



**OPERATING AGREEMENT**  
**of**  
**RETHINK SELF STORAGE FUND, LLC**  
a Delaware limited liability company



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## **OPERATING AGREEMENT of RETHINK SELF STORAGE FUND, LLC**

This operating agreement (this “Agreement”) of Rethink Self Storage Fund, LLC, a Delaware limited liability company (the “Fund”), is made and entered into effective as of August 15, 2023 between Rethink Self Storage Fund Management, LLC (the “Manager”), and those individuals and entities who have executed this Agreement in accordance with the terms hereof and those persons who may hereafter be accepted into the Fund pursuant to the terms of this Agreement (the “Members”).

### **Article 1: Definitions**

1.1 Capitalized terms in this Agreement, unless context indicates otherwise, shall have the meaning set forth in this Article 1.

1.2 “Act” means the Delaware Limited Liability Company Act as may be amended from time to time or such other acts that govern limited liability companies or which may be adopted by Delaware in the future. Conflicts between the Act and this Agreement shall be resolved in favor of the provisions of this Agreement except where the provisions of the Act may not be varied by contract as a matter of law.

1.3 “Affiliate” means, with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person (as applicable). For purposes of this definition, “control,” when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or partnership or other ownership interests, by contract or otherwise; and the terms “controlling” and “controlled” shall have correlative meanings.

1.4 “Agreement” or “Operating Agreement” means this Fund’s Operating Agreement as originally executed and as amended, modified, or supplemented from time to time.

1.5 “Capital Account” means a capital account maintained for each Member in accordance with the rules set forth in section 1.704-1(b)(2)(iv) of the Regulations.

1.6 “Capital Contribution” means any contribution of cash, property, or services contributed to the Fund by a Member.

1.7 “Capital Transaction” means the sale, refinance or other disposition of the Properties, or sale of all or substantially all of the assets of the Fund (in which case the Fund may be liquidated, wound up and dissolved).

1.8 “Class A Members” means Persons who subscribe to purchase Class A Shares and whom the Manager admits as a Class A Member and whose names are listed in the Register of the Fund. References herein to “Class A” Members, unless specified otherwise, shall apply to all Class A-1, Class A-2, and Class A-3 Members.

1.9 “Class A Shares” means the limited liability company interests in the Fund held by Class A Members. References herein to Class A Shares, unless specified otherwise, shall apply to all Class A-1,



Class A-2, and Class A-3 Shares.

1.10 “Class A-1 Members” means Members admitted to the Fund by the Manager as Class A-1 Members and whose names appear in the Register.

1.11 “Class A-1 Preferred Return” means for each Class A-1 Member, a cumulative, non-compounding return of 10.0% per year on the Class A-1 Member’s initial Capital Contributions. The Preferred Return shall begin to accrue on the date the Class A-1 Member’s Capital Contribution is deployed by the Fund. The Class A-1 Preferred Return is not guaranteed and will be paid only if there are funds available (as determined by the Manager) to pay it.

1.12 “Class A-1 Shares” means Shares held by a Class A-1 Member.

1.13 “Class A-2 Account” means the book-keeping account created and used to capture the Class A-2 Member’s proportional distribution of the Operating Cash Flow and Net Capital Proceeds.

1.14 “Class A-2 Members” means Members admitted to the Fund by the Manager as Class A-2 Members and whose names appear in the Register.

1.15 “Class A-2 Preferred Return” means for each Class A-2 Member, a cumulative, non-compounding return of 8.0% per year on the Class A-2 Member’s initial Capital Contributions. The Preferred Return shall begin to accrue on the date the Class A-2 Member’s Capital Contribution is deployed by the Fund. The Class A-2 Preferred Return is not guaranteed and will be paid only if there are funds available (as determined by the Manager) to pay it.

1.16 “Class A-2 Shares” means Shares held by a Class A-2 Member.

1.17 “Class A-3 Account” means the book-keeping account created and used to capture the Class A-3 Member’s proportional distribution of the Operating Cash Flow and Net Capital Proceeds.

1.18 “Class A-3 Members” means Members admitted to the Fund by the Manager as Class A-3 Members and whose names appear in the Register.

1.19 “Class A-3 Preferred Return” means for each Class A-3 Member, a cumulative, non-compounding return of 8.0% per year on the Class A-3 Member’s initial Capital Contributions. The Preferred Return shall begin to accrue on the date the Class A-3 Member’s Capital Contribution is deployed by the Fund. The Class A-3 Preferred Return is not guaranteed and will be paid only if there are funds available (as determined by the Manager) to pay it.

1.20 “Class A-3 Shares” means Shares held by a Class A-3 Member.

1.21 “Class B Members” means, initially, the Manager and/or its Affiliates but may include others to whom the Manager grants or sells Class B Shares and whose names are listed in the Register of the Fund.

1.22 “Class B Shares” means the limited liability company interests in the Fund held by Class B Members.

1.23 “Code” means the Internal Revenue Code of 1986, as amended.



- 1.24 “Fund” means Rethink Self Storage Fund, LLC, a Delaware limited liability company.
- 1.25 “ERISA” means the Employee Retirement Income Security Act of 1974 and all applicable rules and regulations promulgated thereunder.
- 1.26 “Interests” or “Shares” means the limited liability company interests of the Fund (divided into Class A Shares and Class B Shares or such other class of Shares the Manager may issue from time to time) which represents a Member’s rights in the Fund including a Member’s rights to share in the income, gains, losses, deductions, credit or similar items, and any other rights under this Agreement or applicable law.
- 1.27 “Investor Portal” means the online portal, website, virtual data room, or any electronic medium the Manager may use in order to provide Offering materials and other services (such as collection of investments and distributions of K-1s) to Members.
- 1.28 “IRS” means the Internal Revenue Service.
- 1.29 “Manager” means Rethink Self Storage Fund Management, LLC.
- 1.30 “Member(s)” means any Person who (i) is one of the original Members of the Fund which are parties to this Agreement and listed in the Register, or (ii) has been admitted to the Fund as a Member in accordance with the Act and this Agreement, and (iii) has not ceased to be a Member for any reason.
- 1.31 “Net Capital Proceeds” means 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) the expenses the Fund incurs 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.
- 1.32 “Operating Cash Flow” means the cash flow from the ordinary operations of the Properties (not from Capital Transactions), as determined in the sole discretion of the Manager, taking into account all revenue and all expenses of the Fund and any additions to or withdrawals from Reserve Accounts.
- 1.33 “Person” means an individual, partnership, a limited liability company (foreign or domestic), a trust, estate, individual retirement account, a corporation, association or any other legal entity.
- 1.34 “Private Placement Memorandum” or “PPM” means the Fund’s private placement memorandum that more fully describes the offering of the Fund’s Shares and which is hereby incorporated by reference. If any conflict or inconsistencies exist between the PPM and this Agreement, the terms and provisions of this Agreement shall control.
- 1.35 “Profits” or “Losses” means the Fund’s taxable income or loss determined in accordance with IRS Code section 703(a) for each of its fiscal years or other periods, provided, however, that “Profits” shall also include income exempt from Federal income taxation and “Losses” shall include expenditures described in Section 705(a)(2)(B) of the Code or treated as such under Regulations Section 1.704-1(b)..
- 1.36 “Property” or “Properties” means the real properties which the Manager shall identify based on pre-determined criteria and in its sole discretion.





1.37 “Register” shall have the meaning set forth in section 3.4 of this Agreement.

1.38 “Regulations” means the regulations issued by the U.S. Department of Treasury or Internal Revenue Service.

1.39 “Reserve Accounts” means accounts established and maintained by the Fund to fund anticipated cash needs. If the Fund is obligated by law or contract to keep certain amounts in the Reserve Accounts, such amounts shall be maintained at all times unless or until the Fund’s obligations have been fulfilled. In addition, the Manager may, in its sole discretion, determine the amounts to be kept in such Reserve Accounts and may determine to make distributions of such reserves, if possible, in accordance with this Agreement.

1.40 “Sponsors” means the members of the Manager or such other key Persons of the Fund whom may be designated as such by the Manager and who provide services to the Fund.

1.41 “Subscription Agreement” means the binding agreement executed by a prospective Member wishing to become a Member of the Fund which indicates the prospective Member’s intent to (i) be bound by the terms of the Subscription Agreement and this Agreement, and (ii) contribute such capital as set forth in the Subscription Agreement. The Manager may accept or reject a prospective Member’s Subscription Agreement for any reason. Upon acceptance of the Subscription Agreement by the Manager, the prospective Member will become a Member of the Fund and be bound by the terms set forth in this Agreement.

1.42 “Super Majority Vote” means a vote of Class A Members holding at least 80% of the total Class A Shares then issued and outstanding.

1.43 “Unrecovered Capital Contribution” means the amount of a Class A Member’s Capital Contribution reduced by any capital returned from a Capital Transaction or distributions made to a Member that are otherwise considered a return of capital.

## **Article 2: Formation; Name; Purpose**

2.1 **Formation.** The Fund has been formed in accordance with and pursuant to the Act for the purpose set forth below. The Members hereby agree that the Fund shall be governed by the terms and conditions of this Agreement.

2.2 **Name.** The name of the Fund shall be Rethink Self Storage Fund, LLC and all its business shall be conducted under that name or such other name(s) as may be designated by the Manager. All property, real, personal, or mixed, owned by or leased by the Fund shall be held in the name of the Fund or such other name(s) as may be designated by the Manager.

2.3 **Purpose.** The purpose of the Fund is set forth in the Fund’s Private Placement Memorandum. Notwithstanding the specific purpose set forth therein, the Fund may engage in any other business in which the Fund may legally engage under the Act. In carrying on its business, the Fund may enter into contracts, incur indebtedness, sell, lease, or encumber any or all of its property, engage the services of others, enter into joint ventures, and take any other actions the Manager deems advisable to carry out the purpose of the Fund.

2.3.1 **Side Cars.** The Manager shall also have the right to structure the purchase of a Property



to include outside third-party members (each a “Side Car Investment”) in its sole discretion. In such an instance, the Property may not be wholly owned by the Fund but partially owned, in conjunction with the Side Car Investment parties. Each Side Car Investment shall be responsible for its own costs and expenses, and the Fund will be responsible for its pro rata share of those costs and expenses, alongside third parties. No Member has an automatic right to provide additional investment into any Side Car Investment without the Manager’s consent, except, however, the Sponsors (or their Affiliates) shall be permitted to participate in any Side Car Investment and to directly (or indirectly) own an interest in such Side Car Investment. The ownership of any equity interests in a Side Car Investments by the Sponsors (or their Affiliates) shall not, by itself, form the basis of an impermissible conflict between the Sponsor and the Fund (or the Manager), and shall not, by itself, form the basis of a claim against the Sponsors or the Manager for a breach or violation of its fiduciary duties, such claims being affirmatively waived by all Members (to the fullest extent permitted by applicable law) as it pertains to these contemplated transactions.

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

### **Article 3: Membership Classes and Shares**

**3.1 Membership Classes.** The Fund shall have two initial classes of Members: Class A Members (which will be subdivided into Class A-1, Class A-2, and Class A-3 Members) and Class B Members.

**3.2 Shares.** Each Member shall be issued their proportionate number of Shares in the Fund. As of the date of this Agreement, the Fund has authorized 5,000 Class A Shares which shall be held by Class A Members. The Fund has issued 100 Class B Shares, all of which shall be held by the Class B Members. Only Class A Members shall be required to contribute capital to the Fund. Class B Members shall not be required to contribute to the Fund unless, and to the extent that, they choose to become Class A Members and make contributions as such.

**3.3 Certificate of Shares.** The Shares of the Fund will 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 and/or as required by law.

**3.4 Fund Register.** The Manager shall maintain records, in a manner it determines to be reasonable, setting forth, with respect to each Member, the name, address, amount of Capital Contribution, the class of each Member, the ownership percentage that each Member owns of each class of Shares, and such other information as the Manager may deem necessary or desirable. The Manager shall update the Register as the Manager shall deem necessary or advisable, including, without limitation, to reflect the admission of subsequent Members or increase in ownership interest of Members without the need to obtain consent from any Member.

### **Article 4: Members and Members’ Rights**

**4.1 Membership Procedure.** Notwithstanding anything herein to the contrary, the Manager retains sole discretion in accepting Members into the Fund.

**4.1.1 Capital Contributions.** Upon execution of this Agreement (through the execution of the Subscription Agreement), each Member shall contribute capital to the Fund in the amount set forth in the Subscription Agreement.



**4.1.2 Discretionary Return of Capital Contributions.** In the event the Manager does not expend a Member's Capital Contributions (whether the initial Capital Contributions made to the Fund or any additional Capital Contributions) as originally contemplated, the Manager may, in its sole discretion, distribute the applicable amounts back to the Members in accordance with the manner in which they were funded.

**4.1.3 No Right to Return of Capital.** No Member shall be entitled to a return of any part of such Member's Capital Contributions or Capital Account, or to receive interest on such Member's Capital Contributions or Capital Account, or to receive any distributions from the Fund, except as expressly provided for in this Agreement or under the Act. Under any circumstance requiring a return of all or any portion of a Capital Contribution, each Member shall look solely to the assets of the Fund for the return of the Member's Capital Contribution, and no Member shall be liable to any other Member for the return of their capital. No Member shall have the right to receive distributions (or a return of their Capital Contributions) in any form other than cash.

**4.1.4 Member Capital Accounts.** Upon acceptance of a Person as a Member, a Capital Account shall be established and maintained for each Member. Each Member's Capital Account shall initially be credited with the amount of their Capital Contribution. Thereafter, each Member's Capital Account shall be (i) increased by the amount of any additional Capital Contributions of the Member and the amount of income or gain allocated to the Member, and (ii) 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 Fund described in section 705(a)(2)(B) of the Code, and/or the amount of any liabilities such Member assumed by the Fund or that are secured by any property contributed by such Member to the Fund. Unless otherwise specifically provided herein, the Member's Capital Accounts shall be adjusted and maintained in accordance with Code section 704 and the regulations thereunder.

**(a) Modifications.** If the Manager determines that it is prudent to modify the manner in which the Member Capital Accounts or Class Capital Accounts, or any increases or decreases to the same, are computed in order to comply with such Treasury Regulations, the Manager may authorize such modifications without the consent of any Member.

**(b) No Obligation to Restore Deficit.** Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member has a deficit Capital Account (after giving effect to all contributions, distributions, allocations and other adjustments to each Member's Capital Account for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to reduce or eliminate the negative balance of such Member's Capital Account except as may be required by Applicable Law, or in respect of any negative balance resulting from a withdrawal of capital or termination in contravention of this Agreement.

**(c) Succession Upon Transfer.** In the event that any Shares are transferred in accordance with Article 11 of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the Transferred Shares and, subject to Article 11, shall receive allocations and distributions pursuant to this Agreement.

**4.2 No Right to Manage.** 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 Fund, nor shall any such Member hold themselves out as having such authority. Unless authorized to do so by the Manager, no attorney-in-fact, employee or other agent of the Fund shall have any power or authority



to bind the Fund 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 Fund to any agreement. No Member, acting solely in the capacity of a Member, is an agent of the Fund.

**4.3 Voting Rights.** Except as otherwise provided by this Agreement or the Act, each Member hereby waives their right to vote on any matters. All other decisions will rest exclusively with the Manager. Each Share shall be entitled to one (1) vote on matters that require approval of the Members pursuant to this Agreement or the Act. The Manager of the Fund shall maintain the Register and shall update the Register upon the admission of new Members and the issuance or transfer of any Shares to any new or existing Member. If any transferee of any Shares is not admitted as a Member as provided herein, such transferee's Shares shall not be entitled to voting on any matter.

**4.3.1 Actions Requiring Member's Consent.**

(a) An affirmative vote of the Members holding at least the majority of all Class A Shares issued by the Fund will be required to accept any amendment or action proposed by the Manager that will, or could reasonably be expected to have, an adverse effect on the Members including, without limitation, a proposed amendment that would negatively affect the Member's distributions, or cause the Fund to materially deviate from the business purpose of the Fund.

(b) An affirmative vote of the Members holding at least the majority of all Class A Shares issued by the Fund will be required to approve any loan by the Fund to any Manager and/or its Affiliate or for the Fund to guarantee any of a Manager's, or its Affiliates', obligations.

(c) A unanimous vote of Members will be required to adopt an amendment that would impose personal liability on any Member.

(d) Subject to the provisions set forth in Article 6 herein, an affirmative Super Majority Vote of the Members shall be required to remove the Manager for "cause" as such term is used in Article 6.

**4.4 Meetings of Members.** No annual meetings of the Members are required. However, if the Manager proposes to make an amendment to this Agreement or proposes to take an action that requires the consent of the Members under this Agreement or the Act, the Manager shall hold a meeting of the Members. Additionally, the Members holding at least 20% of the Shares entitled to vote on a proposed amendment or proposed action may call a meeting of the Members for the purpose of voting on such action. In calling such meeting, the following procedures will be followed:

**4.4.1 Notice by Manager of a Meeting.** If, subject to section 4.4, a meeting is so required, the Manager shall give written notice to each Member entitled to vote on such matters in writing, specifying (i) the proposed amendment or actions; (ii) the reason(s) why the Manager believes the amendment is in the best interest of the Fund; and (iii) the date, time and place of the meeting, the date of which shall not be less than five (5) nor more than ninety (90) days before each meeting.

**4.4.2 Place of Meetings.** The meeting may be in-person at a location designated by the Manager, or may be by telephonic or video conference or any other electronic device where all Members attending can hear each other. Attendance of a Member (in person or by proxy) at a meeting shall constitute a waiver of notification requirement of the meeting unless such Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.



**4.4.3 Quorum.** For purposes of giving effect to the vote, a quorum shall exist if the Members holding a Majority of the Shares permitted to vote on the proposed amendment or action are present at the meeting. If a quorum is present, then the affirmative vote required pursuant to this Agreement or the Act shall constitute the act of the Members.

**4.4.4 Proxies and Voting Procedures.** A Member may vote either in person or by a proxy at any meeting of the Members. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer period is provided in the appointment form. Voting may be done verbally (including through online or telephonic audio), through paper or electronic ballots, or through email. If the Manager proposes an amendment or an action that is not approved by the Investors within ninety (90) days from proposal, the Manager shall not again propose that amendment or action for at least six (6) months.

**4.4.5 Action Taken Without a Meeting.** Any proposed action or amendment by the Manager that is required or permitted to be submitted to Members for voting at a meeting may be taken without a meeting if written consent, setting forth the proposed action or amendment, shall be given by the Members holding at least the number of Shares necessary to authorize or take the action, and the consents are delivered to the Fund.

If an action is taken by less than all of the Members entitled to vote on the action, all Members entitled to vote on the action or amendment who did not participate in taking the action shall be given written notice of the action not more than ten (10) days after the taking of the action without a meeting, but the failure to give such notice shall not invalidate the action so taken. The record date for determining Members entitled to take action without a meeting is the date the first Member gives the consent.

**4.5 Information Rights.** Members or such Member's authorized representative shall have access to and may inspect and copy all books, records, and materials of the Fund or its activities subject to the procedures set forth in this section.

**4.5.1 Inspection Procedures.** If a Member wishes to inspect the books and records of the Fund: (i) such Member shall notify the Manager, setting forth in reasonable detail the information requested and the reason for the request; (ii) the Manager shall respond to the request within a reasonable time by either providing the information requested or scheduling a date for the Member to inspect the Fund's records; (iii) any inspection of the Fund's records shall be at the sole cost and expense of the requesting Member; and (iv) the requesting Member shall reimburse the Fund for any reasonable costs incurred by the Fund in responding to the Member's request and making information available to the Member. Before providing information or allowing a Member to inspect the Fund's records. The Manager may require such Member to execute a confidentiality agreement satisfactory to the Manager.

**4.5.2 Restrictions on Information.** The following restrictions shall apply to any request for information or to inspect the books and records of the Fund: (i) No Member shall have a right to a list of the Members or any information regarding the Members; and (ii) the Manager shall not be required to respond to a request for information or to inspect the books and records of the Fund if the Manager believes such request is made to harass the Fund or the Manager, to seek trade secrets or other confidential information about the Fund, or to compete with the Fund.

**4.6 Confidentiality.** For as long as any Member owns an Interest in the Fund and at all times thereafter, no Member shall divulge to any person or entity, or use for their own benefit or the benefit of any person, any information of the Fund of a confidential or proprietary nature, including, but not limited



to, (i) financial information; (ii) the business methods, systems, or practices used by the Fund; and (iii) the identity of the Fund's Members or vendors. The foregoing shall not apply to information that is in the public domain or that a Member is required to disclose by legal process.

**4.7 Limited Liability of the Members.** Each Member's liability shall be limited to its Capital Contribution as and when payable to the Fund, and/or the amount of capital credited to them pursuant to this Agreement. No Member shall be personally liable for any debt, obligation or liability of the Fund, whether arising in contract, tort or otherwise, solely by reason of being a Member of the Fund.

**4.8 No Member Interest in Property.** No real or personal property of the Fund owned by the Fund, directly or indirectly, shall be deemed to be owned by any Member individually, but shall be owned by, and title shall be vested solely in, the Fund. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Fund any right that such Member may have to maintain any action for partition with respect to the property of the Fund.

**4.9 Other Businesses.** Each Member, including the Sponsors, may engage in any business whatsoever, including a business that is competitive with the business of the Fund, 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 Fund or its members, or otherwise. Without limiting the preceding sentence, the Members acknowledge that other Members, and/or the Manager and/or its Affiliates intend to sponsor, manage, invest in, and otherwise be associated with other entities and businesses investing in similar assets as the Fund, some of which could be competitive with the Fund. No Member shall have any claim against the Manager or its Affiliates or other Members on account of such other entities or businesses.

**4.10 Side Letters.** The Manager may amend this Agreement to increase the distributions to one or more Members, or to give such Members additional rights, or require different obligations, without the consent of any other Member, provided that any such increase does not decrease the distributions to any other Members, or any additional rights given do not adversely impact the rights of any other Member. Any such amendment may be affected by a letter agreement between the Manager and the affected Member(s) (each a "Side Letter").

**4.11 Withdrawal.** A Member may withdraw from the Fund only with the consent of the Manager in its sole discretion. The withdrawing Member must give at least ninety (90) days' notice to the Manager. The withdrawing Member, if consent is so given by the Manager, shall not be entitled to distributions or payments from Fund on account of their withdrawal, nor shall they be indemnified against liabilities of Fund or relieved of their responsibility to contribute capital. For purposes of this section, a Member who transfers its Shares pursuant to (i) a transfer permitted under section 11.1, or (ii) an involuntary transfer by operation of law, shall not be treated as thereby withdrawing from Fund. Notwithstanding anything herein to the contrary, the Manager formed the Fund as the initial Member and simultaneously to the admission of other Members will withdrawal as a Member but continue as the Manager.

## **Article 5: Additional Capital**

**5.1 General.** In the event the Fund requires additional capital, the Fund may, in the Manager's discretion, elect one or more of the following options:

**5.1.1 Financing.** The Manager may obtain financing from private or institutional lenders. The Manager will have sole discretion in determining the reasonableness of the terms and obligations of any



such debt.

**5.1.2 Issuing New Shares.** The Manager may, in its sole discretion, issue additional Class A Shares, or create additional classes of Shares in the future, with such rights and preferences as the Manager may determine in its sole discretion ("New Shares"). Any Member may hold more than one class of Shares. The Manager may, but shall not be required to, offer any New Shares to the Class A Members prior to offering New Shares to other Persons; provided the offer to non-Members is at a price not less than and upon terms no more favorable to the offeree than to Members.

**5.1.3 Manager/Member Loans.** The Fund may accept loans from any Member (or Members), or from the Manager or its Affiliates subject to the terms set forth below.

(a) **Manager Advances.** The Manager or its Affiliates may, but shall not be required to, loan its own funds or defer reimbursement of its out-of-pocket expenses (an "Advance"). Such Advances shall earn interest at the prime rate of interest designated in the Wall Street Journal on any date within ten (10) days of the date of the loan or from the date the reimbursement was due, plus four (4) percentage points; subject to applicable state laws regarding maximum allowable rates of interest. Each Advance shall be unsecured and without recourse.

(b) **Member Loans.** If the Fund requires additional funds, then with consent of the Manager, any Member or its Affiliate may, but shall not be required to, loan such funds to the Fund (each a "Member Loan"). Each Member Loan shall (i) not increase the Capital Account of the lending Member, and (ii) shall not result in the adjustment of the number of Shares owned by a Member, and (iii) the repayment of such loans by the Fund shall not decrease the Capital Accounts of the Members making the loan, (iv) each Member Loan shall be unsecured and without recourse; and (v) shall be upon such terms as shall be agreed to by the lending Member and shall be evidenced by a promissory note, payable on demand, duly executed by the Manager on behalf of the Fund and delivered to the lending Member.

(c) **Repayment of Member Loans and Manager Advances.** After payment of (i) current and past-due debt service on liabilities of the Fund other than Member Loans or Manager Advances, and (ii) all operating expenses of the Fund, the Fund shall pay the current and past-due debt service on any outstanding Member Loans and Manager Advances before distributing any amount to any Member pursuant to Article 8. Such loans and advances 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.

**5.1.4 Capital Calls.** The Manager may seek additional Capital Contributions from Members.

**5.1.5 Capital Call Procedures.** Additional Capital Contributions may be (i) called at the sole discretion of the Manager if, and only if, the Fund requires additional capital to meet a liability that cannot be otherwise discharged utilizing contingency reserve funds or operational cash flows (each a "Capital Call"); or (ii) made voluntarily by a Member with the express written consent of the Manager. Unless otherwise determined by the Manager in its sole discretion, all Members shall be required to participate in a Capital Call on a pro rata basis of its Capital Contributions in proportion to the aggregate Capital Contributions of all Members (each Member's "Call Amounts"). A Capital Call, when issued, shall be issued by the Manager in writing to all the Members and shall provide for a funding/participation deadline of not less than 10 business days from the date of the notice (the "Capital Call Notice").

(a) **Failure to Fund Capital Call.** Failure of a Member to participate in the Capital Call shall result in a default by such Member and the reduction of the percentage of Shares owned by the



defaulting Member. Such reduction will be determined by multiplying the percentage of Shares owned by the defaulting Member by the quotient of the amount of the defaulting Member's Call Amount divided by the total amount of the Capital Call. Further, if the Manager deems appropriate in its sole discretion, it may, but is not obligated to, take any or all of the following additional actions against a defaulting Member:

(i) Permitting the non-defaulting Member(s), in proportion to their relative ownership percentage of Shares (or in such other percentages as the Managers may agree) (the "Lending Members", whether one or more), to advance the portion of any defaulting Member's proportionate share of the defaulting Member's Call Amount which such defaulting Member failed to contribute to the Fund (the "Default Member Call Amount"), with such advancement to be treated as a loan by the Lending Member(s) to the defaulting Member(s), carrying an interest rate up to the maximum non-usurious amount allowed by Applicable Law (the "Default Call Loan"). Such loan is repayable by the following provisions which are consented to by the defaulting Member: (i) the defaulting Member consents to the making of the Default Call Loan in favor of the Lending Member(s) and certifies that it is receiving adequate consideration; (ii) it further consents to the assignment to the Lending Members of all distributions otherwise payable to it until payments to the Lending Members equal the repayment of the Default Call Loan principal balance plus all accrued and unpaid interest and any fees or expenses related to the enforcement and collection of the Default Call Loan; and (iii) following payment of Default Call Loan and all associated interest and fees, the Default Call Loan shall be deemed repaid, and the defaulting Member shall thereafter continue to receive all distributions it is otherwise due. By execution of this Agreement, such defaulting Member hereby authorizes the Manager and the Fund to pay the amounts consented to above directly to the Lending Members; or

(b) **Defaulting Member Expenses.** A defaulting Member under this section shall be solely responsible for its defaulting amounts due, and the expenses, interest, fees, costs, and liabilities associated with its default and the Fund's enforcement of any of its rights hereunder, and the same may be offset against distributions owed to such defaulting Member, without notice. The defaulting Member shall never be entitled to distributions comprised of default fees, interests, or remedies charged to them.

(c) **Consent to Remedies.** Each Member hereby consents to the application of the remedies provided herein in recognition of the risk and speculative damages their default would cause the other Members. The selection of which remedy or remedies to pursue against a defaulting Member shall be made in the sole and absolute discretion of the Manager. The pursuit of any one remedy shall not operate as a waiver of the Fund's right to pursue any other remedy against the defaulting Member provided in this Agreement.

## Article 6: Manager and Manager's Rights

6.1 **General.** The Fund shall be managed by at least one Manager appointed pursuant to this Article. The initial Manager of the Fund shall be Rethink Self Storage Fund Management, LLC. Each Manager (including a Manager elected to fill a vacancy) shall hold office until such Manager's death or mental incompetence (if applicable), bankruptcy, dissolution (if applicable), resignation or removal. Except as otherwise provided in this Agreement, the Manager shall have full, exclusive, and complete authority, power, and discretion to manage and control the business, affairs, and the property of the Fund, to execute any contracts or other instruments on behalf of the Fund, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Fund's business.

6.2 **Examples of Manager's Authority.** Without limiting the grant of authority set forth in this





section, the Manager shall have the power to (i) determine and adjust the price of Class A Shares from time to time; (ii) issue Shares to any person for such consideration as the Manager may determine in its sole discretion, and admit such persons to the Fund as Members; (iii) make all decisions concerning the assets of the Fund (iv) engage the services of third parties to perform services including lawyers, accountants and consultants; (v) enter into joint ventures, leases and any other contracts of any kind; (vi) incur indebtedness, whether to banks or other lenders; (vii) determine the amount and the timing of distributions; (viii) determine the information to be provided to the Members; (ix) grant liens, and other encumbrances on the assets of the Fund; (x) make all elections under the Code and State and local tax laws; (xi) file and settle lawsuits on behalf of the Fund; (xii) file a petition in bankruptcy; (xiii) discontinue the business of the Fund; (xiv); and create offices, designate officers and appoint any committee as the Manager shall deem appropriate; (xv) execute on behalf of the Fund (and give individual officers of the Fund the authority to execute) all instruments and documents, including, without limitation: checks, drafts, notes, and other negotiable instruments; mortgages or deeds or trusts; security agreements; and financing statements; (xvi) sell or otherwise dispose of all or any portion of the assets of the Fund; and (xvii) dissolve the Fund.

**6.3 Manager Deadlock.** In the event there is more than one Manager, upon considering any matter arising in the course of the Fund's business and affairs, such Managers cannot reach a consensus respecting such matter, they shall exercise reasonable good faith efforts to resolve the dispute. Such efforts shall include, without limitation, at least two meetings over the course of not less than thirty calendar (30) days to discuss and try to resolve the disputed matter. Any dispute arising between or among the Managers shall be resolved in the manner set forth in Article 13 of this Agreement. Notwithstanding anything to the contrary to this Agreement, any decision of an arbitrator (determined in a manner set forth in the provisions of Article 13 of this Agreement) shall be binding on any dispute between or among the Managers.

**6.4 Time Commitment.** The Manager shall devote such time to the business and affairs of the Fund as the Manager may determine in its sole and absolute discretion. The Manager may engage in other businesses or activities (including businesses and/or activities that may compete with the Fund). No Member shall be entitled to participate in or receive interest in such other businesses or activities.

**6.5 Reliance on Third Parties.** In carrying out its duties to the Fund, the Manager and its Affiliates, members, managers, officers, employees, and agents of the Manager and the Fund (each a "Covered Person" for purposes of this Article) may rely upon information, advice, opinions, reports, or statements of (i) any attorney, independent accountant, appraiser, or other expert or professional employed or engaged by or on behalf of the Fund, and (ii) any other person employed or engaged by the Fund for matters that the relying Covered Person reasonably believes to be within such other person's professional or expert competence; provided that the relying Covered Person acted in good faith in selecting the persons described in this sentence. The preceding sentence shall in no way limit any Covered Person's right to rely on information to the extent provided in the Act.

**6.6 Board of Advisors.** The Fund may also seek to establish a board of advisors, which would include one or more highly qualified business and industry professionals. The board of advisors will advise management in making appropriate decisions and taking effective action. However, the board of advisors will not be responsible for management decisions and has no legal or fiduciary responsibility to the Fund. The Fund will indemnify such advisors to the fullest extent possible and reimburse them for their out-of-pocket expenses. Additionally, such advisors may be compensated a customary amount for their services of advising the Fund.



**6.7 Manager's Consideration.** 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 any Member or any factors that may affect any Member or the Fund.

**6.8 Compensation of Manager and Affiliates.** The Fund shall pay to the Manager or its Affiliates fees for its or their services to the Fund, as described in the Private Placement Memorandum. In addition, the Fund shall reimburse the Manager for (i) the cost of forming the Fund and offering Shares to Members, including legal and accounting expenses, and (ii) direct out-of-pocket expenses reasonably incurred by Manager in connection with the performance of services to the Fund in its capacity as the Manager of the Fund.

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

**6.10 Resignation of the Manager.** The Manager may resign by giving written notice to the Members. The resignation shall be effective on receipt of notice thereof or at such later time as is specified in the notice. If the resignation is effective at a future time, a successor may be elected before that time to take office when the resignation becomes effective.

**6.11 Removal of the Manager.** The Manager may be removed for "cause" by an affirmative Super Majority Vote, but only if the Class A Members have "cause" to remove the Manager.

**6.11.1 Cause Defined.** For purposes of this section, "cause" shall be deemed to exist if the Manager or an Affiliate (i) breaches any material provision of this Agreement and the Manager fails to begin curing the breach for more than 30 days after the Manager has received written notice of such breach (ii) engages in willful misconduct or acts with reckless disregard to its obligations, in each case causing material harm to the Fund, (ii) engages in bad faith in activities, such as fraud, or misappropriation of Fund funds, that cause material harm to the Fund, and the individual responsible for such actions is not terminated within 30 days after the Manager becomes aware of such actions; and (iv) the Manager is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors; or files a petition or answer seeking reorganization or an arrangement with creditors; or an order, judgment, or decree is entered without the Manager's consent appointing a receiver, trustee or liquidator for the Manager.

**6.11.2 Procedure.** Notwithstanding anything in this Agreement to the contrary, if any Member or Members believes cause exists to remove the Manager, they shall submit their case to arbitration in accordance with Article 11 of this Agreement. If the arbitrator determines that "cause" exists, the Class A Members owning at least 20% of the Class A Shares then issued and outstanding may call for a meeting of the Class A Members for the purpose of giving the Manager an opportunity for a hearing, and to vote on the removal of the Manager from office. An affirmative vote of a Super Majority of Class A Members to remove the Manager shall be required to remove the Manager, which such removal shall be effective 30 days following the vote.

**6.12 Vacancy.** In the event of a vacancy in the Manager's position due to voluntary resignation, a vote of the Class B Members holding a majority of the Class B Shares then issued and outstanding shall vote on a replacement for the Manager. If such a vacancy exists due to removal of the Manager by vote of the Members, then such a vacancy will be filled by a vote of the Members holding the majority of Class A



Shares.

**6.13 No Effect on Ownership.** The resignation or removal of the Manager shall have no effect on the ownership of Shares (regardless of the class of Shares) such Manager or its Affiliates hold.

## **Article 7: Exculpation and Indemnification**

**7.1 Exculpation.** No Covered Person shall be liable to the Fund for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person, so long as such action or omission was taken in good faith and in manner that they reasonably believed to be in or not opposed to the best interest of the Fund and so long as the act or omission does not constitute fraud or willful misconduct by such Covered Person.

**7.2 Indemnification.** To the maximum extent permitted by the Act, the Fund shall indemnify, hold harmless, defend, pay and reimburse, or advance payments to any Covered Persons against any and all losses, claims, actions, damages, judgments, fines or liabilities, including reasonable legal fees, any amounts expended in settlement of any claims, or other expenses incurred in investigating or defending such claims, actions, damages, judgments, fines or liabilities (collectively the “Damages”), 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 Fund in connection with the business of the Fund.

Notwithstanding the foregoing, such indemnification shall be available to such Covered Persons if (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 Fund; (ii) such Covered Person’s action or inaction did not constitute fraud or willful misconduct, and with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, 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.

**7.2.1 Reimbursement.** If it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this section 7.2, then such Covered Person shall promptly reimburse the Fund for any reimbursed or advanced expenses.

**7.2.2 Entitlement to Indemnification.** The Fund shall continue to provide indemnification 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 and shall inure to the benefit of the executors, administrators, and legal representatives of such Covered Persons.

**7.2.3 Funding Indemnification.** Any indemnification by the Fund pursuant to this section shall be provided out of and to the extent of Fund assets only, and shall not constitute a claim against the Fund in the event that the Fund’s cash flow is insufficient to pay its obligations; nor shall any Member be required to make additional capital contributions to satisfy such indemnification obligation.

**7.2.4 Insurance.** To the extent available on commercially reasonable terms, the Fund may purchase, at its expense, insurance to cover Damages covered by the foregoing indemnification provisions



in such amounts and with such deductibles as the Manager may determine. If any Covered Person recovers any amounts in respect of any Damages from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Fund for any amounts previously paid to such Covered Person by the Fund in respect of such Damages.

**7.2.5 Amendment to Indemnification Provision.** No amendment, modification or repeal of this section that adversely affects the rights of a Covered Person to indemnification for Damages shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Damages without the Covered Person's prior written consent.

**7.2.6 Survival.** The provisions of this section shall survive the dissolution, liquidation, winding up, and termination of the Fund.

## **Article 8: Distributions**

**8.1 General.** Unless otherwise specified - and in the Manager's sole discretion in order to reflect the intended economic arrangement among the Members - all distributions that each class of Member is entitled to will be allocated to each class, as a class (i.e., as a group and not as an individual). Once such allocations are made to each class, distributions so allocated to each class will then be allocated equally to each month starting the day capital was deployed by the Fund. The amount assigned to each month will then be allocated to each Member based upon the percentage of the class of Shares each Member owned that month. For the purpose of accounting convenience and simplicity, the Fund may (in the Manager's discretion), treat any ownership (or purchase) of Shares in the Fund during the first 15 days of any month as if it had occurred on the first day of the month and any ownership (or purchase) of Shares which occurs after the 15th day of the month as if it had occurred on the first day of the following month.

**8.1.1 Timing of Distributions.** The availability and timing of distributions will be determined by the Manager in its sole discretion.

**8.1.2 Distributions of Operating Cash Flow** will be made as follows:

**First, to the Class A-1 Members in proportion to their Unrecovered Capital Contributions until each Class A-1 Member has received the 10.0% Class A-1 Preferred Return;**

**Second, to the Class A-2 Members in proportion to their Unrecovered Capital Contributions until each Class A-2 Member has received the 8.0% Class A-2 Preferred Return;**

**Third, to the Class A-3 Members in proportion to their Unrecovered Capital Contributions until each Class A-3 Member has received the 8.0% Class A-3 Preferred Return;**

**Fourth, to the Class A-2 and Class A-3 Accounts in proportion to the Class A Shares owned by the Class A-2 and Class A-3 Members.**

**Fifth, of the Operating Cash Flow allocated to the Class A-2 Account, 80.0% will be distributed to the Class A-2 Members and 20.0% will be distributed to the Class B Members. In the event the Class A-2 Members achieve a 15.0% IRR, the remaining**



**Operating Cash Flow will be distributed 60.0% to Class A-2 Members and 40.0% to Class B Members.**

**Sixth, of the Operating Cash Flow allocated to the Class A-3 Account, 70.0% will be distributed to the Class A-3 Members and 30.0% will be distributed to the Class B Members. In the event the Class A-3 Members achieve a 15.0% IRR, the remaining Operating Cash Flow will be distributed 50.0% to Class A-3 Members and 50.0% to Class B Members.**

Distributions of Operating Cash Flow made to Class A Members will be treated as a return on investment.

Any deficiencies in the Preferred Return may be paid from Operating Cash Flow during subsequent years of operation, in the Manager's discretion or from Operating Cash Flow.

**8.1.3 Distributions of Net Capital Proceeds** will be made as follows:

**First**, to the Class A-1 Members in proportion to their Unrecovered Capital Contributions until each Class A-1 Member has received any accrued but unpaid portion of the Class A-1 Preferred Return;

**Second**, to the Class A-2 Members in proportion to their Unrecovered Capital Contributions until each Class A-2 Member has received any accrued but unpaid portion of the Class A-2 Preferred Return;

**Third**, to the Class A-3 Members in proportion to their Unrecovered Capital Contributions until each Class A-3 Member has received any accrued but unpaid portion of the Class A-3 Preferred Return;

**Fourth**, to the Class A Members in proportion to and the extent of their Unrecovered Capital Contribution until each Class A Member's Unrecovered Capital Contribution is reduced to zero;

**First**, Net Capital Proceeds will be allocated to the Class A-2 and Class A-3 Accounts in proportion to the Class A Shares owned by the Class A-2 and Class A-3 Members.

**Second**, of the Net Capital Proceeds allocated to the Class A-2 Account, 80.0% will be distributed to the Class A-2 Members and 20.0% will be distributed to the Class B Members. In the event the Class A-2 Members achieve a 15.0% IRR, the remaining Net Capital Proceeds will be distributed 60.0% to Class A-2 Members and 40.0% to Class B Members.

**Third**, of the Net Capital Proceeds allocated to the Class A-3 Account, 70.0% will be distributed to the Class A-3 Members and 30.0% will be distributed to the Class B Members. In the event the Class A-3 Members achieve a 15.0% IRR, the remaining Net Capital Proceeds will be distributed 50.0% to Class A-3 Members and 50.0% to Class B Members.

Distributions of Net Capital Proceeds will be treated as a return of capital until each Class A Member receives a return of their Unrecovered Capital Contribution, after which, any further returns will be considered a return on investment.



**8.2 Recycling of Distributions.** The Manager may, in its sole discretion, reinvest amounts that would otherwise be available for distribution.

**8.3 Reinvestment Option.** The Manager may, in its discretion, permit each Member to elect to, (i) receive cash distributions for their share of distributions from the Fund that is payable to the Investors, or (ii) have such amount(s) credited to such electing Member's capital account and reinvested in the Fund to purchase additional Class A Shares on the same terms set forth herein. Partial reinvestment may be permitted. If no election is made, then distributions a Member who failed to make such election is entitled to will be distributed to such Member. The Manager, at any time may suspend this option and distribute cash to the Members in accordance with the distribution schedule set forth above.

**8.4 Distributions to Fund Tax Liability.** In the event that the Fund recognizes net gain or income for any taxable year, the Fund shall, taking into account its financial condition and other commitments, make a good faith effort to cause the Fund to pay each Member a cash advance against distributions to be paid hereunder if the Fund's failure to do so would result in any such Member having due and payable income tax liabilities (attributable to the taxable income of the Fund) which exceed the actual distributions made hereunder to each such Member. The Manager will not be required to consider the particular circumstances of any Members in making its estimate and may make an assumption as to the "tax bracket" applicable to the Members as a group. Such tax distributions will be considered advances against distributions to each Member. Each Member shall be responsible for paying any and all taxes that may be imposed on any distribution received by such Member hereunder.

**8.5 Tax Withholding.** To the extent the Fund 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 Fund 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 Fund, promptly reimburse the Fund for the amount paid over.

**8.6 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 Fund 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.

**8.7 Limitation on Distributions.** No Member is guaranteed a distribution of any amount and has no right to any form of distribution other than cash. No distribution shall be made to any Member if, in the discretion of the Manager, (i) the Fund would not be able to pay its debts as they become due in the usual course of business; (ii) the Fund's total assets would be less than the sum of its total liabilities; or (iii) such distribution would otherwise constitute a violation of the Act. A Member who receives a distribution which is otherwise prohibited by this provision shall be liable for the return of such distribution along with any reasonable expenses incurred by the Fund to enforce this provision.

## **Article 9: Allocations**

### **9.1 General.**

**9.1.1 Allocation of Profits.** Except as otherwise provided for in this Article 9, and subject to applicable tax law, Profits of the Fund for each fiscal year will be allocated among the Members as follows:



(a) First, for any fiscal year in which distributions are made to the Members, Profits shall be allocated to the Members equal to the amount of such distributions they receive pursuant to section 8.1;

(b) Second, to the Members until the cumulative Profits allocated pursuant to section 8.1 are equal to the cumulative Losses, if any, previously allocated to the Members pursuant to section 9.1.2. Such Profits being allocated under this section will be made on a last-in-first-out basis with respect to the Losses allocated under section 9.1.2, for all prior periods in proportion to the Member's respective shares of the Losses being offset; and

(c) Remaining Profits not otherwise allocated will be allocated to the Members pro rata in accordance with the distribution schedule set forth in section 8.1.

**9.1.2 Allocation of Losses.** Except as provided for otherwise in this Article 9 or applicable tax law, Losses of the Fund for each fiscal year will first be allocated as follows:

(a) First, to the Members, pro rata based on the amount of Profits being offset, until the cumulative Losses allocated pursuant to this section are equal to the cumulative Profits, if any, previously allocated to the Members pursuant to section 9.1.1; and

(b) Second, to the Members based on Capital Account balances until each Member's Capital Account has been reduced to zero; then

(c) Third, the balance, if any, to the Members pro rata in accordance with the distribution schedule set forth in section 8.1.

**9.2 Reallocation of Depreciation.** Notwithstanding anything herein to the contrary, in the event a Member cannot take depreciation or other applicable items of Loss due to the vehicle by which such Member made their Capital Contribution and hold their Shares, including, without limitation, individual retirement accounts ("IRAs"), such allotted depreciation (or other items of Loss as the case may be) to such Member shall be reallocated proportionally to all other Members.

**9.3 Proration of Allocations.** In the event that Members are issued Shares on different dates, the Profits or Losses allocated to the Members for each fiscal year during which Members receive Shares will be allocated among the Members in accordance with Section 706 of the Internal Revenue Code, using any convention permitted by law and selected by the Manager. For purposes of determining the Profits, Losses and individual Tax Items allocable to any period, Profits, Losses and any other income, gains, credits, losses, deductions, and expenses (collectively the "Tax Items") will be determined on a daily, monthly or other basis, as determined by the Manager using any method that is permissible under Section 706 of the Code and the Treasury Regulations. Except as provided in this Article 9, all individual items of Fund income, gain, loss and deduction will be allocated among the Members in the same proportions as they share Profits and Losses for the fiscal year or other period in question.

**9.4 Substantial Economic Effect.** The Fund shall seek to allocate its Tax Items in a manner so that such allocations have "substantial economic effect", as defined in section 704(b) of the Code and the Regulations issued thereunder, and otherwise comply with applicable tax laws.

**9.5 Special Allocations.** 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 Code and Regulations. The Manager shall be conclusively deemed to have used reasonable efforts if it has sought and obtained advice from competent legal counsel and/or a certified public accountant.

**9.6 Losses and Income Attributable to Member Loans.** In the event the Fund recognizes a loss attributable to loans from Members, then such loss, as well as any income recognized by the Fund as a result of the repayment of such loan (including debt forgiveness income), shall be allocated to the Member(s) making such loan.

**9.1 Curative Allocations.** Any allocations required to be made pursuant to section 9.4 and section 9.5 (other than allocations, the effect of which are likely to be offset in the same taxable year by other special allocations) shall be taken into account, to the extent permitted by Code and the Regulations, in computing allocations of income, gain, loss or deduction pursuant to section 9.1 so that the net amount of any items so allocated and all other items allocated to each Member in each taxable year (or, if not offset in the same year, in subsequent years) shall, to the extent possible, be equal to the amount that would have been allocated to each Member pursuant to section 9.1 had such allocations under section 9.4 and Section 9.5 not occurred.

**9.2 Allocations in Respect of Transferred Shares.** In the event of a Transfer of Shares during any fiscal year made in compliance with the provisions of this Agreement, Profits, Losses, and other Tax Items of the Fund attributable to such Shares for such fiscal year shall be determined using the interim closing of the books method.

**9.3 Pre-distribution Adjustment.** In the event property of the Fund is distributed to one or more Members in kind, there shall be allocated to the Members the amount of income, gain or loss which the Fund would have recognized had such property been sold for its fair market value on the date of the distribution, to the extent such income, gain or loss has not previously been allocated among the Members. The allocation described in this section is referred to as the “Pre-Distribution Adjustment.” If the fair market value of such property is different from such property’s tax basis (if applicable), the Fund will comply with any requirements of Code §§ 704(c) and 706 and will take into account any resulting differences in the amount of depreciation, expense, income, gain or loss in accordance with Code § 704(c).

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

## **Article 10: Bank Accounts; Records and Reports; Tax Matters**

**10.1 Bank Accounts.** The Manager may at any time open bank or other financial accounts in the name of the Fund, which accounts shall be used for the payment of the expenditures of the Fund authorized by this Agreement, and in which account or accounts shall be deposited all Fund receipts, all amounts contributed to the capital of the Fund or loaned by a Member under this Agreement, and all amounts borrowed by the Fund. The Manager shall not cause the Fund’s funds to be comingled with that of another Person’s.

**10.2 Books and Records of Account.** The Manager shall keep or cause to be kept, at the Fund’s expense, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts, income, deductions, Capital Contributions, the respective Capital Accounts for





the Members, and other matters of the Fund. The Fund's books of account and other records at all times shall be maintained at the principal office of the Fund, shall be kept in accordance with sound accounting procedures consistently applied, and shall be open to the reasonable inspection, copying, and examination of the Members or their duly authorized representatives.

**10.3 Accounting Method.** The Fund shall keep its accounting records and shall report for income tax purposes on a cash or accrual basis, as determined by the Manager and applied on a consistent basis. The Manager is hereby given the power and authority to make changes of accounting methods the Manager shall deem advisable.

**10.4 Financial Statements and Reports.** Within a reasonable period after the close of each fiscal year, the Fund shall furnish to each Member with respect to such fiscal year (i) a statement showing in reasonable detail the computation of the amount distributed to Members and the manner in which it was distributed, (ii) a balance sheet of the Fund, (iii) a statement of income and expenses, (iv) such additional information as may be required by law, and (v) such information as may be required for each Member to file their tax returns. The Manager may, in its discretion, deliver to Members the foregoing reports within a reasonable time after each fiscal quarter. The financial statements of the Fund need not be audited by an independent certified public accounting firm unless the Manager so elects or the law so requires.

**10.4.1 Tax Returns.** At the expense of the Fund, the Manager (or any officer that it may designate) shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Fund pursuant to the Code as well as all other required tax returns in each jurisdiction in which the Fund owns property or does business. As soon as reasonably possible after the end of each fiscal year, the Manager or designated officer will cause to be delivered to each Person who was a Member at any time during such fiscal year, IRS Schedule K-1 to Form 1065 and such other information with respect to the Fund as may be necessary for the preparation of such Person's federal, state, and local income tax returns for such Fiscal Year. Notwithstanding anything to the contrary herein, the Manager shall have the right, at its sole discretion, to file an extension for the filing of the Fund's tax returns in any fiscal year, and in such event, the distribution of K-1's may also be delayed to the Members.

The Member understands that the Fund and the Manager expect to deliver all tax return information, including Schedule K-1s (each, a "K-1") to the Members by either electronic mail or some other form of electronic delivery, and accordingly, each Member hereby expressly understands, consents to, and acknowledges such electronic delivery of tax returns and related information as the only method of transmission, unless the Member expressly, in writing, informs the Manager of its request for paper copies of the same.

#### **10.5 Tax Matters.**

**10.5.1 Tax Returns and Elections.** The Manager and officers shall cause the Fund's tax returns and other federal and state governmental returns and reports to be prepared and filed. Copies of such returns, or pertinent information thereon, shall be furnished to the Members within a reasonable time after the end of the Fund's fiscal year. All elections permitted to be made by the Fund under federal or state laws shall be made by the Manager in its sole discretion; provided, that the Manager, prior to making such election, seeks advice from a certified public accountant that is knowledgeable of the Fund's business.

**10.5.2 Tax Deficiencies.** Each Member agrees that such Member shall not treat any Fund item inconsistently on such Member's federal, state, foreign or other income tax return with the treatment of the item on the Fund'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 Fund, will be recoverable from such Member.

**10.5.3 Tax Matters Representative.** The Manager shall be designated (or may designate a member of the Manager if applicable and as may be required) as the Fund's partnership representative (the "Fund Representative") as provided in Code section 6223(a). Any expenses incurred by the Fund Representative in carrying out its responsibilities and duties under this Agreement shall be an expense of the Fund for which the Fund Representative shall be reimbursed. The Fund Representative is hereby authorized to engage professionals, experts and advisors in connection with its performance of its duties under the Audit Procedures and incur costs, expenses, professional and other fee on behalf of the Fund. The Members hereby acknowledge that the Fund Representative is serving in this capacity as an accommodation and shall not be deemed a fiduciary nor subject to any obligations and/or liability of any kind arising from a fiduciary duty or obligation, whether express or implied. Notwithstanding anything to the contrary in this Agreement, the Fund shall indemnify, defend and, to the fullest extent permitted by applicable law, hold the Fund Representative harmless from and against any and all claims filed against it in its capacity as a Fund Representative

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

**(b) BBA Elections and Procedures.** In the event of an audit of the Fund that is subject to the Fund audit procedures enacted under Code sections 6225, et seq, (the "Audit Procedures"), the Fund 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 Fund, including any election under Code section 6226. If an election under Code section 6226(a) is made, the Fund 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 Fund adjustment, and each Member shall take such adjustment into account as required under Code section 6226(b).

## **Article 11: Transfer of Shares**

**11.1 Restrictions on Transfers.** A Member (a "Transferor") may not sell, transfer, dispose of, or encumber (each, a "Transfer") any of its Shares (the "Transfer Shares"), with or without consideration, without the prior written consent of the Manager, and, in any event, such Transfer must comply with the conditions set forth in section 11.1.1.

### **11.1.1 Conditions of Transfer.**



(a) The Transferor receives, at its expense, an opinion of counsel that such Transfer (i) will not require registration under nor violate the Securities act of 1933 or any applicable state securities laws; (ii) will not subject the Fund or the Manager to the Investment Fund Act of 1940; and (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; provided, that the delivery of such opinion may be waived, in whole or in part, at the sole discretion of the Manager;

(b) The Transfer will not result in the termination of the Fund pursuant to Code Section 708;

(c) The Transfer would not pose a material risk that all or any portion of the assets of the Fund would constitute “plan assets” under ERISA, or otherwise subject the Fund to any ERISA provisions under the Code or any applicable or similar law;

(d) Transfer will not violate the applicable laws of any state or the applicable rules and regulations of any governmental authority;

(e) The transferee has the legal right, power and capacity to own the Shares;

(f) The transferee delivers to the Manager a written agreement by the transferee, in form and substance, satisfactory to the Manager, to assume all of the duties and obligations of the transferring Member under this Agreement arising from and after the effective date of such Transfer and to be bound by and subject to all of the terms and conditions of this Agreement; and

(g) All costs and expenses incurred by the Fund in connection with the Transfer are paid by the transferor to the Fund, without regard to whether the proposed Transfer is consummated.

**11.1.2 Effect of Violation.** Each Member hereby acknowledges the reasonableness of the prohibition contained in this section in view of the purposes of the Fund. The Transfer of any Share in violation of the prohibition contained in this section shall be deemed invalid, null and void, and of no force or effect. The Fund shall have no obligation to recognize any transferee of any Shares in violation of this section.

**11.2 Rights of Transferee.** If the conditions of section 11.1 above are met, then a Member may Transfer all or a portion of its Shares. Nonetheless, until and unless a transferee of such Shares is admitted to the Fund as a Member by the Manager, such transferee shall be entitled only to the allocations and distributions with respect to the Transfer Shares in accordance with this Agreement and, to the fullest extent permitted by applicable law, shall not have any non-economic rights of a Member of the Fund, including, without limitation, the right to require any information on account of the Fund's business, inspect the Fund's books, or vote on Fund matters.

**11.3 Permitted Transfers.** Notwithstanding anything contained herein to the contrary and provided that the provisions of section 11.1 (other than its requirement of the consent of the Manager, or obtaining a legal opinion) are satisfied, the following Transfers shall be permitted:

(a) A Member may Transfer all or any portion of the Member's Shares to (i) the spouse, children, grandchildren, parents or siblings of such Member (“Immediate Family”); or (ii) a trust, partnership, limited liability company, or other entity for the sole benefit of such Member and/or its Immediate Family, provided that, following the transfer, such Member continues to control the transferee



entity. In either case, the Transfer Shares shall not thereafter be transferred further. Any transferee(s) pursuant to this section shall be admitted as an assignee unless admitted as a Member by the Manager; and

(b) Any Member that is an Affiliate of the Manager may Transfer all or any portion of such Member's Share to any of its equity holders, Affiliates, and employees in any proportion as determined by such Member. The transferees pursuant to this section shall be admitted as Members.

**11.4 Death, Disability, Bankruptcy.** Upon the death, bankruptcy, disability, legal incapacity, legal dissolution, or any other voluntary or involuntary act of a Member, neither the Fund nor the Manager shall have the obligation to purchase the Shares owned by such Member, nor shall such Member have the obligation to sell their Shares. Instead, the legal successor of such Member shall become an assignee of the Member pursuant to this section, subject to all of the terms and conditions of this Agreement.

**11.5 Right of First Refusal.** Except for Transfers permitted by section 11.1, each time a Member proposes to Transfer, or receives an offer from a third party to Transfer, all or any part of its Shares, such Member (the "Selling Member") shall first offer such Shares to the Manager. In such an event, the Selling Member shall notify the Manager, specifying the 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").

**11.5.1 Manager's Election.** 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. 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 11.1. If the Manager elects to purchase the Transfer Shares, it shall do so within thirty (30) days on the same terms as set forth in the Sales Notice.

**11.5.2 Material Changes to Terms.** 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.

**11.5.3 Effect of Agreement.** 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.

**11.6 Fair Market Value Procedures.** In the event a Member is required by law or pursuant to this



Agreement, or upon an election of the Member to sell a portion or all of such Member's Shares to the Fund, the fair market value of such Shares shall be agreed upon by the Manager and the Member(s) whose Shares are being purchased. If the fair market value cannot be agreed upon by such parties, then each party, splitting the cost evenly, shall select a qualified appraiser whose valuation shall be used. If the parties cannot agree to a qualified appraiser, then each party, at their own expense, shall select a qualified appraiser and the average valuation shall be used. If a party disputes the average valuation, the two appraisers selected shall choose a third appraiser whose valuation will be used, and which cost shall be borne equally by all parties involved.

**11.6.1 Designation of Representative.** If the Shares of more than one Member are being purchased, then all such Members shall select a single representative, voting on the basis of the number of 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.

**11.7 Mandatory Buyout.** The Manager may, at any time, cause the Fund to purchase all or any portion of the Shares owned if the Manager determines that (i) such Shares are owned by a Member whose assets are governed by ERISA and that all or any portion of the assets of the Fund would, in the absence of such purchase, more likely than not be treated as "plan assets" or otherwise become subject to such laws; (ii) such Member made a material misrepresentation to the Fund; (iii) legal or regulatory proceedings are commenced or threatened against the Fund or any of its Members arising from or relating to the Member's interest in the Fund; (iv) such Member's ownership has caused or will cause the Fund to violate any law or regulation; (v) such Member has violated any of their obligations to the Fund or to the other Members; or (vi) such Member is engaged in, or has engaged in conduct (including but not limited to criminal conduct) that has or is likely to have a material and adverse effect on the Fund.

**11.7.1 Purchase Price and Payment.** In the case of any purchase of Shares described in this section 11.7, the purchase price of the Shares shall be ninety percent (90%) of the amount the Member would receive with respect to such Shares if all of the assets of the Fund were sold for their fair market value, all the liabilities of the Fund were paid, and the net proceeds were distributed in accordance with Article 8. The purchase price shall be paid by wire transfer or other immediately-available funds at closing, which shall be due within sixty (60) days following written notice from the Manager.

## **Article 12: Dissolution and Liquidation**

**12.1 Dissolution.** The Fund shall be dissolved upon the first to occur of (i) the date twelve (12) months following the sale of all or substantially all the assets of the Fund, (ii) the determination of the Manager to dissolve, or (iii) the election of the Members to discontinue the business of the Fund if the Manager was removed for cause. The Members hereby waive the right to have the Fund dissolved by judicial decree.

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

**12.2.1 Distribution of Assets.** At liquidation of the Fund's assets, net proceeds from such liquidation shall be used (i) first, to discharge all liabilities of the Fund other than Member Loans and Manager Advances, (ii) second, to pay any and all expenses incurred as a result of the liquidation (which may include reserves the Manager establishes to pay any unforeseen liability or obligation of the Fund),



and (iii) third, to pay any Member Loans and/or Manager Advances. Thereafter, the net proceeds of the liquidation of the Fund's assets shall be applied and distributed in accordance with Article 6.

**12.2.2 Distributions in Kind.** The assets of the Fund 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. In the event that, in the Manager's opinion, complete liquidation of the assets of the Fund within a reasonable period of time proves impractical, assets of the Fund other than cash may be distributed to the Members in kind but only after all cash and cash-equivalents have first been distributed and after the Pre-Distribution Adjustment.

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

### **Article 13: Dispute Resolution**

**13.1 Mediation.** Disputes arising under this Agreement will be handled in the manner described herein. However, In the event any dispute, controversy or claim arises out of or in connection with, or relating to, this Agreement or any breach or alleged breach of this Agreement (each a "Dispute"), then the parties involved or such parties' authorized representatives shall, upon written request of any party, meet in good faith with the assistance of an unrelated third-party mediator who has the legal competence to mediate such Disputes. The parties shall have thirty (30) calendar days after such mediator is determined to resolve such Dispute with the assistance of the mediator.

**13.2 Arbitration.** If the parties do not resolve such Dispute within thirty (30) calendar days after the mediator had been determined, such Dispute shall be submitted to, and settled by, expedited arbitration in Orlando, Florida, by one (1) arbitrator, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved).

**13.2.1 Final Decision.** Any award rendered by the arbitrator shall be final and conclusive upon the parties, except for any appeal right under the Federal Arbitration Act, and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The decision of the arbitrator shall be in writing and shall set forth findings of fact and conclusions of law. The arbitrator shall not be empowered to award to any party any damages of the type not permitted to be recovered under this Agreement in connection with any Dispute. Each Member hereby irrevocably waives any right to recover such damages.

**13.2.2 Payment of Fees.** Each party shall initially bear the cost of its own experts, evidence and counsel's fees. Fees or expenses of arbitration and/or mediation, including without limitation, the arbitrator and/or mediation, shall be borne equally by each party. The arbitrator shall award costs and expenses of arbitration that were paid or outstanding by the prevailing party, to the prevailing party. Failure of a party to act in good faith during the mediation process shall prohibit such Person (in the event such Person is the prevailing party) from recovering any cost of the arbitration, attorney, and/or accounting fees.

**13.2.3 No Class Action Claims.** NO ARBITRATION SHALL PROCEED ON A CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS. No party may join, consolidate, or otherwise bring claims for or on behalf of two or more individuals or unrelated corporate entities in the same arbitration unless



those persons are parties to a single transaction. An award in arbitration shall determine the rights and obligations of the named parties only, and only with respect to the claims in arbitration, and shall not (i) determine the rights, obligations, or interests of anyone other than a named party, or resolve any claim of anyone other than a named party; or (ii) make an award for the benefit of, or against, anyone other than a named party. No administrator or arbitrator shall have the power or authority to waive, modify, or fail to enforce this paragraph, and any attempt to do so, whether by rule, policy, arbitration decision or otherwise, shall be invalid and unenforceable. Any challenge to the validity of this paragraph shall be determined exclusively by a court and not by the administrator or any arbitrator. If this paragraph shall be deemed unenforceable, then any proceeding in the nature of a class action shall be handled in court, not in arbitration.

**13.3 Injunctions.** Notwithstanding anything to the contrary provided in this Article 13 or this Agreement, and without prejudice to the above procedures, any party may apply to any court of competent jurisdiction for temporary injunctive or other provisional judicial relief if such action is necessary to avoid irreparable damage or to preserve the status quo until such time as the arbitrator is selected and available to hear such party's request for temporary relief.

#### **Article 14: Miscellaneous**

**14.1 Limitations on Damages.** The parties to this Agreement recognize and agree that in the event of a failure to perform any of the obligations set forth in this Agreement, monetary damages may be inadequate; therefore, the parties hereto shall be entitled to specific performance of the terms of this Agreement. Each Member hereby waives their right to recover lost profits, or special, consequential or punitive damages.

**14.2 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; 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.

**14.3 Amendment.** Except as otherwise expressly provided herein (such as the provisions set forth in section 4.3 hereof), the Managers may amend this Agreement without the approval of the Members. The Manager shall notify all Members of such amendment (unless such amendments are typographical or otherwise not substantive) in writing within a reasonable time.

**14.4 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 (unless the recipient demonstrates that the package was not delivered to the specified address), 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 Fund, if to the Fund or the Manager, to the email address of a Member provided by such Member, or such other address or addresses as the parties may designate from time to time by notice satisfactory under this section.

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

**14.6 Governing Law.** This Agreement shall be governed by the internal laws of Delaware without



giving effect to the principles of conflicts of laws. If for any reason the arbitration provisions set forth in Article 11 do not result in any Dispute being arbitrated as required therein, any suit involving such Dispute shall be prosecuted in the Delaware courts or applicable federal courts. Each Member hereby (i) consents to the personal jurisdiction of the Delaware courts or applicable Federal courts, (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 Fund and/or by any means authorized by Delaware law.

**14.7 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 considered to be third-party beneficiaries of this Agreement in any way.

**14.8 Power of Attorney.** The Manager shall at all times during the term of the Fund have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such 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 are required to carry on the business of the Fund or which are required by law. 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 Fund and its assets, and is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth; (ii) may be exercised by the Manager by and through one or more of the principals of the Manager for each of the Members by the signature of the Manager acting as attorney-in-fact for all of the Members, together with a list of all 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 Member of all or any portion of their Shares except that, where the assignee of the Shares owned by the Member has been approved by the Manager for admission to the Fund, 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.

**14.9 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.

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

**14.11 Execution by Members.** It is anticipated that this Agreement will be executed by Members through the execution of the Subscription Agreement.

**14.12 Severability.** If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be deemed invalid or unenforceable, then, to the extent any portion of such provisions are deemed valid, such provision (or provisions as the case may be) shall nevertheless remain binding upon the parties hereto to the fullest extent permitted by law. Additionally, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.





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

**14.14 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.

**14.15 Legal Representation.** Each Member acknowledges that it has had an opportunity to consult with its own legal counsel with regard to the matters contained in this Agreement.

**14.16 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 effective as of the date first written above.

**FUND**

**Rethink Self Storage Fund, LLC**

**By: Rethink Self Storage Fund Management, LLC**

Its Manager

By:

\_\_\_\_\_  
Patrick Traynor, Authorized Manager

**MANAGER**

**Rethink Self Storage Fund Management, LLC**

By:

\_\_\_\_\_  
Patrick Traynor, Authorized Manager



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

**Class B Member(s)**

\_\_\_\_\_  
Name of Class B Member

\_\_\_\_\_  
Name of Class B Member

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name of Signer (if an entity)

\_\_\_\_\_  
Print Name of Signer (if an entity)

\_\_\_\_\_  
Title of Signer (if an entity)

\_\_\_\_\_  
Title of Signer (if an entity)