: DISSOLUTION AND LIQUIDATION

11.1 **Dissolution**. The Company shall be dissolved upon the first to occur of (i) the date twelve (12) months following the sale of all or substantially all, for cash or cash equivalents, of all of the Portfolio Investments and other assets of the Company, (ii) the determination of the Manager to dissolve, or (iii) January 1, 2037. The Members hereby waive the right to have the Company dissolved by judicial decree pursuant to 6 Del. C. §18-802.

11.2 **Liquidation**.

11.2.1 **Generally**. If the Company is dissolved, the Company's assets shall be liquidated and no further business shall be conducted by the Company except for such action as shall be necessary to wind up its affairs and distribute its assets to Members pursuant to the provisions of this Article 11. Upon such dissolution, the Manager shall have full authority to wind up the affairs of the Company and to make final distribution as provided herein.

11.2.2 **Distribution of Assets**. After liquidation of the Company, the assets of the Company shall be distributed as set forth in section 5.1.

11.2.3 **Statement of Account**. Each Member shall be furnished with a statement prepared by the Company's accountants, which shall set forth the assets and liabilities of the Company as of the date of complete liquidation, and the capital account of each Member immediately prior to any distribution in liquidation.

11.2.4 **Distributions in Kind**. The assets of the Company shall be liquidated as promptly as possible so as to permit distributions in cash, but such liquidation shall be made in an orderly manner so as to avoid undue losses attendant upon liquidation.

ARTICLE 12: AMENDMENTS

12.1 **Amendments Not Requiring Consent**. The Manager may amend this Agreement without the consent of any Member to effect:

12.1.1 The correction of typographical errors;

12.1.2 A change in the name of the Company, the location of the principal place of business of the Company, the registered agent of the Company or the registered office of the Company;

12.1.3 Amendments made in connection with the creation of additional classes of limited liability company interests pursuant to section 4.1.1;

12.1.4 The admission, substitution, withdrawal, or removal of Members in accordance with this Agreement;

12.1.5 An amendment that cures ambiguities or inconsistencies in this Agreement;

12.1.6 An amendment that adds to its own obligations or responsibilities;

12.1.7 A change in the fiscal year or taxable year of the Company and any other changes that the Manager determines to be necessary or appropriate as a result of a change in the fiscal year or taxable year of the Company;

12.1.8 A change the Manager determines to be necessary or appropriate to prevent the Company from being treated as an "investment company" within the meaning of the Investment Company Act of 1940;

12.1.9 A change to facilitate the trading of Class A Shares, including changes required by law or by the rules of a securities exchange;

12.1.10 A change the Manager determines to be necessary or appropriate to satisfy any requirements or guidelines contained in any opinion, directive, order, ruling, or regulation of any federal or state agency or judicial authority or contained in any Federal or State statute, including but not limited to "no-action letters" issued by the Securities and Exchange Commission;

12.1.11 A change that the Manager determines to be necessary or appropriate to prevent the Company from being subject to the Employee Retirement Income Security Act of 1974;

12.1.12 A change the Manager determines to be necessary or appropriate to reflect an investment by the Company in any corporation, partnership, joint venture, limited liability company or other entity;

12.1.13 An amendment that conforms to the Disclosure Document;

12.1.14 An amendment required by the Company's lenders;

12.1.15 Any amendment expressly permitted in this Agreement to be made by the Manager acting alone; or

12.1.16 Any other amendment that does not have, and could not reasonably be expected to have, a material adverse effect on the Class A Members.

12.2 **Amendments Requiring Majority Consent**. Any amendment that has, or could reasonably be expected to have, an adverse effect on the Class A Members, other than amendments described in section 12.4, shall require the consent of the Manager and Class A Members holding a majority of the Class A Shares.

12.3 **Amendments to Vary Distributions**. The Manager may amend Article 5 to increase the distributions to one or more Class A Members (for example, to increase the Preferred Return of one or more Class A Members), without the consent of any other Class A Member, provided that any such increase does not decrease the distributions to any other Class A Members. Any such amendment may be affected by a letter agreement between the Manager and the affected Class A Member(s).

12.4 **Amendments Requiring Unanimous Consent**. The following amendments shall require the consent of the Manager and each affected Member:

12.4.1 An amendment deleting or modifying any of the amendments already listed in this section 12.4;

12.4.2 An amendment that would require any Class A Member to make additional Capital Contributions; and

12.4.3 An amendment that would impose personal liability on any Class A Member.

12.5 **Procedure for Obtaining Consent**. If the Manager proposes to make an amendment to this Agreement that requires the consent of Class A Members, the Manager shall notify each affected Class A Member (who may be all Class A Members, or only Class A Members holding a given class of Class A Shares) in writing, specifying the proposed amendment and the reason(s) why the Manager believe the amendment is in the best interest of the Company. At the written request of Class A Members holding at least Twenty Percent (20%) of the Class A Shares entitled to vote on the amendment, the Manager shall hold an in-person or electronic meeting (*e.g.*, a webinar) to explain and discuss the amendment. Voting may be through paper or electronic ballots. If a Class A Member does not respond to the notice from the Manager within twenty (20) calendar days, the Manager shall send a reminder. If the Class A Member does not respond for an additional ten (10) calendar days following the reminder such Class A Member shall be deemed to have consented to the proposed amendment(s). If the Manager proposes an amendment that is not approved by the Class A Members within ninety (90) days from proposal, the Manager shall not again propose that amendment for at least six (6) months.

ARTICLE 13: MISCELLANEOUS

13.1 **Notices**. Any notice or document required or permitted to be given under this Agreement may be given by a party or by its legal counsel and shall be deemed to be given (i) one day after being deposited with an overnight delivery service, or (ii) on the date transmitted by electronic mail, unless the recipient demonstrates that such electronic mail was not received into the recipient's Inbox, to the principal business address of the Company, if to the Company or the Manager, to the email address of A Class A Member provided by such Class A Member, or such other address or addresses as the parties may designate from time to time by notice satisfactory under this section.

13.2 **Electronic Delivery**. Each Member hereby agrees that all communications with the Company, including all tax forms, shall be *via* electronic delivery.

13.3 **Governing Law**. This Agreement shall be governed by the internal laws of Delaware without giving effect to the principles of conflicts of laws. Each Member hereby (i) consents to the personal jurisdiction of the Delaware courts or the Federal courts located in or most geographically convenient to Wilmington, Delaware, (ii) agrees that all disputes arising from this Agreement shall be prosecuted in such courts, (iii) agrees that any such court shall have in personam jurisdiction over such Member, and (iv) consents to service of process by notice sent by regular mail to the address on file with the Company and/or by any means authorized by Delaware law.

13.4 **Waiver of Jury Trial**. EACH MEMBER ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH MEMBER IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT.

13.5 **Signatures**. This Agreement may be signed (i) in counterparts, each of which shall be deemed to be a fully executed original; and (ii) electronically, *e.g.*, via DocuSign. An original signature transmitted by facsimile or email shall be deemed to be original for purposes of this Agreement.

13.6 **No Third-Party Beneficiaries**. Except as otherwise specifically provided in this Agreement, this Agreement is made for the sole benefit of the parties. No other persons shall have any rights or remedies by reason of this Agreement against any of the parties or shall be third party beneficiaries of this Agreement in any way.

13.7 **Binding Effect**. This Agreement shall inure to the benefit of the respective heirs, legal representatives and permitted assigns of each party, and shall be binding upon the heirs, legal representatives, successors and assigns of each party.

13.8 **Titles and Captions**. All article, section and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.

13.9 **Pronouns and Plurals**. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

13.10 **Execution by Class A Members**. It is anticipated that this Agreement will be executed by Class A Members through the execution of a separate Investment Agreement.

13.11 **Legal Representation**. The Company and the Manager have been represented by Lex Nova Law LLC in connection with the preparation of this Agreement. Each Class A Member (i) represents that such Member has not been represented by Lex Nova Law LLC in connection with the preparation of this Agreement, (ii) agrees that Lex Nova Law LLC may represent the Company and/or the Manager in the event of a dispute involving such Class A Member, and (iii) acknowledges that such Class A Member has been advised to seek separate counsel in connection with this Agreement.

13.12 **Days**. Any period of days mandated under this Agreement shall be determined by reference to calendar days, not business days, except that any payments, notices, or other performance falling due on a Saturday, Sunday, or federal government holiday shall be considered timely if paid, given, or performed on the next succeeding business day.

13.13 **Entire Agreement**. This Agreement constitutes the entire agreement among the parties with respect to its subject matter and supersedes all prior agreements and understandings.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

O'DONNELL INDUSTRIAL FUND LLC

By: The O'Donnell Group, Inc.
As Manager

By _____
Douglas D. O'Donnell, President

THE O'DONNELL GROUP, INC.

By _____
Douglas D. O'Donnell, President