

**R&N FARMING OZ I, LLC**  
**CONFIDENTIAL DISCLOSURE MEMORANDUM**

**April 25, 2023**

**Maximum Offering Amount: \$5,133,000**

**Minimum Offering Amount: \$4,820,000**

**Minimum Investment: \$15,000**

Please direct all inquiries relating to the information contained  
in this Disclosure Memorandum or any of the other Subscription Documents to  
AcreTrader Financial, LLC, the placement agent,  
via email to [info@acretrader.com](mailto:info@acretrader.com), or call 888.958.1470

STRICTLY PRIVATE AND CONFIDENTIAL

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## SUBSCRIPTION INSTRUCTIONS

Interests in R&N Farming OZ I, LLC (the “**Interests**”) may be purchased by accredited investors approved by the Company. Prospective investors who would like to purchase Interests must read carefully these confidential offering materials (these “**Offering Materials**”) and the attachments hereto. Prospective investors must initially complete, execute, and deliver the Subscription Agreement on the website located at [www.acretrader.com](http://www.acretrader.com) (the “**Platform**”), to AcreTrader Financial, LLC (“**AcreTrader**”) and provide funds via wallet on the Platform or ACH to North Capital Private Securities (the “**Escrow Agent**”). Upon acceptance of the prospective investor’s Subscription Agreement by the Company, the Company will direct investors to provide additional information and execute various additional documents on the Platform. Please use the following checklist to ensure submission of a complete subscription package.

1. Disclosure Memorandum

Carefully review the Disclosure Memorandum, which begins on Page 2, and consult with your independent financial, tax and legal advisors regarding an investment in the Company.

2. Subscription Agreement and LLC Agreement

Carefully review, complete and confirm the accuracy of each of the statements in the Subscription Agreement located on the Platform. Execute and deliver the investor counterpart signature page to the Subscription Agreement via the Platform, which also serves as the signature page to the Amended and Restated Limited Liability Company Agreement (the “**LLC Agreement**”) for the Company, also available on the Platform. A copy of your fully executed Subscription Agreement will be available to you via your Dashboard on the Platform following its acceptance and execution by the Company. The fully executed LLC Agreement for the Company will be available to you via the Platform as well.

3. Additional Verification Documents and Information

Upon receipt of the prospective investor’s Subscription Agreement by the Company, the Company will direct investors to provide additional information and execute various additional documents on the Platform. Please promptly provide any such information or documentation upon request.

4. Subscription Amount

Please follow the instructions found on the Platform for submitting your subscription amount through secure channels. Your funds, once received via wire or ACH, will be transmitted to the Escrow Agent where they will be held in escrow until your subscription is accepted and the closing occurs.

**Until the acceptance, execution and delivery of the Subscription Agreement by the Company, no subscription offer will be deemed accepted. The Company has the unconditional and exclusive right, in its sole and absolute discretion, prior to the closing of the sale of the Interests, to accept or reject, in whole or in part, any subscription offer. If the Offering is over-subscribed, then the Company has the right to reduce the amount of the investor's subscription offer or reject it in its entirety.**

## DISCLOSURE MEMORANDUM

This Disclosure Memorandum sets forth certain documents and information describing R&N Farming OZ I, LLC (the **“Company”**), the agricultural assets and property under contract and anticipated to be acquired by Company, the Project, the Company’s acquisition, development and disposition strategy for the Project, and certain risks related to the Project and an investment in the Company. This Disclosure Memorandum does not purport to contain all the information you may need to make an investment decision. Consult your legal counsel, accountants and other advisors, and carefully review and consider this entire Disclosure Memorandum and its attachments, as well as the Subscription Agreement (collectively, the **“Subscription Documents”**), before purchasing any Interests.

**INVESTMENT IN THE COMPANY INVOLVES A HIGHER DEGREE OF RISK THAN THAT ASSOCIATED WITH MANY OTHER INVESTMENT ALTERNATIVES. AN INVESTMENT IN THE COMPANY IS NOT AN APPROPRIATE INVESTMENT FOR ANYONE UNABLE TO BEAR THE RISK OF LOSING A SUBSTANTIAL PART OF THEIR INVESTMENT OR REQUIRING LIQUIDITY, AND SHOULD NOT BE VIEWED AS A COMPLETE INVESTMENT PROGRAM. SEE “RISK FACTORS.”**

**THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER APPLICABLE SECURITIES LAWS, AND ARE BEING OFFERED ANY SOLD TO INDIVIDUALS WHO ARE ACCREDITED INVESTORS IN RELIANCE ON AN EXEMPTION FROM REGISTRATION UNDER SECTION 4(A)(2) OF THE SECURITIES ACT AND RULE 506(C) OF REGULATION D PROMULGATED UNDER THE SECURITIES ACT AND EXEMPTIONS FROM APPLICABLE STATE SECURITIES LAWS.**

**IN MAKING AN INVESTMENT DECISION, EACH PROSPECTIVE INVESTOR MUST RELY ON ITS OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE INTERESTS HAVE NOT BEEN APPROVED OR RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DISCLOSURE MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

## CONFIDENTIALITY

Acceptance of this Disclosure Memorandum constitutes an agreement by the recipient and each of its representatives to maintain the confidentiality of all information contained herein (including any exhibits) and in any materials provided in connection with this Offering. Reproduction of this Disclosure Memorandum or other offering materials is strictly prohibited. Notwithstanding the foregoing, Investors (and each of their representatives) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the investment described in this Disclosure Memorandum and all materials of any kind that are provided to the Investors relating to such tax treatment and tax structure.

## IMPORTANT NOTICES TO INVESTORS

The information contained in this Disclosure Memorandum, and each of the documents comprising the Subscription Documents, is accurate only as of the dates respectively first set forth herein and therein, regardless of the time of delivery of this Disclosure Memorandum or of any sale of any Interests. The Company's business, financial condition, results of operations and prospects may have changed since the date of this Disclosure Memorandum. This Disclosure Memorandum is summary in nature and should only be read in conjunction with the Subscription Documents. Neither the delivery of this Disclosure Memorandum nor any sale made in connection with the Offering shall, under any circumstances, create any implication that there has been no change in the affairs of the Company after the date hereof. No person should purchase Interests without having carefully reviewed this Disclosure Memorandum, any amendments or supplements hereto, the Subscription Agreement and all other Subscription Documents.

The Company obtained the industry, market and competitive position data used throughout this Disclosure Memorandum from its research, studies conducted by third parties, independent industry associations or general publications and other publicly available information. The Company and Trinity Agri Management, LLC (the "**Manager**") make no representations or warranties about the accuracy of any of this information or data or the conclusions reached in these third party studies. Industry experts may disagree with these assumptions and with the Manager's view of the market and the prospects for the Company and the Project. Investors may wish to conduct your own separate investigation of the real estate industry or the specific submarkets targeted by the Company to obtain broader insight in assessing the Company's prospects.

The nature of this investment presents a number of conflicts of interest involving the Manager and its affiliates. See Part 4, Certain Risk Factors and Conflicts of Interest.

In making an investment decision, Investors must rely on their own examination of the Company and the terms of the Offering, including the merits and risks involved. An investment in the Company involves special considerations and Investors should carefully review all of the information contained in this Disclosure Memorandum. While this Disclosure Memorandum summarizes certain material documents relating to the Company and the Offering, such summaries do not purport to be complete. Accordingly, reference should be made to the form of LLC Agreement attached hereto, the other Subscription Documents, and all supporting documents and other information furnished in connection with this Offering on the Platform for complete information concerning the rights and obligations of Investors in this Offering. The information contained in this Disclosure Memorandum supersedes any other oral or written information previously provided in connection with the Offering. No person has been authorized to give any information or to make any representation on behalf of the Company or the Manager related to the Offering other than as set forth in this Disclosure Memorandum, and no such information or representation should be relied upon. See Part 4, Certain Risk Factors and Conflicts of Interest.

The Company and the Manager reserve the right, in their sole discretion, (i) to accept or reject, in whole or in part, any subscription, (ii) to accept subscriptions in any order, regardless of the order in which they are received, and (iii) to terminate this Offering at any time.

### **ACCESS TO ADDITIONAL INFORMATION**

As described further in Part 6, Additional Information and Documentation, each prospective Investor and its representative(s) may ask questions of and receive answers from the Manager (or persons acting on its behalf) concerning the terms and conditions of the Offering or any other matter set forth herein and obtain any additional information, to the extent the Manager possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information set forth herein, including, but not limited to, access to information concerning the Company and the Offering.

### **TAX MATTERS**

Any statement contained in this Disclosure Memorandum (including any exhibits) concerning United States tax matters is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the United States Internal Revenue Code, and was written to support the promotion or marketing of the transaction(s) or matter(s) addressed.

Investors are not to construe the contents of this Disclosure Memorandum or any prior or subsequent communication from the Company, the Manager or professionals associated with this Offering as legal, tax or investment advice. Each Investor should consult with his, her or its own personal attorney, accountant and other advisors, at its own expense, as to the legal, tax, economic, and other consequences of an investment in the Company and the investment's suitability for such Investor.

### **SECURITIES LAW MATTERS**

THIS DISCLOSURE MEMORANDUM DOES NOT CONSTITUTE AN OFFER OR SOLICITATION BY A PERSON NOT QUALIFIED TO DO SO OR TO ANY PERSON RESIDING IN A JURISDICTION WHERE SUCH OFFER OR SOLICITATION IS NOT AUTHORIZED.

THE INTERESTS ARE BEING OFFERED TO A LIMITED NUMBER OF SELECT INDIVIDUALS WHO QUALIFY AS "ACCREDITED INVESTORS" UNDER THE SECURITIES ACT. BECAUSE THE INTERESTS ARE BEING OFFERED ONLY TO ACCREDITED INVESTORS, THIS DISCLOSURE MEMORANDUM DOES NOT CONTAIN ALL INFORMATION THAT WOULD BE REQUIRED TO BE DISCLOSED UNDER THE SECURITIES ACT IF THE OFFERING WAS BEING MADE TO PERSONS OTHER THAN ACCREDITED INVESTORS.

THE COMPANY IS NOT SUBJECT TO THE REPORTING REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (THE "**EXCHANGE ACT**"), AND, ACCORDINGLY, DOES NOT FILE PERIODIC REPORTS, PROXY STATEMENTS OR OTHER INFORMATION WITH THE SECURITIES AND EXCHANGE COMMISSION (THE "**SEC**").

THE INTERESTS OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT, OR ANY U.S. STATE OR FOREIGN SECURITIES LAWS, AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THESE LAWS. THE INTERESTS MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT AS PERMITTED UNDER THE SECURITIES ACT,

APPLICABLE STATE SECURITIES LAWS AND/OR APPLICABLE LOCAL LAWS IN COUNTRIES OUTSIDE THE U.S. OR PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE INTERESTS MAY BEAR A LEGEND, IN FORM AND SUBSTANCE SATISFACTORY TO THE COMPANY, TO THE FOREGOING EFFECT.

Under no circumstances shall this Disclosure Memorandum constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

FOR NON-UNITED STATES RESIDENTS. IT IS THE RESPONSIBILITY OF EACH INVESTOR TO SATISFY HIMSELF OR HERSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OR JURISDICTION OUTSIDE THE UNITED STATES IN CONNECTION WITH ANY PURCHASE OF THE INTERESTS HEREUNDER, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE REQUIREMENTS.

### **CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS**

The Investment Overview, including the Project Pro Forma, and other information contained in this Disclosure Memorandum, may constitute forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. All statements included in this Disclosure Memorandum that address activities, events or developments that the Company expects or anticipates will or may occur in the future, including such matters as projections, forecasts, future expenditures, business strategy, competitive strengths, goals, markets, rates of return, distributions, and the growth of the Company's business and operations, are forward-looking statements. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "projects," "potential," or "continue" or the negative of such terms or other comparable terminology. These statements are based, in part, on assumptions made by, and information currently available to, the Company, including the Manager's own knowledge and assessment of the Offering, applicable real estate sectors, local submarkets and other factors, as well as information provided by third-party consultants and other industry sources that have not been independently verified by the Company or the Manager. Actual results may differ materially from the Company's expectations and predictions due to a number of risks and uncertainties, many of which are beyond the Company's control. The Company has based these forward-looking statements on current expectations and projections about future events, including, among other things:

- the significant considerations and risks discussed in this Disclosure Memorandum;
- changes in international, national, regional and local economic and market conditions;
- changes in interest rates and in the availability, cost and terms of debt financing;
- changes in governmental laws and regulations, fiscal policies and zoning ordinances, and the related costs of compliance with laws and regulations, fiscal policies and ordinances;
- attracting and retaining talented employees;
- changes in operating expenses; and
- fires, hurricanes, tornadoes, earthquakes, droughts, floods and other natural disasters as well as civil unrest, acts of war, terrorism, outbreaks of infectious disease, pandemic or other serious public health concern, each of which may result in uninsured losses.

Consequently, all of the forward-looking statements made in this Disclosure Memorandum are qualified by these cautionary statements and the Company cannot ensure that the results anticipated

by the Company or the projections made by the Company will be realized or, even if realized, will have the expected consequences to or effects on the Company or its business, financial condition or results of operations. Investors should not place excessive reliance on these forward-looking statements in making their investment decision. The Company expressly disclaims any obligation or undertaking to release publicly any updates or revisions to these forward-looking statements to reflect events or circumstances that occur or arise or are anticipated to occur or arise after the date hereof. In making an investment decision regarding the Interests, Investors should not infer any representation about the likely existence of any particular future set of facts or circumstances.



## PART 1

### SUMMARY OF PRINCIPAL OFFERING TERMS

The following summary is qualified in its entirety by the detailed information appearing elsewhere in this Disclosure Memorandum and the Subscription Documents. Capitalized terms used but not otherwise defined in this summary have the respective meanings given to such terms in the Amended and Restated Limited Liability Company Agreement of the Company (the “**LLC Agreement**”).

<b>The Company</b>	R&N Farming OZ I, LLC is a California limited liability company (the “ <b>Company</b> ”). The Company has been established to provide a vehicle for qualified investors (“ <b>Prospective Investors</b> ” and, in their capacity as members of the Company, “ <b>Members</b> ”) to make an investment in and indirectly, together with the Manager and other Investor Members, to invest substantially all of its assets in R&N Farming I, LLC, a California limited liability company and subsidiary of the Company (the “ <b>Property Owner</b> ”). The Company will be managed by Trinity Agri Management LLC, a California limited liability company (the “ <b>Manager</b> ”), which is owned by Riley Chaney and Nino Carvalho.
<b>Offering</b>	The Company is offering to sell up to \$5,133,000 of limited liability company interests in the Company (“ <b>Interests</b> ”) to prospective Investors who are “accredited investors” as defined in Rule 501(a) of Regulation D of the Securities Act (the “ <b>Offering</b> ”). The Company proposes to use the net proceeds from the sale of Interests in the Offering to acquire, develop, operate and ultimately dispose of the Project. The Manager intends to initially invest \$30,000 in Interests in the Company, and, as discussed below, will also receive interests in the Property Owner in lieu of receiving certain asset management fees in exchange for services provided to the Company. See “Asset Management Fees” below.
<b>Minimum Investment</b>	The minimum investment amount is \$15,000 although the Manager may accept lesser amounts in its sole discretion. The Manager will accept subscriptions in excess of the minimum investment amount in increments of \$1,000.
<b>Offering Termination Date; Minimum/Maximum Offering Amounts</b>	The Offering will continue until the earliest of (i) May 31, 2023, unless extended by the Company, in its sole discretion, to a date not later than September 30, 2023, (ii) the acceptance of subscriptions totaling \$5,133,000, or (iii) the termination of the Offering by the Company. No subscriptions will be accepted unless the minimum amount of \$4,820,000 is raised in the Offering.
<b>How to Subscribe</b>	To purchase an Interest in the Offering, each prospective Investor must complete and deliver to the Company all Subscription Documents and wire such prospective Investor’s initial Capital Contribution in accordance with the instructions provided on page 1. Once made, an Investor may not revoke its subscription.
<b>Closing</b>	Subscription funds will be deposited into an escrow account in accordance with a subscription escrow agreement (the “ <b>Escrow Agreement</b> ”) among the Company, the Placement Agent and North Capital Private Securities together

with any successor escrow agent approved by the Company, the “**Escrow Agent**”), and will be released from escrow by the Escrow Agent at one or more Closings. Upon release from escrow, the subscription funds will be delivered to the Company to be used as described in this Disclosure Memorandum.

The Manager may accept or reject subscriptions, in whole or in part, at any time prior to the termination of the Offering, if the Manager partially accepts or rejects a subscription, or does not accept a subscription, then the rejected portion of the subscription funds, or any subscription that was not accepted by the termination of the Offering, will be promptly returned to the Investor, without interest or deduction. Closings will take place at such times as may be determined in the sole discretion of the Manager. There is no minimum amount of Interests that must be sold in order for the first Closing to occur. At the time of each Closing, the Investors whose subscriptions are accepted will be admitted to the Company as Members.

The Company may, in the Manager’s sole discretion, allocate Interests among subscribers in the event of an over-subscription for the Interests. In determining which subscriptions to accept, in whole or in part, the Manager may take into account any factors it considers relevant. In the event the Company rejects or cancels all or any portion of any subscription, the Company will refund promptly the amount paid with respect to the portion of Interests as to which the subscription is not accepted, without interest.

**Eligible Investors**

The Offering is being made pursuant to an exemption from registration under applicable federal and state securities laws. In compliance with such exemption, each Investor will be required to satisfy certain investor suitability standards and will be required to represent, warrant and verify, among other things, whether such Investor is an “accredited investor” as defined in Regulation D promulgated under the Securities Act.

**Property Owner**

The Company will invest substantially all of the net proceeds from this offering in membership interests in the Property Owner. The Property Owner has been formed to acquire, redevelop, own and operate certain farm property located in Fresno County, California near San Joaquin, California. The Manager will also serve as the manager of the Property Owner (the “**Property Owner Manager**”) and will be a member of the Property Owner.

**Project**

The Property Owner is currently under contract to purchase approximately 169 acres of farmland, which includes approximately 155 farmable acres (the “**Project**”). The Project includes approximately 100 acres which are currently planted with alfalfa and approximately 55 acres of fallow land. The Property Owner intends to develop, plant and cultivate pistachios trees on the properties.

The Project is more completely described in Part 2, Investment Overview. The Company currently anticipates at least a 10-year hold for the Project.

The Company will use substantially all of the net proceeds from the offering to make capital contributions to the Property Owner, and the Property Owner will

finance the remaining amount required by obtaining a mortgage loan and a development loan secured by the Project. *The costs for the Project have not been finalized and are subject to change.*

The Project is located within a qualified “Opportunity Zone” (as set forth in the Tax Cuts and Jobs Act of 2017) in Fresno County.

## **Opportunity Zone Program**

On December 22, 2017, Congress enacted H.R. 1, also known as “The Tax Cuts and Jobs Act” (the “**Tax Cuts and Jobs Act**”). Among many other provisions, the Tax Cuts and Jobs Act established the Opportunity Zone tax incentive program as a new community investment tool to encourage long-term investments in low-income urban and rural communities nationwide (the “**Opportunity Zone Program**”), as codified in Sections 1400Z-1 and 1400Z-2 of the Code. The program is designed to encourage investors to re-invest their unrealized capital gains into qualified opportunity zones by providing tax incentives relating to the treatment of capital gains with respect to investments in a “qualified opportunity fund” as defined in Section 1400Z-2(d)(1) of the Code (a “**QOF**”). A qualified opportunity zone is a population census tract that is a low-income community (as defined in Section 45D(e) of the Code) or certain other census tracts adjacent to a low-income community and which is nominated as a qualified opportunity zone by the chief executive officer of a State or possession of the United States and certified by the United States Department of the Treasury. See Part 2, Investment Overview – Overview of Opportunity Zone Program.

The Opportunity Zone Program provides tax incentives to investors by allowing them to defer taxes due on certain capital gains by reinvesting such gains in qualified opportunity zone investments. The monies eligible for investment extend only to realized capital gains from the sale or exchange of any property to an unrelated person (“**Eligible Gains**”). Investors are eligible for tax deferral on Eligible Gains up to the amount of such gains that are invested in a QOF generally within 180 days of the date of the capital gains realization event (as defined in Section 1400Z-2 of the Code and the regulations promulgated thereunder). Investors should consult with their tax advisors regarding the investment of Eligible Gains and reporting such investments on their tax returns.

The Company intends to certify and be treated as a QOF as defined in Section 1400Z-2 of the Code and the regulations promulgated thereunder, and intends to make investments in “qualified opportunity zone property” (as defined below) including, specifically, investments in the Property Owner (the Property Owner plans to comply with the requirements to be treated as a QOZB (as defined below) under Section 1400Z-2 of the Code and the regulations promulgated thereunder). As a QOF, Investors who reinvest Eligible Gains in the Company will likely receive reductions on capital gains taxes relative to the years of their investment. Additionally, the Company may accept funds from Investors that are not from Eligible Gains; however, such funds would not be entitled to the tax benefits of the Opportunity Zone Program. Investors that purchase interests in the Company using both Eligible Gains and other monies

will be responsible for tracing their respective investments for the purposes of claiming the tax benefits under the Opportunity Zone Program with respect to the interest purchased using Eligible Gains.

Regardless of how many Investors invest Eligible Gains in the Company, the Manager intends to comply with the requirements of Section 1400Z-2 of the Internal Revenue Code of 1986, as amended (the “**Code**”), any proposed, temporary, or final regulations or other guidance applicable to QOFs, unless the Manager determines that it is no longer feasible or in the best interests of the Company to qualify or maintain its status as a QOF. See Part 2, Investment Overview – Overview of Opportunity Zone Program.

Investors are urged to review the opportunity zone tax considerations prior to investing in the Company; such considerations can be found in See Part 2, Investment Overview – Opportunity Zone Program Tax Considerations.

<b>Capital Contributions</b>	The Manager’s objective is to maintain the asset base of the Company consistent with the Company’s investment strategy and policies. The Manager will retain discretion within specified parameters set forth in the Company’s LLC Agreement to call additional Capital Contributions from the Members of the Company to meet the capital needs of the Company.
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<b>Use of Proceeds</b>	The Company intends to invest the proceeds of this Offering in the Property Owner and the Project and to pay operating expenses and expenses related to the offering and organizational expenses of the Company.
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<b>Fees paid to the Manager and its Affiliates</b>	The Property Owner will pay the following fees to the Manager or its designated affiliates.
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<i>Asset Management Fee</i>	The Property Owner will pay the Property Owner Manager an annual management fee in the amount equal to 0.50% of the aggregate Capital Contributions made to the Property Owner and the total debt of the Property Owner (the “ <b>Asset Management Fee</b> ”). The Asset Management Fee shall be payable monthly in arrears as of the last day of each month (each such payment date, the “ <b>Asset Management Fee Payment Date</b> ”). Pursuant to Section 4.6(b) of the LLC Agreement, during the period beginning on the effective date of the LLC Agreement and ending December 31, 2026, the Manager has irrevocably elected to (i) waive 25% of the Asset Management Fee in return for interests in the Property Owner (in each instance, the “ <b>Profits Interest Amount</b> ”) and (ii) receive 75% of the Asset Management Fee paid in cash. After December 31, 2026, the Asset Management Fee shall be paid in cash to the Manager.
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<i>Farm Management Fee</i>	The Property Owner will pay the Property Owner Manager or its designated affiliate an annual farm management fee in the amount of \$180 per farmable acre of the Project.
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<i>Carried Interest</i>	The Property Owner Manager will receive 20% of the distributions of available cash from operations after the members of the Property Owner, receives
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distributions equal to its 8% preferred return and will receive 20% of the distributions of available cash from a capital event after the members of the Property Owner receive distributions equal to its 8% preferred return and its Unrecovered Capital (as defined below).

**Administrative Services Fee**

The Company and the Manager will enter into an Administrative Services Agreement with Acretrader Management, LLC ("**Acretrader Management**") to provide certain administrative services to investors. The Company will pay Acretrader Management an annual fee of approximately \$25,515 (approximately 0.50% of the total Capital Contributions of Members other than the Manager) to provide these services pursuant to the Administrative Services Agreement.

**Placement Agent Fee**

The Company will pay AcreTrader Financial, LLC ("**AcreTrader**") a placement agent fee equal to approximately \$204,120 (4%) of the total proceeds of the Offering raised by AcreTrader) for providing certain placement agent services to the Company (assuming the maximum offering amount is raised). AcreTrader is a broker-dealer registered with the SEC and a member of FINRA / SIPC.

**Capital Accounts**

A capital account will be established for each Member (a "**Capital Account**") to reflect each Member's Capital Contributions to the Company. Capital Accounts will be adjusted to reflect distributions, allocation of profits and losses, permitted expenses and other similar credits and debits.

**Allocation of Profits and Losses**

At the close of each accounting period of the Company, any net profits or losses (determined after all Company expenses, fees and liabilities and including current income and realized and unrealized appreciation and depreciation for the accounting period then ended) will be allocated to each Member (including, for these purposes, the Manager) in proportion to their respective Capital Accounts at the beginning of such accounting period. With respect to any Member investing Eligible Gains in the Company, such Member's ability to use losses may be limited as a result of the basis rules under Section 1400Z-2 of the Code. See Part 2, Investment Overview –Opportunity Zone Program Tax Considerations.

**Distributions**

*Distributions to the Members from the Company.*

Distributions will be made at such times chosen by the Manager in its sole discretion and will depend on the Company receiving distributions from the Property Owner. Any distributions of available cash flow will be distributed to the Members pro rata in proportion to their percentage interest. The ability of the Company to make distributions to Members may be limited without causing a taxable event regarding the Members' invested Eligible Gains.

The Company will receive distributions from the Property Owner. The Property Owner will make distributions of available cash to the Company as determined by the Property Owner Manager in its reasonable discretion.

*Distributions to the Company from the Property Owner.*

On an annual basis, prior to March 1 of each taxable year, the Property Owner Manager shall determine to what extent, if any, the Property Owner's cash on hand for the preceding taxable year exceeds the current and anticipated needs for such moneys, including, needs for operating expenses, debt service and reserves (including reserves for Fees and other expenses related to the development, management and operation of the Project). To the extent such excess cash on hand exists and is permitted for distribution in accordance with the preceding sentence, the Property Owner Manager may, but shall not be required to, make distributions to its members as follows:

Distributable cash flow of the Property Owner shall be distributed as follows:

Distributable cash flow shall be distributed as follows:

- (1) First, 100% *pari passu* to the members of the Property Owner pro rata in accordance with each member's Accrued Preferred Return Account balance until each member's Accrued Preferred Return Account balance, if any, is reduced to zero;
- (2) Second, *pari passu* (A) 80% to the members (including the Manager) pro rata in accordance with their Percentage Interests, and (B) 20% to the Property Owner Manager.

Capital Transaction Proceeds received by the Property Owner shall be distributed in the following order of priority:

- (1) First, 100% *pari passu* to the members of the Property Owner pro rata in accordance with each member's Accrued Preferred Return Account balance, until each member's Accrued Preferred Return Account balance, if any, is reduced to zero;
- (2) Second, 100% *pari passu* to the members (including the Manager) pro rata in accordance with their Unreturned Capital balances, until the amount of each member's Unreturned Capital balance has been reduced to zero;
- (3) Third, *pari passu* (A) 80% to the members of the Property Owner (including the Manager) pro rata in accordance with their Percentage Interests, and (B) 20% to the Property Owner Manager.

**"Accrued Preferred Return Account"** means an internal book account maintained by the Property Owner for the members (a) to which shall be credited an amount equal to each member's Preferred Return; and (b) from which shall be debited the amount of any distributions to such member pursuant to Section 10.14(a)(i) or Section 10.14(b)(i) of the Amended and Restated Limited Liability Company Agreement of the Property Owner (the **"Property Owner Agreement"**).

**“Preferred Return”** means, (a) with respect to the Investor Member, a cumulative, non-compounding amount that is calculated like simple interest at an annual rate of 8% per annum on the aggregate balance of the Investor Member’s Unreturned Capital, and (b) with respect to the Property Owner Manager, a cumulative, non-compounding amount that is calculated like simple interest at an annual rate of 8% per annum on the amount equal to the aggregate balance of the Manager Unreturned Capital.

**“Manager Unreturned Capital”** means, with respect to the Property Owner Manager on any given date, the excess, if any, of (a) an amount equal to the sum of (i) the aggregate Capital Contributions of the Property Owner Manager as of such date, and (ii) the aggregate Profits Interest Amount (as defined in the Property Owner Agreement) of the Property Owner Manager as of such date, over (b) the aggregate Distributions to Manager pursuant to Section 10.14(a)(ii)(A) and Section 10.14(b)(ii) of the Property Owner Agreement.

**“Unreturned Capital”** means, (a) with respect to the Investor Member on any given date, the excess, if any, of (i) the aggregate Capital Contributions of the Investor Member as of such date, over (ii) the aggregate Distributions to the Investor Member pursuant to Section 10.14(a)(ii)(A) and Section 10.14(b)(ii) of the Property Owner Agreement as of such date, and (b) with respect to the Manager on any given date, the balance of the Manager Unreturned Capital as of such date.

## **Tax Distributions**

On an annual basis, prior to April 15 of each taxable year, the Manager may, but shall not be required to, cause the Company to distribute to each Member sufficient amounts of cash to permit such Member to discharge its obligations to pay federal, state and local taxes (including estimated taxes) with regard to taxable income reported or to be reported on the Schedule K-1 of Internal Revenue Service Form 1065 issued to such Member in respect of the Profits and Losses of the Company, if any, calculated at the highest combined local, state and federal marginal income tax rates applicable to any Member (each such distribution, a **“Tax Distribution”**). The Manager shall have the discretion to estimate the amount of taxable income allocable to each Member during the applicable period, and to determine the tax rate to be applied to such income, which rate shall be the same for all Members. For the sake of clarity, (a) the Manager may, but shall not be required to, cause the Company to make Tax Distributions to the fullest extent permitted by applicable law, irrespective of whether adequate reserves are then available; and (b) no Tax Distributions shall be made to the Members with respect to the year in which the Company makes any final liquidating distributions, including in connection with a sale of the Company’s assets.

## **Governance**

The business and affairs of the Company will be managed exclusively by the Manager, which is a California limited liability company owned and controlled by Riley Chaney and Nino Carvalho. Notwithstanding the general authority of the Manager to manage the operations of the Company, the Members will have the right to approve certain major decisions.

Specifically, unless the Manager shall receive the consent of a majority in interest of the Members, the Manager shall not have the authority to:

- (a) issue any New Securities that are senior to the Membership Interests;
- (b) amend or agree to the amendment of this LLC Agreement (except as provided therein) or execute or deliver any instrument on behalf of the Company, if the effect of such amendment, agreement or instrument would be a diminution of the Members' rights, interests or benefits in the Company;
- (c) dissolve the Company, except as expressly provided in the LLC Agreement.

Unless the Manager shall receive the consent of all Members, the Manager shall not do or perform:

- (a) any act which requires the consent of all Members under the California Revised Uniform Limited Liability Company Act (the "**Act**"), unless the right to do so is expressly set forth in the LLC Agreement and not in conflict with the nonwaivable provisions of the Act;
- (b) any act that would subject any Member to liability as a Manager or "general partner" in any jurisdiction or any other liability except as provided for in the LLC Agreement or under the California Revised Uniform Limited Liability Company Act; or
- (c) any act that would cause the Company to be taxed for federal income tax purposes as an association taxable as a corporation.

## **Reports**

Members will receive the following:

- (a) a balance sheet reviewed by the Company's accountant as of the end of the Company's taxable year and statements of income and cash flow for the year then ended, which financial statements shall be delivered as soon as reasonably practicable following the end of a taxable year, provided that the Company shall use commercially reasonable efforts to provide such information within 120 days after the end of each taxable year to each person who was a Member at any time during such taxable year; and
- (b) information necessary for the preparation of each Member's income tax returns, including a statement showing such Member's share of Profit or Loss, deductions or credit for the taxable year or taxable quarter for federal income tax purposes and the amount of any distribution made to or for the account of such Member pursuant to the LLC Agreement, and the Company shall use commercially reasonable efforts to provide such



information within 90 days after the end of each taxable year to each person who was a Member at any time during such taxable year.

<b>Term</b>	The term of the Company is perpetual, unless terminated earlier in accordance with the LLC Agreement.
<b>Risk Factors and Potential Conflicts of Interests</b>	As detailed further under Part 4, Risk Factors, an investment in the Company involves substantial risks, including real estate risks, general market risks, limited transferability of Interests, tax risks and other potential risks. There is no guarantee that an Investor will receive either a return of its investment or a return on its investment. Each Investor is advised to consult with its own tax advisor and counsel regarding the tax consequences of investing in the Company. The Manager may have various potential conflicts of interests. See “Potential Conflicts of Interest”.
<b>Tax Considerations</b>	It is intended that the Company be classified as a partnership, and not as an association taxable as a corporation. If the Company is classified as a partnership, the Company would not be subject to U.S. federal income tax, and each Member thereof will be required to report on its own annual tax return such Member’s distributive share of the Company’s taxable income or loss.
<b>Broker-Dealer</b>	The Company has engaged AcreTrader, a broker-dealer registered with the SEC and other necessary state or other regulators and a member of FINRA/SIPC, as its broker-dealer to provide certain services related to this Offering. AcreTrader will receive a placement fee equal to 4% of the total proceeds of the Interests sold to AcreTrader clients (approximately \$204,120, assuming maximum offering amount is raised).
<b>Requests for Additional Information</b>	Each Member will be required to comply promptly with reasonable requests for information made by the Manager in connection with the operation of the Company, including without limitation, in order to comply with any actual or anticipated request by any U.S. federal, state or local regulatory authority, agency, committee, court, exchange or self-regulatory organization.

## PART 2

### INVESTMENT OVERVIEW

#### Business of the Company

The Company intends to invest its capital raised in this offering into its subsidiary, R&N Farming I, LLC (the “**Property Owner**”), which will own the Project.

The Company will use substantially all of the net proceeds from the Offering to make capital contribution to the Property Owner, and the Property Owner will finance the remaining required amount by obtaining a mortgage loan and a development loan secured by the Project with a deed of trust. The costs for the Project have not been finalized and are subject to change.

#### The Project

The Property Owner has been formed to acquire, develop, own and operate the Project. The Project consists of approximately 169 acres located in Tranquillity, Fresno County, California and is comprised of three parcels of property. The Project includes approximately 155 farmable acres of which approximately 100 acres are currently planted with alfalfa and approximately 55 acres are fallow. The Property Owner intends to plant and cultivate pistachio trees on the properties.

The Property Owner is under contract to purchase the properties for \$3,562,440 from the seller. The seller’s current tenant, which is an affiliate of the seller, will be permitted to continue to farm the properties until the earlier of December 31, 2023 or the 2023 crop harvest, whichever is sooner.

The Property Owner expects to obtain a loan to finance a portion of the total purchase price for the properties with Madera Farm Credit to the extent necessary to finance the purchase and/or development of the Project. Fresno Madera Farm Credit is part of the Farm Credit System. The Property Owner anticipates placing its excess funds into an advance payment account with Madera Farm Credit, which pays interest on these funds at an interest rate that is set monthly. Each property is enrolled in the Williamson Act and receives reduced tax assessments.

#### Orchard Development Timeline and Plan

Below is the estimated development timeline for the Project and the parcels of property, which is subject to change.

<b>Activity</b>	<b>Projected Timeline</b>
Property under contract	1/13/23
Property due diligence	2/25/23
Close on Property and loan	5/31/23
Expiration of Lease	12/31/23 or upon completion of 2023 harvest
Ground Preparation	12/31/23 or upon completion of 2023 harvest
Installation of irrigation system	1/1/24
Plant trees	March 2024
Trees Begin to produce –First production year	2029
Initial crop sales	2029

Below is a map showing the location of the parcels of property that comprise the Project.



### Ground Preparation

Pistachio trees require well-drained soils with between 4 to 6 feet of topsoil. The Property soil fits this profile and will be prepared accordingly: disced, GPS mark tree rows, deep rip (down tree row for maximum root expansion), level and grade soil to proper slope and elevation, apply soil amendments such as gypsum, sulfur, and compost, make berms with GPS to later be planted on with trees. These items will be done in the Fall of 2023 to Winter of 2024. The Property Owner will install stakes to support and train the trees with and then expects to plant in February and March of 2024.

### Irrigation System/Land Improvements

The Property Owner intends to install an irrigation system on each property that is most suited for the soil and production. After most of the soil and ground work is complete, the Property Owner will install a state of the art single-line drip irrigation system to efficiently irrigate the pistachio trees. The new irrigation systems and pump that will be installed by the Property Owner will need to be connected to PG&E and operate on electric power. The irrigation system will be equipped with variable frequency drive (VFD) pumps for maximum power use efficiency.

## **Pistachio Trees**

The Property Owner will plant pistachio trees with either a UCB-1 or Platinum type of rootstock. Both of these rootstocks are ideally suited for this soil type. In July or August of 2024, the Property Owner will field bud (by the use of skilled labor contractors) the female variety Golden Hills and the male variety Randy. Pistachio trees require a male tree to pollinate, via wind, the female producer. Golden Hills and Randy varieties are a great match for each other in terms of pollination timing and maturity. The Property Owner intends to plant approximately 143 trees per acre. Each row will be approximately 19 feet apart and each tree will be approximately 16 feet apart down the row.

Pistachio trees generally begin producing fruit at approximately six years after planting and reach peak production in approximately year ten. The productive lifespan of a pistachio tree is generally over 80 years.

## **Water**

The parcels of property that comprise the Project are located in the Tranquillity Irrigation District. The Tranquillity Irrigation District is located in the Central Valley in Fresno County and services the town of Tranquillity and adjacent farmlands. The Tranquillity Irrigation District's sources of irrigation water are pre-1914 Ripraria, CVP and district well field. The Tranquillity Irrigation District is part of the Delta-Mendota Subbasin. There are 23 GSAs that make up this Subbasin. The Tranquillity Irrigation District is part of the Central Delta-Mendota Groundwater Sustainability Agency. Tranquillity Irrigation District is in the process of adding an additional storage recharge basin to capture flood water off of the Kings and San Joaquin Rivers on flood years.

The Tranquillity Irrigation District has multiple sources of water, including: CVP contract, riparian rights, Kings River water rights, wells/groundwater, and is strategically located and connected to the Kings River and San Joaquin River to capture flood waters when available. All irrigation systems and pumps are connected to PG&E and operate on electric power.

## **Management of the Company and the Property Owner**

The Manager of the Company is Trinity Agri Management LLC, which is owned by Riley Chaney and Nino Carvalho. The Manager was formed on March 9, 2022. The Manager also serves as the manager of the Property Owner (in its capacity as manager, the "**Property Owner Manager**"). The initial members of the Property Owner will be the Company and the Property Owner Manager. The Property Owner will be responsible for the redevelopment, management and operation of the Project.

Trinity Farm Management, LLC ("**Farm Management**"), an affiliate of the Manager, will provide farm management services to the Project. Farm Management was formed in March 2022 and is jointly owned by Riley Chaney and Nino Carvalho. Farm Management provides direct farm management services including labor, irrigation, new development, scheduling of spraying, and harvest.

## **Biographical Information**

Riley Chaney. Riley Chaney grew up on the west side of Fresno County, California and has been involved in all aspects of production agriculture. For over 25 years, he has developed, farmed and managed

almonds, pistachios, and various row crops for his family's operation. Mr. Chaney has managed farm operations for other owners for over 9 years. Mr. Chaney holds a California Pest Control Advisor License and Qualified Applicator License. He has prior experience with chemical and fertilizer sales and has worked selling agriculture and crop insurance. In 2010, Mr. Chaney and his wife Annie, started their own farm which consists of almonds and pistachios. Mr. Chaney serves as President of the board of directors of the James Irrigation District in San Joaquin, California. He graduated from California Polytechnic State University, San Luis Obispo in 2001.

#### Nino Carvalho.

Nino Carvalho was born and raised in California's Central Valley. He is the 4th generation in a farming family where he derived his passion for agriculture at a very young age. In 1999, while in college where he studied Agriculture and business, Mr. Carvalho obtained his PCA (Pest Control Advisor License) and QAL (Qualified Applicator License). Mr. Carvalho returned to the Central Valley to start an agribusiness helping other growers by applying crop protection and implementing sustainability on the farm. In 2001, Mr. Carvalho established his own 650 acre farm growing crops such as cotton, tomatoes, onions, pistachios, and almonds while growing his custom application business. He is currently the Board President for a grower-owned cooperative and has served on the board for fifteen years. Mr. Carvalho also sits on the Fresno Slough Irrigation District board. His focus is on the current pulse of agriculture and its future at all times. Mr. Carvalho attributes his success in life to his upbringing in agriculture and living on the farm, where he raised his own family and still resides with his wife. Mr. Carvalho graduated from California Polytechnic State University, San Luis Obispo, in 1999.

### **Sources and Uses**

The table below sets forth the proposed sources and uses for the Project, which are subject to change.

#### **Sources:**

Capital raise - investors	\$5,103,000
Capital raise - sponsor	30,000
<u>Debt</u>	<u>1,000,000</u>
<b>Total</b>	<b><u>\$6,133,000</u></b>

#### **Uses:**

Real Estate purchase	\$3,562,440
Closing costs	35,624
Initial startup costs	50,000
Working Capital Reserves	2,250,816
Loan Fees	30,000
<u>Placement Fee</u>	<u>204,120</u>
<b>Total</b>	<b><u>\$6,133,000</u></b>

## Project Pro Forma

The Pro Forma Financial Performance for the Project (“**Project Pro Forma**”) assumes traditional financing. The Project Pro Forma has been generated by management, has not been prepared in accordance with generally accepted accounting principles and has not been audited or reviewed by an independent accounting firm. While the Manager believes the assumptions contained in the Project Pro Forma are reasonable, it is difficult to predict all factors that may affect operation of the Project and future operations. Therefore, no assurances can be made that the Manager’s assumptions regarding the Project will prove to be accurate. Investors are cautioned against placing excessive reliance on the Project Pro Forma in making an investment decision with respect to the Company. The Project Pro Forma includes forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. See “Forward Looking Statements”. The projected distributable cash flow is not guaranteed, is based on management’s current assumptions regarding the Project, and will be subject to the financial performance of the Project, market conditions, the Project Pro Forma and the risks outlined in Part4, Certain Risk Factors and Conflicts of Interest.

Hold Period	Purchase	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Acres	155	155	155	155	155	155	155	155	155	155	155	155	155	155	155	155
Yield	-	-	-	-	-	-	-	600	1,300	2,200	2,850	2,850	2,850	2,850	2,850	2,850
Price	-	-	2.68	2.93	3.17	3.26	3.36	3.46	3.56	3.67	3.78	3.80	4.01	4.13	4.26	4.38
<b>Crop Revenue</b>	-	-	-	-	-	-	-	<b>321,844</b>	<b>718,243</b>	<b>1,251,963</b>	<b>1,670,517</b>	<b>1,720,632</b>	<b>1,772,251</b>	<b>1,825,419</b>	<b>1,880,181</b>	<b>1,936,587</b>
<i>per acre</i>	-	-	-	-	-	-	-	<i>2,076</i>	<i>4,634</i>	<i>8,077</i>	<i>10,778</i>	<i>11,101</i>	<i>11,434</i>	<i>11,777</i>	<i>12,130</i>	<i>12,434</i>
Cultural Costs	-	-	-	171,839	198,166	220,684	274,023	402,545	453,319	466,319	480,326	495,354	510,215	525,521	541,287	557,525
Harvest Costs	-	-	-	-	-	-	-	50,836	52,423	53,336	55,616	57,284	59,003	60,773	62,536	64,414
<b>Total Farming Costs</b>	-	-	-	<b>171,839</b>	<b>198,166</b>	<b>220,684</b>	<b>274,023</b>	<b>453,441</b>	<b>505,743</b>	<b>520,315</b>	<b>536,542</b>	<b>552,639</b>	<b>569,218</b>	<b>586,294</b>	<b>603,883</b>	<b>622,000</b>
<i>per acre</i>	-	-	-	<i>1,109</i>	<i>1,278</i>	<i>1,424</i>	<i>1,768</i>	<i>2,925</i>	<i>3,263</i>	<i>3,361</i>	<i>3,462</i>	<i>3,565</i>	<i>3,672</i>	<i>3,783</i>	<i>3,896</i>	<i>4,013</i>
Property Insurance	-	1,550	1,581	1,613	1,645	1,678	1,711	1,746	1,780	1,816	1,852	1,889	1,927	1,966	2,005	2,045
Liability Insurance	-	1,630	1,724	1,758	1,793	1,829	1,866	1,903	1,941	1,980	2,020	2,060	2,101	2,143	2,186	2,230
Crop Insurance	-	-	-	-	-	-	-	-	-	-	-	-	23,127	23,589	24,061	24,542
Repair and Maintenance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Selling, General and Administrative	-	25,000	25,500	26,010	26,530	27,061	27,602	28,154	28,717	29,291	29,877	30,475	31,084	31,706	32,340	32,987
Management Fee	-	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180	56,180
<b>Total Overhead Costs</b>	-	<b>84,420</b>	<b>84,385</b>	<b>85,561</b>	<b>86,149</b>	<b>86,748</b>	<b>87,359</b>	<b>87,983</b>	<b>88,619</b>	<b>89,268</b>	<b>89,929</b>	<b>90,604</b>	<b>91,294</b>	<b>91,998</b>	<b>92,717</b>	<b>93,450</b>
<b>Total Costs</b>	-	<b>84,420</b>	<b>84,385</b>	<b>257,400</b>	<b>284,315</b>	<b>307,432</b>	<b>361,383</b>	<b>541,424</b>	<b>594,361</b>	<b>610,183</b>	<b>626,472</b>	<b>643,243</b>	<b>660,513</b>	<b>678,292</b>	<b>696,599</b>	<b>715,450</b>
<i>per acre</i>	-	<i>545</i>	<i>546</i>	<i>1,661</i>	<i>1,834</i>	<i>1,982</i>	<i>2,332</i>	<i>3,493</i>	<i>3,835</i>	<i>3,937</i>	<i>4,042</i>	<i>4,150</i>	<i>4,261</i>	<i>4,378</i>	<i>4,499</i>	<i>4,624</i>
<b>EBITDA</b>	-	<b>(84,420)</b>	<b>(84,385)</b>	<b>(257,400)</b>	<b>(284,315)</b>	<b>(307,432)</b>	<b>(361,383)</b>	<b>(219,580)</b>	<b>123,887</b>	<b>641,780</b>	<b>1,044,045</b>	<b>1,077,389</b>	<b>1,088,614</b>	<b>1,123,540</b>	<b>1,159,526</b>	<b>1,196,603</b>
Depreciation	-	-	238,804	-	-	-	-	146,455	146,455	146,455	146,455	146,455	146,455	146,455	146,455	146,455
<b>EBIT</b>	-	<b>(84,420)</b>	<b>(323,789)</b>	<b>(257,400)</b>	<b>(284,315)</b>	<b>(307,432)</b>	<b>(361,383)</b>	<b>(366,035)</b>	<b>(22,568)</b>	<b>435,325</b>	<b>897,590</b>	<b>930,934</b>	<b>942,159</b>	<b>977,085</b>	<b>1,013,071</b>	<b>1,050,148</b>
Property Taxes	-	7,837	15,388	25,718	26,232	26,757	27,292	27,838	28,394	28,962	29,541	30,132	30,735	31,350	31,977	32,616
Interest Expense	-	16,500	66,500	77,927	31,105	105,781	124,003	154,157	181,789	196,189	196,441	190,242	183,561	176,379	168,639	160,307
Interest Income	-	31,170	71,471	49,434	43,516	36,544	28,366	18,763	9,068	11,339	15,353	14,115	14,873	15,059	15,250	11,893
<b>Net Income</b>	-	<b>(77,587)</b>	<b>(334,806)</b>	<b>(311,611)</b>	<b>(358,136)</b>	<b>(403,425)</b>	<b>(484,312)</b>	<b>(529,267)</b>	<b>(229,683)</b>	<b>281,513</b>	<b>685,560</b>	<b>724,675</b>	<b>742,730</b>	<b>784,415</b>	<b>827,705</b>	<b>863,118</b>
Depreciation	-	-	238,804	-	-	-	-	146,455	146,455	146,455	146,455	146,455	146,455	146,455	146,455	146,455
<b>Cash from Operations</b>	-	<b>(77,587)</b>	<b>(96,002)</b>	<b>(311,611)</b>	<b>(358,136)</b>	<b>(403,425)</b>	<b>(484,312)</b>	<b>(382,812)</b>	<b>(83,228)</b>	<b>427,368</b>	<b>832,015</b>	<b>871,130</b>	<b>889,185</b>	<b>930,870</b>	<b>974,160</b>	<b>1,015,573</b>
Development Loan Draw	-	-	-	171,839	198,166	220,684	274,023	453,441	505,743	-	-	-	-	-	-	-
Principal Paydown	-	-	-	-	-	-	-	-	-	-	(37,117)	(104,401)	(112,231)	(120,648)	(129,637)	(2,253,803)
Profits Interest	-	7,666	7,666	7,666	7,666	-	-	-	-	-	-	-	-	-	-	-
<b>Cash from Financing</b>	-	<b>7,666</b>	<b>7,666</b>	<b>179,506</b>	<b>205,832</b>	<b>220,684</b>	<b>274,023</b>	<b>453,441</b>	<b>505,743</b>	<b>-</b>	<b>(97,117)</b>	<b>(104,401)</b>	<b>(112,231)</b>	<b>(120,648)</b>	<b>(129,637)</b>	<b>(2,253,803)</b>
Pre-Planting Costs	-	-	(440,634)	-	-	-	-	-	-	-	-	-	-	-	-	-
Planting Costs	-	-	(398,007)	-	-	-	-	-	-	-	-	-	-	-	-	-
Exit Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	18,341,326
<b>Cash from Investing</b>	-	<b>-</b>	<b>(838,641)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>18,341,326</b>
<b>Available Cash</b>	-	<b>(69,921)</b>	<b>(326,377)</b>	<b>(132,106)</b>	<b>(152,304)</b>	<b>(182,741)</b>	<b>(210,288)</b>	<b>70,630</b>	<b>422,514</b>	<b>427,368</b>	<b>734,898</b>	<b>766,729</b>	<b>776,354</b>	<b>810,222</b>	<b>844,463</b>	<b>17,037,637</b>
Beginning Cash Balance	2,250,816	2,250,816	2,180,895	1,253,318	1,121,812	363,508	786,767	576,479	365,763	533,577	656,597	664,247	639,308	708,642	717,667	559,688
Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance	2,250,816	2,180,895	1,253,318	1,121,812	363,508	786,767	576,479	365,763	533,577	656,597	664,247	639,308	708,642	717,667	559,688	-
Minimum Cash	2,250,816	191,768	217,847	234,383	263,142	286,385	323,373	365,763	533,577	656,597	664,247	639,308	708,642	717,667	559,688	-
<i>Min Cash - 1 Check</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>	<i>Y</i>
<b>Distributable Cash Flow</b>	-	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>281,346</b>	<b>254,700</b>	<b>304,947</b>	<b>727,248</b>	<b>731,068</b>	<b>768,221</b>	<b>801,196</b>	<b>1,002,442</b>	<b>17,657,385</b>

## Opportunity Zone Program Considerations

The purpose of this summary is (1) to provide an overview of the Opportunity Zone Program referred to below; (2) to outline certain tax considerations of the Opportunity Zone Program as they relate to the Property Owner, and as they relate to the Company, or another QOF (as defined below) that invests in the Property Owner; and (3) to highlight certain risks associated with the Opportunity Zone Program.

This summary is not intended to be an exhaustive treatment of the matters described herein. Investors are urged to consult their advisors regarding the qualification of the Property Owner as a QOZB (as defined below), the qualification as QOFs of the Company or another QOF that invests in the Property Owner, and the eligibility of an investment in the Property Owner, the Company, or another QOF that invests in the Property Owner for the tax benefits described herein. An investor's failure to consult with its advisors may result in the benefits of the Opportunity Zone Program being unavailable with regards to its purchase of the units or other forms of equity in the Property Owner, the Company, or another QOF that invests in the Property Owner.

## Overview of Opportunity Zone Program

On December 22, 2017, Congress enacted H.R. 1, also known as "The Tax Cuts and Jobs Act" (the "**Tax Cuts and Jobs Act**"). Among many other provisions, the Tax Cuts and Jobs Act established a new, place-based incentive program as a new community investment tool to encourage long-term investments in low-income urban and rural communities nationwide designated as qualified opportunity zones (the "**Opportunity Zone Program**"), as codified in Sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code of 1986, as amended (the "**Code**"). Final regulations were published by the United States Department of the Treasury (the "**Treasury**") on January 13, 2020 (as later corrected and amended and as corrected and amended after the date hereof, the "**OZ Regulations**"), along with other forms of guidance released by the Internal Revenue Service (the "**IRS**") address and clarify certain aspects of the implementation of the Opportunity Zone Program.

The program is designed to encourage investors to re-invest qualifying capital gains into qualified opportunity zones by providing tax incentives relating to the treatment of capital gains with respect to investments in a "qualified opportunity fund" as defined in Section 1400Z-2(d)(1) of the Code (a "QOF"). A qualified opportunity zone is a population census tract that is a low-income community (as defined in Section 45D(e) of the Code) or certain other census tracts adjacent to a low-income community and which were nominated as a qualified opportunity zone by the chief executive officer of a State or possession of the United States and certified by the Treasury.

The Opportunity Zone Program provides tax incentives to investors by allowing them to defer taxes due on certain capital gains by reinvesting such gains in one or more QOFs. The monies eligible for investment extend only to realized capital gains from the sale or exchange of any property to an unrelated person ("**Eligible Gains**"). Investors are eligible for tax deferral on Eligible Gains up to the amount of such gains that are invested in a QOF within 180 days of the date of the capital gains realization event (as defined in Section 1400Z-2 of the Code and OZ Regulations). Investors should consult with their tax advisors regarding the investment of Eligible Gains and reporting such investments on their tax returns. Additionally, the Property Owner may accept funds from investors that are not from Eligible Gains; however, such funds would not be entitled to the tax benefits of the Opportunity Zone Program. Investors that purchase interests in the Company (or another QOF that invests in the Property Owner) using both Eligible Gains and other monies will be responsible for tracing their respective investments for the



purposes of claiming the tax benefits under the Opportunity Zone Program with respect to the interest purchased using Eligible Gains.

The Property Owner intends to qualify as a QOZB (defined below) for purposes of the Section 1400Z-2 of the Code. Investors in the Company or another QOF (collectively, “**QOF Investors**”) that make investments in the Property Owner will likely receive reductions on capital gains taxes relative to the years of their investment. Management plans to comply with the requirements of Section 1400Z-2 of the Code, the OZ Regulations, and any additional proposed, temporary, or final regulations or other guidance applicable to QOZBs.

**Qualified Opportunity Fund.** In order to qualify as a QOF, an investment fund must hold at least 90% of its assets in “qualified opportunity zone property” in each of its taxable years, determined by calculating the average of the percentage of “qualified opportunity zone property” held by such QOF (i) on the last day of the first six-month period of the taxable year of such QOF and (ii) on the last day of each taxable year of such QOF (the “**90% Requirement**”). An entity certifies its status as a QOF to the IRS by completing IRS Form 8996, Qualified Opportunity Fund, which shall be attached to the entity’s timely filed federal income tax return for the taxable year. Under the OZ Regulations, funds contributed to a QOF may be excluded from the 90% Requirement with respect to any testing date if such proceeds (i) were received by the QOF as a capital contribution, (ii) were contributed to the QOF not more than 6 months prior to such testing date, and (iii) are held by the QOF continuously in cash, cash equivalents, or debt instruments with a term of 18 months or less. In addition, under the OZ Regulations, proceeds received by a QOF from the sale of “qualified opportunity zone property” will be treated as “qualified opportunity zone property” if such proceeds (i) are reinvested by the QOF within 12 months of such sale, and (ii) are held continuously in cash, cash equivalents, or debt instruments with a term of 18 months or less, until such proceeds are reinvested. If a QOF fails to meet the 90% Requirement, the QOF (or its partners if the QOF is taxed as a partnership) will be required to pay a penalty for each month of such failure to the extent the amount of assets held by the QOF in qualified opportunity zone property falls below 90% multiplied by the underpayment rate established under Section 6621(a)(2) of the Code for the month.

**Qualified Opportunity Zone Property.** Qualified opportunity zone property (“**QOZP**”), which is defined in Section 1400Z-2(d) of the Code, includes (i) qualified opportunity zone stock, (ii) qualified opportunity zone partnership interests and (iii) qualified opportunity zone business property. Qualified opportunity zone stock and qualified opportunity zone partnership interests are equity interests, acquired by the QOF in exchange for cash after December 31, 2017, in an entity operating (or, with respect to a new entity, formed to operate) as a “qualified opportunity zone business” (as described below).

“Qualified opportunity zone business property” is defined in Section 1400Z-2(d)(2)(D) of the Code as tangible property used in a trade or business of the QOF if (i) the property was acquired by the QOF by purchase from an unrelated party (as defined in Section 179(d)(2) of the Code) after December 31, 2017, (ii) the original use of the property in a qualified opportunity zone commences with the QOF or the QOF substantially improves the property, and (iii) during substantially all of the QOF’s holding period of the property, substantially all of the use of the property was in a qualified opportunity zone (although “substantially all” as used for these purposes is not defined in the Code, it is defined in the OZ Regulations as 70% with respect to the use requirement and 90% with respect to the holding period requirement).

Tangible property is considered “substantially improved” if, during any 30-month period after the QOF’s acquisition of the tangible property, additions to basis in respect to such tangible property in the hands of the QOF exceed an amount equal to the adjusted basis of such tangible property at the beginning of



such 30-month period in the hands of the QOF. The OZ Regulations and Revenue Ruling 2018-29 provide that for land with existing improvements the “substantial improvement test” excludes the basis attributable to the land in applying the basis of the tangible property at the beginning of the 30-month period. Further, with respect to real property, the land value is separated from the building value for purposes of satisfying the substantial improvement requirement. The land is not required to be separately improved in order for the building to be considered substantially improved. Under the OZ Regulations, the “substantial improvement” requirement does not apply to land unless the land is unimproved or minimally improved, and the QOF purchases the land with an expectation, an intention or a view not to improve the land by more than an insubstantial amount within 30 months after the date of purchase.

In addition, the OZ Regulations define “original use” of tangible property as the date any person first places such property in service in the qualified opportunity zone for purposes of depreciation or amortization (or that would allow for such deductions for the property owner); provided, however, if such property has been unused or vacant for the time period required under the OZ Regulations, it will be deemed to satisfy the “original use” requirement when it is first placed in service in the qualified opportunity zone (provided, further, if such unused or vacant property is purchased by the QOF, it must be substantially improved as described above). Further, the OZ Regulations provide that used tangible property may satisfy the “original use” requirement when such property is moved into to a qualified opportunity zone so long as such property was not previously used in the qualified opportunity zone. The “original use” requirement does not apply to land or an existing building that is being substantially improved. Although land may be treated as qualified opportunity zone business property in some circumstances under the OZ Regulations, uncertainty remains with respect to the exceptions and limitations to such treatment.

**Qualified Opportunity Zone Business.** A “qualified opportunity zone business” or “QOZB” is defined in Section 1400Z-2(d)(3) of the Code as a trade or business in which substantially all of the tangible property owned or leased is “qualified opportunity zone business property” as described above (but replacing QOF with QOZB, where applicable, as the owner of such property). Under the OZ Regulations, a QOZB will be treated as satisfying the “substantially all” requirement in the foregoing sentence if at least 70% of the tangible property owned or leased by such business is qualified opportunity zone business property (the “70/30 Test”). Additionally, in order to qualify as a QOZB, (i) at least 50% of the trade or business’s total gross income (as tested by a permissible method under the OZ Regulations) must be derived from the active conduct of such business (the OZ Regulations provide that entering into a triple-net-lease with respect to real property owned by the QOZB is not considered an active trade or business), (ii) a substantial portion of the trade or business’s intangible property must be used in the active conduct of the business (“substantial portion” is defined as 40% under the OZ Regulations), (iii) less than 5% of the trade or business’s average unadjusted basis in its property may be nonqualified financial property (which is defined in the Code to include certain types of financial assets and may include cash), and (iv) a qualified opportunity zone business cannot include the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises. The Property Owner intends to operate as a QOZB.

The OZ Regulations provide that the 50% gross income test described in the previous paragraph may be satisfied by one of three methods under the safe harbor or a facts and circumstances test. The foregoing safe harbor is satisfied if: (i) at least 50% of the services performed (based on hours) for the QOZB are performed within the qualified opportunity zone, (ii) at least 50% of the services performed (based on amounts paid for the services) for the QOZB are performed within the qualified opportunity zone, or (iii)

the tangible property of the QOZB that is in an qualified opportunity zone and the management or operational functions performed for the business in the Opportunity Zone are each necessary to generate 50% of the gross income of the trade or business. A QOZB that does not meet any of the three safe harbors may still meet the 50% requirement if, based on all the facts and circumstances, at least 50% of the gross income of a trade or business is derived from the active conduct of a trade or business in the qualified opportunity zone. For purposes of the 50% gross income test, the ownership and operation (including leasing) of real estate is the active conduct of a trade or business, although merely entering into a single triple-net-lease with respect to real estate or merely holding land for investment may not give rise to the active conduct of a trade or business.

With respect to the nonqualified financial property requirement for QOZBs, the OZ Regulations establish, in the context of defining a QOZB, a 31-month working capital safe harbor for businesses that acquire, construct, or rehabilitate tangible business property in a qualified opportunity zone. The safe harbor allows a QOF, in determining whether a business in which the QOF has invested is a QOZB, to treat the business's cash, cash equivalents, and debt instruments with a term of 18 months or less as working capital that does not disqualify the business from being a QOZB provided that certain requirements have been satisfied, including: (i) the business has a written plan that identifies the working capital as property held for the acquisition, construction, or substantial improvement of tangible property in the opportunity zone, (ii) the business has a written schedule showing that the working capital will be used within 31 months, and (iii) the business substantially complies with the schedule. A QOZB may benefit from multiple overlapping or sequential applications of the 31-month working capital safe harbor if each application independently satisfies the requirements under the OZ Regulations. In addition, if multiple overlapping or sequential applications of the 31-month working capital safe harbor are applied to tangible property, such tangible property may be availed of the beneficial treatment under the working capital safe harbor rules for a total period of 62 months so long as each application independently satisfies the requirements under the OZ Regulations, the working capital assets of under each application are expended according to the applicable plan, and the multiple infusions of working capital assets form an integral part of the plan covered in the initial working capital safe harbor period. In addition, based on current guidance, the application of the 70/30 Test and other QOZB requirements during the working capital safe harbor period remains unclear.

As indicated above, at least 40% of the intangible property of a QOZB must be used in the active conduct of a trade or business in a qualified opportunity zone. For purposes of such requirement, the OZ Regulations specify that intangible property of a QOZB is treated as used in the active conduct of its trade or business in a qualified opportunity zone if (i) the use of such intangible property is normal, usual, or customary in the conduct of the QOZB's trade or business, and (ii) such intangible property is used by the QOZB in a qualified opportunity zone in the QOZB's performance of an activity of its trade or business that contributes to the QOZB's generation of gross income for its trade or business.

### **Opportunity Zone Program Tax Considerations**

The Opportunity Zone Program is intended to provide investors in QOFs with the following types of potential tax benefits:

*Capital Gains Tax Deferral.* An investor that properly invests Eligible Gains in a QOF will be eligible to defer federal income tax due on such Eligible Gains until the earlier of (i) the date such investor disposes of its interest in the QOF, and (ii) December 31, 2026. However, the OZ Regulations provide a list of "inclusion events" that would cause the recognition of deferred Eligible Gains for income tax purposes prior to the

date in the foregoing sentence (for example, a distribution to a partner in the QOF that exceeds such partner's basis). The OZ Regulations provide that an inclusion event generally causes an investment of Eligible Gains to lose the ability to benefit from the basis step-up after 10 years (as described below), subject to certain exceptions (such as inclusion events caused by partnership distributions).

Although the Eligible Gains retain their character (as described in the OZ Regulations), marginal income tax rates could be increased by Congress prior to the date the taxes on such Eligible Gains become due, and such higher tax rates may apply to the Eligible Gains. We note that prior to disposition of a QOF interest, the profits, gains, losses, deductions and credits of such QOF (and from a QOZB, as applicable) are taxed under the general income tax rules of the Code and regulations promulgated thereunder.

**Basis Adjustments.** With respect to a QOF Investor's investment of Eligible Gains in a QOF, the QOF Investor's initial basis in its interest in the QOF for federal income tax purposes will be zero. The QOF Investor's basis will be adjusted as follows: (i) if the investment is held for at least 5 years, the QOF Investor's basis will be increased by an amount equal to 10% of the QOF Investor's Eligible Gains, (ii) if the investment is held for at least 7 years, the QOF Investor's basis will be additionally increased by an amount equal to 5% of the QOF Investor's Eligible Gains (so long as such Eligible Gains are invested in a QOF on or before December 31, 2019), and (iii) if the investment is held for at least 10 years, the QOF Investor may elect to adjust its basis in its investment to fair market value on the date that the QOF Investor disposes of its interest in the QOF. The OZ Regulations require taxpayers to make the foregoing election (upon disposition of their interests in a QOF) prior to January 1, 2048. The OZ Regulations also provide an alternative, allowing the QOF Investor to make such election with respect to pass-through gains resulting from the sale or exchange of QOZP (or qualified opportunity zone business property) by a QOF or a QOZB, subject to certain requirements and limitations. In addition, the OZ Regulations provide that a QOF Investor's basis attributable to its share of debt is not considered to be a separate investment in a QOF for purposes of claiming the tax benefits under the Opportunity Zone Program. As noted above, the ability for a QOF Investor to receive the foregoing basis adjustments may be impaired or eliminated by the occurrence of an "inclusion event" as described under the OZ Regulations.

**Other Tax Considerations Related to Qualified Opportunity Zone Businesses.** QOF Investors may be subject to limitations with respect to the ability to receive distributions and the ability to utilize their share of net operating losses (for federal income tax purposes) due to the basis rules described above (and the "inclusion events" as detailed further by the OZ Regulations).

***In order for a QOF Investor to receive the benefits described above, each QOF Investor must make a timely investment of gains in a QOF and timely election to treat such investment as a QOF investment under Section 1400Z-2 of the Code. In particular, any gain deferred by investing in a QOF must have been generated from a sale to an unrelated party within 180 days of investment in such QOF. The Property Owner has no control over these circumstances, and the Company (or another QOF that invests in the Property Owner) and its QOF Investors will have to rely on their own tax advisors and determinations.***

***QOF Investors are urged to consult their own tax advisors regarding the Company's (or another QOF that invests in the Property Owner) qualification as a QOF, QOF Investors' investments in the Company (or another QOF that invests in the Property Owner), the Company's (or another QOF that invests in the Property Owner) investment in the Property Owner, the Property Owner's intended approach for qualifying as a QOZB, and the considerable uncertainty in this area.***

**The investment objective of the Property Owner and the Company is speculative and entails substantial risks. There can be no assurance that the investment objective of the Property Owner and the Company will be achieved. Interests are only suitable for Investors who can afford to lose all or a substantial portion of their investment. See “Certain Risk Factors”.**

## PART 3

### SUMMARY OF LLC AGREEMENT

The following summary of certain provisions of the LLC Agreement does not summarize all material provisions of the LLC Agreement and is qualified in its entirety by the actual LLC Agreement. As used in this summary, any capitalized terms used but otherwise undefined in this Disclosure Memorandum shall have the respective meanings given to such terms in the LLC Agreement, which is attached to this Disclosure Memorandum.

#### Overview

The Company is governed by the Articles of Organization and the LLC Agreement, each of which is attached to this Disclosure Memorandum. Investors should review the LLC Agreement in its entirety prior to subscribing to purchase an Interest.

#### Purpose

The Company's purpose is to (1) to acquire, invest in, develop, own, hold, use, operate, lease, manage and dispose of the Project or any interest therein, and to engage in any and all activities and transactions and enter into any and all agreements and undertakings which are appropriate, necessary, customary, convenient, or incidental to the foregoing purposes; (2) to accomplish any lawful business whatsoever or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its Property; (3) to exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act or under the laws of any jurisdiction in which the Company may conduct its business; and to engage in all activities necessary, customary, convenient, or incidental to any of the foregoing.

#### Management

All management and other powers relating to the day to day control of the Company will be vested in the Manager. The Manager has the full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business on the terms and conditions set forth in the LLC Agreement. The Members have the right to approve certain matters as set forth below.

*Decisions requiring a Majority of the Members.* Without the consent of Members holding greater than 50% of the Interests, the Manager will not: (1) issue any New Securities that are senior to the Membership Interests; (2) amend or agree to the amendment of the LLC Agreement (except as provided in Article 15 of the LLC Agreement) or execute or deliver any instrument on behalf of the Company, if the effect of such amendment, agreement or instrument would be a diminution of the Members' rights, interests or benefits in the Company; or (3) dissolve the Company except as provided in Section 14.1 of the LLC Agreement.

*Decisions requiring Unanimous Vote of Members.* Without the consent of all Members, the Manager will not do or perform: (1) any act which requires the consent of all Members under the Act, unless the right to do so is expressly set forth in the LLC Agreement and not in conflict with the nonwaivable provisions of

the Act; (2) any act that would subject any Member to liability as a Manager or general partner in any jurisdiction; or (3) any act that would cause the Company to be taxed for federal income tax purposes as an association taxable as a corporation.

### **Duties of the Manager**

The Manager shall perform his, her or its duties as Manager in good faith and in a manner he, she or it reasonably believes to be in or not opposed to the best interest of the Company. The Members hereby agree that the foregoing are the only fiduciary duties that a Manager shall owe to the Company and its Members. A Manager who so performs his, her or its duties as a Manager shall not have any liability by reason of being or having been a Manager of the Company.

In performing his, her or its duties, the Manager shall be entitled to rely upon, and shall be fully protected in relying in good faith upon, the books and records of the Company and on information, opinions, reports, financials, or statements (including with respect to the value and amount of the Properties, liabilities, Profits or Losses of the Company or any other facts pertinent to the existence and amount of Properties from which Distributions to Members might properly be paid) of the following Persons unless the Manager shall have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- (1) any Members, officers, employees, contractors, or agents of the Company whom such Manager reasonably believes to be reliable and competent in the matters presented and who have been selected with reasonable care by or on behalf of the Company; or
- (2) any attorney, accountant, advisor, or other person as to matters which such Manager reasonably believes to be within such person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

The Manager and its affiliates may have other business interest and may engage in other activities in addition to those relating to the Company. Neither the Manager nor any officer of the Company shall incur any liability to the Company or to any of the Member solely as a result of the Manager's or such officer's activities relating to any other business or ventures.

### **Removal or Resignation of the Manager**

The Manager may only be removed as the Manager for Cause by a determination of a Majority of the Members. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member or constitute a withdrawal of the Member. For the avoidance of doubt, the Manager shall retain all of the rights to distributions set forth in Section 10.14 of the LLC Agreement in the event of its removal. As used herein, "Cause" means the conviction or admission by consent of guilt in respect of a material violation of a material U.S. federal or state securities law or in respect of a felony violation of the Manager or any Manager, managing member, or executive officer thereof.

The Manager shall not resign as Manager unless a substitute Manager has been approved in advance by a Majority of the Members. In the case where a substitute Manager is approved, such resignation shall become effective on such date as is mutually agreed upon by the resigning Manager and a Majority of the Members. The resignation of any Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of the Member.

## Capital Accounts

Each Capital Contribution is credited to the contributing Investor's Capital Account in exchange for the subscribed Interests. No Member shall be entitled to withdraw any part of its Capital Account or to receive any distribution from the Company, except as set forth in the LLC Agreement. Terms governing the maintenance of Capital Accounts are set forth in the LLC Agreement.

## Additional Capital Contributions

In the event that the Manager determines that Additional Capital Contributions are reasonably necessary to facilitate the business needs of the Company, including to meet the Company's operating expenses, to fund the expansion of the Company's business and to purchase any Property reasonably necessary for the operation of the Company, the Manager may cause the Company to request Additional Capital Contributions from all of the Members, and if the Company requests such Additional Capital Contributions from all Members, each Member shall be entitled, but not required, to make such Additional Capital Contribution on a basis pro rata to such Member's Percentage Interest in the Company. The Manager will update Exhibit A to reflect any changes to the Members of the Company or the effects of any Additional Capital Contributions on the Members' Capital Contributions. The Manager shall not be required to make any Capital Contributions with respect to its Profits Interest Amount.

Upon making a determination to request Additional Capital Contributions from all Members, the Manager shall give Notice to each Member in writing at least ten days prior to the date on which the Additional Capital Contributions are due. Such Notice shall set forth the amount of Additional Capital Contribution needed, the purpose for which the contribution is needed, and the date by which the Member must contribute such Additional Capital Contribution. In the event that one or more of the Members does not or decides not to make its Additional Capital Contribution, the contributing Member or Members shall be entitled to receive Additional Membership Interests of the Company in return for such contributing Member's or Members' Additional Capital Contribution (the "**Additional Capital Contribution Membership Interests**").

In the event that one or more Members elect not to participate in a call for Additional Capital Contributions, then the Manager may in its sole discretion do or cause to be done any one or more of the following:

- (1) offer the other Members the opportunity to increase their Additional Capital Contributions to fund such shortfall, with any amount not accepted by any Member to be offered to any other Member willing to so increase its Additional Capital Contributions in excess of such non-accepting Member's share of the shortfall; and/or
- (2) incur indebtedness, including from the Manager, any Member or their respective Affiliates, to fund such shortfall.

The Manager shall not be obligated to exercise any of the options available to it set forth in Section 9.3(a) of the LLC Agreement or to pursue such any such option in any particular order.

If a Member elects not to fund Additional Capital Contributions on the specified due date, then such election not to make Additional Capital Contributions shall be reflected in corresponding non-punitive adjustments to the Capital Accounts and Percentage Interests of the Members and adjustments will be made for purposes of calculating allocations and distributions pursuant to the LLC Agreement.

## **Allocations**

After giving effect to the special allocations set forth in Section 10.2 through Section 10.8, for each Fiscal Year (or portion thereof), except as otherwise provided in the LLC Agreement, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the aggregate distribution that would be made to such Member pursuant to Section 14.2 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Values, all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Gross Asset Value of the assets of the Company securing such Nonrecourse Liability), and the net assets of the Company were distributed in accordance with Section 14.2 to the Members immediately after making such allocation.

## **Distributions**

Distributions will be made at such times chosen by the Manager in its sole discretion and will depend on the Company receiving distributions from the Property Owner. Any distributions of available cash flow will be distributed to the Members pro rata in proportion to their percentage interests.

Each such Distribution shall be in cash or other property (which need not be distributed proportionately) or partly in both, as reasonably determined in good faith by the Manager. Except as provided in Section 17704.06(c) of the Corporations Code, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization, or the date payment is made if it occurs more than 120 days after the date of authorization.

## **Tax Distributions**

On an annual basis, prior to April 15 of each taxable year, the Manager may, but shall not be required to, cause the Company to distribute to each Member sufficient amounts of cash to permit such Member to discharge its obligations to pay federal, state and local taxes (including estimated taxes) with regard to taxable income reported or to be reported on the Schedule K-1 of Internal Revenue Service Form 1065 issued to such Member in respect of the Profits and Losses of the Company, if any, calculated at the highest combined local, state and federal marginal income tax rates applicable to any Member (each such distribution, a “**Tax Distribution**”). Any Tax Distributions to a Member shall be treated as an advance against Distributions to which such Member would otherwise be entitled under Section 10.14 of the LLC Agreement, and Tax Distributions shall only be made to the extent that the Company has cash flow available to distribute. The Manager shall have the discretion to estimate the amount of taxable income allocable to each Member during the applicable period, and to determine the tax rate to be applied to such income, which rate shall be the same for all Members. For the sake of clarity, (a) the Manager may, but shall not be required to, cause the Company to make Tax Distributions to the fullest extent permitted by applicable law, irrespective of whether adequate reserves are then available; and (b) no Tax Distributions shall be made to the Members with respect to the year in which the Company makes any final liquidating distributions, including in connection with a sale of the Company’s assets. Section 10.12 of the LLC Agreement is not intended to guarantee that Members will receive distributions sufficient to pay their income taxes. In all events, each Member will be responsible for the payment of its respective income taxes, and no Member shall have any right to recover any amount from the Company with respect thereto because such Member did not receive distributions of cash sufficient to pay its income taxes, irrespective of whether the Company had any distributable cash available. Any distribution under Section



10.12 of the LLC Agreement shall not be treated as a guaranteed payment to a Member for the purposes of Section 707(c) of the Code.

### **Expenses**

The Company will pay all third-party costs and expenses relating to its activities and operations, including all activities and operations prior to the Effective Date, including: (i) all costs and expenses incurred in organizing the Company and developing, negotiating, financing and structuring the Project, including any engineering, appraisal, environmental, travel, legal and accounting expenses, any deposits and commitment fees and other fees, and the costs of rendering financial assistance to or arranging for financing for the Project or for working capital or other Company purposes; (ii) all costs and expenses, if any, incurred in monitoring the Project, including, without limitation, any engineering, environmental, travel, legal and accounting expenses and other fees; (iii) taxes of the Company; (iv) costs related to litigation and threatened litigation involving the Company; (v) expenses associated with third-party accountants, attorneys and tax advisors with respect to the Company and its activities, including the preparation and auditing of financial reports and statements and other similar matters, the distribution of financial and other reports to the Members, refinancing the Project and selling or otherwise disposing of the Project; (vi) brokerage commissions incurred by or on behalf of the Company and paid to third parties; (vii) all costs and expenses associated with obtaining and maintaining customary insurance for the Company and its assets; (viii) fees incurred in connection with the maintenance of bank or custodian accounts; (ix) all expenses incurred in connection with the registration (or exemption from registration) of the Company's securities under applicable securities laws or regulations and any offering expenses, including the costs of preparation of offering materials, accountants fees, legal fees, and related expenses; and (x) all expenses of the Company that are not normally recurring operating expenses. To the extent that any expenses of the Company are paid by the Manager or any one or more of its principals or Affiliates, such expenses shall be reimbursed by the Company. In connection with the Closing, the Company shall reimburse the Manager for actual out-of-pocket expenses incurred by it or its principals or Affiliates (and supported by reasonable documentation) in connection with formation of the Company and the due diligence, pre-acquisition and acquisition of the Project, including expenses incurred by them on behalf of the Company on or before the Effective Date. In lieu of such reimbursement, the Manager may elect to treat any unreimbursed expenses as a Capital Contribution.

### **Transfers**

No Member may transfer all or any portion of its Interests unless (1) the transferor has received the prior written consent of the Manager; (2) prior to the Transfer, the Company receives, unless waived by the Manager in writing, an opinion of counsel satisfactory to the Manager that such Transfer is not subject to registration under, or is exempt from the registration requirements of, the applicable state, federal and other securities laws; (3) prior to the Transfer, the Company receives from the transferee such information and transferee executes such agreements that the Manager may reasonably require, including, but not limited to, any taxpayer identification number and any agreement that may be required by the Taxing Jurisdiction; (4) the Transfer will not cause, or be reasonably likely to cause, the Company to become subject to the reporting requirements of the Securities Exchange Act of 1934 or otherwise become subject to increased regulation by the United States Securities and Exchange Commission or any other federal or state governmental authority; and (5) contemporaneously with the Transfer, the transferee shall execute the LLC Agreement and any other instruments as the Manager may deem necessary or desirable, in form and substance satisfactory to the Manager, and the transferee shall pay all reasonable expenses, including attorneys' fees, incurred by the Company in connection with such Transfer. Unless an Assignee is

approved to be admitted as a Substitute Member by the Manager, such Assignee will only have the rights associated with an Economic Interest and shall not have any voting rights.

## **Dissolution**

The Company shall be dissolved and its affairs wound up prior to such date, upon the first to occur of the following events: (1) the written consent of the Manager and a Majority of the Members; (2) the merger of the Company where the Company is not the successor limited liability company in such merger or the consolidation of the Company with one or more limited liability companies or other entities; (3) the sale of all or substantially all of the assets of the Company; or (4) the entry of a decree of judicial dissolution pursuant to Section 17707.03 of the Corporations Code. Upon the occurrence of one of the foregoing events, the Company shall wind up its affairs and be liquidated as set forth in the LLC Agreement.

## **Reports to Members**

The Manager will from time to time provide such financial information or reports to the Members as the Manager, in its sole discretion, shall deem appropriate. The Manager will cause the Company to prepare and distribute to each Member the following reports or information:

- (1) a balance sheet reviewed by the Company's accountant as of the end of the Company's Taxable Year and statements of income and cash flow for the year then ended, which financial statements shall be delivered as soon as reasonably practicable following the end of a Taxable Year, provided that the Company shall use commercially reasonable efforts to provide such information within 120 days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year; and
- (2) information necessary for the preparation of each Member's income tax returns, including a statement showing such Member's share of Profit or Loss, deductions or credit for the Taxable Year or taxable quarter for federal income tax purposes and the amount of any distribution made to or for the account of such Member pursuant to the LLC Agreement, and the Company shall use commercially reasonable efforts to provide such information within 90 days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year.

## **Indemnification**

Subject to Section 8.4 of the LLC Agreement, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Company), by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such claim, action, suit or proceeding if such Person acted in good faith, and, with respect to any criminal action or proceeding had no reasonable cause to believe such Person's conduct was unlawful. The termination of any claim, 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 Person did not act in good faith, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

Subject to Section 8.4 of the LLC Agreement, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith, except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct, or have breached their fiduciary duties set forth in Section 4.7(a), in the performance of such Person's duty to the Company unless and only to the extent that the court in which such claim, action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Subject to Section 8.4 of the LLC Agreement, to the extent that a Member, Manager or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith, notwithstanding that such Person has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

Any indemnification under Section 8.1, Section 8.2 or Section 8.3 of the LLC Agreement shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Member, Manager or officer is proper in the circumstances because such Person has met the applicable standards of conduct set forth in Section 8.1, Section 8.2 or Section 8.3 of the LLC Agreement and that indemnification is otherwise appropriate under the circumstances, which determination shall be made by the Manager in its sole discretion.

Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Company in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Section 8.4 of the LLC Agreement upon receipt of an undertaking by or on behalf of the Member, Manager or officer to repay such amount if and to the extent that it shall be ultimately determined that such Person is not entitled to be indemnified by the Company as authorized in Article 8 of the LLC Agreement.

## **Amendments**

The LLC Agreement may be amended, restated, supplemented, waived or otherwise modified by the Manager, without the approval of the Members, to reflect: (i) a change in the Company's registered office or registered agent; (ii) a change in the name of the Company; (iii) a change in the end of the Company's fiscal year; (iv) admission or termination of Members in accordance with the LLC Agreement, including amendments to Exhibit A; (v) a change that is necessary, desirable or appropriate to qualify the Company as a limited liability company or an entity in which the Members have limited liability under the laws of any U.S. state other jurisdiction or that is necessary, desirable or appropriate to ensure that the Company shall not be treated as an association taxable as a corporation or as a publicly-traded partnership taxable as a corporation for U.S. federal income tax purposes; (vi) a change necessary, desirable or appropriate to achieve or continue flow-through tax treatment or tax treatment of the Company (including its status as

a Qualified Opportunity Fund); (vii) a change that is necessary, desirable or appropriate to cure any ambiguity or error, make an inconsequential revision, provide clarity, or to correct or supplement any provision in the LLC Agreement that may be defective or inconsistent with any other provision in the LLC Agreement or to correct any typographical error; (viii) changes required pursuant to the LLC Act or applicable state or other securities or commodities laws, rules or regulations; (ix) changes necessary, desirable or appropriate to satisfy any requirements, obligations, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or non-U.S. governmental entity, so long as such change is made in a manner that minimizes any adverse effect on the Members; (x) changes adding any obligation, representation or warranty of the Manager or waiving or surrendering any right or power granted to the Manager; or (xi) any other change that is required or contemplated by the LLC Agreement.

The rights under the LLC Agreement with respect to the Company may also be amended or waived by action taken by both (i) the Manager and (ii) a Majority in Interest at the time of the amendment.

The LLC Agreement may be amended by the Manager, without the consent of affected Members, at any time and without limitation, if any Member objecting to such amendment has an opportunity to provide notice of its objection as of a date determined by the Manager that is not less than 45 days after the Manager has delivered written notice of such amendment to each affected Member and that is prior to the effective date of the amendment.

The Manager may, in its sole discretion, choose to deliver any proposed or effective amendment described in Section 15.2 of the LLC Agreement via e-mail and/or another electronic reporting medium in lieu of providing the Members with paper copies of such amendment; provided that the Manager may agree in writing in its sole discretion and at the request of any Member to limit the applicability of any portion of this sentence to such Member.

## PART 4

### CERTAIN RISK FACTORS AND CONFLICTS OF INTEREST

#### CERTAIN RISK FACTORS

*An investment in the Company is speculative and involves a high degree of risk. Only prospective investors who can withstand the loss of all or a substantial part of their investment should consider investing in the Interests. The fees and expenses charged in connection with an investment in the Interests may be higher than those charged in connection with other investments and will reduce the profits, if any, to Members arising from the Company's investment in the Property Owner and the Project. Because there are restrictions on transferring the Interests, and because there is no secondary market for the Interests and none is expected to develop, prospective investors should not require ready access to their capital. Each prospective investor should specifically consider, without limitation, the following risks and other factors before making a decision to subscribe for the Interests.*

#### **Risks Relating to Investing in the Interests**

**Newly Formed Entity.** The Company is a newly formed entity and has no operating history or financial statements. There is no assurance that the Company will meet its projected financial objectives.

**Forward-Looking Statements.** This Disclosure Memorandum includes “forward-looking statements” within the meaning of the Securities Act, including statements about the plans, beliefs and strategies of the Manager and/or its affiliates, and about the prospects of the Company. Although the Manager believes that the plans, intentions and expectations reflected in or suggested by such forward-looking statements are reasonable, it can give no assurance of their accuracy. All forward-looking statements attributable to the Manager and/or its affiliates, or persons acting on their behalf, are expressly qualified in their entirety by the additional cautionary statements contained herein. Any assumed values for unrealized investments may not reflect amounts that actually will be realized upon disposition and may vary significantly from other valuation techniques. Should one or more of the underlying assumptions used to make such calculations prove incorrect, the actual results and performance of the Company may vary materially from any future results, performance or achievements expressed or implied by the forward-looking statements. Investors should not rely on such forward-looking statements. Forward-looking statements are not guaranties of performance.

**No Assurance of Investment Return; Possible Loss of Entire Investment.** The Manager cannot provide any assurance that it will be able to realize the projected returns described in this Disclosure Memorandum. The financial projections in the financial pro formas included in this Disclosure Memorandum are based on what the Company believes to be reasonable assumptions concerning certain factors affecting the Project and probable future Project operations. Despite these future projections, no assurances can be made that these projections will prove to be accurate or that the projected returns will be achieved, and Investors are cautioned against placing excessive reliance on such projections in deciding whether to invest in the Company. Similarly, there can be no assurance that the Company overall will be able to generate returns for the Members or that the returns will be commensurate with the risks of investing in farmland assets. There can be no assurance that any Member will receive any distributions from the

Company. Accordingly, an investment in the Company should only be considered by persons or entities that can afford a loss of their entire investment.

***The Company may not achieve its targeted returns.*** The Partnership's investment in the Project is based on the Manager's estimates or projections of internal rates of return and other key financial criteria. The Company's ability to achieve its targeted return may be adversely impacted by a variety of factors, including, but not limited to, the proposed structure for the Company's investment, increased competition faced by the Project, changes in general economic conditions, weather conditions, national or international political events, changes in interest rates and changes in applicable laws and regulations. Investors have no assurance that the Company will achieve its targeted returns or cash multiple of invested capital objectives. On any given investment or with respect to all investments in the aggregate, loss of principal is possible.

***Dilutions from Capital Calls.*** The Manager does not anticipate, but may be required, to call Additional Capital Contributions (as defined in the LLC Agreement) from the Members. In such an event, if a Member elected not to participate in such capital call, the value of such Member's Interests would be diluted.

***Limited Private Offering; Absence of SEC or Other Securities Commission Review.*** This offering is a private offering and is not registered under the Securities Act or under any state securities laws or the securities laws of any other jurisdiction. Thus, this Disclosure Memorandum has not been reviewed by the SEC or by the equivalent agency of any state or other jurisdiction. Review by any such agency might result in additional disclosures or substantially different disclosures from those actually included in this Disclosure Memorandum.

***Diverse Investor Group.*** The Members are expected to include both taxable and tax-exempt entities, as well as persons or entities that are organized in various jurisdictions and that otherwise may have conflicting investment, tax or other interests. As a result, conflicts of interest may arise in connection with, among other things, the nature of investments made by the Company, the structuring or acquisition of investments and the timing of dispositions of investments. Decisions made by the Manager with respect to the foregoing may be more beneficial for one type of Member than for another type of Member. In managing the Company, the Manager will consider the objectives of the Company as a whole, not the investment, tax or other objectives of any Member individually.

***Restrictions on Transfer; No Market for the Interests; Illiquidity of Interests.*** The Interests offered hereby have not been registered under any federal or state securities laws or the securities laws of any other jurisdiction and, therefore, are subject to the restrictions on transfer contained in such laws. In connection with this offering, prospective investors will be required to represent that they are acquiring the Interests for their own account, for investment purposes only and not with a view toward the resale or other distribution thereof as a whole or in part, and that they agree that they will not transfer, sell or otherwise dispose of their Interests in any manner that will violate the securities laws of any jurisdiction. The Interests are not redeemable or transferable except pursuant to the terms of the LLC Agreement. There will not be any market for the Interests and none is expected to develop. Consequently, Members may not be able to liquidate their Interests for a lengthy period of time, which may not be prior to the time the Company liquidates the investments it makes. In addition, any such liquidation may be in the form of non-cash distributions to the Members.

***Liability of Members for Repayment of Certain Distributions.*** Under California law (applicable to an investment in the Company), if a Member has knowingly received a distribution from the Company at a

time when its liabilities exceed the fair market value of its assets after giving effect to the distribution, the Member is liable to the Company for a period of four years thereafter for the amount of the distribution. If the Company is otherwise unable to meet its obligations, Members may, under applicable law, be obligated to return, with interest, cash distributions previously received by them to the extent such distributions are deemed to constitute a return of their Capital Contributions or are deemed to have been wrongfully paid to them. In addition, Members may be liable under applicable federal and state bankruptcy or insolvency laws to return a distribution made during the Company's insolvency.

### **Risks Relating to the Company's Operations**

**Management Control by Manager.** The Company will be managed exclusively by the Manager, subject to certain limited approval rights by the Members on certain limited decisions. The Members will not make decisions with respect to the acquisition, management, disposition or other realization of the Project or any other assets of the Company, or other decisions regarding the Company's business and affairs and will not participate in the day to day management of the Company.

**Dependence on Key Personnel.** The success of the Company will be highly dependent on the agricultural and managerial expertise of the Manager and its personnel, particularly Riley Chaney and Nino Carvalho. The interests of these professionals in the Manager should tend to discourage them from withdrawing from participation in the Company's investment activities. However, there can be no assurance that any of these professionals will continue to be associated with the Manager or their affiliates throughout the life of the Company, as such personnel are under no contractual obligation to remain with the Manager for all or any portion of the term of the Company. Personnel of the Manager and its affiliates are not required to devote all or a specific amount of time to the Company's affairs. See also "Potential Conflicts of Interest" below.

**Absence of Recourse to the Manager.** The LLC Agreement limits the circumstances under which the Manager and its affiliates, including their respective officers, managers, directors, employees, shareholders, members, partners and other agents, can be held liable to the Company. As a result, Members may have a more limited right of action in certain cases than they would have in the absence of such a limitation.

**Uninsured Losses.** With respect to the Project and the Property Owner, liability, fire, flood, extended coverage and loss insurance with insured limits and policy specifications that the Manager believes are customary for similar properties may, in the discretion of the Manager, be maintained. Certain losses of a catastrophic nature, such as wars, natural disasters, droughts, fires, earthquakes, hurricanes, floods, pandemics, terrorist attacks or other similar events, may be either uninsurable or insurable at such high rates that to maintain such coverage would cause an adverse impact on the Project. In general, losses related to terrorism are becoming harder and more expensive to insure against. Most insurers are excluding terrorism coverage from their all-risk policies. In some cases, the insurers are offering significantly limited coverage against terrorist acts for additional premiums, which can greatly increase the total costs of casualty insurance for a property. As a result, the Project may be insured against terrorism. If a major uninsured loss occurs, the Company could lose both invested capital in and anticipated profits from the Property Owner and the Project.

**Indemnification.** The Company will be required to indemnify the Manager, and its respective affiliates, including their respective officers, managers, directors, employees, shareholders, members, partners and other agents, against any loss, liability or expense incurred by them on behalf of or in connection with the

business of the Company, provided that the Manager acted in good faith, and, with respect to any criminal action or proceeding had no reasonable cause to believe such Person's conduct was unlawful. In addition, the Company may pay the expenses incurred by such indemnified party in defending an actual or threatened civil or criminal action in advance of the final disposition of such action. The potential liabilities associated with the Company's indemnification obligations may be material and may have an adverse effect on the returns to the Members. Any indemnification obligation of the Company would be payable from the assets of the Company, including the capital contributed by the Members.

**Leverage.** The use of secured indebtedness to finance a portion of development costs and/or working capital is referred to as "leveraging." The Property Owner intends to borrow money secured by the Project to help finance the Project. Leveraging increases the risk of loss of the Company's investment in the Property Owner and the Project if and to the extent that the Project declines in value. In addition, to the extent cash flow from a leveraged investment is not sufficient to pay debt service, cash from other sources would be required. Unless the Project generates such cash, the Company might be required to raise additional equity investment funds or to borrow additional funds for such purpose, and there can be no assurance that such equity investment, or such loans, will be available on favorable terms if at all.

**Recourse to Company Assets.** The assets of the Company are available to satisfy all liabilities and other obligations of the Company. If the Company becomes subject to a liability (including without limitation, pursuant to any indemnity or guarantee provided in connection with any property-level or entity-level financing), parties seeking to have the liability satisfied may have recourse to the Company's assets generally and may not be limited to any particular asset, such as the investment giving rise to the liability. To the extent the Manager chooses to use special purpose entities for individual transactions to reduce recourse risk (and it may, but will be under no obligation to do so), the separate legal identity of such entities may be subject to later challenge based on a number of theories, including veil piercing, substantive consolidation and other grounds. Accordingly, Members could find their interests in the Company's assets adversely affected by a liability arising out of an investment in which they did not participate because, for example, they were excluded or excused by the Manager.

**Interest Rate Risks; Hedging Policies and Risks.** The Company or the Property Owner may utilize financing that provides for adjustments in the interest rate at various monthly, annual or other intervals. An increase in the interest rate as a consequence of any such adjustment: (i) would result in less income to the Company; (ii) may reduce distributions to the Members; (iii) may cause negative amortization; and (iv) may cause the sale of an investment prematurely or on less favorable terms than might otherwise be obtained.

**Assumption of Business, Terrorism and Catastrophe Risks.** The Company and the Property Owner may be subject to the risk of loss arising from exposure that the Project may incur, indirectly, due to the occurrence of various events, including, without limitation, pandemics, hurricanes, droughts, fires, earthquakes, and other natural disasters, terrorism and other catastrophic events. These risks of loss can be substantial and could have a material adverse effect on the Company and the Members' Interests.

**Dependence on Technology; Cybersecurity Risks.** The Company, the Manager, and their respective service providers depend on computer systems, including hardware and software, in the management and operation of the Company's funds. The use of computer systems is subject to a number of inherent and unpredictable risks resulting from malfunctions and errors, such as telecommunications failures, software related "system crashes," deterioration and failure of hardware and power loss. In addition, the computer systems of the Company's service providers may be vulnerable to cyber-attacks, including computer



viruses, malicious code and unauthorized data breaches. These events could cause interruptions in the operations of the Company, may result in the improper use or disclosure of confidential information relating the Company and/or the Members, and could result in significant losses and/or reputational harm to the Company and the Members. While the Company takes reasonable precautions to prevent, identify and treat errors, malfunctions and cyber-attacks, there can be no assurance that the Company or any of its service providers will be able to respond in a timely manner as a result of technological advancements and issues that may go undetected for a significant period of time. Moreover, the Company will have no control over, and will have no ability to prevent malfunctions or cyber-attacks to, its service providers' computer systems. Similar risks apply at the subsidiary level for the Property Owner and the assets or businesses in which the Company invests.

**Future Market Value.** There are no assurances regarding the future market value of the Project. The economic future of the Project's submarket, future construction activity, interest rates, demographic changes, changes in tax laws, and numerous other factors will determine the future market value of the Company and its assets, including the Project. There is no assurance that the Company will increase in value or even maintain their respective current values.

**Inadequate Reserves.** Reserves for capital expenditures may prove inadequate. It is expected that the Company will be required to maintain and replace from time to time its equipment, irrigation and sprinkler systems, as well as other farm equipment and redevelop and replant its fields. Although the Company is expected to maintain reserves for these capital expenditures, these reserves may be inadequate if the Company's assumptions and estimates on the useful life of these improvements or trees are inaccurate. Costs and expenses for these capital expenditures over and above-budget expenses could adversely affect the Company's financial condition.

The operations of the Project, the Property Owner and the Company are and will be subject to various federal, state, and local laws, regulations, and court decisions. The Company will continue to be subject to federal, state, and local laws establishing minimum wages, unemployment taxes, and sales taxes and regulating overtime, working conditions, and similar matters over which they will have no control. The Project's operations will be subject to federal, state, and local regulations relating to sanitation, health and safety. All of these laws, regulations, and court decisions could have negative effect on the Project's operations, financial results, and ability to compete. Suspension of the Company's ability to operate by any regulatory agency would have a material adverse effect on the profitability of the Project and Company. Increased regulation of various aspects of the Project's operations could also have an adverse effect on the Company's financial position.

#### **Additional Risks Relating to Farmland Investments**

**General Risks.** In general, a downturn in the national or local economy, changes in the zoning or tax laws or the availability of financing could affect the performance and value of the Company's investment in the Property Owner and the Project. Because farmland is relatively illiquid, the Company may not be able to respond promptly to adverse economic or other conditions by diversifying its real estate holdings. Other risks include local market conditions, changes in economic conditions or interest rates, the unavailability or increased costs of financing, changes in farmland expenses, changes in governmental rules and policies (such as zoning), condemnation, casualty, acts of God (such as fires, earthquakes, floods), competition, the unavailability of funds to meet utility and maintenance costs, insurance costs and real estate taxes,

liability under environmental or other laws, and other factors which are beyond the control of the Company.

Farmland assets held (directly or indirectly) by the Company:

- may not operate at a profit;
- may not perform to the Company's expectations;

The value of the Company's farmland investments and crop output will depend upon many factors beyond the Company's control.

***Environmental Liabilities.*** The Company could face substantial loss from environmental claims based on environmental problems associated with the Project as well as from occupational safety issues and concerns. Various federal, state and local laws and regulations subject property owners and operators to liability for reporting, investigating, remediating, and monitoring regulated hazardous substances released on or from a property. These laws and regulations often impose strict liability without regard to whether the owner or operator knew of, or actually caused, the release. The presence of, or the failure to properly report, investigate, remediate, or monitor, hazardous substances could adversely affect the financial condition of the Company or the ability of the Company to operate or dispose of its investments. In addition, these factors could hinder the Company's and the Property Owner's ability to borrow against the Project. The presence of hazardous substances on a property also could result in personal injury or similar claims by private plaintiffs. In addition, there are federal, state and local laws and regulations which impose requirements on the storage, use, management and disposal of regulated hazardous materials or substances. The failure to comply with those requirements could result in the imposition of liability, including penalties or fines, on the owner or operator of the property. Future laws or regulations could also impose unanticipated material environmental liabilities on the Company in connection with any of its investments. The costs of complying with these environmental laws and regulations for the Project could adversely affect the Company's operating costs and, if contamination is present, the value of the Project.

***Pandemics and Other Health Crises.*** The farmland underlying the Company's investment could be materially and adversely affected by the risks, or the public perception of the risks, related to a pandemic or other health crisis, such as the outbreak of novel coronavirus (COVID-19). Operating costs for the farmland underlying the Company's investments may increase due to additional health and safety requirements, and the Project may experience disruptions due to employee illness. Additionally, restrictions on access to the Project or the risk, or public perception of the risk, of a pandemic or media coverage of infectious diseases could cause employees or customers to avoid the Project or not purchase its produce, which could adversely affect operations. Such impacts on the real estate underlying the Company's investments could negatively impact the Company's performance by making it more difficult for entities in which it invests to satisfy their debt payment obligations, increasing the default risk applicable to such borrowers and/or making it relatively more difficult for the Company to generate attractive risk-adjusted returns.

In addition, the outbreak of COVID-19 has led to an economic slowdown in the United States and such outbreak, or any new outbreaks, could lead to a recession. During periods of economic slowdown or recession, rising interest rates or declining demand for farmland, or the public perception that any of these events may occur, could result in a general decline in rents or an increased incidence of defaults under existing leases and loans. The extent to which federal, state or local governmental authorities grant

rent relief or other relief or enact amnesty programs applicable to our tenants in response to the COVID-19 outbreak will exacerbate the negative impacts that a slow down or recession will have on the Company.

The operation of assets or acquisition interests in assets, companies and businesses may be adversely affected by deteriorations and uncertainty in the financial markets and economic conditions throughout the world. Any deterioration or uncertainty could weaken the financial condition of assets, companies and businesses, causing them to operate at a loss or have significant variations in their operating results, or to be unable to secure financing for their future operations and capital needs. Farmland historically has experienced significant fluctuations and cycles in value and local market conditions that may result in reductions in the value of real property interests. All farmland, including the Project, is subject to the risk that a general downturn in the national or local economy will depress farmland prices, and these risks may be greater in connection with investments in low-income areas. Recent economic developments have increased, and may continue to increase, the risk associated with investing in assets, companies and businesses. Given the volatile nature of the current market disruption and the uncertainties underlying efforts to mitigate or reverse the disruption, the Company may not timely anticipate or manage existing, new or additional risks, contingencies or developments, including regulatory developments and trends in new products and services, in the current or future market environment. A failure could adversely affect the Company and its objectives or could require the Company to dispose of assets at a loss while unfavorable market conditions prevail. If the Company cannot operate its investment to meet its financial expectations, the Company's financial condition, results of operations, cash flow and ability to meet its obligations may be adversely affected.

***Risks Relating to Property Tax.*** Farmland owned by the Property Owner will likely be subject to real property taxes and, in some instances, personal property taxes. Such real and personal property taxes may increase as property tax rates change and as the Project is assessed or reassessed by taxing authorities. An increase in property taxes on the Project could adversely affect the Company's results from operation and could decrease the value of the Project as well as returns to Investors.

***Risk of Terrorism.*** The Project may be directly or indirectly affected by a terrorist attack. While a terrorist attack could have a minimal impact on the Project, such an attack, if it occurred near the Project or impacted harvesting, workforce or supply-chain infrastructure relied on by the Company, could have a variety of adverse consequences for the Company, including risks and costs related to the destruction of property, inability to use the Project for its intended uses for an extended period, decline in property value, and injury or loss of life, as well as litigation related thereto.

***Impact of Market Conditions.*** The Company's strategy relies, in part, upon favorable market conditions existing prior to the termination of the Company. The Company can make no assurances that such conditions will exist or continue to exist.

***Impact of Government Regulation.*** The agricultural industry is extensively regulated and subject to frequent regulatory change. The adoption of new legislation or changes in existing laws or new interpretations of existing laws can have a significant impact on methods of doing business, costs of doing business and amounts of reimbursement from governmental and other agencies. The farmland industry is and will continue to be subject to varying degrees of regulation and licensing by federal and state regulatory authorities in various states and localities.

***Due Diligence and Analytic Risks.*** The Manager and/or its affiliates will conduct due diligence that they deem reasonable and appropriate based on the facts and circumstances applicable to the farmland. When

conducting due diligence, the Manager and/or its affiliates will be required to exercise their professional judgment in evaluating important and complex business, financial, tax, accounting and legal issues. When conducting due diligence, the Manager and/or its affiliates will rely on the resources reasonably available, which in some circumstances whether or not known at the time, may not be sufficient, accurate, complete or reliable. Due diligence may not reveal or highlight matters that could have a material effect on the value of the Project. Moreover, even if due diligence reveals certain factors that, over time, prove to have a material effect on the value of an investment, there is no guarantee that in conducting due diligence, the Manager and/or its affiliates will accurately predict at such time which factors ultimately prove to have such a material effect.

**Geographic Concentration.** The Project is in one agricultural region of California. This exposes the Company to greater economic risks than if it owned a more geographically diverse asset base. As a result of the geographic concentration of farmland, the Company is particularly susceptible to developments or conditions in this geographic area, including adverse weather conditions (such as drought, fire, windstorms, tornados, floods, hail and temperature extremes), earthquakes, transportation conditions, crop disease, pests and other adverse growing conditions, and unfavorable or uncertain political, economic, business or regulatory conditions (such as changes in price supports, subsidies and environmental regulations). Any such developments or conditions could materially adversely affect the value of the Project, which could materially adversely affect the Company's financial condition, results of operations, cash flow and amounts it is able to distribute to Members.

**Permanent Crop Risks.** The Project will be planted with a permanent crop. Permanent crops have plant structures (such as root stock, trees, vines or bushes) that produce yearly crops without being replanted. Permanent crops such as pistachios involve more risk than specialty/vegetable and commodity row crops because permanent crops require more time and capital to plant. As a result, permanent crops are more expensive to replace. If a farmer loses a permanent crop to drought, flooding, pestilence, fire or disease, then there would generally be significant time and capital needed to return the land to production because a tree may take years to grow before bearing fruit.

Pistachio trees on permanent crop farmland have a longer productive lifespan of approximately 80 to 100 years. Additionally, permanent crop farmland prevents the farmer from being able to rotate crop types to keep up with changing market conditions or changes to the weather or soil. If demand for one type of permanent crop decreases, then the permanent crop farmer cannot easily convert the farmland to another type of crop because permanent crop farmland is dedicated to one crop during the lifespan of the trees or vines and therefore cannot easily be rotated to adapt to changing environmental or market conditions.

**Development activity.** The Project involves significant development activity and the cultivating of pistachio trees to production takes time. Planting pistachio trees typically requires substantial capital outlay during the development period and several years could pass before positive cash flows can be generated, if ever.

**Issues with Adequate Water.** The farming operations on the Project require access to sufficient water as well as proper drainage. Although the Company expects that the Project has sufficient water and access to proper drainage, its analysis and surveys of the water availability may be incorrect, and water availability and rights on the Project may be affected by future federal, state and local government regulations, policies and practices as well as private sector rights, actions and inactions. Accordingly, there may be a need to drill wells or obtain additional water rights in the future, and the Company and the

Property Owner would be required to obtain permits prior to drilling such wells, which are required by state and county regulations. Such permits may be difficult or costly to obtain, particularly in areas where there is a limited supply of water, and there can be no assurance that such additional wells would produce sufficient water supplies to support farming operations adequately. Similarly, the Project may be subject to governmental regulations relating to the quality and disposition of rainwater runoff or other water to be used for irrigation, and in such case, the Company and the Property Owner could incur costs in order to retain this water and comply with such regulations. If the Property Owner is unable to obtain or maintain sufficient water supplies or if they do not have proper drainage, or the costs incurred to obtain or maintain the water supplies cause the farming operation to be less profitable, then the Property Owner's ability to conduct its farming operations on favorable terms, or at all, would be significantly impaired, which could have a material adverse impact on the Company's operations and the value of the Project, and consequently the amounts the Company is able to distribute to Members.

The Project may be vulnerable to adverse weather conditions, including drought, windstorms, tornados, floods and temperature extremes, which are quite common, but difficult to predict. Unfavorable growing conditions can reduce both crop size and crop quality. Seasonal factors, including supply and consumer demand, may also have an effect on the pistachios that the Company grows. In extreme cases, entire harvests may be lost.

In addition, in 2014, California passed the Sustainable Groundwater Management Act of 2014 ("**SGMA**") which, among other objectives, seeks to achieve a sustainable balance in identified aquifers throughout California. The SGMA authorizes local and regional agencies to form groundwater sustainability agencies that will prepare and submit a groundwater sustainability plan ("**GSP**") to the California Department of Water Resources by either 2020 or 2022 (depending upon priority rating of the basin), with the intention of achieving groundwater sustainability within 20 years. The implementation of the GSPs may have an impact on the water availability for the Project and therefore impact crop production, which may adversely affect the Company's revenues or land valuations; however, the details of such water management decisions will take time to finalize and implementation will vary by water district.

***Variability related to Weather and Crop Production.*** Certain geographical areas in California, including the geographical area where the Project is located, have experienced severe drought conditions over the past few years. These drought conditions, if they persist, could have negative short-term impacts on U.S. agriculture generally, including less crop production, increased competition for farmland due to depressed sales and lower farm income. In addition, if these drought conditions were to increase in severity or to continue for a more extended period of time, then it could have a materially adverse impact on the Company's farming operations in the region or longer-term effects on the U.S. agricultural industry generally. In addition, farms located near rivers or other water sources may be more susceptible to floods and drainage problems in periods of sustained rains. The Project may also be vulnerable to crop disease, pests and other contaminants. Damages to crops from drainage issues, crop disease or pests may vary in severity and effect, depending on the stage of production at the time of the drainage issue, infection or infestation, and, with respect to infestation or infection, the type of treatment applied and climatic conditions. The costs to control infestations vary depending on the severity of the damage and the extent of the plantings affected. These drainage issues or infestations can increase the Property Owner's costs and decrease its revenues and, consequently, decrease the Company's revenues. In addition, the Company may incur losses from product recalls, fines or litigation due to other contaminants that may cause food borne illness. It is difficult to predict the occurrence or severity of such product recalls, fines or litigation as well as their impact upon the Property Owner's operations and consequently the amounts the Company is able to distribute to Members.

In addition, the risks associated with weather conditions, seasonal variability, crop disease and other contaminants are magnified in the case of permanent crops, as such conditions can have a cumulative effect. Therefore, adverse weather conditions, seasonal variability, crop disease, pests and other contaminants could have a material adverse effect on the Property Owner's operations and the value of its farms, and consequently the amount the Company is able to distribute to Members.

***Effect of Variability on Revenues.*** A crop season is characterized by cultivation and the growing of the crop during the course of the year, with the resultant harvest generally occurring in the late summer to early fall. Revenues from the sale of tree nuts (almonds, walnuts, pistachios and pecans) generally stretch over a period of months in the year following the harvest and the percentage of the crop sold in each quarter of the following year is not consistent from year to year. Accordingly, the seasonal variability of the crops grown on such farms can be expected to cause quarterly fluctuations in the Company's revenues.

Additionally, the Company's quarterly earnings may be adversely affected by factors outside of its control, including weather conditions and poor economic factors in certain markets in which it operates. This seasonality can be expected to cause periodic fluctuations in productivity. The Company can provide no assurances that its cash flows will be sufficient to offset any shortfalls that occur as a result of these fluctuations. As a result, volatility in the Company's financial performance resulting from the seasonal variability of the crops grown on its farms could have a material adverse effect on its revenues and consequently, the amounts the Company is able to distribute to Members.

***Future Climate Change Risks.*** In addition to the general risks to the Company's operations posed by adverse weather conditions, the Company's operations and the value of the Project and the Property Owner may be subject to risks associated with long-term effects of climate change. Some climatologists have predicted that the impacts of climate change could include increases in average temperatures, more extreme temperatures, changes in rainfall patterns, severe droughts and increases in volatile weather over time. The effects of climate change may be more significant along coastlines, such as in California, where the Project is located, due to rising sea levels resulting from the melting of polar ice caps, which could result in increased risk of coastal erosion, flooding, degradation in the quality of groundwater aquifers and expanding agricultural weed and pest populations. Such effects of climate change could make the Project less suitable for farming or other alternative uses, which could materially adversely impact the Company's ability to generate revenues, its operations, the value of its farms, and consequently, the amounts it is able to distribute to Members.

***Agricultural Technology Advancements.*** Future advances in seed technology, genetic engineering, irrigation improvements and other agricultural technology enhancements may lead to higher crop production on existing farmland, which could put downward pressure on the demand for its crops. As a result, the Company could experience a reduction in its anticipated returns, which are, in part, based on certain assumptions regarding increased global demand for permanent crops and commodity crops and declining availability of farmland, which in turn could have a materially adverse effect on its operations and financial condition.

***Endangered Species Risks.*** Federal, state and local laws and regulations intended to protect threatened or endangered species could restrict certain activities on the Project. The size of any area subject to restriction would vary depending on the protected species at issue, the time of year and other factors, and there can be no assurance that such federal, state and local laws will not become more restrictive over time. If portions of the Project are deemed to be part of or bordering habitats for such endangered

or threatened species that could be disturbed by the Company's and the Property Owner's agricultural activities, then it could impair the ability of the land to be used for farming, which in turn could have a material adverse impact on the Company's operations and the value of the Project.

***Inflated Purchase Prices.*** The allocation of substantial amounts of capital for investment in farmland and farming and significant competition for income-producing real estate may inflate the purchase prices for such assets. If the Company acquires property in such an inflated environment, then it is possible that the value of its assets may not appreciate and may, instead, decrease in value, perhaps significantly, below the amount the Company paid for such assets. In addition to macroeconomic and local economic factors, technical factors, such as a decrease in the amount of capital allocated to the purchase of farmland and farming related farms and the number of investors participating in the sector, could cause the value of the Company's assets to decline.

***Tariffs.*** If sale volumes or prices to foreign entities decline as a result of tariffs imposed on pistachios imported from the United States, then the Company's revenues may decline, which will have a material adverse effect on operations and revenues, and consequently, amounts it is able to distribute to Members.

***Tranquillity Irrigation District.*** The properties are located in the Tranquillity Irrigation District and. The Tranquillity Irrigation District has multiple sources of water including, CVP contract, riparian rights, Kings River water rights wells/groundwater and is strategically located and connected to the Kings River and San Joaquin River to capture flood water when available. The Tranquillity Irrigation District is part of the Central Mendota GSA. Reclamation districts are special purpose districts which reclaim and protect land that is threatened by permanent or temporary flooding so that it may be used for agriculture, commerce, industry, or residence. This is accomplished with a system of levees, drainage ditches and pumps.

The Tranquillity Irrigation District may promulgate rules and regulations that bind the Company and affect the Company's pistachio production, which could reduce income and investment returns.

## **Other Considerations**

***Absence of Regulation; Certain Protections under Federal Securities Laws Not Available.*** The Company has not registered under and does not intend to register under the Investment Company Act, and Interests are not registered under the Securities Act, or the securities laws of any United States state or other jurisdiction. Consequently, the Company is subject to substantially less regulation and supervision than investment companies registered under the Investment Company Act. While the Company has not and does not intend to register under the Investment Company Act, there can be no assurance that the Company will not become subject to requirements of the Investment Company Act in the future, in which case the nature and performance of the Company's activities could be materially adversely affected.

***ERISA.*** Subject to the limitations set forth in Part 5, Certain Regulatory, ERISA and Tax Considerations – ERISA Considerations, the Company will generally accept subscriptions from individual retirement accounts, Keogh Plans, employee benefit plans and other “benefit plan investors.” The Manager intends to use commercially reasonable efforts to ensure that “benefit plan investors” (as defined in ERISA) hold less than 25% of the total value of each class of equity interest in the Company (or such higher percentage as may be prescribed by ERISA or regulations promulgated thereunder). There can be no assurance that

non-“plan asset” status will be obtained or maintained. See Part 5, Certain Regulatory, ERISA and Tax Considerations – ERISA Considerations, for additional information.

**United States Federal Income Tax Risks.** An investment in the Company entails certain tax risks, including: (i) the possibility that certain deductions claimed by the Company may be disallowed and that any audit of the Company’s tax return may result in an audit of a Member’s return; (ii) the possibility that the Company may have taxable income allocable to Members in an amount greater than the cash available for distribution; (iii) the possibility that a Member may be liable for withholding taxes in excess of its distributable share of any cash distributions from the Company; and (iv) the possibility that future legislative or administrative or judicial interpretations of current law or future legislation will change the tax treatment of investors described herein. Each investor should carefully review the risks described in Part 5, Certain Regulatory, ERISA and Tax Considerations – United States Federal Income Tax Considerations.

The Company may take positions with respect to certain tax issues that depend on legal conclusions not yet addressed by the courts. Should any such positions be successfully challenged by the Internal Revenue Service (the “IRS”) or any other applicable taxing authorities, there could be a materially adverse effect on the Company and a Member could be found to have a different tax liability for that year than that reported on its federal income tax return.

Members will be required to take into account their allocable share of the Company’s items of income, gain, loss, deduction and credit, without regard to whether they have received or will receive any distributions from the Company. Thus, each Member may be taxed on its distributive share of certain taxable income of the Company regardless of whether such investor receives any actual cash distributions from the Company. Accordingly, a Member’s tax liability for any taxable year attributable to its investment in the Company may exceed (perhaps to a substantial extent) the cash distributed to that investor during the taxable year.

**Risk of Tax Audit.** Pursuant to the U.S. Bipartisan Budget Act of 2015, as amended, or any similar state or local tax rules (“BBA”), the IRS is generally permitted to determine adjustments to items of income, gain, deduction, loss or credit of the Company, and assess and collect taxes attributable thereto (including any applicable penalties and interest), at the Company level. Although certain elections or other procedures may be available to mitigate the impact of such determination, assessment or collection, there can be no assurances that the Company will avoid, or be able to avoid, any entity-level determination, assessment or collection. In addition, any such elections or procedures may have differing results on the tax liability of investors depending on the tax status of each investor, and the Company may not be able to take into account the particular facts or circumstances of an investor. A Member may be required to bear a share of the economic burden of taxes so assessed or collected without regard to whether such person was a Member, or without regard to its relative ownership interest, during the taxable year of the Company to which such taxes relate. Each partnership (or other entity taxed as a partnership) that is required to file, or that files, a U.S. income tax return, must designate a representative under the BBA (such representative for the Company, the “**Company Representative**”) with the sole authority to act on behalf of, and to bind, the partnership, its partners, and any other person whose tax liability is determined by taking into account adjustments under the BBA. If the Company Representative is an entity, the Manager will have the exclusive authority to appoint the Company’s “designated individual” through whom such Company Representative will act. Limitations on the authority of the Company Representative in the LLC Agreement or in any other agreement will not be binding during examinations upon audit or any other proceedings. In addition, Members will not be able to participate in any such examinations or proceedings without



permission of the IRS. Prospective investors should note that the BBA regime is complex and that the impact on any current or future allocations made or cash available for distributions or withdrawals by the Company is uncertain. The Company may also be exposed to the risk that these rules apply to any entity treated as a partnership for U.S. federal income tax purposes in which the Company directly or indirectly invests. The legal and accounting costs incurred in connection with any audit of the Company will be borne by the Company. The cost of any audit of any Member will be borne solely by such Member. Prospective investors should consult their own tax advisors in this regard.

**Structure.** The Manager intends to structure the Company's investments in a manner that is intended to achieve the Company's investment objectives. There can be no assurance, however, that the structure of any investment will be tax efficient for any particular Member or that any particular tax result will be achieved. In addition, tax reporting requirements may be imposed on investors under the laws of the jurisdictions in which Members are liable for taxation or in which the Company makes investments. Prospective investors should consult their own professional advisors with respect to the tax consequences to them of an investment in the Company under the laws of the jurisdiction in which they are liable for taxation.

**Tax-Exempt Investors.** The Company will seek to minimize the amount of "unrelated business taxable income" ("UBTI") that is realized by tax-exempt investors, to the extent reasonably practicable and consistent with its objective of maximizing the pre-tax returns of the Members as a whole, but it is possible that a significant portion of the Company's income will be treated as UBTI. See Part 5, Certain Regulatory, ERISA and Tax Considerations – Unrelated Business Taxable Income, for additional information.

**Delayed Tax Report Information.** The Company will use commercially reasonable efforts to provide Schedules K-1 to Members within 90 days of the end of the taxable year (or as soon as reasonably practicable thereafter), but may not be able to provide final Schedules K-1 to Members for any given fiscal year until after April 15 of the following year. Members should be prepared to obtain extensions of the filing date for their income tax returns at the U.S. federal, state and local levels.

**Tax Changes.** Members will be subject to the risk that changes to the tax law may adversely affect the federal income tax consequences of their investment in the Company. Changes in existing tax laws or regulations and their interpretation may be enacted after the date of this Disclosure Memorandum, possibly with retroactive effect, and could alter the income tax consequences of an investment in the Company. Certain provisions of the Code may be further amended or interpreted in a manner adverse to the Company, in which event any benefits derived from an investment in the Company may be adversely affected. In addition, significant legislative and budgetary proposals affecting tax laws have been made by the legislative and executive branches of the federal government. The likelihood of enactment of any such proposals, or any similar proposals, into law is uncertain. The enactment of any such proposals, including subsequent proposals, into law could have material adverse effects on the Company and/or the Members. Enactment of such legislation, or similar legislation, could require significant restructuring of the Company in order to mitigate such effects.

**The taxation of entities taxed as partnerships and investors in those entities is complex. Prospective investors are strongly urged to review the discussion set forth under Part 5, Certain Regulatory, ERISA and Tax Considerations.**

**FOIA.** The Manager may determine that, as a result of the United States Freedom of Information Act ("FOIA"), or any laws, statutes or regulatory requirements similar in intent or effect to FOIA within any

jurisdiction inside or outside of the United States, a Member or its affiliates may be required to disclose information relating to the Company and its investments, which disclosure could, for example, affect the Company's ability to compete for investment opportunities. The Manager may, in order to prevent any such potential disclosure, withhold all or any part of the information otherwise to be provided to such Member, as more fully described in the LLC Agreement.

***Anti-Money Laundering.*** If the Company or any governmental agency believes that the Company has accepted subscriptions from, or is otherwise holding assets of, any person or entity that is acting, directly or indirectly, in violation of any US, international or other anti-money laundering laws, rules, regulations, treaties or other restrictions, or on behalf of any suspected terrorist or terrorist organization, the Company or such governmental agency may freeze the assets of such person or entity. The Company may also be required to remit or transfer assets held in respect of such person or entity to a governmental agency.

### **Risks Associated with the Opportunity Zone Program**

***Risks Related to Uncertainty of and Compliance with the Opportunity Zone Program.*** The Property Owner was structured to receive investments from QOFs (including the Company (or another QOF that invests in the Property Owner)) in order to benefit from the Opportunity Zone Program, and the Property Owner presently intends to conduct its operations so that it is treated as a QOZB within the meaning of Section 1400Z-2 of the Code. However, no assurances can be provided that the Property Owner will qualify as a QOZB or that, even if it does qualify, the tax benefits enumerated herein will be available to any particular QOF Investor.

There are numerous aspects of Section 1400Z-2 of the Code that are subject to interpretation and that will require clarification by the Treasury. While the OZ Regulations provided clarification of certain rules of the Opportunity Zone Program, such regulations do not address many important issues and numerous issues remain with respect to the topics addressed by such regulations. It is unclear if any additional guidance will be released, or in what manner the Treasury will resolve the many areas of uncertainty in the Opportunity Zone Program. Technical corrections legislation also may be needed from Congress to clarify certain provisions of the Tax Cuts and Jobs Act and to give proper effect to congressional intent. No assurance can be provided that additional legislation will be enacted, and even if enacted, additional legislation may not clearly address all items that require or would benefit from clarification.

The Property Owner may change its business operations, its strategies, and the investments or types of investments it may make at any time and from time to time in order to comply with any additional legislation or administrative guidance from Congress or the Treasury. Changes may cause the Property Owner to incur significant costs and/or avoid (or execute on) transactions it otherwise would not have, which could have a material adverse effect on the performance of the Property Owner. However, the Property Owner may determine not to, or may be unable to, comply with the additional legislation or administrative guidance in a manner that will allow QOF Investors to derive any or all of the tax benefits associated with the Opportunity Zone Program. Although management currently expects to manage the Property Owner in order to qualify as a QOZB (and to manage the Company (or another QOF that invests in the Property Owner) in order to qualify as a QOF), no assurance can be provided in this regard. Further, even if the Property Owner qualifies as a QOZB (and the Company (or another QOF that invests in the Property Owner) qualifies as a QOF), the Property Owner (and the Company (or another QOF that invests

in the Property Owner)) may determine to manage its investment in a manner that prevents QOF Investors from continuing to receive any or all of the tax benefits of the Opportunity Zone Program.

In the event that, under additional legislation or administrative guidance, the Property Owner will be unable to qualify as a QOZB or provide QOF Investors with the anticipated tax benefits due to the Property Owner's current or anticipated structure, strategies and/or practices (or otherwise), management generally will have a duty to consider whether any changes to the Property Owner or its investment strategy may be made in order for the Property Owner to qualify as a QOZB, but will have no obligation to make any such change. In addition, any such change would require prior consent of the all QOFs that are members of the Property Owner and all QOF Investors of the Company (or another QOF that invests in the Property Owner).

In addition, in the event that additional legislation is not enacted or administrative guidance is not provided in respect of a particular matter relating to the Opportunity Zone Program, the Property Owner may take certain actions based on its assumptions regarding the interpretation of certain provisions in Section 1400Z-2 of the Code (and the OZ Regulations) and the IRS may assert positions contrary to these assumptions, which could have an adverse impact on the Property Owner, its status as a QOZB, and the tax benefits otherwise afforded to QOF Investors under Section 1400Z-2 of the Code.

***AS A RESULT OF THE FOREGOING, THERE CAN BE NO GUARANTEE THAT THE COMPANY (OR ANOTHER QOF THAT INVESTS IN THE PROPERTY OWNER) AND ITS QOF INVESTORS WILL BE ABLE TO TAKE ADVANTAGE OF ANY OF THE POTENTIAL TAX BENEFITS DESCRIBED HEREIN.***

***Complying with OZ Regulations Could Have a Material Adverse Effect on the Property Owner's Performance.*** Complying with Section 1400Z-2 of the Code and any legislation or administrative guidance issued in connection with the Opportunity Zone Program could have a material adverse effect on the performance of the Property Owner and/or some or all of its members. For example, in order for the Company (or another QOF that invests in the Property Owner) to be able to take advantage of certain of the tax benefits afforded to its QOF Investors under Section 1400Z-2 of the Code, the Property Owner may hold an asset for a longer period of time than management would otherwise determine to be optimal absent legislation. Additionally, because there is a ten year holding period required to take advantage of certain benefits of an investment in a QOF, it may not be advantageous to liquidate underperforming investments in order to reposition those funds into better performing investments.

As further described above, maintaining the Property Owner's status as a QOZB may require the Property Owner to engage in certain transactions that would otherwise not be necessary in order to satisfy the 70/30 Test, the intangible property limitations, the nonqualified financial property limitations, the 50% gross income test and the other requirements to qualify as a QOZB. Such requirements may also affect the Property Owner's ability to operate in a manner that would otherwise not be necessary.

***An investment by the Company in the Property Owner is illiquid due to the ten-year hold period.*** In order to take advantage of certain tax benefits regarding exclusion of future gain of investing in a QOF, each QOF Investor must hold his, her or its investment in such QOF (and therefore the Property Owner would likely need to maintain its status as a QOZB) for more than ten years. This ten-year hold requirement may require sales at inopportune times and may result in less than maximum return on a particular investment.

Members may disagree with the timing of liquidation of investments as it may result in the inability for QOF Investors to take full advantage tax benefits under the Opportunity Zone Program.

***The Property Owner is reliant upon QOFs and QOF Investors to make appropriate timely investments and elections in order to take advantage of the benefits of a QOF.*** In order for QOF Investors to receive the benefits of investing in the Company (or another QOF that invests in the Property Owner), QOF Investors must make timely investments in such QOF and must make timely elections and tax filings required to qualify its investment. Furthermore, any gain deferred by investing in such QOF must have been generated from a sale to an unrelated party within 180 days of investment in such QOF. In addition, such QOF must have been properly formed, must have made timely elections and tax filings required to qualify as a QOF, and must have made timely investments in the Property Owner in order to satisfy the 90% Requirement. The Property Owner has no control over these circumstances and will have to rely on the representations of QOF Investors.

***Ten-Year Holding Period.*** One of the potential benefits of investing in a QOF is the exclusion from taxable income of any appreciation in the value of the interest held by a QOF Investor for at least 10 years upon disposition of his or her interest. This exclusion of investor-level gain is effectuated through a basis adjustment and provides that, in the case of any investment in a QOF held by a QOF Investor for at least 10 years, the basis of QOF Investor's interest will be equal to the fair market value of such QOF interest on the date that it is sold or exchanged. Based on Section 1400Z-2 of the Code and the OZ Regulations, it is unlikely that QOF Investors can take advantage of the basis adjustment in the event that the Property Owner (or the Company (or another QOF that invests in the Property Owner)) is dissolved or liquidated. Under the OZ Regulations, this exclusion is available in connection with the disposition of a QOF interest held by a QOF Investor for more than 10 years, or, if certain requirements are satisfied, for pass-through gains after such 10-year period resulting from the disposition of QOZP held by a QOF or qualified opportunity zone business property by the Property Owner subject to certain limitations based on the character of the gain (for example, ordinary income items as determined under the partnership tax rules). The foregoing may limit the exit possibilities and strategies with respect to the Property Owner's business. The OZ Regulations provide that the ability to make such an election is not impaired solely because the qualified opportunity zones in which the Property Owner invested have ceased to be designated as qualified opportunity zones, as long as the QOF Investor's QOF interest is sold or exchanged (or the occurrence of one of the alternative options described in the foregoing sentence) on or prior to December 31, 2047.

***Management is not required to cause the Property Owner to maintain the Property Owner's business for the required 10-year holding period.*** In the event that management determines it is no longer feasible or in the best interests of the Property Owner to maintain its status as a QOZB, management is not required to cause the Property Owner to maintain its status as a QOZB. If management decides not to maintain the Property Owner's business prior to the end of the required holding period for QOF Investors to obtain the 10-year basis adjustment, then QOF Investors could lose the tax benefits otherwise afforded to them under Section 1400Z-2 of the Code.

***Future Legislation.*** It is possible that future legislation will be enacted that would repeal Section 1400Z-2 of the Code, prematurely end the deferral of gain that has been invested in the Property Owner (through a QOF), take away or curtail the ability of QOF Investors to eliminate gain from the sale or exchange after 10 years, or severely limit the types of investments that will qualify as QOZP. No assurances can be provided that the legislation will not be enacted. The foregoing list of risk factors does not purport to be a complete enumeration or explanation of the risks involved in an investment in the Property Owner. QOF

Investors should consult with their own legal, tax and financial advisers before deciding to invest in the Property Owner. No assurances can be provided that the legislation will not be enacted.

**The foregoing list of risk factors does not purport to be a complete enumeration or explanation of all the risks and significant considerations involved in an investment in the Company. Prospective investors should read this entire Disclosure Memorandum and consult with their own legal, financial, tax and other advisors before deciding to make an investment in the Company.**

## **POTENTIAL CONFLICTS OF INTEREST**

Certain factors may give rise to conflicts of interest between the Manager and its respective affiliates, on the one hand, and the Members, on the other hand. By acquiring Interests, each Member will be deemed to have acknowledged the existence of, and waived any claim of liability arising from, any such actual or potential conflicts of interest. The following discussion enumerates certain potential conflicts of interest that should be carefully evaluated before making an investment in the Company.

### ***The Company***

The Company may be subject to certain conflicts of interest arising out of its relationship with the Manager and its respective affiliates. The agreements and arrangements among the Company, the Manager, and their respective affiliates, including those related to compensation, expenses and reimbursement of expenses, have been established by the Manager and are not the result of arm's-length negotiations.

Although the Company has adopted no formal policy for resolving conflicts of interest, the Manager will attempt to resolve any conflicts of interest on an equitable basis, although it is possible that potential conflicts may not be resolved in favor of the Company.

### ***Fees Payable Regardless of Property Owner Performance***

Regardless of whether the Property Owner experiences net losses in a particular year or over the life of the Property Owner, the Property Owner will continue to pay the Property Owner Manager's fees and to reimburse the Property Owner Manager for certain expenses.

### ***Farming Contract with Entity Affiliated with the Manager***

The Property Owner will enter into a contract for farming services and farming equipment with an entity owned by the members of the Manager. Although the affiliate of the Manager will use best efforts to avoid improper self-dealing, there is an inherent conflict of interest where one person is on both sides of a transaction, which may result in the agreement differing from one negotiated at arm's-length. The contract will be for a one-year term with automatic renewal unless agreed to otherwise, and the Manager will maintain flexibility on pricing to reflect changes in the scope of character of the required services. Any fees paid will be subject to the terms of the Property Owner LLC Agreement.

### ***Other Activities of Management***

Personnel of the Manager are not required to devote all or any specified portion of their time to the business and affairs of the Company, but will devote to the Company so much of their time as the Manager deems necessary or appropriate.

The Manager and its affiliates (and their respective officers, managers, directors, employees, shareholders, members, partners and other agents) may invest for other investment vehicles, funds or client accounts advised or managed by them or for their personal accounts in the same areas of investment opportunity as those in which the Company may invest. Moreover, such persons may become aware of, and participate in, business opportunities in which the Company will not be given an opportunity to participate. The Manager generally has no obligation or responsibility to disclose or refer any particular investment or other opportunity of any kind whatsoever to the Company, even if such opportunity is of a character that, if presented to the Company, could be taken by the Company.

### ***Lack of Separate Representation***

Maynard Nexsen PC has acted and will act as legal counsel to the Manager and the Company in connection with the formation of the Company and the Interests offered and transactions contemplated hereby. Maynard Nexsen PC is not representing any prospective investors nor is it rendering any legal advice to any other prospective investors in connection with their investment in the Company and the transactions contemplated hereby. Accordingly, prospective investors are strongly urged to consult with their own tax and legal advisors with respect to the tax and other legal aspects of investment in the Company and the transactions contemplated hereby, and with specific reference to their own personal financial and tax situation. Maynard Nexsen PC does not monitor compliance by the Company or the Manager with the investment program or other investment guidelines or procedures set forth in the LLC Agreement, and Maynard Nexsen PC does not monitor compliance by the Company or the Manager with applicable laws, unless in each case Maynard Nexsen PC has been specifically retained to do so. Maynard Nexsen PC does not investigate or verify the accuracy or completeness of any information provided to prospective investors or their representatives regarding the Offering, the Company or the Manager, including without limitation the information contained in this Disclosure Memorandum.

## PART 5

### CERTAIN REGULATORY, ERISA AND TAX CONSIDERATIONS REGULATORY CONSIDERATIONS

#### United States Securities Laws

The offer and sale of Interests will not be registered under the Securities Act, in reliance upon the exemption from registration provided by Section 4(a)(2) thereof and Regulation D promulgated thereunder, as well as representations made by prospective investors pursuant to the Subscription Agreement. Each prospective investor must be an “accredited investor” (as defined in Regulation D). In order to establish compliance with such exemption, each prospective investor must furnish certain information to the Company and represent, among other customary private placement representations, that it is acquiring its Interests for its own account, for investment purposes only and not with a view towards resale or distribution. The Interests will not be registered under any other securities laws, including state securities laws (or “blue sky” laws) or non-U.S. securities laws. Furthermore, the Interests may not be transferred or resold except as permitted under the Securities Act and any applicable state or non-U.S. securities laws, pursuant to registration or exemption therefrom, and in compliance with the restrictions on transferability set forth in the LLC Agreement.

#### Anti-Money Laundering Regulations

All subscriptions are subject to applicable anti-money laundering regulations, including Title IV of the USA PATRIOT Act Improvement and Reauthorization Act of 2005, as amended (the “**USA PATRIOT Act**”), and any relevant regulations and any other applicable federal or other laws or regulations. The Company and the Manager may be required to obtain a detailed verification of the identity of each prospective investor, the identity of any beneficial owner of any such prospective investor and the source of funds used to subscribe for Interests. Each prospective investor is also required to represent that it is not a prohibited person, as defined by the USA PATRIOT Act, United States Executive Order 13224 and any other relevant legislation and regulations.

An individual prospective investor may be required to produce a copy of a passport or identification card certified by a notary public. Corporate, trust or partnership prospective investors may be required to produce a certified copy of their charter documents (including documentation of any change of name) and appropriate certificates, resolutions and/or written consents verifying the identity and authority of the relevant persons to sign on behalf of such prospective investor with respect to an investment in the Company. In the case of pooled or institutional investors, the subscribing institution is obliged to conduct appropriate due diligence on its investors and/or clients (as applicable). The Company may request information from such subscribing institution regarding its anti-money laundering procedures.

Should an existing Member or prospective investor refuse to provide any information required for verification purposes, the Company may refuse to accept a subscription or may cause the redemption of the Interests held by any such existing Member. The Company and the Manager may request such additional information from Members or prospective investors as is necessary in order to comply with the USA PATRIOT Act, United States Executive Order 13224 or other relevant United States or other anti-money laundering legislation and regulations.

The Company and the Manager reserve the right to request such further information as may be necessary to verify the identity of a prospective investor and the source of payment of subscription funds, or other information as may be necessary to comply with applicable regulations. In the event of delay or failure by a prospective investor to produce information required for verification purposes, the Company may refuse to accept such prospective investor's subscription and subscription payment.

The Company, by written notice to any Member, may take any action it determines in its sole discretion to be necessary or advisable to comply with the USA PATRIOT Act, United States Executive Order 13224 or any other relevant anti-money laundering legislation and regulations applicable to the Company, the Manager or any of the Company's other service providers including effecting the required withdrawal of a Member, or if so ordered by a competent United States or other court or regulatory authority.

If the Company or the Manager has a suspicion that any transaction concerning the Company is connected with money laundering or terrorist financing, the Company (or the Manager) may be required to report such a suspicion to the appropriate regulatory authorities. In reporting such a suspicion, non-public personal information may be disclosed regarding the Member who is the subject of the suspicion. In addition, the regulatory authorities to which the Company or the Manager are subject have the power to request evidence confirming that the Company or the Manager have been operating in compliance with applicable anti-money laundering procedures and other applicable laws, rules and regulations. Such evidence could include non-public personal information of Members.

## **ERISA CONSIDERATIONS**

THE FOLLOWING DISCUSSION IS NOT INTENDED, OR WRITTEN BY THE MANAGER OR ITS LEGAL COUNSEL, TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED UPON SUCH TAXPAYER. THIS DISCUSSION IS PROVIDED SOLELY AS A GENERAL DISCUSSION TO SUPPORT THE MARKETING OF INTERESTS IN THE COMPANY OFFERED HEREBY. EACH PROSPECTIVE INVESTOR SHOULD SEEK ADVICE BASED UPON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE POTENTIAL TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY.

### **General**

Fiduciaries and other persons who are proposing to invest in Interests on behalf of retirement plans, individual retirement accounts ("**IRAs**"), and other employee benefit plans (collectively "**Plans**") covered by ERISA or the Code, must give appropriate consideration to, among other things, the role that an investment in the Company plays in the Plan's portfolio, taking into consideration whether the investment is designed to reasonably further the Plan's purposes, the investment's risk and return factors, the portfolio's composition with regard to diversification, the liquidity and current return of the total portfolio relative to the anticipated cash flow needs of the Plan, the estimated return of the total portfolio relative to the Plan's objectives, the limited right of investors to withdraw all or part of their capital or to transfer their Interests in the Company, and whether investment in the Company constitutes a direct or indirect transaction with a party in interest (under ERISA) or a disqualified person (under the Code).

### **Plan Asset Regulations and Benefit Plan Investors**

The United States Department of Labor (the "**DOL**") has adopted regulations (the "**Plan Asset Regulations**") that treat the assets of certain pooled investment vehicles, such as the Company, as "plan assets" for purposes of Title I of ERISA and Section 4975 of the Code ("**Plan Assets**"). Section 3(42) of ERISA defines



the term “Plan Assets” to mean plan assets as defined by such regulations as the DOL may prescribe, except that, under such regulations, the assets of an entity shall not be treated as Plan Assets if, immediately after the most recent acquisition of an equity interest in the entity, less than 25% of the total value of each class of equity interest in the entity is held by “Benefit Plan Investors” (the “significant participation test”). For purposes of this determination, the value of any equity interest held by a person (other than such a Benefit Plan Investor), who has discretionary authority or control with respect to the assets of the entity, or any person, who provides investment advice for a fee (direct or indirect) with respect to such assets, or any affiliate of such a person, shall be disregarded. An entity shall be considered to hold Plan Assets only to the extent of the percentage of the equity interest held by Benefit Plan Investors. The term “**Benefit Plan Investors**” means any employee benefit plan subject to the fiduciary provisions of ERISA, any plan to which the prohibited transaction provisions of Section 4975 of the Code apply (e.g., IRAs), and any entity whose underlying assets include Plan Assets by reason of a plan’s investment in such entity (a “**Plan Asset Entity**”).

The Manager intends to use commercially reasonable efforts either to operate the Company in such a manner so as to ensure that benefit plan investors hold less than 25% of the total value of each class of equity interest in the Company.

If the Company’s assets were considered Plan Assets, then, under ERISA and the Code, the Manager would be a fiduciary, and certain employees, partners, and officers of the Manager, as well as certain affiliates, would become “parties in interest” and “disqualified persons” with respect to the investing Plans, with the result that the rendering of services to certain related parties or the lending of money or other extensions of credit, or the sale, exchange, or leasing of property by the Company or certain related parties, or the payment of certain fees, as well as certain other transactions, might be deemed to constitute prohibited transactions. Additionally, individual investment in Interests by persons who are fiduciaries or parties-in-interest and disqualified persons, or both, to a Plan might be deemed to constitute prohibited transactions under such circumstance.

### **Representation by Plans**

The fiduciaries of each Plan investing in the Company must represent that the decision to invest Plan Assets in the Company is consistent with the provisions of ERISA and the Code that require diversification of Plan Assets and impose other fiduciary responsibilities. In particular, exempt organizations should consider the applicability to them of the provisions relating to UBTI. Each Plan investing in the Company must represent, among others, that the Plan’s investment in the Company and the payment of certain expenses are not prohibited transactions within the meaning of ERISA and that such Plan’s investment in the Company is permissible under the documents governing the investment of its assets and under ERISA and any other applicable laws.

### **Ineligible Purchasers**

Interests may not be purchased with Plan Assets if the Manager, any selling agent, finder, any of their respective affiliates, or any of their respective employees: (i) has investment discretion with respect to the investment of such Plan Assets; (ii) has authority or responsibility to give or regularly gives investment advice, with respect to such Plan Assets, for a fee pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan Assets and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to such Plan. A party that is described in clause (i) or (ii) of the preceding sentence is a fiduciary

under ERISA and the Code with respect to the Plan, and any such purchase might result in a “prohibited transaction” under ERISA and the Code.

### **Plans’ Reporting Obligations**

The information contained herein and in the other documentation provided to investors in connection with an investment in the Company is intended to satisfy the alternative reporting option for “eligible indirect compensation” on Schedule C of the Form 5500, in addition to the other purposes for which such documents were created.

**Whether or not the underlying assets of the Company are deemed Plan Assets, an investment in the Company by a Plan is subject to ERISA and the Code. Accordingly, Plan fiduciaries should consult their own counsel as to the consequences under ERISA and the Code of an investment in the Company. Note that similar laws governing the investment and management of the assets of governmental or non-U.S. plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code. Accordingly, fiduciaries of such governmental or non-U.S. plans, in consultation with their counsel, should consider the effect of their respective laws and regulations on an investment in the Company.**

### **CERTAIN UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS**

THE FOLLOWING SUMMARY COVERS ONLY FEDERAL INCOME TAX MATTERS, AND DOES NOT ADDRESS ANY OTHER FEDERAL, STATE, LOCAL OR NON-U.S. TAX CONSIDERATIONS. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PURCHASE AND OWNERSHIP OF INTERESTS IN THE COMPANY.

The following summary discusses certain United States federal income tax considerations that may be relevant to prospective investors in connection with the purchase and ownership of Interests in the Company. This discussion is based on provisions of the Internal Revenue Code of 1986, as amended (the “**Code**”), the regulations promulgated thereunder (the “**Regulations**”) and published administrative rulings and judicial decisions, all as of the date of this Disclosure Memorandum. No assurance can be given that future legislation, regulations, administrative rulings or court decisions will not modify the conclusions set forth herein, possibly with retroactive effect, or otherwise adversely affect the federal, state and/or local income tax aspects of an investment in the Company. This discussion is necessarily general, and the actual tax and financial consequences of the purchase and ownership of Interests in the Company will vary depending upon the particular circumstances of Members. This discussion does not constitute tax advice, and is not intended as a substitute for tax planning. Further, this discussion does not apply to special classes of taxpayers, such as “closely held” corporations, regulated investment companies, banks, thrifts, insurance companies, Members that hold interests in the Company as other than capital assets, or (except as specifically addressed) non-U.S. persons or entities or tax-exempt organizations. The Company has not sought a ruling from the Internal Revenue Service (the “**IRS**”) or any other federal, state or local agency with respect to any of the tax issues affecting the Company or the Members, nor has it obtained an opinion of counsel with respect to any tax issues. See also “Opportunity Zone Program Considerations” and “Risks Factors – Risks Associated with the Opportunity Zone Program”.

The federal income tax treatment of partners in partnerships holding Interests in the Company generally will depend on the activities of the partnership and the status of the partner. Prospective investors that are partnerships (or entities treated as partnerships for federal income tax purposes) should consult their

own tax advisors regarding the federal income tax consequences to them and their partners of the acquisition, ownership and disposition of Interests in the Company.

EACH PROSPECTIVE INVESTOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR IN ORDER TO FULLY UNDERSTAND THE FEDERAL, STATE, LOCAL AND OTHER INCOME TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY. IN NO EVENT WILL THE COMPANY, THE MANAGER, OR THEIR AFFILIATES, COUNSEL OR OTHER PROFESSIONAL ADVISORS BE LIABLE TO ANY MEMBER FOR ANY U.S. FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF AN INVESTMENT IN THE COMPANY, WHETHER OR NOT SUCH CONSEQUENCES ARE DESCRIBED IN THIS DISCLOSURE MEMORANDUM.

#### Tax Classification of the Company

Under current law, the Manager expects that the Company will be classified as a partnership for federal income tax purposes and not as an association taxable as a corporation under the Code and Regulations. However, the Company could fail to qualify as a partnership for federal income tax purposes in future years as a result of a variety of developments including, without limitation, (i) modifications of the law governing the classification of entities as partnerships and (ii) characterization of such an entity as a “publicly traded partnership” as a result of the volume of transfers of partnership interests.

Under Section 7704 of the Code, a “publicly traded partnership” is generally treated as a corporation for federal income tax purposes, unless at least 90% of its annual gross income is “qualifying income,” which generally includes income from investing or trading in stocks and securities. A publicly traded partnership is any partnership the interests in which are traded on an established securities market or which are readily tradable on a secondary market (or the substantial equivalent thereof). The Manager does not expect that the Interests will be traded on an established securities market. Regulations concerning the classification of partnerships as publicly traded partnerships provide certain safe harbors under which interests in a partnership will not be considered readily tradable on a secondary market (or the substantial equivalent thereof). Depending on the number of Members, the Company may qualify for the safe harbor exemption for partnerships that are offered to investors in private placements. The discussion below assumes that the Company will be treated as a partnership for federal income tax purposes.

#### Taxation of the Company

*Allocations of Profits and Losses.* As a partnership, the Company itself generally will not be subject to federal income taxation. Each Member otherwise subject to tax will be required to report separately, on its own federal income tax return, its distributive share (whether or not actually distributed) of the Company’s income, gain, loss, deduction or credit for each taxable year of the Company ending with or within the Member’s taxable year. Generally, a Member’s distributive share of partnership income, gain, loss, deduction or credit for federal income tax purposes is determined in accordance with the provisions of the LLC Agreement unless the LLC Agreement does not so provide, or unless the allocations provided by the LLC Agreement are deemed not to have “substantial economic effect” for federal income tax purposes. The Manager believes that the allocations set forth in the LLC Agreement should be respected for federal income tax purposes. However, if the allocations that are made pursuant to the LLC Agreement with respect to a particular item were successfully challenged by the IRS, then allocations in respect of such item would be determined by the IRS according to each Member’s “interest” in the Company, taking into account all of the facts and circumstances. In some instances, this could result in such Member recognizing a greater or lesser amount of income, gain, loss or deduction than it would have otherwise

recognized pursuant to the terms of the LLC Agreement, or in such Member recognizing an amount of income, gain, loss or deduction at a different time than pursuant to the terms of the LLC Agreement.

*Returns, Tax Audits and Elections.* The Company will file an annual partnership information return that will report the results of its operations. The Company has discretion regarding how to report partnership items on the Company's federal income tax returns and all Members are generally required to treat the items consistently on their own federal income tax returns.

Under the BBA, a partnership required to file, or that files, an income tax return, must appoint a Company Representative with the sole authority to act on behalf of the partnership in connection with audits, assessments, collections and related proceedings, and to bind the partnership and its partners. The Company is expected to designate the Manager or one of its affiliates as the Company Representative, to the extent permitted under applicable law. The BBA permits the IRS to adjust any item of the Company's income, gain, loss, deduction or credit (and any Member's distributive share thereof) for any taxable year under review (the "**Review Year**"), and to assess on and collect from the Company any tax attributable thereto (including additions to tax, interest and penalties).

Under the default BBA regime, the Company is required to pay any imputed underpayment amount as a result of any such adjustment. In such case, any person who is a Member in the year of such adjustment may be required to bear a share of the economic burden of any such taxes assessed or collected, without regard to whether such person was a Member, or without regard to such Member's relative ownership interest, during the Review Year. Under certain circumstances, the amount of the imputed underpayment determined under the default regime may be reduced in whole or in part to the extent of the allocable share of any Members that file amended returns and pay any associated taxes, qualify as tax-exempt partners under Section 168(h) of the Code, or are subject to a lower rate of tax, in each case with respect to the Review Year. There can be no assurances that the Company will be able to reduce, or will reduce, the amount of an imputed underpayment pursuant to these procedures. Under an alternative BBA regime, the Company Representative may elect out of the default regime for the Company and require that its Members directly take into account the amount of any adjustment, in which case the Company is required to send an adjusted Schedule K-1 to each person who was a Member in the Review Year and each such person (whether a current or former Member) will generally be required to pay any resulting tax (including interest and penalties, as well as a two-percentage point increase on the interest rate that would otherwise have been imposed on any underpayment of taxes). There can be no assurances that the Company will make, or will be able to make, a valid election to apply this alternative regime under any particular circumstances. Similar rules may apply to any entity treated as a partnership for federal income tax purposes in which the Company directly or indirectly invests. The BBA regime is complex and, in certain circumstances, the effect of its implementation on the Company and the Members may be unclear. Prospective investors should consult their own tax advisors regarding the application of the BBA regime to an investment in the Company in their particular circumstances.

*Section 754 Election.* The Code provides for adjustments to the basis of partnership property upon distribution of partnership property to a partner and transfers of partnership interests (including by reason of death), provided that an election has been made by the partnership pursuant to Section 754 of the Code. Under the LLC Agreement, the Manager may in some circumstances cause the Company to make such an election. Any such election, once made, cannot be revoked without the consent of the IRS. In certain circumstances, basis adjustments similar to those resulting from a Section 754 election are effectively mandatory. If basis adjustments are required, the Manager will cause the Company to comply with any such requirement.

## Federal Income Taxation of Members Generally

*In General.* Each Member will be subject to tax on its distributive share of the Company's taxable income or loss, regardless of whether it has received or will receive any actual distribution of cash or property from the Company. In addition, the Company could recognize taxable income prior to the receipt of cash or property with respect to such income (e.g., deemed dividends and original issue discount). Consequently, a Member's income tax liability related to transactions by the Company could exceed the amount distributed by the Company to such Member in a particular year.

Currently, the highest individual tax rate applicable to ordinary income is 37% and the highest individual long-term capital gains and qualified dividend income rate is 20% (unless an individual taxpayer elects to be taxed at ordinary rates; see below under "Limitations on Losses and Deductions—General Limitations"). In all cases applicable tax rates may be higher due to the phase out of certain tax deductions, exemptions and credits. The excess of capital losses over capital gains may be offset against the ordinary income of an individual taxpayer, subject to an annual limitation of \$3,000. Capital losses of an individual taxpayer may generally be carried forward to succeeding tax years to offset capital gains and then ordinary income (subject to the \$3,000 annual limitation). For corporate taxpayers, the current maximum income tax rate is 21%. Capital losses of a corporate taxpayer may be offset only against capital gains, but unused capital losses may be carried back three years (subject to certain limitations) and carried forward five years.

In addition, individual Members with "modified adjusted gross income" that exceeds certain thresholds (e.g., \$250,000 for married individuals filing jointly and \$200,000 for single individuals) are subject to a Medicare tax of 3.8% on the lesser of: (i) their investment income, net of deductions properly allocable to such income, and (ii) the excess of their "modified adjusted gross income" above the applicable threshold. Some portion or all of the Company's income may be treated as investment income for this purpose, and as a result individual Members receiving allocations of income from the Company may be subject to this tax. This tax is in addition to any federal income tax imposed on individual Members with respect to their distributive share of income of the Company. Trusts and estates also may be subject to this additional tax. Members should consult their own tax advisors regarding the application of the Medicare tax to their investment in the Company.

*Alternative Minimum Tax.* Individual Members could be subject to the alternative minimum tax ("**AMT**") if the AMT exceeds the general federal income tax otherwise payable by the individual Member for the taxable year. In addition, on August 16, 2022 the Inflation Reduction Act of 2022 was enacted, which among other things, imposes a 15% AMT on US corporations with financial accounting profits exceeding a certain threshold. Due to the complexity of AMT calculations, Members should consult with their tax advisors as to whether an investment in the Company may create or increase AMT liability.

## Limitations on Losses and Deductions

*General Limitations.* If the Company is treated as an "investor" for federal income tax purposes, the following limitations generally would be expected to apply to expenses or losses allocated by the Company to non-corporate Members (including certain closely held personal service and S corporations):

- Except as described below, interest on any amount borrowed by a non-corporate Member to purchase Interests generally would be "investment interest," subject to a limitation on deductibility. In general, investment interest would be deductible only to the extent of the

taxpayer's "net investment income." For this purpose, "net investment income" generally would include net income from the Company and other income from property held for investment (other than income treated as passive activity income). However, qualified dividend income, as defined in Section 1(h)(11)(B) of the Code, and long-term capital gain are excluded from the definition of net investment income unless the taxpayer makes a special election to treat such qualified dividend income or gain as ordinary income. Interest that is not deductible in the year incurred, because of the deductibility limitation applicable to investment interest, may be carried forward and deducted in a future year in which the taxpayer has sufficient investment income. However, interest on any amount borrowed by a Member to make a Capital Contribution to the Company, which amount is allocable to a portfolio company that is engaged in certain types of trades or businesses and classified as a partnership for federal income tax purposes, generally will be treated as a passive activity expense (rather than as "investment interest"). A substantial portion of the Company's income is expected to consist of investment interest or business interest, although there can be no assurances in this regard.

- An individual Member's distributive share of certain of the Company's expenses (including the Management Fee and any other amounts that are treated for tax purposes as expenses of the Company) would currently not be deductible and, as of 2026, would be deductible only as itemized deductions, subject to the limitations of Code Sections 67 and 68. Itemized deductions are non-deductible in computing such Member's AMT income and AMT liability. Each Member to whom these rules potentially apply will have to take into account separately its share of the Company's expenses to determine the application of these limitations.

*Basis and At Risk Limitations.* The amount of any loss of the Company that a Member is entitled to include in its income tax return is limited to its adjusted tax basis in its Interests as of the end of the Company's taxable year in which such loss occurred. Similarly, a Member that is subject to the "at risk" limitations (generally, non-corporate taxpayers and closely held corporations) may not deduct losses of the Company to the extent that they exceed the amount such Member has "at risk" with respect to its Interests at the end of the taxable year. The amount that a Member has "at risk" will generally be the same as its adjusted tax basis as described above, except that it will generally not include any amount attributable to liabilities of the Company or any amount borrowed by the Member on a non-recourse basis. Losses denied under the basis or "at risk" limitations are suspended and may be carried forward to future years subject to these and other applicable limitations.

*Limitation on Excess Business Losses.* Recently enacted tax reform legislation imposes a new limitation on the deduction of business losses recognized from a sole proprietorship or passed through from an S corporation or partnership. Business losses in excess of a specified threshold (currently \$540,000 for married couples filing jointly; \$270,000 for single persons and married persons filing separately) are no longer allowed in the year of recognition and become net operating loss carryforwards. This limitation applies after the pre-existing passive loss rules and applies for taxable years beginning after December 31, 2020, and before January 1, 2026.

*20% Deduction for Qualified Business Income of Pass-Through Entities.* Under the Tax Cuts and Jobs Act of 2017 (the "TCJA"), for tax years beginning after December 31, 2017, and before January 1, 2026, Section 199A of the Code allows non-corporate taxpayers a deduction of up to 20% for "qualified business income" ("QBI") earned through pass-through entities, such as partnerships and limited liability companies taxed as partnerships, S corporations, disregarded entities and trusts. QBI is generally defined as all domestic business income other than investment income (e.g., dividends (other than qualified REIT

dividends, cooperative dividends and certain income from publicly traded partnerships), investment interest income, short-term capital gains, long-term capital gains, commodities gains, and foreign currency gains).

Non-corporate Members may be eligible for a deduction with respect to their allocable share of a portion of the Company's QBI that is earned through portfolio companies that are pass-through entities, including REITs (if any). However, the deduction is subject to several limitations that may materially limit the amount of the deduction available for Members. For example, the deduction is generally limited to 50% of W-2 wages (or, if greater, 25% of W-2 wages, plus 2.5% of the cost of tangible depreciable property), in each case, with respect to the qualified trade or business. This limitation generally does not apply to REIT dividends and income from publicly traded partnerships. Non-corporate Members are urged to consult their tax advisors regarding the potential availability of any such deduction.

*Depreciation.* The TCJA expanded bonus depreciation by permitting businesses an immediate tax deduction for investment in certain qualified property purchased after September 27, 2017 and before January 1, 2023. Beginning in 2023, the deduction percentage will decrease by 20% each year through 2026. Unless Congress acts, bonus depreciation is set to expire on January 1, 2027.

*Miscellaneous Deductions.* The TCJA temporarily suspended all miscellaneous itemized deductions, such as deductions for investment fees and expenses and unreimbursed employee business expenses that were previously subject to the 2% of adjusted gross income floor. Taxpayers may not claim miscellaneous itemized deductions for the years to which the suspension applies beginning after December 31, 2017, and before January 1, 2026.

*Organization and Syndication Expenses.* The Company may incur certain expenses in connection with its organization and the marketing of the Interests. For federal income tax purposes, amounts paid or incurred to organize a partnership are not deductible, but may, by election of the Company, be capitalized and amortized over a period of not less than 180 months. Amounts paid or incurred to market Interests that qualify as "syndication expenses" are neither deductible nor amortizable.

#### Taxation of Distributions and Dispositions

*Taxation of Distributions.* Cash non-liquidating distributions, to the extent that they do not exceed a Member's tax basis in its Interests, will not result in taxable income to such Member, but will reduce its tax basis in its Interests by the amount distributed. Cash (and, in certain circumstances, marketable securities) distributed to a Member in excess of the basis of its Interests is generally taxable as capital gain, subject to certain exceptions.

When a Member receives a cash liquidating distribution from the Company, such Member generally will recognize capital gain or loss to the extent of the difference between the proceeds received by such Member and such Member's adjusted tax basis in its Interests. Such capital gain or loss will be long-term or short-term depending on the Member's holding period. For purposes of these rules, a decrease in a Member's share of Company liabilities (which can result from a variety of transactions) is treated as if it were a distribution of cash. However, a resigning or withdrawing Member will recognize ordinary income to the extent such Member's allocable share of the Company's "unrealized receivables" exceeds the Member's basis in such unrealized receivables (as determined pursuant to applicable Regulations). For these purposes, accrued but untaxed market discount, if any, on securities held by the Company will be treated as an unrealized receivable, with respect to which a resigning or withdrawing Member would recognize ordinary income.

Distributions of property other than cash in complete liquidation of a Member's Interests generally will not result in the recognition of taxable gain or loss to the Member (except to the extent such distribution is treated as made in exchange for such Member's share of the Company's unrealized receivables). However, a distribution of marketable securities will be treated as a distribution of cash (which, as described above, can require the recognition of gain by the recipient Member), unless the distributing partnership is an "investment partnership" and the recipient Member is an "eligible partner" as defined in Section 731(c) of the Code. The Company cannot provide any assurances that the Company will be an "investment partnership" for these purposes.

*Dispositions of Company Interests.* If Interests in the Company are sold, transferred or otherwise disposed of, gain or loss from the disposition will be based on the difference between the amount realized on the disposition and the basis attributable to the Interests that are disposed of. The amount realized on the disposition of Interests generally will equal the sum of (i) any cash received, (ii) the fair market value of any other property received and (iii) the amount of the Company's liabilities allocated to the Interests. Because the amount realized includes any amount attributable to the relief from the Company's liabilities attributable to the Interests, a Member could have taxable income, or perhaps even a tax liability, in excess of the amount of cash and property received upon the disposition of Interests. A Member generally should be expected to recognize capital gain or loss on the sale of an Interest except to the extent of any gain attributable to the Company's "unrealized receivables" or inventory items, if any.

#### Unrelated Business Income Tax

Tax-exempt organizations generally are subject to federal income tax on their UBTI. Generally, a tax-exempt entity that realizes UBTI is taxed on such income at the regular trust or, in the case of certain entities, corporate federal income tax rates. Where a tax-exempt entity owns an interest in an entity taxed as a partnership, the activities of the partnership are attributed to it for purposes of determining whether the tax-exempt entity's distributive share of partnership income is UBTI.

UBTI is defined generally as any gross income derived by a tax-exempt entity from an unrelated trade or business that it regularly carries on, less the deductions directly connected with that trade or business.

However, Section 512(b) of the Code provides that interest, dividends, certain rents from real property, gain from the sale of property that is not held for sale to customers in the ordinary course of business, and certain other types of income generally are not treated as UBTI. Nevertheless, Section 514 of the Code provides that UBTI includes a percentage of any gross income not otherwise treated as UBTI (less the same percentage of applicable deductions) that is derived from any property that is subject to "acquisition indebtedness." Acquisition indebtedness includes the amount of any mortgage or lien to which property is subject at the time of its acquisition and debt incurred after the acquisition or improvement of any property if the debt would not have been incurred but for such acquisition or improvement and the incurrence of the debt was reasonably foreseeable at the time of the acquisition or improvement. Section 514(c)(9) of the Code excludes from the definition of "acquisition indebtedness" any indebtedness incurred in acquiring or improving real property that is owned by employee trusts qualified under Section 401 of the Code and certain educational institutions (collectively, "**Qualified Organizations**") if six enumerated conditions are met. Those conditions include (subject to certain exceptions) that the purchase price for the real property be fixed at the time of acquisition, that the real property not be financed by the seller (or its affiliates), that no part of the real property be leased to the seller (or its affiliates), and that, where the investment is held through a partnership with partners that are not Qualified Organizations, the partnership's tax allocations satisfy certain requirements.



The amount of UBTI that is realized by tax-exempt Members will depend on the nature of the Company's future operations. It is possible that the Company will be treated as a "dealer" with respect to all or part of the assets in which it invests, which would cause all the gain from the disposition of such assets to be UBTI. Furthermore, because of the Company's investment strategy of using leverage to finance its investments, it is likely that a substantial portion of the income of the Company will be UBTI under the acquisition indebtedness rules, subject to the possible application of the Section 514(c)(9) exception with respect to real estate assets for Members that are Qualified Organizations. In that regard, it should be noted that the Company's tax allocations generally should satisfy the requirements of Section 514(c)(9) of the Code (although certain uncertainties would arise if the Company elects to have multiple closings) and that the Company will attempt to comply with the other requirements of Section 514(c)(9) of the Code with respect to any real estate assets that it acquires to the extent reasonably practicable and consistent with its objective of maximizing the pre-tax rate of return of its investors. However, it is possible that the Company will take actions (such as acquiring a property that will be leased back to the seller) that would make the Section 514(c)(9) exception not applicable. Accordingly, while the Company will seek to minimize the amount of UBTI that is realized by tax-exempt Members to the extent reasonably practicable and consistent with its objective of maximizing the pre-tax returns of the Members as a whole, it is possible that a significant portion of the income and gain earned by the Company will constitute UBTI, even for Members that are Qualified Organizations.

Any prospective tax-exempt investor should consult its own tax advisor with respect to the effect of an investment in the Company on its own tax situation and regarding the possible tax consequences of an investment in the Company.

#### State and Local Tax Considerations

In addition to the federal income tax consequences described above, prospective investors should consider potential state and local tax consequences of an investment in the Company, including potential filing requirements. State and local laws often differ from federal income tax laws with respect to the treatment of specific items of income, gain, loss, deduction and credit. A Member's distributive share of the taxable income or loss of the Company generally will be required to be included in determining its reportable income for state and local tax purposes in the jurisdiction in which he, she or it is a resident. In addition, for tax years beginning on or after January 1, 2018, and before January 1, 2026, the deductibility of state and local taxes for federal tax income purposes may be limited for Members that are individuals.

Members may be subject to state and/or local franchise, withholding, income, capital gain or other tax payment obligations and filing requirements in jurisdictions where the Company is regarded as doing business or earning income. Credits for these taxes may not be available (or may be subject to limitations) in the jurisdictions in which Members are residents.

Each prospective investor should consult its tax advisor with regard to the state and local tax consequences of an investment in the Company in states and localities in which he, she or it is domiciled, resident or conducts business, or is regarded as such.

**The foregoing is a summary of some of the important tax rules and considerations affecting the Members, the Company, and the Company's proposed investment structure and operations. This summary does not purport to be a complete analysis of all relevant tax rules and considerations, which will vary with the particular circumstances of each Member, nor does it purport to be a complete listing of all potential tax risks inherent in purchasing or holding Interests. The foregoing does not fully address**

tax considerations affecting prospective investors that are not U.S. persons. Any discussion of federal, state or local tax matters contained herein, including any attachments or enclosures, was not intended or written to be used, and it cannot be used or relied upon by any taxpayer for the purpose of avoiding any penalties that may be imposed on such taxpayer. Each prospective investor in the Company is urged to consult its own tax advisor in order to understand fully the federal, state, local and any non-U.S. tax consequences of an investment in the Company in its particular circumstances.

## **PART 6**

### **ADDITIONAL INFORMATION AND DOCUMENTATION**

Each prospective Investor is invited to ask questions of the Manager and obtain additional information or documents concerning the terms and conditions of the Offering, the Company and the Manager to the extent the Manager possesses the same or can acquire it without unreasonable effort or expense.

Please direct all inquiries relating to the information contained in this Disclosure Memorandum or any of the other Subscription Documents via email to [info@acretrader.com](mailto:info@acretrader.com), or call 888.958.1470

## **PART 7**

### **GOVERNING DOCUMENTS**

The following governing documents of the Company are attached to this Disclosure Memorandum.

1. Articles of Organization of the Company
2. Form of Amended and Restated Limited Liability Company Agreement of the Company
3. Form of Amended and Restated Limited Liability Company Agreement of the Property Owner



## California Secretary of State Electronic Certified Copy

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify that the attached transcript of 1 page is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.



**IN WITNESS WHEREOF**, I execute  
this certificate and affix the Great  
Seal of the State of California on  
this day of March 11, 2022

**SHIRLEY N. WEBER, Ph.D.**  
Secretary of State

Verification Number: LIQF56  
Entity (File) Number: 202207010805

To verify the issuance of this Certificate, use the Verification Number above  
with the Secretary of State Electronic Verification Search available at  
[bizfile.sos.ca.gov](http://bizfile.sos.ca.gov)





# California Secretary of State Electronic Filing

**FILED**  
Secretary of State  
State of California

## LLC Registration – Articles of Organization

Entity Name: R&N Farming OZ I, LLC

Entity (File) Number: 202207010805

File Date: 03/09/2022

Entity Type: Domestic LLC

Jurisdiction: California

### Detailed Filing Information

1. Entity Name: R&N Farming OZ I, LLC
2. Business Addresses:
  - a. Initial Street Address of Designated Office in California: 3213 West La Costa Avenue  
Fresno, California 93711  
United States
  - b. Initial Mailing Address: 3213 West La Costa Avenue  
Fresno, California 93711  
United States
3. Agent for Service of Process: C T CORPORATION SYSTEM (C0168406)
4. Management Structure: One Manager
5. Purpose Statement: The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

Electronic Signature:

The organizer affirms the information contained herein is true and correct.

Organizer: Valerie Cook

Certificate Verification Number: LIQF56  
Use [bizfile.sos.ca.gov](https://bizfile.sos.ca.gov) to verify the certified copy.

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**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**R&N FARMING OZ I, LLC,**

**A CALIFORNIA LIMITED LIABILITY COMPANY**

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THE MEMBERSHIP INTERESTS IN R&N FARMING OZ I, LLC DESCRIBED IN THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OR JURISDICTION IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS. THE MEMBERSHIP INTERESTS MAY NOT BE TRANSFERRED OR RESOLD, IN WHOLE OR IN PART, EXCEPT AS PERMITTED UNDER ALL SUCH SECURITIES LAWS PURSUANT TO REGISTRATION THEREUNDER OR AN EXEMPTION THEREFROM. THE TRANSFERABILITY OF THE MEMBERSHIP INTERESTS IS FURTHER RESTRICTED BY THE TERMS OF THIS LIMITED LIABILITY COMPANY AGREEMENT.

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**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF  
R&N FARMING OZ I, LLC**

This Amended and Restated Limited Liability Company Agreement (this “**Agreement**”) of R&N Farming OZ 1 LLC (the “**Company**”), a California limited liability company, is by and among the Company, Trinity Agri Management, LLC, a California limited liability company (the “**Manager**”), and the Persons executing this Limited Liability Company Agreement as Members, effective as of April 25, 2023 (the “**Effective Date**”).

WHEREAS, the Company was formed as a limited liability company under the laws of the state of California, for the purposes set forth in this Agreement, when the Company’s Articles of Organization were filed with the California Secretary of State on March 9, 2022 and the Members executed a Limited Liability Company Agreement dated as of March 9, 2022 (the “**Original Agreement**”).

WHEREAS, the Company was formed as a “qualified opportunity fund” as that term is defined in Section 1400Z-2(d)(1) of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations and publications prescribed in connection therewith (a “**Qualified Opportunity Fund**”).

WHEREAS, the parties wish to enter into this Agreement to amend and restate the Original Agreement, admit additional Members and to set forth the terms and conditions governing the operation and management of the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms used in this Agreement shall have the following meanings unless otherwise expressly provided herein:

“**Act**” means the California Revised Uniform Limited Liability Company Act, codified in the California Corporations Code, Section 17701.01 *et seq.*

“**Additional Capital Contribution**” means any Capital Contribution that a Member makes in accordance with Section 9.2.

“**Additional Capital Contribution Membership Interests**” is defined in Section 9.2.

“**Additional Member**” means a Member, other than an Initial Member or a Substitute Member, who has acquired a Membership Interest and has become a Member in accordance with Section 13.3, but such term does not include any Person who has ceased to be a Member.

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

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this LLC Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

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

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of § 1.704-1(b)(2)(ii)(d) of the Regulations and shall be so construed.

**“Adjustment Date”** means the date on which any of the events described in Regulations § 1.704-1(b)(2)(iv)(f)(5) occurs.

**“Affiliate”** means, with respect to any Person, (a) any Person directly or indirectly controlling, controlled by, or under common control with such Person; (b) any Person owning or controlling twenty percent (20%) or more of the outstanding voting interests of such Person; (c) any director, executive officer, trustee, general partner or Manager of such Person; and (d) any Person who is a director, executive officer, trustee, general partner or Manager of any Person described in clauses (a) through (c) of this sentence. For purposes of this definition, the term **“controls,” “is controlled by” or “is under common control with”** means the possession, direct or indirect, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The Company, however, shall not be deemed to be an Affiliate of any Member.

**“Agreement”** is defined in the preamble.

**“Asset Management Fee”** is defined in Section 4.6(b).

**“Asset Management Fee Payment Date”** is defined in Exhibit B.

**“Assignee”** means a transferee of one or more Membership Interests (but who is not a Member immediately prior to such transfer) who has not been admitted as a Substitute Member or Additional Member, as applicable. Such transferee of one or more Membership Interests shall be entitled to merely an Economic Interest in the Company until and unless such Assignee is admitted as a Substitute Member or Additional Member, as applicable, in accordance with this LLC Agreement.

**“Capital Account”** means the account maintained with respect to a Member or Assignee determined in accordance with Article 9.

**“Capital Contribution”** means any contribution of Property made by or on behalf of a Member or Assignee.

**“Cause”** is defined in Section 4.19.

**“Certificate”** means the Articles of Organization of the Company, as amended, modified, supplemented or restated from time to time.

**“Code”** means the United States Internal Revenue Code of 1986, or any successor thereto.

**“Company”** means R&N Farming OZ I, LLC, a California limited liability company, and any other successor limited liability company.

**“Company Counsel”** is defined in Section 16.15.

**“Company Level Tax”** is defined in Section 11.4(f).

**“Company Minimum Gain”** shall have a meaning consistent with the definition of “partnership minimum gain” set forth in §§ 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

**“Company Nonrecourse Liability”** shall have a meaning consistent with the definition of “nonrecourse liability” set forth in § 1.704-2(b)(3) of the Regulations.

**“Company Property”** means any Property owned by the Company.

**“Confidential Information”** is defined in Section 6.8.

**“Corporations Code”** means the California Corporations Code.

**“Depreciation”** means, for each Taxable Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to Property for such Taxable Year, except that if the Gross Asset Value of Property differs from its adjusted basis for federal income tax purposes at the beginning of such Taxable Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Taxable Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of Property at the beginning of such Taxable Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

**“Designated Individual”** is defined in Section 11.4(a).

**“Distributable Cash Flow”** means for the period in question, the total cash gross receipts of the Company (exclusive of Capital Contributions) derived from all sources (including any reserves previously established by the Manager which the Manager, in its reasonable discretion, determines are no longer required by the Company), less (a) the operating expenses of the Company (including debt service), (b) Fees and (c) any amounts set aside by the Manager for the restoration or creation of reserves as it deems in its reasonable discretion are necessary or appropriate.

**“Distribution”** means a distribution or Transfer of Property made by the Company to a Member or an Assignee on account of such Member’s or Assignee’s Membership Interest(s) as described in Article 10.

**“Economic Interest”** means a Member’s or Assignee’s share of the Company’s Profits, Losses, and Distributions of the Company’s Property pursuant to this LLC Agreement and the Act, but shall not include any right to participate in the operation, management or affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members, except as provided in Section 17705.02(c) of the Act, any right to information concerning the business and affairs of Company.

**“Effective Date”** is defined in the preamble.

**“Event of Dissolution”** has the meaning set forth in Section 14.1.

**“Fair Market Value”** means: (a) as to any Securities which are listed or admitted to trading on any national securities exchange on any trading day, the amount equal to (i) the last sale price of such Securities, regular way, on such date or, if no such sale takes place on such date, the average of the closing bid and asked prices thereof on such date, in each case as officially reported on the principal national securities exchange on which such Securities are then listed or admitted to trading; or (ii) if such Securities are not then listed or admitted to trading on any national securities exchange but are reported through the automated quotation system of a registered securities association, the last trading price of such Securities on such date, or if there shall have been no trading on such date, the average of the closing bid and asked prices of such Securities on such date as shown by such automated quotation system; and (b) as to any other Property on any date, the fair market value of such Property on such date as reasonably determined in good faith by the Manager, or as otherwise determined pursuant to the terms of this LLC Agreement.

**“Fees”** means the fees to the Manager and its principals and Affiliates set forth on Exhibit B.

**“GAAP”** means generally accepted accounting principles.

**“Gross Asset Value”** means, with respect to any Property, the Property’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any Property contributed by a Member to the Company shall be the Fair Market Value of such Property;

(b) The Gross Asset Values of all Company Property shall be adjusted to equal their respective Fair Market Values as of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the acquisition of a greater than de minimis number of additional Membership Interests by any new or existing Member in exchange solely for services previously provided or to be provided by such Member to the Company; (iii) the Distribution by the Company to a Member of more than a de minimis amount of Property as consideration for a Membership Interest; and (iv) the liquidation of the Company within the meaning of Regulations § 1.704-1(b)(2)(ii)(g) (other than pursuant to Code § 708(b)(1)(B)); provided, however, that adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company Property distributed to any Member shall be adjusted to equal the Fair Market Value of such Property on the date of Distribution; and

(d) The Gross Asset Values of Company Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Property pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation § 1.704-1(b)(2)(iv)(m), clause (f) of the definition of Profits and Losses set forth herein, and Section 10.8; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (d) to the extent the Manager determines that an adjustment pursuant to clause (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Gross Asset Value of Property has been determined or adjusted pursuant to clauses (a), (b) or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Property for purposes of computing Profits and Losses.

**“Indemnifying Member”** is defined in Section 11.4(f).

**“Initial Member(s)”** means those the Member identified on Exhibit A who have executed this LLC Agreement as of the Effective Date, but such term does not include any Person who has ceased to be a Member.

**“IRS”** means the Internal Revenue Service.

**“LLC Agreement”** means this Limited Liability Company Agreement including all exhibits attached hereto and all amendments hereto adopted in accordance with Section 15.2 and the Act.

**“Majority of the Members”** means those Members holding greater than fifty percent (50%) of the voting Membership Interests; any other reference in this LLC Agreement to any other specified percentage of the Members shall refer to those Member(s) holding, in the aggregate, the specified percentage of Membership Interests in the Company and, for this purpose, (a) Assignees, transferees and other holders of Membership Interests who have not been admitted as Members pursuant to Section 13.2 or Section 13.3, as applicable, shall be deemed to hold no Membership Interests; and (b) no Membership Interests that are issuable upon the conversion of outstanding securities shall be deemed to be outstanding.

**“Manager”** means Trinity Agri Management LLC, a California limited liability company, and any other Person appointed or elected, as applicable, to serve as a successor to Trinity Agri Management LLC as Manager of the Company under Article 4.

**“Member”** means an Initial Member, Substitute Member or Additional Member of the Company, but such term does not include any Person who has ceased to be a Member.

**“Member Minimum Gain”** means an amount, with respect to each Member Nonrecourse Liability, equal to the Company Minimum Gain that would result if such Member Nonrecourse

Liability were treated as a Company Nonrecourse Liability, determined in accordance with § 1.704-2(i)(3) of the Regulations.

**“Member Nonrecourse Deductions”** shall have a meaning consistent with the definition of “partner nonrecourse deductions” set forth in §§ 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

**“Member Nonrecourse Liability”** shall have a meaning consistent with the definition of “partner nonrecourse liability” set forth in § 1.704-2(b)(4) of the Regulations.

**“Membership Interest”** means an ownership interest in the Company representing a Member’s entire equity and beneficial interest in the Company, including such Member’s Economic Interest and the right of the Member to vote on, consent to, or otherwise participate in any decision, vote or action of or by the Members granted pursuant to this LLC Agreement and the Act. In the case of an Assignee, the term **“Membership Interest”** shall encompass only the Assignee’s Economic Interest in the Company relating to such Membership Interest.

**“New Securities”** is defined in Section 4.3(v).

**“Nonrecourse Deductions”** is defined in §§ 1.704-2(b)(1) and 1.704-2(c) of the Regulations.

**“Notice”** means written notice delivered to a Person pursuant to a provision of this LLC Agreement. All Notices shall be deemed delivered (a) three (3) days after mailed by first class United States mail postage prepaid, (b) the second business day after deposit for overnight delivery with Federal Express, UPS or similar overnight delivery service, (c) the first business day after delivered personally, or (d) the first business day after delivered by facsimile or other electronic transmission, if to the Company, at the principal office of the Company set forth in the LLC Agreement, if to Investor, at its address set forth on in Exhibit A or at such other address that the Member has given written Notice of to the Company.

**“Organization”** means any entity permitted to be a Member of a limited liability company under the Act. The term **“Organization”** includes corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, trusts, limited liability companies, and unincorporated associations, but does not include joint tenancies and tenancies by the entirety.

**“OZ Statute”** shall mean Code Section 1400Z-2, together with those Regulations from time to time promulgated thereunder.

**“Partnership Representative”** is defined in Section 11.4(a).

**“Percentage Interest”** means, with respect to a Member at any particular time, the ratio (expressed as a percentage) of the aggregate Capital Contributions made to date by such Member, divided by the aggregate Capital Contributions made to date by all Members of the Company.

**“Person”** shall include an individual, estate or any Organization.



**“Principal Place of Business”** means the principal office of the Company designated in Section 2.3, or any other place or places as the Manager may from time to time deem advisable.

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

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company Property is adjusted pursuant to clauses (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Property for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Company Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Taxable Year, computed in accordance with the definition of Depreciation set forth above;

(f) To the extent an adjustment to the adjusted tax basis of any Company Property pursuant to Code § 734(b) or Code § 743(b) is required pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s membership interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 10.2 through Section 10.8 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 10.2 through Section 10.8 shall be determined by applying rules analogous to those set forth in clauses (a) through (f) above.

**“Project”** means the real estate, improvements and agricultural assets located in Fresno County, California and includes approximately 169 acres of farmland, as the same may be further developed, improved or modified by the Company.

**“Property”** means any property, whether real, personal or mixed, tangible or intangible, including Securities, money and any legal or equitable interest in such property and goodwill associated with such property, but excluding services and promises to perform services in the future.

**“Property Owner”** has the meaning set forth in Section 2.5.

**“QOZB”** has the meaning set forth Section 2.5.

**“Qualified Opportunity Fund”** or **“QOF”** means a “qualified opportunity fund” as such term is defined in Section 1400Z-2(d)(1) of the Code and the applicable Regulations.

**“Qualified Opportunity Zone Benefits”** has the meaning set forth in Section 2.5.

**“Qualified Opportunity Zone Property”** has the meaning set forth in Section 2.5.

**“Regulations”** means the permanent, temporary, proposed, or proposed and temporary regulations issued by the United States Department of the Treasury that are promulgated under the Code.

**“Revised Partnership Audit Procedures”** means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 or any similar procedures established by a state, local, or non-U.S. taxing authority.

**“Secretary of State”** means the Secretary of State of California.

**“Securities Acts”** is defined in Section 16.2.

**“Substitute Member”** means an Assignee who has been admitted as a Member of the Company in accordance with Section 13.2, but such term does not include any Person who has ceased to be a Member. Upon becoming a Member of the Company, such Assignee shall have all the rights of a Member as are described more fully in Section 13.2.

**“Tax Distributions”** is defined in Section 10.12.

**“Taxable Year”** means the taxable year of the Company as determined pursuant to § 706 of the Code.

**“Taxing Jurisdiction”** means the taxing jurisdiction of the federal government and of any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member’s share of the income or gain attributable to the Company.

**“Transfer”** means, as a noun, any voluntary or involuntary sale, assignment, exchange, mortgage, pledge, grant, hypothecation or other transfer (including by operation of law) of a

Membership Interest in the Company, and, as a verb, to voluntarily or involuntarily sell, assign, exchange, mortgage, pledge, grant, hypothecate or otherwise transfer (including by operation of law) a Membership Interest in the Company owned by a Person or any interest (including a beneficial interest or “transferable interest” as defined by Section 17701.02(aa) of the Act) in any Membership Interests owned by a Person.

## **ARTICLE 2 FORMATION OF COMPANY**

**Section 2.1 Organization.** On March 9, 2022, and the Company was formed pursuant to the provisions of the Act by the filing of Articles of Organization with the Secretary of State. This Agreement shall constitute the “operating agreement” (as that term is used in the Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Act in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

**Section 2.2 Registered Agent and Office.** The registered agent for service of process and the registered office shall be that Person and location reflected in the Certificate. The Manager may, from time to time, change the registered agent or office in the manner provided by the Act and applicable law. In the event the registered agent ceases to act as such for any reason or the location of the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office within ten (10) days after the registered agent ceased to act as such or the location of the registered office changed, as the case may be, the Manager or any Member may designate a replacement registered agent or file a notice of change of address.

**Section 2.3 Principal Place of Business.** The Principal Place of Business of the Company is located at 3213 West LaCosta Avenue, Fresno, California 93711. The Company may locate its principal places of business at any other place or places as the Manager may from time to time deem advisable.

**Section 2.4 Purposes; Powers.** The purposes of the Company are:

(a) to acquire, invest in, develop, own (directly or indirectly), hold, use, operate, lease, manage and dispose of the Project or the QOZB or any interest therein, and to engage in any and all activities and transactions and enter into any and all agreements and undertakings which are appropriate, necessary, customary, convenient, or incidental to the foregoing purposes;

(b) to accomplish any lawful business whatsoever or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its Property;

(c) to exercise all powers necessary to or reasonably connected with the Company’s business which may be legally exercised by limited liability companies under the Act or under the laws of any jurisdiction in which the Company may conduct its business; and

(d) to engage in all activities necessary, customary, convenient, or incidental to any of the foregoing.

### **Section 2.5 QOF Purpose.**

(a) The Company was formed as a “qualified opportunity fund” as such term is defined in Section 1400Z-2(d)(1) of the Code and the regulations and publications prescribed in connection therewith (a “**QOF**”). The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, to invest substantially all of its assets in limited liability company interests of R&N Farming I, LLC, a California limited liability company (the “**Property Owner**” or “**QOZB**”), which will be a wholly-owned subsidiary of the Company, and engaging in any and all activities necessary or incidental to the foregoing. The Members acknowledge that their acquisition of their interests in the Company is intended to allow them to participate in the economic success of the development of one or more projects and to allow them to be eligible to obtain the deferral and other benefits provided under Section 1400Z-2 of the Code (collectively, the “**Qualified Opportunity Zone Benefits**”).

(b) The Company was organized for the purpose of investing in “qualified opportunity zone property” as defined in Section 1400Z-2(d)(2) of the Code (“**Qualified Opportunity Zone Property**”), and shall certify as a QOF. The Company expects to acquire partnership interests in the QOZB (constituting “qualified opportunity zone partnership interests” (as defined in Section 1400Z-2(d)(3) of the Code)) that will operate as a “qualified opportunity zone business” (as defined in Section 1400Z-2(d)(3) of the Code). Notwithstanding anything to the contrary herein, the Manager shall take such action from time to time as the Manager determines is necessary or appropriate in order to maintain the Company’s qualification as a QOF; provided, however, if the Manager determines that it is no longer in the best interests of the Company to continue to be qualified as a QOF, the Manager may authorize the Company to revoke or otherwise terminate its QOF election pursuant to the Code or Internal Revenue Service guidance.

**Section 2.6 Construction of Agreement in Accordance with OZ Statute and Addendum.** This Agreement shall be construed in a manner to attain continued compliance with the applicable rules under the OZ Statute and to enable the Company to maximize the economic and tax benefits afforded thereby, as further described in the Addendum. In the event of any inconsistency between the provisions of the Addendum and the other provisions of this Agreement, the Addendum will prevail.

## **ARTICLE 3 NAMES AND ADDRESSES OF MEMBERS**

The name and address of each Member and Assignee, and the Membership Interests and Percentage Interest of each such Member and Assignee, shall be as listed on Exhibit A attached hereto. The Manager shall update Exhibit A from time to time as necessary to accurately reflect the information therein and to reflect the admission of Additional Members or Substitute Members in accordance with this LLC Agreement; provided, however, the failure of the Manager to cause Exhibit A to be updated shall not prevent the effectiveness of, or otherwise affect the underlying adjustments that would be reflected in, such update. Any such update to Exhibit A shall not be

deemed an amendment to this LLC Agreement for purposes of requiring Member approval. Any reference in this LLC Agreement to Exhibit A shall be deemed to be a reference to Exhibit A as may be in effect from time to time.

## **ARTICLE 4**

### **RIGHTS AND DUTIES OF THE MANAGER**

**Section 4.1 Management.** The management of the business and affairs of the Company shall be vested in the Manager as more fully set forth in this LLC Agreement. Except for situations in which the approval of the Members is expressly required by nonwaivable provisions of the Act or by this LLC Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and Properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business on the terms and conditions set forth in this LLC Agreement, including the power to exercise on behalf and in the name of the Company all of the powers described in the Act. The Manager may delegate such general or specific authority to such other officers, employees or agents of the Company as the Manager considers desirable from time to time, and each such officer, employee or agent of the Company may, subject to any restraints or limitations imposed by the Manager, exercise the authority granted to them. Unless authorized to do so by this LLC Agreement or by the Manager, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have the power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

**Section 4.2 Tenure and Qualifications.** By executing this LLC Agreement, the Members hereby appoint Trinity Agri Management LLC as the Manager. The Manager shall, subject to earlier vacation, hold office until such Manager's successor shall have been elected or designated and qualified in accordance with this Article 4. A Manager need not be a resident of any specific state or a Member of the Company.

**Section 4.3 Certain Powers of the Manager.** Except as otherwise required pursuant to this LLC Agreement or by nonwaivable provisions of the Act, the Manager shall have, without limitation, the power and authority, on behalf of the Company:

(a) to negotiate and enter into subscription agreements and side letters (if any), issue Interests in accordance with the terms contained in such subscription agreements and exercise and perform the Company's rights and obligations thereunder;

(b) to acquire, hold, manage, finance, refinance, pledge, encumber, transfer, exchange and otherwise dispose of interests in the QOZB and the Project;

(c) to open, have, maintain and close bank and brokerage accounts, including the power to draw checks or other orders for the payment of moneys;

(d) to incur and pay all expenses and obligations incident to the operation and management of the Company;

(e) to bring and defend actions and proceedings at law or in equity or before any governmental, administrative or other regulatory agency, body or commission;

(f) to hire and terminate consultants, custodians, attorneys, accountants and such other agents and employees of the Company as it may deem necessary or advisable (including property management or leasing entities), to authorize each such agent and employee to act for and on behalf of the Company, and to compensate them from Company funds;

(g) to set aside funds for reserves, anticipate contingencies and working capital;

(h) to call Additional Capital Contributions in accordance with Section 9.2;

(i) to make Distributions in accordance with Article 10;

(j) to make all elections, investigations, evaluations and decisions, binding the Company thereby, that may be necessary or appropriate for the acquisition, holding or disposition of Securities for the Company;

(k) to enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Company's business, and to take or omit to take such other action in connection with such business of the Company as may be necessary or desirable to further the purposes of the Company;

(l) to acquire, whether by purchase, lease or otherwise, Property from any Person for use in connection with the Project and/or the Company's business and to hold and own or lease such Property in the name of the Company;

(m) subject to Section 4.4(a), to Transfer the Company's Property;

(n) to borrow money for the Company from banks, other lending institutions, the Manager, any Member, or Affiliate of the Manager or any Member on such terms as the Manager deems appropriate, including, but not limited to, for the acquisition of and development costs related to the Project, and in connection therewith, to hypothecate, encumber and grant security interests in the Property of the Company to secure repayment of the borrowed sums;

(o) to execute, on behalf of the Company, all instruments and documents, including, but not limited to, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, guarantees (including guarantees), security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's Property, assignments, bills of sale, leases, partnership agreements, operating agreements or limited liability company agreements of other limited liability companies, and any other instruments or documents necessary to the business of the Company;

(p) without limiting the generality of the foregoing clause (l), in connection with any loans related to the Project, to execute and deliver such amendments to this LLC Agreement, consents, certificates and other documents as the lender customarily requires in connection with the loan transaction, to include such items as "special purpose entity" provisions, separateness covenants, and other requirements;

- (q) to purchase liability and other insurance to protect the Company's Property and business;
- (r) to admit Assignees as Substitute Members in accordance with Section 13.2;
- (s) to admit Additional Members in accordance with Section 13.3;
- (t) subject to Section 4.4(a), to dispose of all or substantially all of the Company Property;
- (u) subject to Section 4.4(a), to merge or consolidate the Company with or into one or more limited liability companies or other Organizations;
- (v) subject to Section 4.4(a), to authorize and cause the Company to issue additional Membership Interests, rights, options or warrants to subscribe for, purchase or otherwise acquire additional Membership Interests, or any evidences of indebtedness or other securities directly or indirectly convertible into or exchangeable for Membership Interests (collectively, "New Securities");
- (w) to enter into any and all other agreements on behalf of the Company with any other Person for any purpose;
- (x) to prepare and cause to be prepared reports, statements and other relevant information for distribution to Members and to prepare and file all necessary returns, reports and statements and pay all taxes, assessments and other impositions relating to the assets or operations of the Company; and
- (y) to do and perform any and all other acts as may be necessary or appropriate to the conduct of the Company's business.

#### **Section 4.4 Additional Company Decisions.**

- (a) Decisions Requiring a Majority of the Members. Unless the Manager shall receive the consent of a Majority of the Members, the Manager shall not have the authority to:
  - (i) issue any New Securities that are senior to the Membership Interests;
  - (ii) amend or agree to the amendment of this LLC Agreement (except as provided in Article 15) or execute or deliver any instrument on behalf of the Company, if the effect of such amendment, agreement or instrument would be a diminution of the Members' rights, interests or benefits in the Company; or
  - (iii) dissolve the Company, except as provided in Section 14.1 of this LLC Agreement.
- (b) Decisions Requiring Unanimity. Unless the Manager shall receive the consent of all Members, the Manager shall not do or perform:

(i) any act which requires the consent of all Members under the Act, unless the right to do so is expressly set forth in this LLC Agreement and not in conflict with the nonwaivable provisions of the Act;

(ii) any act that would subject any Member to liability as a Manager or “general partner” in any jurisdiction except as provided for herein or under the Act; or

(iii) any act that would cause the Company to be taxed for federal income tax purposes as an association taxable as a corporation.

#### **Section 4.5 Expenses.**

(a) Formation Expenses. Each Member shall be responsible for paying its own attorney’s fees and other costs in connection with the drafting, negotiation and execution of this LLC Agreement.

(b) Due Diligence Expenses of Manager and its Affiliates. All reasonable and actual out-of-pocket expenses incurred by the Manager and its Affiliates in connection with the due diligence evaluation of the Project, and other third-party pre-acquisition expenses (including deposits), shall be reimbursed by the Company in accordance with Section 4.5(d).

(c) Company and Expenses. The Company shall bear and pay all third-party costs and expenses relating to its activities and operations, including all activities and operations prior to the Effective Date, including: (i) all costs and expenses incurred in organizing the Company and developing, negotiating, financing and structuring the Project, including any engineering, appraisal, environmental, travel, legal and accounting expenses, any deposits and commitment fees and other fees, and the costs of rendering financial assistance to or arranging for financing for the Project or for working capital or other Company purposes; (ii) all costs and expenses, if any, incurred in monitoring the Project, including, without limitation, any engineering, environmental, travel, legal and accounting expenses and other fees; (iii) taxes of the Company; (iv) costs related to litigation and threatened litigation involving the Company; (v) expenses associated with third-party accountants, attorneys and tax advisors with respect to the Company and its activities, including the preparation and auditing of financial reports and statements and other similar matters, the distribution of financial and other reports to the Members, refinancing the Project and selling or otherwise disposing of the Project; (vi) brokerage commissions incurred by or on behalf of the Company and paid to third parties; (vii) all costs and expenses associated with obtaining and maintaining customary insurance for the Company and its assets; (viii) fees incurred in connection with the maintenance of bank or custodian accounts; (ix) all expenses incurred in connection with the registration (or exemption from registration) of the Company’s securities under applicable securities laws or regulations and any offering expenses, including the costs of preparation of offering materials, accountants fees, legal fees, and related expenses; and (x) all expenses of the Company that are not normally recurring operating expenses. To the extent that any expenses of the Company are paid by the Manager or any one or more of its principals or Affiliates, such expenses shall be reimbursed by the Company.

(d) Reimbursement of Expenses. The Company shall reimburse the Manager for actual out-of-pocket expenses incurred by it or its principals or Affiliates (and supported by



reasonable documentation) in connection with formation of the Company and the due diligence, pre-acquisition and acquisition of the Project, including expenses incurred by them on behalf of the Company on or before the Effective Date. In lieu of such reimbursement, the Manager may elect to treat any unreimbursed expenses as a Capital Contribution.

**Section 4.6 Payment of Fees.** In addition to, and entirely separate from, any other distributions and allocations to the Manager hereunder, as compensation for various tasks and responsibilities performed by certain entities, the Company shall pay to such entities the amounts and at the times described on Exhibit B. The Members acknowledge that the Manager, or other entities affiliated with the Manager or its principals may receive these payments, and the Members consent to such payment. Any distributions made pursuant to this Section 4.6 and Exhibit B to the Manager, or other entities affiliated with the Manager or its principals shall not be considered a “distribution” under this Article 4 and shall not trigger any distribution owed to the Members or any Capital Account adjustment hereunder.

**Section 4.7 Liability for Certain Acts.**

(a) The Manager shall perform his, her or its duties as Manager in good faith and in a manner he, she or it reasonably believes to be in or not opposed to the best interest of the Company. The Members hereby agree that the foregoing are the only fiduciary duties that a Manager shall owe to the Company and its Members. A Manager who so performs his, her or its duties as a Manager shall not have any liability by reason of being or having been a Manager of the Company.

(b) In performing his, her or its duties, the Manager shall be entitled to rely upon, and shall be fully protected in relying in good faith upon, the books and records of the Company and on information, opinions, reports, financials, or statements (including with respect to the value and amount of the Properties, liabilities, Profits or Losses of the Company or any other facts pertinent to the existence and amount of Properties from which Distributions to Members might properly be paid) of the following Persons unless the Manager shall have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(i) any Members, officers, employees, contractors, or agents of the Company whom such Manager reasonably believes to be reliable and competent in the matters presented and who have been selected with reasonable care by or on behalf of the Company; or

(ii) any attorney, accountant, advisor, or other person as to matters which such Manager reasonably believes to be within such person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

**Section 4.8 Officers.** If authorized by the Manager, the Company may from time to time appoint or employ a Chief Executive Officer, President, Secretary, and/or any other officers of the Company whose title, duties, functions and compensation shall be those authorized from time to time by the Manager and who may serve at the pleasure of the Manager. Officers and other employees of the Company need not be Members or a Manager of the Company. Unless the

authority of the officer in question is limited or otherwise specified by the document appointing such officer or is otherwise specified by the Manager, any officer so approved shall have the same authority to act for the Company as a corresponding officer of a California corporation would have to act for a California corporation in the absence of a specific delegation of authority.

**Section 4.9 Manager and Officers Have No Exclusive Duty to Company.** Except as otherwise provided in this LLC Agreement or other written agreement between the Company and the Manager or any officer, neither the Manager nor any officer of the Company shall be required to manage the Company as the Manager's or such officer's sole and exclusive function, and the Manager or any officer may have other business interests and may engage in other activities in addition to those relating to the Company, and neither the Company nor any Member shall have any right, by virtue of this LLC Agreement, to share or participate in such other investments or activities of a Manager or officer of the Company or to the income or proceeds derived therefrom. Neither the Manager nor any officer of the Company shall incur any liability to the Company or to any of the Members solely as a result of the Manager's or such officer's activities relating to any other business or venture. Neither the Company nor the Members shall have any right, by virtue of this LLC Agreement or the relationship created hereby to participate in other business ventures in which the Manager or any officer participates, or share in the profits or losses therefrom. Neither the Manager nor any officer shall be obligated to offer any interest in any business activity to the Company or to another Member.

**Section 4.10 Property.** Any and all Company Property shall be owned by the Company as an entity, in the name of the Company, and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company Property in its individual name or right, and each Member's interest in the Company shall be personal property for all purposes. The foregoing provisions shall govern over any contrary or inconsistent provision herein, in the Certificate or any other document or instrument governing the affairs of the Company.

**Section 4.11 Bank Accounts.** The Manager may from time to time open bank accounts in the name of the Company.

**Section 4.12 Records, Audits and Reports to be Maintained.** At the expense of the Company, the Manager shall maintain the records and accounts of all operations and expenditures of the Company. The Manager shall also maintain the following records at the Principal Place of Business:

- (a) a current list of the full name and last known business or residence address of each Member and the Manager;
- (b) a copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any material documents of the Company have been executed;
- (c) copies of the Company's Federal, foreign, state and local income tax returns and reports, if any, for the three (3) most recent Taxable Years;
- (d) a copy of this LLC Agreement including all amendments thereto;

(e) copies of any financial statements of the Company for the three (3) most recent years; and

(f) copies of the statement filed with the Secretary of State the statement required under Section 17702.09 of the Act according to the frequency set forth therein.

**Section 4.13 Access to Records.** The records required to be maintained by the Manager in Section 4.12, and only such other records that the Members are entitled to inspect by non-waivable provisions of the Act, are subject to inspection and copying at the reasonable request (which may be made no more than once per Taxable Year) of, and at the expense of, any Member during regular business hours of the Company for any proper purpose (which determination shall be made by the Manager in its sole discretion); provided, however, that the Manager may keep confidential from any Member who is not also a Manager: (a) any information that the Manager believes to be in the nature of trade secrets; (b) any information the disclosure of which the Manager believes would be likely to materially damage the Company or its business; and (c) any information the Company is required by law or by agreement with a third party to keep confidential. Prior to any inspection of such records, the Manager may require the Member and the Member's agents to execute a confidentiality and non-disclosure agreement containing commercially reasonable terms and conditions with regard to the information to be inspected, reviewed or copied, as described above.

**Section 4.14 Reports to Members.** The Manager shall from time to time provide such financial information or reports to the Members as the Manager, in its sole discretion, shall deem appropriate. The foregoing notwithstanding, the Manager shall cause the Company to prepare and distribute to each Member the following reports or information:

(a) a balance sheet reviewed by the Company's accountant as of the end of the Company's Taxable Year and statements of income and cash flow for the year then ended, which financial statements shall be delivered as soon as reasonably practicable following the end of a Taxable Year, provided that the Company shall use commercially reasonable efforts to provide such information within one hundred and twenty (120) days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year; and

(b) information necessary for the preparation of each Member's income tax returns, including a statement showing such Member's share of Profit or Loss, deductions or credit for the Taxable Year or taxable quarter for federal income tax purposes and the amount of any distribution made to or for the account of such Member pursuant to this LLC Agreement, and the Company shall use commercially reasonable efforts to provide such information within ninety (90) days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year.

**Section 4.15 Financial Statements.** The Members acknowledge and agree that, except as otherwise determined by the Manager, the financial statements of the Company shall not be audited.

**Section 4.16 Accounts.** The Manager, or if officers are appointed by the Manager, such officer(s) as are authorized and directed by the Manager, shall maintain a record of the Capital Account for each Member and Assignee in accordance with Article 9.

**Section 4.17 Records of Membership Interests.** The Manager shall maintain a record of the Membership Interests held by each Member and Assignee, as such Membership Interests shall be increased or decreased from time to time in accordance with this LLC Agreement.

**Section 4.18 Resignation.** The Manager shall not resign as Manager (and any attempted resignation shall therefore not be accepted or effective) unless a substitute Manager has been approved in advance by a Majority of the Members. In the case where a substitute Manager is approved, such resignation shall become effective on such date as is mutually agreed upon by the resigning Manager and a Majority of the Members. The resignation of any Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of the Member. The Manager shall promptly notify the Members of its resignation as Manager and the Members shall elect a substitute Manager within thirty (30) days of the receipt of such notice.

**Section 4.19 Removal.** Trinity Agri Management LLC may only be removed as the Manager for Cause by a vote of a Majority of the Members. Any successor Manager may only be removed, with or without cause, by a Majority of the Members. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member or constitute a withdrawal of the Member. For the avoidance of doubt, the Manager shall retain all of the rights to distributions set forth in Section 10.14 in the event of its removal. As used herein, "Cause" means the conviction or admission by consent of guilt in respect of a material violation of a material U.S. federal or state securities law or in respect of a felony violation of the Manager or any manager, managing member or executive officer thereof.

**Section 4.20 Vacancies.** In the case of a vacancy in the office of Manager, a Majority of the Members shall be entitled to appoint a Manager to fill such vacancy.

**Section 4.21 Other Activities; Business Opportunities.** Nothing contained in this Agreement shall prevent any Member or any of such Member's Affiliates from engaging in any other activities or businesses, regardless of whether those activities or businesses are similar to or competitive with the Company or the Project. None of the Members nor any of their Affiliates shall be obligated to account to the Company or to the other Members for any profits or income earned or derived from other such activities or businesses. None of the Members nor any of their Affiliates shall be obligated to inform the Company or the other Members of any business opportunity of any type or description.

## **ARTICLE 5 MEETINGS OF THE MANAGER**

As there is a single Manager, there shall be no requirements or procedures for regular or special meetings of such Manager, nor shall a meeting or any other form of consent be required for such Manager to exercise the authority granted under this LLC Agreement.

## **ARTICLE 6**

### **RIGHTS AND OBLIGATIONS OF MEMBERS**

**Section 6.1 Member Management Rights.** Except as otherwise provided in this LLC Agreement or by nonwaivable provisions of the Act, all decisions concerning the business, affairs and Properties of the Company shall be made by the Manager in accordance with this LLC Agreement, and no Member shall have any right to participate in the management of the business, affairs and Properties of the Company. No Member has a voting right except with respect to the matters expressly reserved for a vote of the Members in this LLC Agreement or by nonwaivable provisions of the Act.

**Section 6.2 Company Property; No Compensation.** A Member shall have no interest in specific Company Property, unless otherwise agreed by all of the Members. Except as provided otherwise in this LLC Agreement, no Member, solely by reason of being a Member of the Company, shall be entitled to any salary, draw, or other compensation from the Company.

**Section 6.3 Liability of Members to Third Parties.** Unless otherwise provided by the Act, no Member shall be liable under any judgment, decree, or order of a court, or in any other manner, for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any Member, Manager, agent or employee of the Company. Except as otherwise provided by the Act, by applicable law, or expressly in this Agreement, no Member will be obligated personally for any debt, obligation, or liability of the Company or other Members, whether arising in contract, tort, or otherwise, solely by reason of being or acting as a Member. Except as otherwise provided by the Act, by applicable law, or expressly in this Agreement, no Manager will be obligated personally for any debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise, solely by reason of being or acting as a Manager.

**Section 6.4 Roles with the Company; Compensation.** A Member or any Person affiliated or associated with such Member may act as surety, guarantor, endorser, or provider of collateral for, and transact any kind of business with, the Company on such terms as agreed between such Member or Person and the Company, provided that any such transaction must be on an arms-length basis and on commercially reasonable terms. Nothing in this LLC Agreement shall be construed to preclude a Member, or any Person affiliated or associated with such Member, from serving the Company in any other capacity as a Manager, officer, employee, agent, contractor, or otherwise and receiving commercially reasonable compensation and expense reimbursement therefor.

**Section 6.5 Right of Withdrawal.** No Member shall have the right to withdraw or resign as a Member of the Company or otherwise seek the partition of the Company's Property, without the prior written consent of the Manager. No Member may withdraw any part of his, her, or its Capital Contributions from the Company.

**Section 6.6 Conflicts of Interest.** No Member or Manager shall be deemed to have violated a duty or obligation to the Company merely because the Member's or Manager's conduct furthers such Member's or Manager's own interest. Subject to the other provisions of this LLC Agreement, a Member or Manager, or any of their respective Affiliates, may lend money to and

transact other business with the Company, provided that the Company and such Member, Manager or Affiliate conduct such transaction at arms-length on commercially reasonable terms. The rights and obligations of a Member or Manager, or Affiliate thereof, as the case may be, who lends money to or transacts business with the Company are the same as those of a person who is not a Member or Manager, subject to this LLC Agreement, the Act or other applicable law. No transaction with the Company shall be voidable solely because a Member or Manager, or an Affiliate thereof, has a direct or indirect interest in the transaction if (a) the transaction is fair to the Company, (b) if the Manager is disinterested in the transaction, the Manager authorizes, approves or ratifies the transaction, or (c) the holders of a majority of the Membership Interests held by the disinterested Members authorize, approve or ratify the transaction.

**Section 6.7 No Fiduciary Duties.** Except as expressly set forth in this LLC Agreement, no Member shall owe, in its, his or her capacity as a Member, any fiduciary or other similar duties to the Company or the other Members.

**Section 6.8 Non-Disclosure and Confidentiality.** Without the prior written consent of the Manager, no Member shall at any time while he, she or it is a Member of the Company or thereafter in any manner, directly or indirectly, divulge, disclose or communicate to any Person, or shall use for his, her or its own or any other Person's purposes or benefit, any information related to the Company, including trade secrets, or any information regarding the Company's processes, plans, practices or other information related to the business of the Company (including any information to which a Member may be entitled pursuant to Article 4), the other Members, or the Affiliates of either of the foregoing ("**Confidential Information**"). "Confidential Information" does not include: (a) information already known to the Member when received from the Company (other than information pertaining to assets contributed or rights granted to the Company by such Member or any Affiliate thereof); (b) information that is generally available to the public, other than information obtained through a breach of the Member's duty of confidentiality hereunder; (c) information which is legally received by the Member from a Person in rightful and legal possession of such Confidential Information and not under any legal, contractual, fiduciary or other duty to any Person not to disclose such Confidential Information; or (d) information which is independently developed by the Member without use of, reference to, or reliance on the Company's Confidential Information. Each Member acknowledges that any such information obtained as a result of its membership in or dealings with the Company and the other Members is confidential and that its disclosure will substantially and adversely affect the effectiveness and successful conduct of the business of the Company and the Company's goodwill. Each Member further acknowledges that such Member's obligation not to disclose any of the Confidential Information shall not be terminated upon, but shall survive, the occurrence of any event which results in such Member no longer being a Member of the Company for a period of five (5) years following such event; provided that, with respect to Confidential Information that constitutes a trade secret such obligation not to disclose shall continue in force with respect to such trade secret for the longer of (i) so long as such Confidential Information remains a trade secret; or (ii) five (5) years after the occurrence of any event which results in such Member no longer being a Member of the Company. Notwithstanding any provision hereof to the contrary, a Member may disclose Confidential Information: (A) to its employees, members, officers, directors, members, Managers, Affiliates, agents, attorneys, accountants, lenders and professional advisors (collectively, "**Representatives**") who have a reasonable need to know such Confidential Information and are apprised of the confidential nature of such Confidential Information; (B) to any party if and to the

extent required by law (including state or federal banking regulations) or court order; (C) as necessary to enforce or perform such Member's obligations under this LLC Agreement; or (D) subject to any policies relating to such disclosure adopted from time to time by the Manager, as necessary to fulfill such Member's (or any of its Representative's) duties and responsibilities to the Company in the ordinary course of the Company's business. Notwithstanding the foregoing, a Member shall be liable to the Company and every other Member for any breach of the provisions of this Section 6.8 by any of such Member's Representatives. In the event that any Member becomes legally compelled to disclose any of the Confidential Information or in the event that any Member has knowledge that anyone to whom such Member has transmitted the Confidential Information pursuant to this LLC Agreement becomes legally compelled to disclose any of the Confidential Information, such Member shall provide the Manager with reasonably prompt notice prior to any such disclosure to enable the Company to seek a protective order or other appropriate remedy with respect to such disclosure or to waive compliance with the provisions of this LLC Agreement.

## **ARTICLE 7 MEETINGS OF MEMBERS**

**Section 7.1 Meetings.** Meetings of the Members for any proper purpose (which determination shall be made by the Manager in its, his or her sole discretion) may be called at any time by the Manager or by any Member or group of Members holding at least twenty percent (20%) of the Membership Interests of the Company. Meetings shall be held at such place or places as shall be stated in the Notice of such meeting. At a meeting no business shall be transacted and no action shall be taken other than the purpose or purposes stated in the written Notice of meeting and matters germane to such purposes, unless all of the Members agree to the transaction of such business or taking of such action.

**Section 7.2 Notice of Meetings.** Written Notice of every meeting of Members shall be given to each Member of record entitled to vote at the meeting at least five (5) days prior to the day named for the meeting. Notice of a meeting need not be given to any Member of record entitled to vote at the meeting who signs a waiver of such Notice, whether before or after the meeting, or who attends the meeting without protesting the lack of Notice of such meeting prior to the conclusion of the meeting.

**Section 7.3 Manner of Acting.** The affirmative vote or action of a Majority of the Members shall be the vote or action of the Members, unless the vote or action of a greater or lesser proportion or number of the Members is otherwise expressly required by this LLC Agreement or nonwaivable provisions of the Act. Any Member may participate in any meeting of the Members by means of a conference telephone or similar communications equipment by means of which all persons participating in such meeting can hear each other, and participation in a meeting pursuant to this Section 7.3 shall constitute presence in person at such meeting.

**Section 7.4 Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting and without Notice if the action is evidenced by one or more written consents describing the action taken, signed by those Members or that Member having the requisite number of Membership Interests required to take such action at a meeting of the Members and delivered to the Company for inclusion in the minutes or for

filing with the Company records. An action taken under this Section 7.4 is effective when the Members holding the necessary number of Membership Interests to take or approve a specific action have signed the consent, unless the consent specifies a different effective date. If an action by Members is taken without a meeting under this Section 7.4, notice to the Members shall be considered waived, provided however, that if action is taken hereunder by less than all of the Members entitled to vote upon such action, Notice of such action shall be provided to the nonparticipating Members so entitled to vote. Failure to provide the Notice described in the preceding sentence shall not invalidate or otherwise affect the validity of any action properly taken by the Members holding the requisite number of Membership Interests.

**Section 7.5 Waiver of Notice.** When any Notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such Notice, whether before, at, or after the date on which such Notice was otherwise required to be given, shall be equivalent to the giving of such Notice.

## **ARTICLE 8 INDEMNIFICATION**

**Section 8.1 Indemnification of Members, Managers and Officers.** Subject to Section 8.4, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Company), by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such claim, action, suit or proceeding if such Person acted in good faith, and, with respect to any criminal action or proceeding had no reasonable cause to believe such Person's conduct was unlawful. The termination of any claim, 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 Person did not act in good faith, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

**Section 8.2 Indemnification in Actions by or in Right of the Company.** Subject to Section 8.4, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith, except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct, or have breached their fiduciary duties set forth in Section 4.7(a), in the performance of such Person's duty to the Company unless and only to the extent that the court in which such claim, action or suit was brought shall determine upon application that, despite the adjudication of



liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**Section 8.3 Indemnification When Successful on Merits or Otherwise.** Subject to Section 8.4, to the extent that a Member, Manager or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith, notwithstanding that such Person has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

**Section 8.4 Determination of Meeting Applicable Standard.** Any indemnification under Section 8.1, Section 8.2 or Section 8.3 shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Member, Manager or officer is proper in the circumstances because such Person has met the applicable standards of conduct set forth in Section 8.1, Section 8.2 or Section 8.3 and that indemnification is otherwise appropriate under the circumstances, which determination shall be made by the Manager in its sole discretion.

**Section 8.5 Payment of Expenses in Advance of Disposition of Action.** Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Company in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Section 8.4 upon receipt of an undertaking by or on behalf of the Member, Manager or officer to repay such amount if and to the extent that it shall be ultimately determined that such Person is not entitled to be indemnified by the Company as authorized in this Article 8.

**Section 8.6 Non-Exclusivity of Article.** The indemnification authorized in and provided by this Article 8 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provision of the Certificate, this LLC Agreement, other agreement, vote or action of Members or by the Manager, or otherwise, and shall continue as to a Person who has ceased to be a Member, Manager or officer and shall inure to the benefit of the heirs, executors and administrators of such a Person.

**Section 8.7 Insurance.** The Company may purchase and maintain insurance on behalf of any Person who is or was a Member, Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization, against any liability asserted against such Person incurred by such Person in such capacity, whether or not the Company is required or permitted to indemnify such Person against such liability under the provisions of this Article 8 or any statute.

## **ARTICLE 9 CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS**

**Section 9.1 Initial Capital Contributions.** The Manager is authorized to cause the Company to issue the Membership Interests. The initial Capital Contribution of (initial Percentage Interest of) each Member is set forth on Exhibit A. All Capital Contributions shall be made in cash in U.S. dollars, unless otherwise agreed to by the Manager, in its sole discretion. The initial Capital

Contribution (to the extent not previously paid) shall be paid by each Member in cash or its equivalent or in such other consideration as the Manager shall agree upon in writing at its sole discretion. No Member shall be required to contribute any Additional Capital Contributions to the Company.

## **Section 9.2 Additional Capital Contributions.**

(a) In addition to the initial Capital Contributions of the Members, in the event that the Manager determines that Additional Capital Contributions are reasonably necessary to facilitate the business needs of the Company, including to meet the Company's operating expenses, to fund the expansion of the Company's business and to purchase any Property reasonably necessary for the operation of the Company, the Manager may cause the Company to request Additional Capital Contributions from all of the Members, and if the Company requests such Additional Capital Contributions from all Members, each Member shall be entitled, but not required, to make such Additional Capital Contribution on a basis pro rata to such Member's Percentage Interest in the Company. The Manager will update Exhibit A to reflect any changes to the Members of the Company or the effects of any Additional Capital Contributions on the Members' Capital Contributions. Upon making a determination to request Additional Capital Contributions from all Members, the Manager shall give Notice to each Member in writing at least ten (10) days prior to the date on which the Additional Capital Contributions are due. Such Notice shall set forth the amount of Additional Capital Contribution needed, the purpose for which the contribution is needed, and the date by which the Member must contribute such Additional Capital Contribution. In the event that one or more of the Members does not or decides not to make its Additional Capital Contribution, the contributing Member or Members shall be entitled to receive Additional Membership Interests of the Company in return for such contributing Member's or Members' Additional Capital Contribution (the "**Additional Capital Contribution Membership Interests**"). For the sake of clarity, nothing in this Section 9.2 shall be construed to require the Company, in the event the Manager determines that additional capital is necessary or appropriate to facilitate the business needs of the Company, to raise such additional capital by way of Additional Capital Contributions from the Members, and subject to any consent required pursuant to Section 4.4(a) of this LLC Agreement, the Company may raise such additional capital from any one or more third parties on such terms as the Manager may determine, in its sole discretion, provided that the purchase price for any New Securities issued in connection with raising such additional capital would be determined by the Manager provided that such includes a pro rata portion of any Fees paid by the Members prior to the issuance of such New Securities.

(b) At the time of any Additional Capital Contribution from a new or existing Member pursuant to this Section 9.2, in the sole discretion of the Manager, the Company may cause the Capital Accounts of such Member to be debited and such debited amount distributed to the other Members or reallocated to their Capital Accounts in a manner determined in good faith by the Manager, in its sole discretion, to equitably apportion the expenditures of the Company borne by the other Members prior to such Additional Capital Contributions.

## **Section 9.3 Election Not to Fund Additional Capital Contributions.**

(a) Funding the Shortfall. In the event that one or more Members elect not to participate in a call for Additional Capital Contributions, then the Manager may in its sole discretion do or cause to be done any one or more of the following:

(i) offer the other Members the opportunity to increase their Additional Capital Contributions to fund such shortfall, with any amount not accepted by any Member to be offered to any other Member willing to so increase its Additional Capital Contributions in excess of such non-accepting Member's share of the shortfall; and/or

(ii) incur indebtedness, including from the Manager, any Member or their respective Affiliates, to fund such shortfall.

(b) Manager Discretion. The Manager shall not be obligated to exercise any of the options available to it set forth in Section 9.3(a) of this LLC Agreement or to pursue such any such option in any particular order.

(c) Adjustments to Capital Accounts, Percentage Interests and Distributions. If a Member elects not to fund Additional Capital Contributions on the specified due date, then such election not to make Additional Capital Contributions shall be reflected in corresponding non-punitive adjustments to the Capital Accounts and Percentage Interests of the Members and adjustments will be made for purposes of calculating allocations and distributions pursuant to this LLC Agreement.

**Section 9.4 Maintenance of Capital Accounts.** The Company shall establish and maintain a separate Capital Account for each Member and Assignee.

(a) To each Member's Capital Account there shall be credited (i) such Member's Capital Contributions (provided, however, that in the case of a Capital Contribution made in the form of a promissory note of which the contributing Member is the maker, such Member's Capital Account shall be increased with respect to such promissory note only when there is a taxable disposition of such note by the Company or when, and to the extent that, the contributing Member makes principal payments on such note); (ii) such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 10.2 through Section 10.8; and (iii) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member.

(b) To each Member's Capital Account there shall be debited (i) the amount of cash and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this LLC Agreement; (ii) such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 10.2 through Section 10.8; and (iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company.

(c) In the event all or a portion of the Membership Interests held by a Member are transferred in accordance with the terms of this LLC Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interests. This Section 9.4 shall not be interpreted as permitting the transfer of any Membership Interests that is otherwise prohibited under Article 12.

(d) In determining the amount of any liability for purposes of this Section 9.4, there shall be taken into account Code § 752(c) and any other applicable provisions of the Code and Regulations.

(e) If so determined by the Manager, immediately prior to any Adjustment Date, the Capital Accounts of all Members shall also be increased or decreased to reflect the aggregate net increase or decrease in Gross Asset Values of the Company as if the upward or downward change in the Gross Asset Values arising from such adjustment had been Profits or Losses, respectively, and allocated among the Members pursuant to Section 10.1. It is the intention of the Members that the Capital Accounts of the Company be maintained in accordance with the Regulations promulgated under Code § 704(b) and that this LLC Agreement be interpreted consistently therewith. Notwithstanding anything contained in this Article IX to the contrary, to the extent such Regulations require allocations for tax purposes that differ from the allocations of Profits and Losses contained in Article X, the Manager may determine the manner in which such tax allocations shall be made so as to comply more fully with such Regulations or other applicable law and, at the same time to the extent reasonably possible, preserve the economic relationships among the Members as set forth in this Agreement.

## **ARTICLE 10**

### **ALLOCATIONS AND DISTRIBUTIONS**

**Section 10.1 Allocations of Profits and Losses.** After giving effect to the special allocations set forth in Section 10.2 through Section 10.8, for each Fiscal Year (or portion thereof), except as otherwise provided in this LLC Agreement, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to the aggregate distribution that would be made to such Member pursuant to Section 14.2 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Values, all Company liabilities were satisfied (limited with respect to each Nonrecourse Liability to the Gross Asset Value of the assets of the Company securing such Nonrecourse Liability), and the net assets of the Company were distributed in accordance with Section 14.2 to the Members immediately after making such allocation.

**Section 10.2 Company Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 10, if there is a net decrease in Company Minimum Gain during any Taxable Year, each Member shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulation § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 10.2 is intended to comply with the minimum gain chargeback requirement in § 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

**Section 10.3 Member Minimum Gain Chargeback.** Except as otherwise provided in § 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 10, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Liability during any Taxable Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Liability, determined in accordance with § 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Liability, determined in accordance with Regulations § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 10.3 is intended to comply with the minimum gain chargeback requirement in § 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

**Section 10.4 Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in § 1.704-1(b)(2)(ii)(d)(4), § 1.704-1(b)(2)(ii)(d)(5) or § 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 10.4 shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 10 have been tentatively made as if this Section 10.4 were not in this LLC Agreement.

**Section 10.5 Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any Taxable Year which is in excess of the sum of (a) the amount such Member is obligated to restore pursuant to any provision of this LLC Agreement; and (b) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 10.5 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 10 have been made as if Section 10.4 and this Section 10.5 were not in this LLC Agreement.

**Section 10.6 Nonrecourse Deductions.** Nonrecourse Deductions for any Taxable Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

**Section 10.7 Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Taxable Year shall be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Liability with respect to which such Member Nonrecourse Deductions are attributable in accordance with § 1.704-2(i)(1) of the Regulations.

**Section 10.8 Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Company Property pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(2) or Regulations § 1.704-1(b)(2)(iv)(m)(4), to be taken into

account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the Property) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their respective Percentage Interests in the Company in the event that Regulations § 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations § 1.704-1(b)(2)(iv)(m)(4) applies.

**Section 10.9 Loss Limitation.** Losses allocated pursuant to Section 10.1 shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Taxable Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 10.1, the limitation set forth in this Section 10.9 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

**Section 10.10 Other Allocation Rules.** Notwithstanding any other provisions of this Article 10, if the amount of Membership Interests held by any Member changes during the Taxable Year, or if any Members are admitted during the Taxable Year, the Profits, Losses and other items otherwise to be allocated hereunder for such Taxable Year shall be allocated on a month-by-month basis among the Members in proportion to the Membership Interests each Member holds as of the first day of each such month, and each Member's share of the Profits, Losses and other items for such Taxable Year shall be equal to the sum of his, her or its share of the Profits, Losses and other items for each month during the Taxable Year.

**Section 10.11 Tax Allocations: § 704(c) of the Code.** In accordance with Code § 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company Property is adjusted pursuant to clause (b) of the definition of Gross Asset Value set forth herein, subsequent allocations of income, gain, loss, and deduction with respect to such Property shall take account of any variation between the adjusted basis of such Property for federal income tax purposes and its Gross Asset Value in the same manner as under Code § 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this LLC Agreement. Allocations pursuant to this Section 10.11 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this LLC Agreement.

**Section 10.12 Tax Distributions.** On an annual basis, prior to April 15 of each Taxable Year, the Manager may, but shall not be required to, cause the Company to distribute to each Member sufficient amounts of cash to permit such Member to discharge its obligations to pay federal, state and local taxes (including estimated taxes) with regard to taxable income reported or

to be reported on the Schedule K-1 of Internal Revenue Service Form 1065 issued to such Member in respect of the Profits and Losses of the Company, if any, calculated at the highest combined local, state and federal marginal income tax rates applicable to any Member (each Distribution, a “**Tax Distribution**”). Any Tax Distributions to a Member shall be treated as an advance against Distributions to which such Member would otherwise be entitled under Section 10.13, and Tax Distributions shall only be made to the extent that the Company has cash flow available to distribute. The Manager shall have the discretion to estimate the amount of taxable income allocable to each Member during the applicable period, and to determine the tax rate to be applied to such income, which rate shall be the same for all Members. For the sake of clarity, (a) the Manager may, but shall not be required to, cause the Company to make Tax Distributions pursuant to this Section 10.12 to the fullest extent permitted by applicable law, irrespective of whether adequate reserves are then available; and (b) no Tax Distributions shall be made to the Members with respect to the year in which the Company makes any final liquidating distributions, including in connection with a sale of the Company’s assets. This Section 10.12 is not intended to guarantee that Members will receive distributions sufficient to pay their income taxes. In all events, each Member will be responsible for the payment of its respective income taxes, and no Member shall have any right to recover any amount from the Company with respect thereto because such Member did not receive distributions of cash sufficient to pay its income taxes, irrespective of whether the Company had any distributable cash available. Any distribution under this Section 10.12 shall not be treated as a guaranteed payment to a Member for the purposes of Section 707(c) of the Code.

**Section 10.13 Other Distributions.** On an annual basis, prior to March 1 of each Taxable Year, the Manager shall determine to what extent, if any, the Company’s cash on hand for the preceding Taxable Year exceeds the current and anticipated needs for such moneys, including, needs for operating expenses, debt service and reserves (including reserves for Fees and other expenses related to the management and operation of the Project). To the extent such excess cash on hand exists and is permitted for distribution in accordance with the preceding sentence, the Manager may, but shall not be required to, make Distributions to the Members in proportion to their respective Percentage Interests.

Each such Distribution shall be in cash or other Property (which need not be distributed proportionately) or partly in both, as reasonably determined in good faith by the Manager. Except as provided in Section 17704.06(c) of the Act, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

**Section 10.14 Amounts Withheld.** In determining the amount to be distributed to each Member under this Article 10, the Company shall take into account amounts reasonably expected to be treated as Distributions to such Member pursuant to Section 11.2 with respect to the current Taxable Year.

## **ARTICLE 11 CERTAIN TAX MATTERS**

**Section 11.1 Elections.** The Manager may make any tax elections for the Company allowed under the Code or the tax laws of any Taxing Jurisdiction.

### **Section 11.2 State Tax Returns; Withholding.**

(a) To the extent required by the laws of any Taxing Jurisdiction, each Member requested to do so by the Manager will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax penalties and interest determined under the laws of the Taxing Jurisdiction with respect to such income.

(b) To the extent required or permitted by the laws of any Taxing Jurisdiction, the Company shall be authorized to file a composite tax return on behalf of one or more of its Members and shall report and pay income taxes required by law to be paid with such composite tax returns to any Taxing Jurisdiction. The Company may withhold from a Member the portion of any such income tax payments attributable to the income of such Member, and/or the Company may require such Member to reimburse the Company for the portion of any such income tax payments attributable to the income of such Member. The Manager shall have the power and the authority to determine in its sole discretion whether a Member should be included in a composite tax return to be filed in any Taxing Jurisdiction. A Member shall be limited to an action against the applicable Taxing Jurisdiction with respect to any claims based on over-withholding or over-payment on a composite tax return, and neither the Company nor the Manager shall have any liability to any Member with respect to any withholding or composite tax return filings or payments made pursuant to this Section 11.2.

(c) Without limiting the authority of the Company and the Manager under Section 11.2(a) and Section 11.2(b), the Company is authorized to withhold from payments and distributions to any Member, and from allocations to any Member, and to pay over to any Taxing Jurisdiction, any other amounts the Company is required to withhold pursuant to the laws of any Taxing Jurisdiction. All amounts withheld by the Company pursuant to this LLC Agreement or the laws of any Taxing Jurisdiction shall be treated as Distributions to such Member for purposes of Article 10.

**Section 11.3 Method of Accounting.** The records of the Company shall be maintained on the method of accounting chosen by the Manager.

### **Section 11.4 Partnership Representative and Tax Audits.**

(a) The Manager shall be designated as the "partnership representative" of the Company under Code § 6223(a) (the "**Partnership Representative**") and shall serve until he resigns or is removed as Partnership Representative under this Section 11.4(a). The Partnership Representative may be removed at any time by the affirmative vote or written consent of the



Manager. In the event the Partnership Representative resigns or is removed, the Manager shall appoint a successor Partnership Representative. The Partnership Representative shall appoint a “designated individual” within the meaning set forth in Regulation 301.6223-1 (a “**Designated Individual**”) to act on behalf of the Partnership Representative with respect to the matters set forth in this Section 11.4(a) and the Partnership Representative shall have sole authority and discretion in appointing, removing and replacing the Designated Individual.

(b) The Company shall indemnify and reimburse the Partnership Representative for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred by the Partnership Representative with any administrative or judicial proceeding with respect to the tax liability of the Company, and against any and all loss, liability, cost or expense, including judgments, fines, amounts paid in settlement and attorneys’ fees and expenses, incurred by the Partnership Representative in any civil, criminal or investigative proceeding in which the Partnership Representative is involved or threatened to be involved by virtue of being the Partnership Representative, except such loss, liability, cost or expense arising as a result of the Partnership Representative’s gross negligence, fraud, malfeasance or intentional misconduct. The payment of all such expenses shall be paid in priority over distributions to any Member. The Manager is authorized to increase the Company’s reserves by an amount necessary to cover the Company’s reasonably anticipated future obligations to make payments to reimburse or indemnify the Partnership Representative under this Section 11.4(b).

(c) For any Taxable Year in which the Company is eligible to make an election under Code § 6221(b) to have Subchapter C of Chapter 63 of the Code not apply to the Company, the Company shall timely make such election, and the Members shall promptly take any actions and shall provide the Company with all information necessary to make such election. Any Member whose act or failure to act prevents the Company from filing a timely election under this Section 11.4(c) shall indemnify the Company for, and hold it harmless from, any costs the Company may incur that would have been avoided had the election been made.

(d) No later than ten (10) business days after it has knowledge of an audit or other proceeding under the Revised Partnership Audit Procedures, the Partnership Representative shall notify each Member of the existence of such audit or other proceeding. Each Member shall have the right to have a tax advisor of his, her or its own choosing participate in, but not direct, the prosecution or defense in such audit or proceeding at such Member’s sole expense. The Partnership Representative shall make commercially reasonable efforts to facilitate such tax advisor’s participation.

(e) If the Company receives a notice of proposed partnership adjustment under Code § 6231(a)(2), the Partnership Representative will make commercially reasonable efforts to (i) make any modifications available under Code § 6225(c)(3), (4) and (5); and (ii) if requested by a Member, provide to such Member information that will allow such Member to file amended federal income tax returns and pay the taxes due on such returns, if any, under procedures described in Code § 6225(c)(2), to the extent that such amended return and payment of any related federal income taxes would reduce the taxes payable by the Company with respect to the imputed underpayment amount (after taking into account any modifications described in clause (i) of this Section 11.4(e)).

(f) If the Company is obligated to pay any amount of tax, penalty, interest, other assessments or charges determined under Subchapter C of Chapter 63 of the Code, including by the Bipartisan Budget Act of 2015 (Pub. L. 114-74) (a “**Company Level Tax**”), each Member (or former Member) to which the assessment or payment relates (an “**Indemnifying Member**”) shall indemnify the Company for, and pay, the Indemnifying Member’s allocable share of the Company Level Tax. Each Indemnifying Member’s allocable share of the Company Level Tax shall be determined in good faith by the Manager. Promptly upon notification by the Manager of the Indemnifying Member’s obligation to indemnify the Company, an Indemnifying Member shall make a payment to the Company of immediately available funds, at the time and in the amount and manner directed by the Manager. Amounts paid to the Company under this Section 11.4(f) by an Indemnifying Member who is not a Member of the Company at the time such payment is made shall not be treated as a Capital Contribution.

(g) The Members’ obligations under Section 11.4(f) shall survive the termination, dissolution, liquidation and winding up of the Company, and shall survive the Disposition of all or any part of a Member’s Membership Interests in the Company. The Company may pursue and enforce all rights and remedies it may have against an Indemnifying Member under this Section 11.4(g), including instituting a proceeding governed by the applicable terms of this LLC Agreement to collect such payments.

## **ARTICLE 12**

### **DISPOSITION OF MEMBERSHIP INTERESTS**

**Section 12.1 Limitations.** An Assignee of a Membership Interest under this Article 12 shall have only those rights of an Assignee as described more fully in Section 13.1 and shall have no right to become a Member of the Company unless such Assignee is admitted as a Substitute Member or Additional Member in accordance with Section 13.2 or Section 13.3, as applicable.

**Section 12.2 Transfer Restrictions.** No Member shall Transfer all or any portion of its, his or her Membership Interests in the Company except in strict compliance with the terms and conditions of Section 12.3 and all other applicable provisions of this LLC Agreement.

**Section 12.3 Consent.** No Member will Transfer all or any portion of its, his or her Membership Interests, unless:

(a) prior to the Transfer, the Company receives, unless waived by the Manager in writing, an opinion of counsel satisfactory to the Manager that such Transfer is not subject to registration under, or is exempt from the registration requirements of, the applicable state, federal and other securities laws;

(b) prior to the Transfer, the Company receives from the transferee such information and transferee executes such agreements that the Manager may reasonably require, including, but not limited to, any taxpayer identification number and any agreement that may be required by the Taxing Jurisdiction;

(c) the Transfer will not cause, or be reasonably likely to cause, the Company to become subject to the reporting requirements of the Securities Exchange Act of 1934 or

otherwise become subject to increased regulation by the United States Securities and Exchange Commission or any other federal or state governmental authority;

(d) contemporaneously with the Transfer, the transferee shall execute the LLC Agreement and any other instruments as the Manager may deem necessary or desirable, in form and substance satisfactory to the Manager, and the transferee shall pay all reasonable expenses, including attorneys' fees, incurred by the Company in connection with such Transfer; and

(e) the transferor has received the prior written consent of the Manager.

**Section 12.4 Assignee Limitations.** All restrictions, including the restrictions contained in this Article 12, on Transfers of Membership Interests shall also apply to any Assignees of Membership Interests.

### **ARTICLE 13**

#### **ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS**

**Section 13.1 Rights of Assignees.** Notwithstanding anything to the contrary contained in this LLC Agreement, the only rights, if any, which an Assignee of a Member shall have are those rights associated with the Economic Interest received and such Assignee shall not receive any right to participate in the management of the business and affairs of the Company; provided, however, that in the event an Assignee is an existing Member of the Company, such Assignee shall receive all rights to participate in the management of the business and affairs of the Company incident to the transferred Membership Interests. An Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Profits and Losses attributable to a transferred Membership Interests.

**Section 13.2 Admission of Substitute Members.** An Assignee of a Membership Interest shall be admitted as a Substitute Member and entitled to all the rights of the Member who initially assigned the Membership Interests only with the approval of the Manager, which approval may be granted or withheld subject to the discretion of such parties. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Interests. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Membership Interests from any liability to the Company that may have existed prior to the approval.

**Section 13.3 Admission of Additional Members.** From the date of formation of the Company, any Person acceptable to the Manager may become an Additional Member of the Company for such consideration as the Manager shall determine, subject to the terms and conditions of this LLC Agreement. No Additional Member shall be entitled to any retroactive allocation of income, gain, loss, deduction or credit by the Company. The Manager may, at its option, at the time the Additional Member is admitted, close the Company's books (as though the Taxable Year had ended) or make pro rata allocations of income, gain, loss, deduction or credit to the Additional Member for that portion of the Taxable Year in which the Member was admitted in accordance with the provisions of § 706(d) of the Code and the Regulations promulgated thereunder. Upon admission of an Additional Member, this LLC Agreement shall be amended in order to reflect such additional Member's Membership Interests in the Company.

## **ARTICLE 14**

### **DISSOLUTION AND LIQUIDATION**

**Section 14.1 Dissolution.** The Company shall be dissolved and its affairs wound up prior to such date, upon the first to occur of the following events (“Event of Dissolution”):

- (a) the written consent of the Manager and a Majority of the Members;
- (b) the merger of the Company where the Company is not the successor limited liability company in such merger or the consolidation of the Company with one or more limited liability companies or other entities;
- (c) the sale, exchange, involuntary conversion or other disposition or transfer of all or substantially all of the assets of the Company;
- (d) the passage of 90 consecutive days during which the Company has no Members, provided that the Membership Interest of a natural person who is the sole Member may pass by will or Applicable Law to the Member’s heirs, successors, or assigns pursuant to Section 17707.01(c) of the Act; or
- (e) the entry of a decree of judicial dissolution pursuant to Section 17707.03 of the Act.

**Section 14.2 Distribution of Assets on Dissolution.** Dissolution of the Company shall be effective on the day on which the Event of Dissolution occurs. On the occurrence of an Event of Dissolution, the Manager shall file a certificate of dissolution with the California Secretary of State pursuant to the Act, unless such a filing is not required by the Act, but the Company shall not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in this Agreement, and the Articles of Organization have been canceled as provided in Section 14.3. Upon the occurrence of one of the events described in Section 14.1, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary or appropriate for, winding up the Company business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this LLC Agreement shall continue in full force and effect until such time as the Property has been distributed pursuant to this Section 14.2 and the Company has terminated. The Manager shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company’s liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

- (a) First, to the payment and discharge of all of the Company’s known debts and liabilities to creditors other than Members;
- (b) Second, to the payment and discharge of all of the Company’s debts and liabilities to Members, including the establishment of reserves in compliance with the Act; and

- (c) The balance, if any, to the Members in the manner set forth in Section 10.13.

Each Member understands and agrees that by accepting the provisions of this Section 14.2 setting forth the priority of the distribution of the assets of the Company to be made upon its liquidation, such Member expressly waives any right that it, as a creditor of the Company, might otherwise have under the Act to receive distributions of assets pari passu with the other creditors of the Company in connection with a distribution of assets of the Company in satisfaction of any liability of the Company, and hereby subordinates to said creditors any such right.

**Section 14.3 Certificate of Cancellation and/or Dissolution.** On completion of the distribution of the assets of the Company as provided in Section 14.2, the Manager shall file a certificate of cancellation and a certificate of dissolution with the California Secretary of State if required under the Act and shall cause the cancellation of all qualifications and registrations of the company as a foreign limited liability company in jurisdictions other than the State of California and shall take such other actions as may be necessary to terminate the Company.

## **ARTICLE 15**

### **AMENDMENT; CERTIFICATES; POWER OF ATTORNEY**

**Section 15.1 LLC Agreement May Be Modified.** This LLC Agreement may be modified as provided in this Article 15 (as the same may from time to time be amended). No Member or Manager shall have any vested rights in this LLC Agreement.

#### **Section 15.2 Amendment or Modification of LLC Agreement.**

(a) This Agreement may be amended, restated, supplemented, waived or otherwise modified by the Manager, without the approval of the Members, to reflect: (i) a change in the Company's registered office or registered agent; (ii) a change in the name of the Company; (iii) a change in the end of the Company's Fiscal Year; (iv) admission or termination of Members in accordance with this Agreement, including amendments to Exhibit A; (v) a change that is necessary, desirable or appropriate to qualify the Company as a limited liability company or an entity in which the Members have limited liability under the laws of any U.S. state other jurisdiction or that is necessary, desirable or appropriate to ensure that the Company shall not be treated as an association taxable as a corporation or as a publicly-traded partnership taxable as a corporation for U.S. federal income tax purposes; (vi) a change necessary, desirable or appropriate to achieve or continue flow-through tax treatment or tax treatment of the Company (including its status as a Qualified Opportunity Fund); (vii) a change that is necessary, desirable or appropriate to cure any ambiguity or error, make an inconsequential revision, provide clarity, or to correct or supplement any provision in this Agreement that may be defective or inconsistent with any other provision in this Agreement or to correct any typographical error; (viii) changes required pursuant to the LLC Act or applicable state or other securities or commodities laws, rules or regulations; (ix) changes necessary, desirable or appropriate to satisfy any requirements, obligations, conditions or guidelines contained in any opinion, directive, order, statute, ruling or regulation of any federal, state or non-U.S. governmental entity, so long as such change is made in a manner that minimizes any adverse effect on the Members; (x) changes adding any obligation, representation or warranty of the Manager or waiving or surrendering any right or power granted to the Manager; or (xi) any other change that is required or contemplated by this Agreement.

(b) The rights under this Agreement with respect to the Company may also be amended or waived by action taken by both (i) the Manager and (ii) a Majority of the Members at the time of the amendment.

(c) Notwithstanding the foregoing, this Agreement may be amended by the Manager, without the consent of affected Members, at any time and without limitation, if any Member objecting to such amendment has an opportunity to provide notice of its objection as of a date determined by the Manager that is not less than 45 days after the Manager has delivered written notice of such amendment to each affected Member and that is prior to the effective date of the amendment.

(d) The Manager may, in its sole discretion, choose to deliver any proposed or effective amendment described in this Section via e-mail and/or another electronic reporting medium in lieu of providing the Members with paper copies of such amendment; provided that the Manager may agree in writing in its sole discretion and at the request of any Member to limit the applicability of any portion of this sentence to such Member.

**Section 15.3 Certificates for Membership Interests.** At the election of the Manager, the Company may issue, but shall not be required to issue, to each Member a certificate in the form determined by the Manager, which shall evidence the Membership Interests of the Company. If issued, the following provisions shall apply with respect to the certificates representing the Membership Interests:

(a) All certificates shall be consecutively numbered. The name of the Person owning the Membership Interests, and the date of issue, shall be entered upon the Company's books. Each certificate shall be signed by the Manager of the Company. A record of such certificates shall be kept with the Company's books and records.

(b) All certificates surrendered to the Company shall be canceled, and no new certificates shall be issued until the former certificates for an equal number of Membership Interests shall have been surrendered and canceled except in cases of a lost or destroyed certificate. Any Person claiming a certificate to be lost or destroyed shall make an affidavit of that fact, and advertise the same as the Manager may require, whereupon the new certificate may be issued of the same tenor and for the same number of Membership Interests as the one alleged to be lost or destroyed, but always subject to the approval of the Manager.

(c) Subject to the restrictions on transfer contained in this LLC Agreement, Membership Interests of the Company shall be transferable by the holder thereof or by its duly authorized agent or attorney, upon surrender of the certificate properly endorsed or together with a properly signed power of transfer.

(d) Subject to the restrictions on transfer contained in this LLC Agreement, the Manager shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and regulation of the certificates for the Membership Interests of the Company.

(e) The certificates representing the Membership Interests of the Company shall bear the following legend:

“THE LIMITED LIABILITY COMPANY INTERESTS IN R&N FARMING OZ I, LLC (THE “COMPANY”) DESCRIBED IN THE LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, EFFECTIVE AS OF APRIL 25, 2023, AS THE SAME SHALL BE AMENDED FROM TIME TO TIME (THE “LLC AGREEMENT”) HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER ANY LAWS OR ACTS OF ANY STATES OR JURISDICTIONS IN RELIANCE UPON EXEMPTIONS UNDER THOSE LAWS AND ACTS. THE SALE OR OTHER DISPOSITION OF THE LIMITED LIABILITY COMPANY INTERESTS IS RESTRICTED AS STATED IN THE LLC AGREEMENT. THE LIMITED LIABILITY COMPANY INTERESTS IN THE COMPANY MAY BE ACQUIRED FOR INVESTMENT PURPOSES ONLY. THESE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (1) THE SECURITIES ACT, (2) ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION, AND (3) THE TERMS AND CONDITIONS OF THE LLC AGREEMENT. NO LIMITED LIABILITY COMPANY INTERESTS IN THE COMPANY WILL BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THE LLC AGREEMENT.”

**Section 15.4 Appointment of Attorney-in-Fact.** Each Member does hereby constitute, appoint and grant to the Manager and each Person who is or hereafter becomes a manager of the Company, full power to act without the others, as its true and lawful representative and attorney-in-fact, in its name, place and stead, to make, execute, sign (where applicable, as a deed), acknowledge and deliver or file (so long as such Person continues to be a manager of the Company): (i) the Certificate; (ii) any amendment to, modification to, restatement of or cancellation of the Certificate or this Agreement adopted in accordance with Section 15.2; (iii) all instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Company; (iv) all instruments, documents and certificates which may be required to effectuate the dissolution and termination of the Company; (v) any certificate or form required to apply for or purchase insurance of any kind, or any governmental program related to farming or food, including without limitation, grants, crop insurance, environmental remediation and erosion; (vi) state or federal tax forms; and (vii) Subscription Agreements or any other such agreements, including this Agreement or any transfer agreement, to admit a new or additional Member to the Company. The powers of attorney granted herein shall be deemed to be coupled with an interest, are intended to secure a proprietary interest of the Manager and the obligations of each Member hereunder, shall be irrevocable and shall survive the withdrawal, death, dissolution, bankruptcy, disability, incapacitation or incompetency of a Member. Without limiting the foregoing, the powers of attorney granted herein shall not be deemed to constitute a written consent of any Member for purposes of Section 15.2. Each Member hereby agrees to be bound by any representation made by the attorney-in-fact acting in good faith pursuant to such power of attorney and hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the attorney-in-fact taken in good faith pursuant to this power of attorney.

## **ARTICLE 16**

### **MISCELLANEOUS PROVISIONS**

**Section 16.1 Entire Agreement.** Except for such written agreements expressly contemplated by this LLC Agreement, this LLC Agreement constitutes the entire agreement among the Members. Each Member hereby acknowledges that in executing this LLC Agreement, such Member has not been induced, persuaded or motivated by any promise or representation made by any other Person, unless expressly set forth herein.

#### **Section 16.2 Investment Representations.**

(a) Each of the undersigned Members acknowledges and understands (i) that the Membership Interests evidenced by this LLC Agreement have not been registered under the Securities Act of 1933 or the acts or laws of any states or other jurisdictions (collectively, the “**Securities Acts**”) because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering; (ii) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment purposes only and not with a view toward the resale or distribution thereof; and (iii) that exemption from registrations under the Securities Acts would not be available if the Membership Interests were acquired by a Member with a view toward the resale or distribution thereof.

(b) Each Member hereby confirms to the Company that such Member is acquiring the Membership Interests for such own Member’s own account, for investment purposes only and not with a view toward the resale or distribution thereof. Each Member acknowledges and understands that the Company is under no obligation to register the Membership Interests or to assist such Member in complying with any exemption from registration under the Securities Acts if such Member should at a later date wish to dispose of their Membership Interests. Furthermore, each Member understands that the Membership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an “affiliate” of the Company and the Membership Interests have been beneficially owned and fully paid for by such Member for at least one (1) year.

(c) Each Member, prior to acquiring Membership Interests, has made an investigation of the Company and its business, and the Company has made available to each Member, all information with respect to the Company which such Member needs to make an informed decision to acquire the Membership Interests. Each Member has relied on his, her or its own tax and legal advisors in connection with such Member’s decision to acquire Membership Interests. Each Member considers himself, herself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member’s investment in the Membership Interests.

**Section 16.3 Rights of Creditors and Third Parties.** This LLC Agreement is entered into by and among the Company, the Manager and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees, provided that the Manager and other Persons referenced in Article 8 are intended third party beneficiaries of such Sections. This LLC Agreement is expressly not intended for the benefit of any creditor of the Company or any other



Person. Except and only to the extent provided by the Act or other applicable statute, no such creditor or third party shall have any rights under this LLC Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

**Section 16.4 Changes in Applicable Law.** In the event that any covenant, condition, or other provision contained in this LLC Agreement, or any part of the business of the Company (whether or not conducted by the Company) is determined to be invalid, void or illegal, the Manager shall amend this LLC Agreement, any other affected agreements, and/or the manner in which the business of the Company is conducted to comply with such laws. For purposes of this Section 16.4, a good faith determination of illegality by the Manager based on an opinion of counsel shall be sufficient to trigger the application of this Section 16.4. Any decisions regarding the manner in which such illegality will be addressed shall require the agreement of the Manager.

**Section 16.5 Interpretation.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this LLC Agreement hereby agree to the terms and conditions contained herein. It is the express intention of the Members that this LLC Agreement and the Certificate shall be the sole source of agreement of the Members on the issues addressed herein, and, except to the extent a provision of the LLC Agreement expressly incorporates federal income tax rules by reference to sections (§§) of the Code or Regulations or is expressly prohibited or ineffective under the Act, the LLC Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of this LLC Agreement is prohibited or ineffective under the Act, the LLC Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this LLC Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

**Section 16.6 Governing Law.** This LLC Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of California, and specifically the Act, applied without respect to any conflicts-of-law principles.

**Section 16.7 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any applicable laws, rules or regulations.

**Section 16.8 Captions.** The captions as to contents of particular articles, sections or paragraphs contained in this LLC Agreement and the table of contents hereto are inserted for convenience and are in no way to be construed as part of this LLC Agreement or as a limitation on the scope of the particular articles, sections or paragraphs to which they refer.

**Section 16.9 Waivers.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this LLC Agreement shall operate or be construed as a

waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. For the avoidance of doubt, nothing contained in this Section 16.9 shall diminish any of the explicit and implicit waivers described in this LLC Agreement.

**Section 16.10 Equitable Remedies.** Each party hereto acknowledges that a breach or threatened breach by such party of any of its obligations under this LLC Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

**Section 16.11 Rights and Remedies Cumulative.** The rights and remedies provided by this LLC Agreement are cumulative and the use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance or otherwise.

**Section 16.12 Construction.** For purposes of this LLC Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this LLC Agreement as a whole (d) “dollar” and “\$” shall refer to United States dollars; (e) any matter requiring the approval or consent of a Person or Persons shall require the express prior written consent or approval (which may be in the form of an email) of the applicable Person(s); and (f) any matter that is required to be approved by any provision shall, once so approved, be deemed approved for all other purposes of this LLC Agreement. The definitions given for any defined terms in this LLC Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and Sections of, and Exhibits attached to, this LLC Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This LLC Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this LLC Agreement to the same extent as if they were set forth verbatim herein.

**Section 16.13 Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this LLC Agreement, their respective heirs, legal representatives, successors and permitted assigns.

**Section 16.14 Counterparts.** The Members are permitted to execute this LLC Agreement in one or more counterparts, each of such counterparts is to be deemed to be an original copy of this LLC Agreement and all of which, when taken together, are to be deemed to constitute one and the same agreement. The exchange of copies of this LLC Agreement and of signature pages by facsimile, electronic mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) is to constitute effective execution and delivery of this LLC Agreement as to the Members. Signatures of the Members transmitted by facsimile, electronic mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) are to be deemed to be their original signatures for all purposes.

**Section 16.15 Company Counsel.** The Manager or its affiliate has retained legal counsel in connection with the formation of the Company and expects to retain legal counsel (collectively, “**Company Counsel**”) in connection with the operation of the Company. Except as otherwise agreed to by the Manager in writing in its sole discretion, Company Counsel is not representing and shall not represent the Members in connection with the formation of the Company, the offering of Interests, the management and operation of the Company, or any dispute which may arise between the Members on one hand and the Manager, the Company on the other (the “**Company Legal Matters**”). Except as otherwise agreed to by the Manager in writing in its sole discretion, each Member shall, if it wishes counsel on a Company Legal Matter, retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel. The Members shall execute on behalf of themselves and the Company consent(s) to the representation of the Company necessary for such representation under the Rules of Professional Conduct or similar rules governing the conduct of attorneys. Each Member acknowledges that Company Counsel represented the Manager, and not any other Member, in the negotiation and documentation of this LLC Agreement. Each Member acknowledges that Company Counsel has and continues to represent both the Manager and its principals and Affiliates in matters unrelated to the Company and the Project. After the Effective Date, Company Counsel will not represent any Member with respect to its investment in the Company in the absence of a clear and explicit agreement to such effect between such Member and Company Counsel, and without such written agreement Company Counsel shall owe no duties directly to such Member. Each Member hereby acknowledges and waives any actual or potential conflict of interest created as a result of Company Counsel preparing this LLC Agreement or continuing to represent the Manager or its principals or Affiliates. Each Member acknowledges it has had the opportunity to consult independent legal counsel regarding this LLC Agreement and the implications of executing this LLC Agreement prior to the time it executed this LLC Agreement. Each Member further agrees it will promptly sign such further and additional conflict waivers relating to the preparation of this LLC Agreement as Company Counsel may from time to time request.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amended and Restated Limited Liability Company Agreement as of the Effective Date.

**THE COMPANY:**

R&N FARMING OZ I, LLC

By: Trinity Agri Management LLC  
Its: Manager

By: \_\_\_\_\_  
Name: Riley Chaney  
Title: President

By: \_\_\_\_\_  
Name: Nino Carvalho  
Title: Vice President

**THE MANAGER:**

TRINITY AGRI MANAGEMENT, LLC

By: \_\_\_\_\_  
Name: Riley Chaney  
Title: President

By: \_\_\_\_\_  
Name: Nino Carvalho  
Title: Vice President

**THE INITIAL MEMBERS:**

\_\_\_\_\_  
**Riley Chaney**

\_\_\_\_\_  
**Nino Carvalho**

**SIGNATURE PAGE – R&N FARMING OZ I, LLC**  
(AMENDED AND RESTATED LIMITED LIABILITY AGREEMENT COUNTERPART)

By signing below, the undersigned Investor hereby (i) subscribes to purchase Interests in the Company, (ii) agrees to be bound by all of the terms and conditions set forth in the LLC Agreement, and (iii) agrees that this page shall serve as Investor's counterpart signature page to the Subscription Agreement and the Amended and Restated Limited Liability Company Agreement of the Company. The undersigned Investor also agrees that the Manager shall have no obligation to admit Investor as a Member until such time as the Manager has reviewed and accepted Investor's subscription documents and received Investor's Subscription Amount.

**INVESTOR SIGNATURE**

Signature: \_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
Entity Name (if applicable): \_\_\_\_\_  
Title (if entity): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Tax ID or Social Security #: \_\_\_\_\_  
Subscription Amount: **US\$** \_\_\_\_\_ (Minimum is \$15,000, subject to the decision of the Manager, in its discretion, to accept a lesser amount)

Date: \_\_\_\_\_, 20\_\_\_\_

**COMPANY ACCEPTANCE**

**R&N FARMING OZ I, LLC**

By: Trinity Agri Management, its Manager

By: \_\_\_\_\_

Name: Riley Chaney

Title: Authorized Person

Date: \_\_\_\_\_, 20\_\_\_\_

## **ADDENDUM 1**

### **Qualified Opportunity Fund Addendum**

#### **Introduction**

1. The Company, the Manager and the Members hereby represent, warrant, covenant, and agree to comply with the requirements, restrictions, and limitations upon actions of the Company (for purposes of this Addendum, the term “Company” shall include a subsidiary that is disregarded for income tax purposes), the Manager, and the Members (all capitalized terms used in this Addendum and not otherwise defined shall have the meanings set forth in this Agreement, Section 1400Z-2 of the Code or the Regulations, as applicable) contained in this Addendum.

#### **Definitions**

2. Capitalized words and phrases used in this Addendum have the following meanings:

(a) “**Addendum**” shall mean this Qualified Opportunity Fund Addendum, which is incorporated by reference into the Agreement.

(b) “**IRS**” means the Internal Revenue Service.

(c) “**OZ Statute**” shall mean Code Section 1400Z-2, together with those Regulations from time to time promulgated thereunder.

(d) “**QOZB**” has the meaning set forth in Section 2.5.

(e) “**Qualified Opportunity Zone Benefits**” has the meaning set forth in Section 2.5.

(f) “**Qualified Opportunity Zone Property**” has the meaning set forth in Section 2.5.

#### **QOF Operations, Etc.**

3. The Company intends to operate in a manner consistent with the definition of a QOF in Section 1400Z-2 of the Code and the Regulations and publications prescribed in connection therewith, either by:

(a) Holding at least 90% of the Company’s assets in Qualified Opportunity Zone Property determined by the average of the percentage of “qualified opportunity zone property” (as defined in Section 1400Z-2 of the Code) as measured (a) on the last day of the first 6-month period of the taxable year of the Company and (b) on the last day of the taxable year of the Company; or

(b) Otherwise meeting the definition of a QOF in any manner that may be now or hereafter provided for by Section 1400Z-2 of the Code or by the Regulations and publications prescribed in connection therewith.

In the case of any investment in the QOF only a portion of which consists of investment(s) of eligible gains under Section 1400Z-2, the Company may treat such investment(s) of mixed funds as provided for under Section 1400Z-2(e)(1) of the Code.

## **Manager Powers**

4. Notwithstanding the provisions of Section 4.3 or any other provision of this Agreement, the Manager shall not have authority to, and covenants and agrees that it shall not, do any of the following acts on behalf of the Company without the written consent or vote of a Majority of the Members: take any action, or omit to take any action, that would jeopardize or eliminate the Company's status as a QOF.

## **Opportunity Zone Compliance**

5. The Manager shall manage and operate the Company in such a manner that, in the Manager's reasonable discretion, will cause the Company to continue to be in compliance with Code Section 1400Z-2 consistent with its purposes and intent as further described herein, and in order to maximize the tax deferral and other tax benefits available therefrom for so long as it remains in the best interests of the Company to do so, in the determination of the Manager and subject to any consent rights reserved to the Members under this Agreement, and shall have the express power and authority to take such actions and to make such decisions consistent therewith, provided that such decisions do not materially impair or alter the rights of one or more of the Members in favor of any other Member, nor result in a material diminution in the assets of the Company. Without limiting the foregoing, the Members acknowledge and agree that the Company may hold and maintain its investments for an extended period of time beyond ten (10) years following the Effective Date. Notwithstanding the foregoing or any other provisions of this Agreement, if qualification as a QOF under Code Section 1400Z-2 becomes unduly burdensome in proportion to the anticipated tax benefits to be received by the Members, the Manager may, with the unanimous consent of the Members, elect to operate the Company in a manner that does not qualify as a QOF; in such case, the provisions of this Agreement related to compliance with Code Section 1400Z-2 and applicable Regulations shall be rendered ineffective.

## **QOZB Information**

6. The Manager shall provide each Member with a copy of all notices, financial statements and other information received by the Company from the QOZB in connection with the Company's investment in the QOZB. In addition, upon reasonable notice from any Member, the Manager shall exercise its inspection rights (as a member of the QOZB) pursuant to the limited liability company agreement of the QOZB for reasonable purposes requested by such Member (and shall provide to all Members a copy of any information obtained in the course of such inspection).

## **Opportunity Zone Program Considerations**

7. Each Member acknowledges that the availability of the tax benefits of investing in the Company are subject to the rules of Code Section 1400Z-2 and the Regulations promulgated thereunder, and (i) understands and is aware that there are uncertainties regarding the "qualified opportunity fund" requirements, the "qualified opportunity zone business" requirements, and the availability of the Qualified Opportunity Zone Benefits, (ii) understands that the Company and the Manager will not obtain a ruling from the Internal Revenue Service that the limited liability company interests in which the Company invests will be treated as a "qualified opportunity zone partnership interest" (as such term is defined in Section 1400Z-2(d)(2) of the Code), (iii) understands and is aware that there is no way to confirm with the Internal Revenue Service that such limited liability company interests owned by the Company qualify as "qualified opportunity zone property" (as such term is defined in Section 1400Z-2(d)(2) of the Code), (iv) has had the opportunity to retain legal and tax counsel to review the application of the provisions of Code Section 1400Z-2 to the acquisition of such Member's membership interests in the Company, and (v) understands that the determination of such Member to invest in the Company has been made by such Member independent of any other Member and independent of any statements or opinions as to the advisability of

such purchase or as to the properties, business, prospects, or condition (financial or otherwise) of the Company and its subsidiaries which may have been made or given by any other Member or by any affiliate, employee, or agent of any other Member or the Manager. No Member (or its affiliates) has relied upon the Company, the Manager, or its affiliates in connection with any tax advice in respect of the foregoing.



## EXHIBIT A

<b>Membership Interests</b>		
<b>Name and Address of Members</b>	<b>Initial Capital Contributions</b>	<b>Percentage Interests</b>
Trinity Agri Management, LLC P.O. Box 8 Tranquillity, California 93668	\$30,000	[ ]%
<b>TOTAL</b>	<b>\$</b>	<b>100.00%</b>

## EXHIBIT B

<b>Asset Management Fee</b>	The Property Owner will pay the Manager an annual Asset Management Fee in the amount equal to 0.50% of the total Capital Contributions to the Project Owner and total debt of the Project Owner. The Asset Management Fee shall be payable monthly in arrears on the first day of each month (each such payment date, the “ <b>Asset Management Fee Payment Date</b> ”). The Asset Management Fee for any partial month shall be prorated. Pursuant to Section 4.6(b) of the Amended and Restated Limited Liability Company Agreement of the Property Owner, during the period beginning on the effective date of the LLC Agreement and ending December 31, 2026, the Manager has irrevocably elected to (i) waive 25% of the Asset Management Fee in return for rights under the LLC Agreement with respect to the Profits Interest Amount and (ii) receive 75% of the Asset Management Fee paid in cash. After December 31, 2026, the Asset Management Fee shall be paid in cash to the Manager.
<b>Farm Management Fee</b>	The Property Owner will pay to Trinity Farm Management, LLC, an affiliate of the Manager, an annual farm management fee in the amount of \$180 per farmable acre of the Project.
<b>Administrative Service Fee</b>	The Company and the Manager will enter into an Administrative Services Agreement with Acretrader Management, LLC to provide certain administrative services to investors. The Company will pay Acretrader Management, LLC an annual fee of approximately \$25,515, or approximately 0.50% of the total Capital Contributions from Members other than the Manager, for its services.
<b>Placement Agent Fee</b>	The Company and AcreTrader Financial, LLC will enter into a Placement Agent Agreement pursuant to which the Company will pay AcreTrader Financial, LLC a placement agent fee pursuant to the terms of the Placement Agent Agreement.

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**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**R&N FARMING I, LLC,**

**A CALIFORNIA LIMITED LIABILITY COMPANY**

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THE MEMBERSHIP INTERESTS IN R&N FARMING I, LLC DESCRIBED IN THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OR JURISDICTION IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS. THE MEMBERSHIP INTERESTS MAY NOT BE TRANSFERRED OR RESOLD, IN WHOLE OR IN PART, EXCEPT AS PERMITTED UNDER ALL SUCH SECURITIES LAWS PURSUANT TO REGISTRATION THEREUNDER OR AN EXEMPTION THEREFROM. THE TRANSFERABILITY OF THE MEMBERSHIP INTERESTS IS FURTHER RESTRICTED BY THE TERMS OF THIS LIMITED LIABILITY COMPANY AGREEMENT.

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Addendum 1 - Qualified Opportunity Zone Business Addendum

EXHIBIT A – Schedule of Members

EXHIBIT B – Fees

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF  
R&N FARMING I, LLC**

This Amended and Restated Limited Liability Company Agreement (this “**Agreement**”) of R&N Farming I, LLC (the “**Company**”), a California limited liability company, dated as of April 25, 2023 (the “**Effective Date**”), is by and between Trinity Agri Management, LLC, a California limited liability company (the “**Manager**”) and R&N Farming OZ I, LLC (the “**Investor Member**”).

WHEREAS, the Company was formed as a limited liability company under the laws of the state of California, for the purposes set forth in this Agreement, when the Company’s Articles of Organization were filed with the California Secretary of State on March 9, 2022 and the Members executed a Limited Liability Company Agreement dated as of March 9, 2022 (the “**Original Agreement**”).

WHEREAS, the Investor Member is making an equity investment in cash proceeds to the Company as set forth herein, in connection with Section 1400Z-2(d)(2)(C) of the Code, in order to acquire its Membership Interests as a “qualified opportunity zone partnership interest” as such term is defined in the Code.

WHEREAS, it is the intent of the Investor Member that the Company becomes and maintains its status as a “qualified opportunity zone business” as such term is defined in Section 1400Z-2(d)(3)(A) of the Code (a “**QOZB**”).

WHEREAS, the Members acknowledge that the acquisition by Investor Member of its interest in the Company is intended by Investor Member to allow it to participate in the economic success of the development of one or more projects and to allow Investor Member to be eligible to obtain the deferral and other benefits provided under Section 1400Z-2 of the Code (collectively, the “**Qualified Opportunity Zone Benefits**”).

WHEREAS, the parties wish to enter into this Agreement to amend and restate the Original Agreement and to set forth the terms and conditions governing the operation and management of the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following terms used in this Agreement shall have the following meanings unless otherwise expressly provided herein:

“**Accrued Preferred Return Account**” means an internal book account maintained by the Company for the Members (a) to which shall be credited an amount equal to each Member’s Preferred Return; and (b) from which shall be debited the amount of any distributions to such

Member pursuant to Section 10.14(a)(i) or Section 10.14(b)(i). The Members agree that preferred return as calculated and maintained by the Company in such Member's Accrued Preferred Return Account is a "reasonable preferred return" (within the meaning of Section 1.514(c)-2(d)(2) of the Regulations) that is computed at a rate that is commercially reasonable based on the relevant facts and circumstances (within the meaning of Section 1.514(c)-2(d)(4) of the Regulations).

**"Act"** means the California Revised Uniform Limited Liability Company Act, codified in the California Corporations Code, Section 17701.01 *et seq.*

**"Additional Capital Contribution"** means any Capital Contribution that a Member makes in accordance with Section 9.2.

**"Additional Capital Contribution Membership Interests"** is defined in Section 9.2.

**"Additional Member"** means a Member, other than an Initial Member or a Substitute Member, who has acquired a Membership Interest and has become a Member in accordance with Section 13.3, but such term does not include any Person who has ceased to be a Member.

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

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this LLC Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

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

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of § 1.704-1(b)(2)(ii)(d) of the Regulations and shall be so construed.

**"Adjustment Date"** means the date on which any of the events described in Regulations § 1.704-1(b)(2)(iv)(f)(5) occurs.

**"Affiliate"** means, with respect to any Person, (a) any Person directly or indirectly controlling, controlled by, or under common control with such Person; (b) any Person owning or controlling twenty percent (20%) or more of the outstanding voting interests of such Person; (c) any director, executive officer, trustee, general partner or Manager of such Person; and (d) any Person who is a director, executive officer, trustee, general partner or Manager of any Person described in clauses (a) through (c) of this sentence. For purposes of this definition, the term **"controls," "is controlled by" or "is under common control with"** means the possession, direct or indirect, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The Company, however, shall not be deemed to be an Affiliate of any Member.

**"Agreement"** is defined in the preamble.



**“Asset Management Fee”** is defined in Section 4.6(b).

**“Asset Management Fee Payment Date”** is defined in Exhibit B.

**“Assignee”** means a transferee of one or more Membership Interests (but who is not a Member immediately prior to such transfer) who has not been admitted as a Substitute Member or Additional Member, as applicable. Such transferee of one or more Membership Interests shall be entitled to merely an Economic Interest in the Company until and unless such Assignee is admitted as a Substitute Member or Additional Member, as applicable, in accordance with this LLC Agreement.

**“Capital Account”** means the account maintained with respect to a Member or Assignee determined in accordance with Article 9.

**“Capital Contribution”** means any contribution of Property made by or on behalf of a Member or Assignee.

**“Capital Transaction”** means (a) a transaction pursuant to which the Company finances or refinances mortgage indebtedness with respect to the Project; or (b) a sale, condemnation, exchange or a casualty not followed by redevelopment, or other disposition, whether by foreclosure or otherwise, of all or a portion of the Project.

**“Capital Transaction Proceeds”** means upon the occurrence of a Capital Transaction, the total gross receipts of the Company derived from such Capital Transaction (including any reserves previously established by the Manager which the Manager, in its reasonable discretion, determines are no longer required by the Company as a result of the Capital Transaction), less (a) the amount necessary to satisfy all indebtedness of the Company; (b) expenses related to the Capital Transaction; (c) Fees; and (d) any amounts set aside by the Manager for the restoration or creation of reserves as it deems, in its reasonable discretion, are necessary or appropriate.

**“Cause”** is defined in Section 4.19.

**“Certificate”** means the Certificate of Formation of the Company, as amended, modified, supplemented or restated from time to time.

**“Code”** means the United States Internal Revenue Code of 1986, or any successor thereto.

**“Company”** means R&N Farming I, LLC, a California limited liability company, and any other successor limited liability company.

**“Company Counsel”** is defined in Section 16.15.

**“Company Level Tax”** is defined in Section 11.4(f).

**“Company Minimum Gain”** shall have a meaning consistent with the definition of “partnership minimum gain” set forth in §§ 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

**“Company Nonrecourse Liability”** shall have a meaning consistent with the definition of **“nonrecourse liability”** set forth in § 1.704-2(b)(3) of the Regulations.

**“Company Property”** means any Property owned by the Company.

**“Confidential Information”** is defined in Section 6.8.

**“Corporations Code”** means the California Corporations Code.

**“Depreciation”** means, for each Taxable Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to Property for such Taxable Year, except that if the Gross Asset Value of Property differs from its adjusted basis for federal income tax purposes at the beginning of such Taxable Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Taxable Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of Property at the beginning of such Taxable Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

**“Designated Individual”** is defined in Section 11.4(a).

**“Distributable Cash Flow”** means for the period in question, the total cash gross receipts of the Company (exclusive of Capital Contributions) derived from all sources other than Capital Transaction Proceeds (including any reserves previously established by the Manager which the Manager, in its reasonable discretion, determines are no longer required by the Company), less (a) the operating expenses of the Company (including debt service), (b) Fees and (c) any amounts set aside by the Manager for the restoration or creation of reserves as it deems in its reasonable discretion are necessary or appropriate.

**“Distribution”** means a distribution or Transfer of Property made by the Company to a Member or an Assignee on account of such Member’s or Assignee’s Membership Interest(s) as described in Article 10.

**“Economic Interest”** means a Member’s or Assignee’s share of the Company’s Profits, Losses, and Distributions of the Company’s Property pursuant to this LLC Agreement and the Act, but shall not include any right to participate in the operation, management or affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members, except as provided in Section 17705.02(c) of the Act, any right to information concerning the business and affairs of Company.

**“Effective Date”** is defined in the preamble.

**“Event of Dissolution”** has the meaning set forth in Section 14.1.

**“Fair Market Value”** means: (a) as to any Securities which are listed or admitted to trading on any national securities exchange on any trading day, the amount equal to (i) the last sale price of such Securities, regular way, on such date or, if no such sale takes place on such date, the

average of the closing bid and asked prices thereof on such date, in each case as officially reported on the principal national securities exchange on which such Securities are then listed or admitted to trading; or (ii) if such Securities are not then listed or admitted to trading on any national securities exchange but are reported through the automated quotation system of a registered securities association, the last trading price of such Securities on such date, or if there shall have been no trading on such date, the average of the closing bid and asked prices of such Securities on such date as shown by such automated quotation system; and (b) as to any other Property on any date, the fair market value of such Property on such date as reasonably determined in good faith by the Manager, or as otherwise determined pursuant to the terms of this LLC Agreement.

**“Fees”** means the fees to the Manager and its principals and Affiliates set forth on Exhibit B.

**“GAAP”** means generally accepted accounting principles.

**“Gross Asset Value”** means, with respect to any Property, the Property’s adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any Property contributed by a Member to the Company shall be the Fair Market Value of such Property;

(b) The Gross Asset Values of all Company Property shall be adjusted to equal their respective Fair Market Values as of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the acquisition of a greater than de minimis number of additional Membership Interests by any new or existing Member in exchange solely for services previously provided or to be provided by such Member to the Company; (iii) the Distribution by the Company to a Member of more than a de minimis amount of Property as consideration for a Membership Interest; and (iv) the liquidation of the Company within the meaning of Regulations § 1.704-1(b)(2)(ii)(g) (other than pursuant to Code § 708(b)(1)(B)); provided, however, that adjustments pursuant to clauses (i), (ii) and (iii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company Property distributed to any Member shall be adjusted to equal the Fair Market Value of such Property on the date of Distribution; and

(d) The Gross Asset Values of Company Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Property pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation § 1.704-1(b)(2)(iv)(m), clause (f) of the definition of Profits and Losses set forth herein, and Section 10.8; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (d) to the extent the Manager determines that an adjustment pursuant to clause (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Gross Asset Value of Property has been determined or adjusted pursuant to clauses (a), (b) or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Property for purposes of computing Profits and Losses.

**“Indemnifying Member”** is defined in Section 11.4(f).

**“Initial Member(s)”** means those the Member identified on Exhibit A who have executed this LLC Agreement as of the Effective Date, but such term does not include any Person who has ceased to be a Member.

**“Investor Member”** has the meaning set forth in the Recitals.

**“IRS”** means the Internal Revenue Service.

**“LLC Agreement”** means this Limited Liability Company Agreement including all exhibits attached hereto and all amendments hereto adopted in accordance with Section 15.2 and the Act.

**“Majority of the Members”** means those Members holding greater than fifty percent (50%) of the voting Membership Interests; any other reference in this LLC Agreement to any other specified percentage of the Members shall refer to those Member(s) holding, in the aggregate, the specified percentage of Membership Interests in the Company and, for this purpose, (a) Assignees, transferees and other holders of Membership Interests who have not been admitted as Members pursuant to Section 13.2 or Section 13.3, as applicable, shall be deemed to hold no Membership Interests; and (b) no Membership Interests that are issuable upon the conversion of outstanding securities shall be deemed to be outstanding.

**“Manager”** means Trinity Agri Management, LLC, a California limited liability company, and any other Person appointed or elected, as applicable, to serve as a successor to Trinity Agri Management, LLC as Manager of the Company under Article 4.

**“Manager Unreturned Capital”** means, with respect to the Manager on any given date, the excess, if any, of (a) an amount equal to the sum of (i) the aggregate Capital Contributions of the Manager as of such date, and (ii) the aggregate Profits Interest Amount of the Manager as of such date, over (b) the aggregate Distributions to the Manager pursuant to Section 10.14(a)(ii)(A) and Section 10.14(b)(ii).

**“Member”** means an Initial Member, Substitute Member or Additional Member of the Company, but such term does not include any Person who has ceased to be a Member.

**“Member Minimum Gain”** means an amount, with respect to each Member Nonrecourse Liability, equal to the Company Minimum Gain that would result if such Member Nonrecourse Liability were treated as a Company Nonrecourse Liability, determined in accordance with § 1.704-2(i)(3) of the Regulations.

**“Member Nonrecourse Deductions”** shall have a meaning consistent with the definition of “partner nonrecourse deductions” set forth in §§ 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

**“Member Nonrecourse Liability”** shall have a meaning consistent with the definition of “partner nonrecourse liability” set forth in § 1.704-2(b)(4) of the Regulations.

**“Membership Interest”** means an ownership interest in the Company representing a Member’s entire equity and beneficial interest in the Company, including such Member’s Economic Interest and the right of the Member to vote on, consent to, or otherwise participate in any decision, vote or action of or by the Members granted pursuant to this LLC Agreement and the Act. In the case of an Assignee, the term **“Membership Interest”** shall encompass only the Assignee’s Economic Interest in the Company relating to such Membership Interest.

**“New Allocation”** has the meaning set forth in Section 10.12(b).

**“New Securities”** has the meaning set forth in Section 4.3(s).

**“Nonrecourse Deductions”** is defined in §§ 1.704-2(b)(1) and 1.704-2(c) of the Regulations.

**“Notice”** means written notice delivered to a Person pursuant to a provision of this LLC Agreement. All Notices shall be deemed delivered (a) three (3) days after mailed by first class United States mail postage prepaid, (b) the second business day after deposit for overnight delivery with Federal Express, UPS or similar overnight delivery service, (c) the first business day after delivered personally, or (d) the first business day after delivered by facsimile or other electronic transmission, if to the Company, at the principal office of the Company set forth in the LLC Agreement, if to Investor, at its address set forth on in Exhibit A or at such other address that the Member has given written Notice of to the Company.

**“Organization”** means any entity permitted to be a Member of a limited liability company under the Act. The term **“Organization”** includes corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, trusts, limited liability companies, and unincorporated associations, but does not include joint tenancies and tenancies by the entirety.

**“OZ Statute”** shall mean Code Section 1400Z-2, together with those Regulations from time to time promulgated thereunder.

**“Partnership Representative”** is defined in Section 11.4(a).

**“Percentage Interest”** means, with respect to a Member at any particular time, the ratio (expressed as a percentage) of the aggregate Capital Contributions made to date by such Member, divided by the aggregate Capital Contributions made to date by all Members of the Company. Solely for purposes of this definition of “Percentage Interest”, the aggregate Profits Interest Amount at any given time shall be deemed an amount of additional Capital Contributions made by the Manager. Accordingly, Percentage Interests will adjust from time-to-time to account for the aggregate Profits Interest Amount at such time.

**“Person”** shall include an individual, estate or any Organization.

**“Preferred Return”** means, (a) with respect to the Investor Member, a cumulative, non-compounding amount that is calculated like simple interest at an annual rate of eight (8%) percent per annum on the aggregate balance of the Investor Member’s Unreturned Capital, and (b) with respect to the Manager, a cumulative, non-compounding amount that is calculated like simple interest at an annual rate of eight (8%) percent per annum on the amount equal to the aggregate balance of the Manager Unreturned Capital.

**“Principal Place of Business”** means the principal office of the Company designated in Section 2.3, or any other place or places as the Manager may from time to time deem advisable.

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

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code § 705(a)(2)(B) or treated as Code § 705(a)(2)(B) expenditures pursuant to Regulations § 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company Property is adjusted pursuant to clauses (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Property for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Company Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Taxable Year, computed in accordance with the definition of Depreciation set forth above;

(f) To the extent an adjustment to the adjusted tax basis of any Company Property pursuant to Code § 734(b) or Code § 743(b) is required pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s membership interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 10.2 through Section 10.8 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Section 10.2 through Section 10.8 shall be determined by applying rules analogous to those set forth in clauses (a) through (f) above.

**“Profits Interest”** shall have the meaning set forth in Section 9.5.

**“Profits Interest Amount”** shall have the meaning set forth in Section 4.6(b).

**“Project”** means the real estate, improvements and agricultural assets located in Fresno County, California and includes approximately 169 acres of farmland, as the same may be further developed, improved or modified by the Company.

**“Property”** means any property, whether real, personal or mixed, tangible or intangible, including Securities, money and any legal or equitable interest in such property and goodwill associated with such property, but excluding services and promises to perform services in the future.

**“QOZB”** has the meaning set forth in the Recitals.

**“Qualified Opportunity Zone Benefits”** has the meaning set forth in the Recitals.

**“Qualified Opportunity Fund”** means a “qualified opportunity fund” as such term is defined in Section 1400Z-2(d)(1) of the Code and the applicable Regulations.

**“Qualified Opportunity Zone Business Property”** means “qualified opportunity zone business property” as defined in Section 1400Z-2(d)(2)(D) of the Code and the applicable Regulations.

**“Regulations”** means the permanent, temporary, proposed, or proposed and temporary regulations issued by the United States Department of the Treasury that are promulgated under the Code.

**“Revised Partnership Audit Procedures”** means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 or any similar procedures established by a state, local, or non-U.S. taxing authority.

**“Secretary of State”** means the Secretary of State of California.

**“Securities Acts”** is defined in Section 16.2.

**“Substitute Member”** means an Assignee who has been admitted as a Member of the Company in accordance with Section 13.2, but such term does not include any Person who has ceased to be a Member. Upon becoming a Member of the Company, such Assignee shall have all the rights of a Member as are described more fully in Section 13.2.

**“Tax Distributions”** is defined in Section 10.13.

**“Taxable Year”** means the taxable year of the Company as determined pursuant to § 706 of the Code.

**“Taxing Jurisdiction”** means the taxing jurisdiction of the federal government and of any state, local, or foreign government that collects tax, interest or penalties, however designated, on any Member’s share of the income or gain attributable to the Company.

**“Transfer”** means, as a noun, any voluntary or involuntary sale, assignment, exchange, mortgage, pledge, grant, hypothecation or other transfer (including by operation of law) of a Membership Interest in the Company, and, as a verb, to voluntarily or involuntarily sell, assign, exchange, mortgage, pledge, grant, hypothecate or otherwise transfer (including by operation of law) a Membership Interest in the Company owned by a Person or any interest (including a beneficial interest or “transferable interest” as defined by Section 17701.02(aa) of the Act) in any Membership Interests owned by a Person.

**“Unreturned Capital”** means, (a) with respect to the Investor Member on any given date, the excess, if any, of (i) the aggregate Capital Contributions of the Investor Member as of such date, over (ii) the aggregate Distributions to the Investor Member pursuant to Section 10.14(a)(ii)(A) and Section 10.14(b)(ii) as of such date, and (b) with respect to the Manager on any given date, the balance of the Manager Unreturned Capital as of such date.

**“Waived Fee Period”** has the meaning set forth in Section 4.6(b).

## **ARTICLE 2 FORMATION OF COMPANY**

**Section 2.1 Organization.** On March 9, 2022, and the Company was formed pursuant to the provisions of the Act by the filing of Articles of Organization with the Secretary of State. This Agreement shall constitute the “operating agreement” (as that term is used in the Act) of the Company. The rights, powers, duties, obligations, and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights, powers, duties, obligations, and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the Act in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

**Section 2.2 Registered Agent and Office.** The registered agent for service of process and the registered office shall be that Person and location reflected in the Certificate. The Manager may, from time to time, change the registered agent or office in the manner provided by the Act and applicable law. In the event the registered agent ceases to act as such for any reason or the location of the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office within ten (10) days after the registered agent ceased to act as such or the location of the registered office changed, as the case may be, the Manager or any Member may designate a replacement registered agent or file a notice of change of address.



**Section 2.3 Principal Place of Business.** The Principal Place of Business of the Company is located at 3213 West LaCosta Avenue, Fresno, California 93711. The Company may locate its principal places of business at any other place or places as the Manager may from time to time deem advisable.

**Section 2.4 Purposes; Powers.** The purposes of the Company are:

(a) to acquire, invest in, develop, own (directly or indirectly), hold, use, operate, lease, manage and dispose of the Project or any interest therein, and to engage in any and all activities and transactions and enter into any and all agreements and undertakings which are appropriate, necessary, customary, convenient, or incidental to the foregoing purposes;

(b) to accomplish any lawful business whatsoever or which shall at any time appear conducive to or expedient for the protection or benefit of the Company and its Property;

(c) to exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act or under the laws of any jurisdiction in which the Company may conduct its business; and

(d) to engage in all activities necessary, customary, convenient, or incidental to any of the foregoing.

**Section 2.5 QOZB Purpose.** The Members desire and intend for the Company to constitute a "partnership" for federal tax purposes, and the Company is organized for the purpose of being a QOZB in order to obtain investment from one or more Qualified Opportunity Funds and to utilize the Qualified Opportunity Zone Benefits afforded by the OZ Statute. The purpose of the Company at formation expressly includes (i) the ownership or lease of substantially all of its tangible property as Qualified Opportunity Zone Business Property in compliance with Code Section 1400Z-2(d)(2)(D) and the applicable Regulations, and (ii) meeting the requirements of a QOZB pursuant to Code Section 1400Z-2(d)(3) and the applicable Regulations.

**Section 2.6 Construction of Agreement in Accordance with OZ Statute and Addendum.** This Agreement shall be construed in a manner to attain continued compliance with the applicable rules under the OZ Statute and to enable the Company to maximize the economic and tax benefits afforded thereby, as further described in the Addendum. In the event of any inconsistency between the provisions of the Addendum and the other provisions of this Agreement, the Addendum will prevail.

### **ARTICLE 3 NAMES AND ADDRESSES OF MEMBERS**

The name and address of each Member and Assignee, and the Membership Interests and Percentage Interest of each such Member and Assignee, shall be as listed on Exhibit A attached hereto. The Manager shall update Exhibit A from time to time as necessary to accurately reflect the information therein and to reflect the admission of Additional Members or Substitute Members in accordance with this LLC Agreement; provided, however, the failure of the Manager to cause Exhibit A to be updated shall not prevent the effectiveness of, or otherwise affect the underlying adjustments that would be reflected in, such update. Any such update to Exhibit A shall not be

deemed an amendment to this LLC Agreement for purposes of requiring Member approval. Any reference in this LLC Agreement to Exhibit A shall be deemed to be a reference to Exhibit A as may be in effect from time to time.

## **ARTICLE 4**

### **RIGHTS AND DUTIES OF THE MANAGER**

**Section 4.1 Management.** The management of the business and affairs of the Company shall be vested in the Manager as more fully set forth in this LLC Agreement. Except for situations in which the approval of the Members is expressly required by nonwaivable provisions of the Act or by this LLC Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and Properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business on the terms and conditions set forth in this LLC Agreement, including the power to exercise on behalf and in the name of the Company all of the powers described in the Act. The Manager may delegate such general or specific authority to such other officers, employees or agents of the Company as the Manager considers desirable from time to time, and each such officer, employee or agent of the Company may, subject to any restraints or limitations imposed by the Manager, exercise the authority granted to them. Unless authorized to do so by this LLC Agreement or by the Manager, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. No Member shall have the power or authority to bind the Company unless the Member has been authorized by the Manager to act as an agent of the Company in accordance with the previous sentence.

**Section 4.2 Tenure and Qualifications.** By executing this LLC Agreement, the Members hereby appoint Trinity Agri Management LLC as the Manager. The Manager shall, subject to earlier vacation, hold office until such Manager's successor shall have been elected or designated and qualified in accordance with this Article 4. A Manager need not be a resident of any specific state or a Member of the Company.

**Section 4.3 Certain Powers of the Manager.** Except as otherwise required pursuant to this LLC Agreement or by nonwaivable provisions of the Act, the Manager shall have, without limitation, the power and authority, on behalf of the Company:

- (a) to open, have, maintain and close bank and brokerage accounts, including the power to draw checks or other orders for the payment of moneys;
- (b) to bring and defend actions and proceedings at law or in equity or before any governmental, administrative or other regulatory agency, body or commission;
- (c) to hire and terminate consultants, custodians, attorneys, accountants and such other agents and employees of the Company as it may deem necessary or advisable (including property management or leasing entities), to authorize each such agent and employee to act for and on behalf of the Company, and to compensate them from Company funds;
- (d) to set aside funds for reserves, anticipate contingencies and working capital;

- (e) to call Additional Capital Contributions in accordance with Section 9.2;
- (f) to make Distributions in accordance with Article 10;
- (g) to make all elections, investigations, evaluations and decisions, binding the Company thereby, that may be necessary or appropriate for the acquisition, holding or disposition of Securities for the Company;
- (h) to enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Company's business, and to take or omit to take such other action in connection with such business of the Company as may be necessary or desirable to further the purposes of the Company;
- (i) to acquire, whether by purchase, lease or otherwise, Property from any Person for use in connection with the Project and/or the Company's business and to hold and own or lease such Property in the name of the Company;
- (j) subject to Section 4.4(a), to Transfer the Company's Property;
- (k) to borrow money for the Company from banks, other lending institutions, the Manager, any Member, or Affiliate of the Manager or any Member on such terms as the Manager deems appropriate, including, but not limited to, for the acquisition of and development costs related to the Project, and in connection therewith, to hypothecate, encumber and grant security interests in the Property of the Company to secure repayment of the borrowed sums;
- (l) to execute, on behalf of the Company, all instruments and documents, including, but not limited to, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, guarantees (including guarantees), security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's Property, assignments, bills of sale, leases, partnership agreements, operating agreements or limited liability company agreements of other limited liability companies, and any other instruments or documents necessary to the business of the Company;
- (m) without limiting the generality of the foregoing clause (l), in connection with any loans related to the Project, to execute and deliver such amendments to this LLC Agreement, consents, certificates and other documents as the lender customarily requires in connection with the loan transaction, to include such items as "special purpose entity" provisions, separateness covenants, and other requirements;
- (n) to purchase liability and other insurance to protect the Company's Property and business;
- (o) to admit Assignees as Substitute Members in accordance with Section 13.2;
- (p) to admit Additional Members in accordance with Section 13.3;
- (q) subject to Section 4.4(a), to dispose of all or substantially all of the Company Property;

(r) subject to Section 4.4(a), to merge or consolidate the Company with or into one or more limited liability companies or other Organizations;

(s) subject to Section 4.4(a), to authorize and cause the Company to issue additional Membership Interests, rights, options or warrants to subscribe for, purchase or otherwise acquire additional Membership Interests, or any evidences of indebtedness or other securities directly or indirectly convertible into or exchangeable for Membership Interests (collectively, “**New Securities**”);

(t) to enter into any and all other agreements on behalf of the Company with any other Person for any purpose; and

(u) to do and perform any and all other acts as may be necessary or appropriate to the conduct of the Company’s business.

#### **Section 4.4 Additional Company Decisions.**

(a) Decisions Requiring a Majority of the Members. Unless the Manager shall receive the consent of a Majority of the Members, the Manager shall not have the authority to:

(i) issue any New Securities that are senior to the Membership Interests;

(ii) amend or agree to the amendment of this LLC Agreement (except as provided in Article 15) or execute or deliver any instrument on behalf of the Company, if the effect of such amendment, agreement or instrument would be a diminution of the Members’ rights, interests or benefits in the Company or amend the articles of formation of the Company;

(iii) enter into or effect any transaction or series of related transactions involving the sale, lease, license or other disposition (including by merger, consolidation, stock sale or sale of assets) by the Company of all or substantially all of the assets of the Company or the Property;

(iv) settle any lawsuit, action, dispute, or other proceeding or otherwise assume any liability or agree to the provision of any equitable relief by the Company;

(v) incur any indebtedness;

(vi) remove the Manager or the election of a substitute Manager pursuant to Section 4.18 or Section 4.19; or

(vii) dissolve the Company, except as provided in Section 14.1 of this LLC Agreement.

(b) Decisions Requiring Unanimity. Unless the Manager shall receive the consent of all Members, the Manager shall not do or perform:

(i) any act which requires the consent of all Members under the Act, unless the right to do so is expressly set forth in this LLC Agreement and not in conflict with the nonwaivable provisions of the Act;

(ii) any act that would subject any Member to liability as a Manager or “general partner” in any jurisdiction except as provided for herein or under the Act; or

(iii) any act that would cause the Company to be taxed for federal income tax purposes as an association taxable as a corporation.

#### **Section 4.5 Expenses.**

(a) Formation Expenses. Each Member shall be responsible for paying its own attorney’s fees and other costs in connection with the drafting, negotiation and execution of this LLC Agreement.

(b) Due Diligence Expenses of Manager and its Affiliates. All reasonable and actual out-of-pocket expenses incurred by the Manager and its Affiliates in connection with the due diligence evaluation of the Project, and other third-party pre-acquisition expenses (including deposits), shall be reimbursed by the Company in accordance with Section 4.5(d).

(c) Company and Expenses. The Company shall bear and pay all third-party costs and expenses relating to its activities and operations, including all activities and operations prior to the Effective Date, including: (i) all costs and expenses incurred in organizing the Company and developing, negotiating, financing and structuring the Project, including any engineering, appraisal, environmental, travel, legal and accounting expenses, any deposits and commitment fees and other fees, and the costs of rendering financial assistance to or arranging for financing for the Project or for working capital or other Company purposes; (ii) all costs and expenses, if any, incurred in monitoring the Project, including, without limitation, any engineering, environmental, travel, legal and accounting expenses and other fees; (iii) taxes of the Company; (iv) costs related to litigation and threatened litigation involving the Company; (v) expenses associated with third-party accountants, attorneys and tax advisors with respect to the Company and its activities, including the preparation and auditing of financial reports and statements and other similar matters, the distribution of financial and other reports to the Members, refinancing the Project and selling or otherwise disposing of the Project; (vi) brokerage commissions incurred by or on behalf of the Company and paid to third parties; (vii) all costs and expenses associated with obtaining and maintaining customary insurance for the Company and its assets; (viii) fees incurred in connection with the maintenance of bank or custodian accounts; (ix) all expenses incurred in connection with the registration (or exemption from registration) of the Company’s securities under applicable securities laws or regulations and any offering expenses, including the costs of preparation of offering materials, accountants fees, legal fees, and related expenses; and (x) all expenses of the Company that are not normally recurring operating expenses. To the extent that any expenses of the Company are paid by the Manager or any one or more of its principals or Affiliates, such expenses shall be reimbursed by the Company.

(d) Reimbursement of Expenses. In connection with the Closing, the Company shall reimburse the Manager for actual out-of-pocket expenses incurred by it or its principals or

Affiliates (and supported by reasonable documentation) in connection with formation of the Company and the due diligence, pre-acquisition and acquisition of the Project, including expenses incurred by them on behalf of the Company on or before the Effective Date. In lieu of such reimbursement, the Manager may elect to treat any unreimbursed expenses as a Capital Contribution.

#### **Section 4.6 Payment of Fees.**

(a) In addition to, and entirely separate from, any other distributions and allocations to the Manager hereunder, as compensation for various tasks and responsibilities performed by certain entities, the Company shall pay to such entities the amounts and at the times described on Exhibit B. The Members acknowledge that the Manager, or other entities affiliated with the Manager or its principals may receive these payments, and the Members consent to such payment. Any distributions made pursuant to this Section 4.6 and Exhibit B to the Manager, or other entities affiliated with the Manager or its principals shall not be considered a “distribution” under this Article 4 and shall not trigger any distribution owed to the Members or any Capital Account adjustment hereunder.

(b) Notwithstanding anything to the contrary contained in this Section 4.6, the Manager has irrevocably elected to waive 25% of the asset management fee described in Exhibit B (the “**Asset Management Fee**”) payable to the Manager during the period beginning as of the Effective Date and ending December 31, 2026 (the “**Waived Fee Period**”). The Asset Management Fee that would otherwise be payable to the Manager on each Asset Management Fee Payment Date during the Waived Fee Period shall be reduced by an amount equal to 25% of the amount of such Asset Management Fee (in each instance, a “**Profits Interest Amount**”). The Manager shall be entitled to the rights described herein with respect to the Profits Interest Amount, including the right to receive Distributions calculated by reference to, or in connection with, the Profits Interest Amount, and corresponding allocations of Profits, under this Agreement. For the avoidance of doubt, and notwithstanding anything to the contrary contained herein, the Manager shall not, by reason of its Profits Interest Amount, be required to make Capital Contributions. The Company’s books and records will be updated from time to time with respect to the increase in the aggregate Profits Interest Amount pursuant to this Section 4.6(b).

#### **Section 4.7 Liability for Certain Acts.**

(a) The Manager shall perform his, her or its duties as Manager in good faith and in a manner he, she or it reasonably believes to be in or not opposed to the best interest of the Company. The Members hereby agree that the foregoing are the only fiduciary duties that a Manager shall owe to the Company and its Members. A Manager who so performs his, her or its duties as a Manager shall not have any liability by reason of being or having been a Manager of the Company.

(b) In performing his, her or its duties, the Manager shall be entitled to rely upon, and shall be fully protected in relying in good faith upon, the books and records of the Company and on information, opinions, reports, financials, or statements (including with respect to the value and amount of the Properties, liabilities, Profits or Losses of the Company or any other facts pertinent to the existence and amount of Properties from which Distributions to Members

might properly be paid) of the following Persons unless the Manager shall have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- (i) any Members, officers, employees, contractors, or agents of the Company whom such Manager reasonably believes to be reliable and competent in the matters presented and who have been selected with reasonable care by or on behalf of the Company; or
- (ii) any attorney, accountant, advisor, or other person as to matters which such Manager reasonably believes to be within such person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

**Section 4.8 Officers.** If authorized by the Manager, the Company may from time to time appoint or employ a Chief Executive Officer, President, Secretary, and/or any other officers of the Company whose title, duties, functions and compensation shall be those authorized from time to time by the Manager and who may serve at the pleasure of the Manager. Officers and other employees of the Company need not be Members or a Manager of the Company. Unless the authority of the officer in question is limited or otherwise specified by the document appointing such officer or is otherwise specified by the Manager, any officer so approved shall have the same authority to act for the Company as a corresponding officer of a California corporation would have to act for a California corporation in the absence of a specific delegation of authority.

**Section 4.9 Manager and Officers Have No Exclusive Duty to Company.** Except as otherwise provided in this LLC Agreement or other written agreement between the Company and the Manager or any officer, neither the Manager nor any officer of the Company shall be required to manage the Company as the Manager's or such officer's sole and exclusive function, and the Manager or any officer may have other business interests and may engage in other activities in addition to those relating to the Company, and neither the Company nor any Member shall have any right, by virtue of this LLC Agreement, to share or participate in such other investments or activities of a Manager or officer of the Company or to the income or proceeds derived therefrom. Neither the Manager nor any officer of the Company shall incur any liability to the Company or to any of the Members solely as a result of the Manager's or such officer's activities relating to any other business or venture. Neither the Company nor the Members shall have any right, by virtue of this LLC Agreement or the relationship created hereby to participate in other business ventures in which the Manager or any officer participates, or share in the profits or losses therefrom. Neither the Manager nor any officer shall be obligated to offer any interest in any business activity to the Company or to another Member.

**Section 4.10 Property.** Any and all Company Property shall be owned by the Company as an entity, in the name of the Company, and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company Property in its individual name or right, and each Member's interest in the Company shall be personal property for all purposes. The foregoing provisions shall govern over any contrary or inconsistent provision herein, in the Certificate or any other document or instrument governing the affairs of the Company.

**Section 4.11 Bank Accounts.** The Manager may from time to time open bank accounts in the name of the Company.

**Section 4.12 Records, Audits and Reports to be Maintained.** At the expense of the Company, the Manager shall maintain the records and accounts of all operations and expenditures of the Company. The Manager shall also maintain the following records at the Principal Place of Business:

- (a) a current list of the full name and last known business or residence address of each Member and the Manager;
- (b) a copy of the Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any material documents of the Company have been executed;
- (c) copies of the Company's Federal, foreign, state and local income tax returns and reports, if any, for the three (3) most recent Taxable Years;
- (d) a copy of this LLC Agreement including all amendments thereto;
- (e) copies of any financial statements of the Company for the three (3) most recent years; and
- (f) copies of the statement filed with the Secretary of State the statement required under Section 17702.09 of the Act according to the frequency set forth therein.

**Section 4.13 Access to Records.** The records required to be maintained by the Manager in Section 4.12, and only such other records that the Members are entitled to inspect by non-waivable provisions of the Act, are subject to inspection and copying at the reasonable request (which may be made no more than once per Taxable Year) of, and at the expense of, any Member during regular business hours of the Company for any proper purpose (which determination shall be made by the Manager in its sole discretion); provided, however, that the Manager may keep confidential from any Member who is not also a Manager: (a) any information that the Manager believes to be in the nature of trade secrets; (b) any information the disclosure of which the Manager believes would be likely to materially damage the Company or its business; and (c) any information the Company is required by law or by agreement with a third party to keep confidential. Prior to any inspection of such records, the Manager may require the Member and the Member's agents to execute a confidentiality and non-disclosure agreement containing commercially reasonable terms and conditions with regard to the information to be inspected, reviewed or copied, as described above.

**Section 4.14 Reports to Members.** The Manager shall from time to time provide such financial information or reports to the Members as the Manager, in its sole discretion, shall deem appropriate. The foregoing notwithstanding, the Manager shall cause the Company to prepare and distribute to each Member the following reports or information:

- (a) a balance sheet reviewed by the Company's accountant as of the end of the Company's Taxable Year and statements of income and cash flow for the year then ended, which



financial statements shall be delivered as soon as reasonably practicable following the end of a Taxable Year, provided that the Company shall use commercially reasonable efforts to provide such information within one hundred and twenty (120) days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year; and

(b) information necessary for the preparation of each Member's income tax returns, including a statement showing such Member's share of Profit or Loss, deductions or credit for the Taxable Year or taxable quarter for federal income tax purposes and the amount of any distribution made to or for the account of such Member pursuant to this LLC Agreement, and the Company shall use commercially reasonable efforts to provide such information within ninety (90) days after the end of each Taxable Year to each person who was a Member at any time during such Taxable Year.

**Section 4.15 Financial Statements.** The Members acknowledge and agree that, except as otherwise determined by the Manager, the financial statements of the Company shall not be audited.

**Section 4.16 Accounts.** The Manager, or if officers are appointed by the Manager, such officer(s) as are authorized and directed by the Manager, shall maintain a record of the Capital Account for each Member and Assignee in accordance with Article 9.

**Section 4.17 Records of Membership Interests.** The Manager shall maintain a record of the Membership Interests held by each Member and Assignee, as such Membership Interests shall be increased or decreased from time to time in accordance with this LLC Agreement.

**Section 4.18 Resignation.** The Manager shall not resign as Manager (and any attempted resignation shall therefore not be accepted or effective) unless a substitute Manager has been approved in advance by a Majority of the Members. In the case where a substitute Manager is approved, such resignation shall become effective on such date as is mutually agreed upon by the resigning Manager and a Majority of the Members. The resignation of any Manager who is also a Member shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of the Member. The Manager shall promptly notify the Members of its resignation as Manager and the Members shall elect a substitute Manager within thirty (30) days of the receipt of such notice.

**Section 4.19 Removal.** Trinity Agri Management, LLC may be removed as the Manager by a vote of a Majority of the Members and a substitute Manager must be approved in advance by a Majority of the Members. Any successor Manager may only be removed, with or without cause, by a Majority of the Members. The removal of a Manager who is also a Member shall not affect such Manager's rights as a Member or constitute a withdrawal of the Member. For the avoidance of doubt, the Manager shall retain all of the rights to distributions set forth in Section 10.14 in the event of its removal.

**Section 4.20 Vacancies.** In the case of a vacancy in the office of Manager, a Majority of the Members shall be entitled to appoint a Manager to fill such vacancy.

**Section 4.21 Other Activities; Business Opportunities.** Nothing contained in this Agreement shall prevent any Member or any of such Member's Affiliates from engaging in any

other activities or businesses, regardless of whether those activities or businesses are similar to or competitive with the Company or the Project. None of the Members nor any of their Affiliates shall be obligated to account to the Company or to the other Members for any profits or income earned or derived from other such activities or businesses. None of the Members nor any of their Affiliates shall be obligated to inform the Company or the other Members of any business opportunity of any type or description.

## **ARTICLE 5 MEETINGS OF THE MANAGER**

As there is a single Manager, there shall be no requirements or procedures for regular or special meetings of such Manager, nor shall a meeting or any other form of consent be required for such Manager to exercise the authority granted under this LLC Agreement.

## **ARTICLE 6 RIGHTS AND OBLIGATIONS OF MEMBERS**

**Section 6.1 Member Management Rights.** Except as otherwise provided in this LLC Agreement or by nonwaivable provisions of the Act, all decisions concerning the business, affairs and Properties of the Company shall be made by the Manager in accordance with this LLC Agreement, and no Member shall have any right to participate in the management of the business, affairs and Properties of the Company. No Member has a voting right except with respect to the matters expressly reserved for a vote of the Members in this LLC Agreement or by nonwaivable provisions of the Act.

**Section 6.2 Company Property; No Compensation.** A Member shall have no interest in specific Company Property, unless otherwise agreed by all of the Members. Except as provided otherwise in this LLC Agreement, no Member, solely by reason of being a Member of the Company, shall be entitled to any salary, draw, or other compensation from the Company.

**Section 6.3 Liability of Members to Third Parties.** Unless otherwise provided by the Act, no Member shall be liable under any judgment, decree, or order of a court, or in any other manner, for any debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any Member, Manager, agent or employee of the Company. Except as otherwise provided by the Act, by applicable law, or expressly in this Agreement, no Member will be obligated personally for any debt, obligation, or liability of the Company or other Members, whether arising in contract, tort, or otherwise, solely by reason of being or acting as a Member. Except as otherwise provided by the Act, by applicable law, or expressly in this Agreement, no Manager will be obligated personally for any debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise, solely by reason of being or acting as a Manager.

**Section 6.4 Roles with the Company; Compensation.** A Member or any Person affiliated or associated with such Member may act as surety, guarantor, endorser, or provider of collateral for, and transact any kind of business with, the Company on such terms as agreed between such Member or Person and the Company, provided that any such transaction must be on an arms-length basis and on commercially reasonable terms. Nothing in this LLC Agreement shall

be construed to preclude a Member, or any Person affiliated or associated with such Member, from serving the Company in any other capacity as a Manager, officer, employee, agent, contractor, or otherwise and receiving commercially reasonable compensation and expense reimbursement therefor.

**Section 6.5 Right of Withdrawal.** No Member shall have the right to withdraw or resign as a Member of the Company or otherwise seek the partition of the Company's Property, without the prior written consent of the Manager. No Member may withdraw any part of his, her, or its Capital Contributions from the Company.

**Section 6.6 Conflicts of Interest.** No Member or Manager shall be deemed to have violated a duty or obligation to the Company merely because the Member's or Manager's conduct furthers such Member's or Manager's own interest. Subject to the other provisions of this LLC Agreement, a Member or Manager, or any of their respective Affiliates, may lend money to and transact other business with the Company, provided that the Company and such Member, Manager or Affiliate conduct such transaction at arms-length on commercially reasonable terms. The rights and obligations of a Member or Manager, or Affiliate thereof, as the case may be, who lends money to or transacts business with the Company are the same as those of a person who is not a Member or Manager, subject to this LLC Agreement, the Act or other applicable law. No transaction with the Company shall be voidable solely because a Member or Manager, or an Affiliate thereof, has a direct or indirect interest in the transaction if (a) the transaction is fair to the Company, (b) if the Manager is disinterested in the transaction, the Manager authorizes, approves or ratifies the transaction, or (c) the holders of a majority of the Membership Interests held by the disinterested Members authorize, approve or ratify the transaction.

**Section 6.7 No Fiduciary Duties.** Except as expressly set forth in this LLC Agreement, no Member shall owe, in its, his or her capacity as a Member, any fiduciary or other similar duties to the Company or the other Members.

**Section 6.8 Non-Disclosure and Confidentiality.** Without the prior written consent of the Manager, no Member shall at any time while he, she or it is a Member of the Company or thereafter in any manner, directly or indirectly, divulge, disclose or communicate to any Person, or shall use for his, her or its own or any other Person's purposes or benefit, any information related to the Company, including trade secrets, or any information regarding the Company's processes, plans, practices or other information related to the business of the Company (including any information to which a Member may be entitled pursuant to Article 4), the other Members, or the Affiliates of either of the foregoing ("**Confidential Information**"). "Confidential Information" does not include: (a) information already known to the Member when received from the Company (other than information pertaining to assets contributed or rights granted to the Company by such Member or any Affiliate thereof); (b) information that is generally available to the public, other than information obtained through a breach of the Member's duty of confidentiality hereunder; (c) information which is legally received by the Member from a Person in rightful and legal possession of such Confidential Information and not under any legal, contractual, fiduciary or other duty to any Person not to disclose such Confidential Information; or (d) information which is independently developed by the Member without use of, reference to, or reliance on the Company's Confidential Information. Each Member acknowledges that any such information obtained as a result of its membership in or dealings with the Company and the other Members is

confidential and that its disclosure will substantially and adversely affect the effectiveness and successful conduct of the business of the Company and the Company's goodwill. Each Member further acknowledges that such Member's obligation not to disclose any of the Confidential Information shall not be terminated upon, but shall survive, the occurrence of any event which results in such Member no longer being a Member of the Company for a period of five (5) years following such event; provided that, with respect to Confidential Information that constitutes a trade secret such obligation not to disclose shall continue in force with respect to such trade secret for the longer of (i) so long as such Confidential Information remains a trade secret; or (ii) five (5) years after the occurrence of any event which results in such Member no longer being a Member of the Company. Notwithstanding any provision hereof to the contrary, a Member may disclose Confidential Information: (A) to its employees, members, officers, directors, members, Managers, Affiliates, agents, attorneys, accountants, lenders and professional advisors (collectively, "**Representatives**") who have a reasonable need to know such Confidential Information and are apprised of the confidential nature of such Confidential Information; (B) to any party if and to the extent required by law (including state or federal banking regulations) or court order; (C) as necessary to enforce or perform such Member's obligations under this LLC Agreement; or (D) subject to any policies relating to such disclosure adopted from time to time by the Manager, as necessary to fulfill such Member's (or any of its Representative's) duties and responsibilities to the Company in the ordinary course of the Company's business. Notwithstanding the foregoing, a Member shall be liable to the Company and every other Member for any breach of the provisions of this Section 6.8 by any of such Member's Representatives. In the event that any Member becomes legally compelled to disclose any of the Confidential Information or in the event that any Member has knowledge that anyone to whom such Member has transmitted the Confidential Information pursuant to this LLC Agreement becomes legally compelled to disclose any of the Confidential Information, such Member shall provide the Manager with reasonably prompt notice prior to any such disclosure to enable the Company to seek a protective order or other appropriate remedy with respect to such disclosure or to waive compliance with the provisions of this LLC Agreement.

## **ARTICLE 7 MEETINGS OF MEMBERS**

**Section 7.1 Meetings.** Meetings of the Members for any proper purpose (which determination shall be made by the Manager in its, his or her sole discretion) may be called at any time by the Manager or by any Member or group of Members holding at least twenty percent (20%) of the Membership Interests of the Company. Meetings shall be held at such place or places as shall be stated in the Notice of such meeting. At a meeting no business shall be transacted and no action shall be taken other than the purpose or purposes stated in the written Notice of meeting and matters germane to such purposes, unless all of the Members agree to the transaction of such business or taking of such action.

**Section 7.2 Notice of Meetings.** Written Notice of every meeting of Members shall be given to each Member of record entitled to vote at the meeting at least five (5) days prior to the day named for the meeting. Notice of a meeting need not be given to any Member of record entitled to vote at the meeting who signs a waiver of such Notice, whether before or after the meeting, or who attends the meeting without protesting the lack of Notice of such meeting prior to the conclusion of the meeting.

**Section 7.3 Manner of Acting.** The affirmative vote or action of a Majority of the Members shall be the vote or action of the Members, unless the vote or action of a greater or lesser proportion or number of the Members is otherwise expressly required by this LLC Agreement or nonwaivable provisions of the Act. Any Member may participate in any meeting of the Members by means of a conference telephone or similar communications equipment by means of which all persons participating in such meeting can hear each other, and participation in a meeting pursuant to this Section 7.3 shall constitute presence in person at such meeting.

**Section 7.4 Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members may be taken without a meeting and without Notice if the action is evidenced by one or more written consents describing the action taken, signed by those Members or that Member having the requisite number of Membership Interests required to take such action at a meeting of the Members and delivered to the Company for inclusion in the minutes or for filing with the Company records. An action taken under this Section 7.4 is effective when the Members holding the necessary number of Membership Interests to take or approve a specific action have signed the consent, unless the consent specifies a different effective date. If an action by Members is taken without a meeting under this Section 7.4, notice to the Members shall be considered waived, provided however, that if action is taken hereunder by less than all of the Members entitled to vote upon such action, Notice of such action shall be provided to the nonparticipating Members so entitled to vote. Failure to provide the Notice described in the preceding sentence shall not invalidate or otherwise affect the validity of any action properly taken by the Members holding the requisite number of Membership Interests.

**Section 7.5 Waiver of Notice.** When any Notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such Notice, whether before, at, or after the date on which such Notice was otherwise required to be given, shall be equivalent to the giving of such Notice.

## **ARTICLE 8 INDEMNIFICATION**

**Section 8.1 Indemnification of Members, Managers and Officers.** Subject to Section 8.4, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Company), by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such claim, action, suit or proceeding if such Person acted in good faith, and, with respect to any criminal action or proceeding had no reasonable cause to believe such Person's conduct was unlawful. The termination of any claim, 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 Person did not act in good faith, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such Person's conduct was unlawful.

**Section 8.2 Indemnification in Actions by or in Right of the Company.** Subject to Section 8.4, the Company shall indemnify any Member, Manager or officer who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that such Person is or was a Member, Manager or officer of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith, except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misconduct, or have breached their fiduciary duties set forth in Section 4.7(a), in the performance of such Person's duty to the Company unless and only to the extent that the court in which such claim, action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**Section 8.3 Indemnification When Successful on Merits or Otherwise.** Subject to Section 8.4, to the extent that a Member, Manager or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith, notwithstanding that such Person has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

**Section 8.4 Determination of Meeting Applicable Standard.** Any indemnification under Section 8.1, Section 8.2 or Section 8.3 shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Member, Manager or officer is proper in the circumstances because such Person has met the applicable standards of conduct set forth in Section 8.1, Section 8.2 or Section 8.3 and that indemnification is otherwise appropriate under the circumstances, which determination shall be made by the Manager in its sole discretion.

**Section 8.5 Payment of Expenses in Advance of Disposition of Action.** Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding shall be paid by the Company in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Section 8.4 upon receipt of an undertaking by or on behalf of the Member, Manager or officer to repay such amount if and to the extent that it shall be ultimately determined that such Person is not entitled to be indemnified by the Company as authorized in this Article 8.

**Section 8.6 Non-Exclusivity of Article.** The indemnification authorized in and provided by this Article 8 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provision of the Certificate, this LLC Agreement, other agreement, vote or action of Members or by the Manager, or otherwise, and shall continue as to a Person who has ceased to be a Member, Manager or officer and shall inure to the benefit of the heirs, executors and administrators of such a Person.

**Section 8.7 Insurance.** The Company may purchase and maintain insurance on behalf of any Person who is or was a Member, Manager, officer, employee or agent of the Company, or is or was serving at the request of the Company as a member, Manager, director, officer, partner, employee or agent of another Organization, against any liability asserted against such Person incurred by such Person in such capacity, whether or not the Company is required or permitted to indemnify such Person against such liability under the provisions of this Article 8 or any statute.

## **ARTICLE 9 CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS**

**Section 9.1 Initial Capital Contributions.** The Manager is authorized to cause the Company to issue the Membership Interests, including Membership Interests in connection with the rights described in this Agreement with respect to the Profits Interest Amount. The initial Capital Contribution of (and initial Percentage Interest of) each Member is set forth on Exhibit A. All Capital Contributions shall be made in cash in U.S. dollars, unless otherwise agreed to by the Manager, in its sole discretion. The initial Capital Contribution (to the extent not previously paid) shall be paid by each Member in cash or its equivalent or in such other consideration as the Manager shall agree upon in writing at its sole discretion. No Member shall be required to contribute any Additional Capital Contributions to the Company.

### **Section 9.2 Additional Capital Contributions.**

(a) In addition to the initial Capital Contributions of the Members, in the event that the Manager determines that Additional Capital Contributions are reasonably necessary to facilitate the business needs of the Company, including to meet the Company's operating expenses, to fund the expansion of the Company's business and to purchase any Property reasonably necessary for the operation of the Company, the Manager may cause the Company to request Additional Capital Contributions from all of the Members, and if the Company requests such Additional Capital Contributions from all Members, each Member shall be entitled, but not required, to make such Additional Capital Contribution on a basis pro rata to such Member's Percentage Interest in the Company. The Manager will update Exhibit A to reflect any changes to the Members of the Company or the effects of any Additional Capital Contributions on the Members' Capital Contributions. Upon making a determination to request Additional Capital Contributions from all Members, the Manager shall give Notice to each Member in writing at least ten (10) days prior to the date on which the Additional Capital Contributions are due. Such Notice shall set forth the amount of Additional Capital Contribution needed, the purpose for which the contribution is needed, and the date by which the Member must contribute such Additional Capital Contribution. In the event that one or more of the Members does not or decides not to make its Additional Capital Contribution, the contributing Member or Members shall be entitled to receive Additional Membership Interests of the Company in return for such contributing Member's or Members' Additional Capital Contribution (the "**Additional Capital Contribution Membership Interests**"). For the sake of clarity, nothing in this Section 9.2 shall be construed to require the Company, in the event the Manager determines that additional capital is necessary or appropriate to facilitate the business needs of the Company, to raise such additional capital by way of Additional Capital Contributions from the Members, and subject to any consent required pursuant to Section 4.4(a) of this LLC Agreement, the Company may raise such additional capital from any one or more third parties on such terms as the Manager may determine, in its sole discretion,

provided that the purchase price for any New Securities issued in connection with raising such additional capital would be determined by the Manager provided that such includes a pro rata portion of any Fees paid by the Members prior to the issuance of such New Securities.

(b) At the time of any Additional Capital Contribution from a new or existing Member pursuant to this Section 9.2, in the sole discretion of the Manager, the Company may cause the Capital Accounts of such Member to be debited and such debited amount distributed to the other Members or reallocated to their Capital Accounts in a manner determined in good faith by the Manager, in its sole discretion, to equitably apportion the expenditures of the Company borne by the other Members prior to such Additional Capital Contributions.

### **Section 9.3 Election Not to Fund Additional Capital Contributions.**

(a) Funding the Shortfall. In the event that one or more Members elect not to participate in a call for Additional Capital Contributions, then the Manager may in its sole discretion do or cause to be done any one or more of the following:

(i) offer the other Members the opportunity to increase their Additional Capital Contributions to fund such shortfall, with any amount not accepted by any Member to be offered to any other Member willing to so increase its Additional Capital Contributions in excess of such non-accepting Member's share of the shortfall; and/or

(ii) incur indebtedness, including from the Manager, any Member or their respective Affiliates, to fund such shortfall.

(b) Manager Discretion. The Manager shall not be obligated to exercise any of the options available to it set forth in Section 9.3(a) of this LLC Agreement or to pursue such any such option in any particular order.

(c) Adjustments to Capital Accounts, Percentage Interests and Distributions. If a Member elects not to fund Additional Capital Contributions on the specified due date, then such election not to make Additional Capital Contributions shall be reflected in corresponding non-punitive adjustments to the Capital Accounts and Percentage Interests of the Members and adjustments will be made for purposes of calculating allocations and distributions pursuant to this LLC Agreement.



**Section 9.4 Maintenance of Capital Accounts.** The Company shall establish and maintain a separate Capital Account for each Member and Assignee.

(a) To each Member's Capital Account there shall be credited (i) such Member's Capital Contributions (provided, however, that in the case of a Capital Contribution made in the form of a promissory note of which the contributing Member is the maker, such Member's Capital Account shall be increased with respect to such promissory note only when there is a taxable disposition of such note by the Company or when, and to the extent that, the contributing Member makes principal payments on such note); (ii) such Member's distributive share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 10.2 through Section 10.8; and (iii) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member.

(b) To each Member's Capital Account there shall be debited (i) the amount of cash and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this LLC Agreement; (ii) such Member's distributive share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 10.2 through Section 10.8; and (iii) the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company.

(c) In the event all or a portion of the Membership Interests held by a Member are transferred in accordance with the terms of this LLC Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interests. This Section 9.4 shall not be interpreted as permitting the transfer of any Membership Interests that is otherwise prohibited under Article 12.

(d) In determining the amount of any liability for purposes of this Section 9.4, there shall be taken into account Code § 752(c) and any other applicable provisions of the Code and Regulations.

(e) If so determined by the Manager, immediately prior to any Adjustment Date, the Capital Accounts of all Members shall also be increased or decreased to reflect the aggregate net increase or decrease in Gross Asset Values of the Company as if the upward or downward change in the Gross Asset Values arising from such adjustment had been Profits or Losses, respectively, and allocated among the Members pursuant to Section 10.1. It is the intention of the Members that the Capital Accounts of the Company be maintained in accordance with the Regulations promulgated under Code § 704(b) and that this LLC Agreement be interpreted consistently therewith. Notwithstanding anything contained in this Article IX to the contrary, to the extent such Regulations require allocations for tax purposes that differ from the allocations of Profits and Losses contained in Article X, the Manager may determine the manner in which such tax allocations shall be made so as to comply more fully with such Regulations or other applicable law and, at the same time to the extent reasonably possible, preserve the economic relationships among the Members as set forth in this Agreement.

## **Section 9.5 Treatment of Membership Interest related to Profits Interest Amount.**

(a) It is the intention of the Members that the Membership Interests issued to the Manager in connection with the rights described in this Agreement with respect to the Profits Interest Amount, including the Manager's right to receive Distributions and allocations of Profits under this Agreement with respect to the Profits Interest Amount (the "**Profits Interest**"), constitute a "profits interest" for federal and state income tax purposes within the meaning of Revenue Procedures 93-27 and 2001-43 and any future IRS guidance, with the intent being that such Profits Interest shall be treated as having been issued and outstanding as of the date of its issuance with an initial Capital Account balance of \$0, and this Agreement shall be interpreted in accordance with such intention. The Company and the Members shall (1) treat such Profits Interest as outstanding for tax purposes, and (2) file all tax returns and reports consistently with the foregoing. The Manager may cause the Company to make an election to value any Profits Interest at its liquidation value (the "**Safe Harbor Election**"), as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to proposed Treasury Regulations Section 1.83-3(l) and IRS Notice 2005-43 (collectively, the "**Proposed Rules**"). The Manager shall cause the Company to make any allocations of items of income, gain, deduction, loss or credit (including forfeiture allocations and elections as to allocation periods) necessary or appropriate to effectuate and maintain the Safe Harbor Election.

(b) Any such Safe Harbor Election shall be binding on the Company and on all of its Members with respect to any Profits Interest issued to or held by the Manager while a Safe Harbor Election is in effect. A Safe Harbor Election once made may be revoked by the Manager as permitted by the Proposed Rules or any applicable rule.

(c) The Investor Member, by signing this Agreement or by accepting its Membership Interest, hereby agrees to use reasonable efforts to comply with all requirements of the Safe Harbor Election with respect to any Profits Interest issued to or held by the Manager while the Safe Harbor Election remains in effect.

(d) The Manager shall file or cause the Company to file all returns, reports and other documentation as may be required to perfect and maintain the Safe Harbor Election with respect to any Profits Interest.

(e) The Manager is hereby authorized and empowered, without further vote or action of the Investor Member, to amend this Agreement (1) as necessary to comply with the Proposed Rules or any rule, in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same and (2) so that the Profits Interests would not be subject to tax under Code Section 409A(a)(1)(A) or interest or additional taxes under Code Section 409A(a)(1)(B), and, in each instance, shall have the authority to execute any such amendment by and on behalf of the Investor Member. Any undertakings by the Investor Member necessary to enable or preserve a Safe Harbor Election may be reflected in such amendments, and to the extent so reflected shall be binding on the Investor Member, provided that such amendments are not reasonably likely to have an adverse effect on the rights and obligations of the Investor Member.

(f) The Investor Member agrees to use reasonable efforts to cooperate with the Manager to perfect and maintain any Safe Harbor Election, and to timely execute and deliver any documentation with respect thereto reasonably requested by the Manager.

## **ARTICLE 10 ALLOCATIONS AND DISTRIBUTIONS**

### **Section 10.1 Allocations of Profits and Losses.**

(a) Except as otherwise provided in this Section 10.1, all Profits and Losses (and individual items of income, gain, loss, deduction or credit) shall be allocated to the Members pro rata in accordance with their respective Percentage Interest at the time such Profits and Losses are realized by the Company.

(b) Capital Transaction.

(i) All Profits arising from a Capital Transaction shall be allocated among the Members as follows:

(A) First, an amount of Profit shall be allocated to the Members (if any) having negative Capital Account balances in proportion to their negative Capital Account balances until all such Capital Accounts shall have a zero balance;

(B) Second, among the Members, so as to bring, as nearly as possible, their Capital Accounts into, and maintain their Capital Accounts in, the same ratios as the distributions that they would receive if an amount equal to the aggregate amount of their Capital Accounts, increased by the amount of such gain, were distributed among them in the manner and order of priority prescribed for a distribution of Capital Transaction Proceeds as described in Section 10.14(b).

The allocations of Profits provided for in this Section 10.1(b)(i) shall be made after the allocations provided in Section 10.2 through Section 10.8 but prior to adjusting Capital Account balances to reflect the distribution of the proceeds from such Capital Transaction.

(ii) All Losses arising from a Capital Transaction shall be allocated among the Members as follows:

(A) First, so as to nearly as possible cause the ratio of each Member's positive Capital Account balance to the positive balances of all Members to be equal to such Member's then-current Percentage Interest;

(B) Second, to each Member with a positive balance in its Capital Account, in proportion to any remaining positive Capital Account balances; and

(C) The balance, if any, to the Members pro rata in accordance with their respective then-current Percentage Interests.

The allocations of Losses provided for in this Section 10.1(b)(ii) shall be made after the allocations provided in Section 10.2 through Section 10.8, but prior to adjusting the Members' Capital Account balances to reflect the distribution of the proceeds from such Capital Transaction.

**Section 10.2 Company Minimum Gain Chargeback.** Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 10, if there is a net decrease in Company Minimum Gain during any Taxable Year, each Member shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Person's share of the net decrease in Company Minimum Gain, determined in accordance with Regulation § 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 10.2 is intended to comply with the minimum gain chargeback requirement in § 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

**Section 10.3 Member Minimum Gain Chargeback.** Except as otherwise provided in § 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article 10, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Liability during any Taxable Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Liability, determined in accordance with § 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Liability, determined in accordance with Regulations § 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 10.3 is intended to comply with the minimum gain chargeback requirement in § 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

**Section 10.4 Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in § 1.704-1(b)(2)(ii)(d)(4), § 1.704-1(b)(2)(ii)(d)(5) or § 1.704-1(b)(2)(ii)(d)(6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 10.4 shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 10 have been tentatively made as if this Section 10.4 were not in this LLC Agreement.

**Section 10.5 Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any Taxable Year which is in excess of the sum of (a) the amount such Member is obligated to restore pursuant to any provision of this LLC Agreement; and (b) the

amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 10.5 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 10 have been made as if Section 10.4 and this Section 10.5 were not in this LLC Agreement.

**Section 10.6 Nonrecourse Deductions.** Nonrecourse Deductions for any Taxable Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

**Section 10.7 Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Taxable Year shall be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Liability with respect to which such Member Nonrecourse Deductions are attributable in accordance with § 1.704-2(i)(1) of the Regulations.

**Section 10.8 Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Company Property pursuant to Code § 734(b) or Code § 743(b) is required, pursuant to Regulations § 1.704-1(b)(2)(iv)(m)(2) or Regulations § 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the Property) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their respective Percentage Interests in the Company in the event that Regulations § 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations § 1.704-1(b)(2)(iv)(m)(4) applies.

**Section 10.9 Loss Limitation.** Losses allocated pursuant to Section 10.1 shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Taxable Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 10.1, the limitation set forth in this Section 10.9 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Regulations.

**Section 10.10 Other Allocation Rules.** Notwithstanding any other provisions of this Article 10, if the amount of Membership Interests held by any Member changes during the Taxable Year, or if any Members are admitted during the Taxable Year, the Profits, Losses and other items otherwise to be allocated hereunder for such Taxable Year shall be allocated on a month-by-month basis among the Members in proportion to the Membership Interests each Member holds as of the first day of each such month, and each Member's share of the Profits, Losses and other items for such Taxable Year shall be equal to the sum of his share of the Profits, Losses and other items for each month during the Taxable Year.

**Section 10.11 Tax Allocations: § 704(c) of the Code.** In accordance with Code § 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company Property is adjusted pursuant to clause (b) of the definition of Gross Asset Value set forth herein, subsequent allocations of income, gain, loss, and deduction with respect to such Property shall take account of any variation between the adjusted basis of such Property for federal income tax purposes and its Gross Asset Value in the same manner as under Code § 704(c) and the Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this LLC Agreement. Allocations pursuant to this Section 10.11 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this LLC Agreement.

**Section 10.12 Variation of Allocations to Preserve and Protect Member's Intent.**

(a) It is the intent of the Members that liquidation proceeds distributed in accordance with positive Capital Accounts balance pursuant to Section 14.2 will be distributed among the Members in the same manner as such distributions would be distributed under Section 10.14(b). Accordingly, the Manager is hereby authorized and directed to allocate income, gain, loss, deduction, or credit (or item thereof) arising in any year differently than otherwise provided for in this Article 10 to the extent that allocating income, gain, loss, deduction or credit (or item thereof) in the manner provided for in this Article 10 is necessary, in the opinion of the Manager, to cause Capital Accounts at the time of liquidation to be in the same ratios that liquidation proceeds would be distributed pursuant to Section 10.14(b). Any allocation made pursuant to this Section 10.12 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article 10 and no amendment of this Agreement or approval of any Member shall be required.

(b) In making any allocation (the “**New Allocation**”) under Section 10.12(a), the Manager is authorized to act only after having been advised by the Company's accountants, at Company expense, that, under Section 704(b) of the Code and the Regulations promulgated thereunder, (i) the New Allocation is necessary, and (ii) the New Allocation is the minimum modification of the allocations otherwise provided for in Article 10 necessary in order to assure that the intent of the Members is satisfied.

**Section 10.13 Tax Distributions.** On an annual basis, prior to April 15 of each Taxable Year, the Manager may, but shall not be required to, cause the Company to distribute to each Member sufficient amounts of cash to permit such Member to discharge its obligations to pay federal, state and local taxes (including estimated taxes) with regard to taxable income reported or to be reported on the Schedule K-1 of Internal Revenue Service Form 1065 issued to such Member in respect of the Profits and Losses of the Company, if any, calculated at the highest combined local, state and federal marginal income tax rates applicable to any Member (each Distribution, a “**Tax Distribution**”). Any Tax Distributions to a Member shall be treated as an advance against Distributions to which such Member would otherwise be entitled under Section 10.14, and Tax

Distributions shall only be made to the extent that the Company has Cash Flow available to distribute. The Manager shall have the discretion to estimate the amount of taxable income allocable to each Member during the applicable period, and to determine the tax rate to be applied to such income, which rate shall be the same for all Members. For the sake of clarity, (a) the Manager may, but shall not be required to, cause the Company to make Tax Distributions pursuant to this Section 10.13 to the fullest extent permitted by applicable law, irrespective of whether adequate reserves are then available; and (b) no Tax Distributions shall be made to the Members with respect to the year in which the Company makes any final liquidating distributions, including in connection with a sale of the Company's assets. This Section 10.13 is not intended to guarantee that Members will receive distributions sufficient to pay their income taxes. In all events, each Member will be responsible for the payment of its respective income taxes, and no Member shall have any right to recover any amount from the Company with respect thereto because such Member did not receive distributions of cash sufficient to pay its income taxes, irrespective of whether the Company had any distributable cash available. Any distribution under this Section 10.13 shall not be treated as a guaranteed payment to a Member for the purposes of Section 707(c) of the Code.

**Section 10.14 Other Distributions.** On an annual basis, prior to March 1 of each Taxable Year, the Manager shall determine to what extent, if any, the Company's cash on hand for the preceding Taxable Year exceeds the current and anticipated needs for such moneys, including, needs for operating expenses, debt service and reserves (including reserves for Fees and other expenses related to the management and operation of the Project). To the extent such excess cash on hand exists and is permitted for distribution in accordance with the preceding sentence, the Manager may, but shall not be required to, make Distributions to the Members as follows:

(a) Distributable Cash Flow shall be distributed as follows:

(i) First, one hundred percent (100%) *pari passu* to the Members (including the Manager) *pro rata* in accordance with each Member's Accrued Preferred Return Account balance, until each Member's Accrued Preferred Return Account balance, if any, is reduced to zero;

(ii) Second, *pari passu* (A) eighty percent (80%) to the Members (including the Manager) *pro rata* in accordance with their Percentage Interests, and (B) twenty percent (20%) to the Manager.

(b) Capital Transaction Proceeds received by the Company shall be distributed in the following order of priority:

(i) First, one hundred percent (100%) *pari passu* to the Members (including the Manager) *pro rata* in accordance with each Member's Accrued Preferred Return Account balance, until each Member's Accrued Preferred Return Account balance, if any, is reduced to zero;

(ii) Second, one hundred percent (100%) *pari passu* to the Members (including the Manager) *pro rata* in accordance with their Unreturned Capital balances,

until the amount of each Member's Unreturned Capital balance has been reduced to zero; and

(iii) Third, *pari passu* (A) eighty percent (80%) to the Members (including the Manager) pro rata in accordance with their Percentage Interests, and (B) twenty percent (20%) to the Manager.

Each such Distribution shall be in cash or other Property (which need not be distributed proportionately) or partly in both, as reasonably determined in good faith by the Manager. Except as provided in Section 17704.06(c) of the Act, the effect of a distribution is measured as of the date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

**Section 10.15 Amounts Withheld.** In determining the amount to be distributed to each Member under this Article 10, the Company shall take into account amounts reasonably expected to be treated as Distributions to such Member pursuant to Section 11.2 with respect to the current Taxable Year.

## **ARTICLE 11 CERTAIN TAX MATTERS**

**Section 11.1 Elections.** The Manager may make any tax elections for the Company allowed under the Code or the tax laws of any Taxing Jurisdiction.

### **Section 11.2 State Tax Returns; Withholding.**

(a) To the extent required by the laws of any Taxing Jurisdiction, each Member requested to do so by the Manager will submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest and penalties assessed on such income. If the Member fails to provide such agreement, the Company may withhold and pay over to such Taxing Jurisdiction the amount of tax penalties and interest determined under the laws of the Taxing Jurisdiction with respect to such income.

(b) To the extent required or permitted by the laws of any Taxing Jurisdiction, the Company shall be authorized to file a composite tax return on behalf of one or more of its Members and shall report and pay income taxes required by law to be paid with such composite tax returns to any Taxing Jurisdiction. The Company may withhold from a Member the portion of any such income tax payments attributable to the income of such Member, and/or the Company may require such Member to reimburse the Company for the portion of any such income tax payments attributable to the income of such Member. The Manager shall have the power and the authority to determine in its sole discretion whether a Member should be included in a composite tax return to be filed in any Taxing Jurisdiction. A Member shall be limited to an action against the applicable Taxing Jurisdiction with respect to any claims based on over-withholding or over-payment on a composite tax return, and neither the Company nor the Manager shall have any



liability to any Member with respect to any withholding or composite tax return filings or payments made pursuant to this Section 11.2.

(c) Without limiting the authority of the Company and the Manager under Section 11.2(a) and Section 11.2(b), the Company is authorized to withhold from payments and distributions to any Member, and from allocations to any Member, and to pay over to any Taxing Jurisdiction, any other amounts the Company is required to withhold pursuant to the laws of any Taxing Jurisdiction. All amounts withheld by the Company pursuant to this LLC Agreement or the laws of any Taxing Jurisdiction shall be treated as Distributions to such Member for purposes of Article 10.

**Section 11.3 Method of Accounting.** The records of the Company shall be maintained on the method of accounting chosen by the Manager.

**Section 11.4 Partnership Representative and Tax Audits.**

(a) The Manager shall be designated as the “partnership representative” of the Company under Code § 6223(a) (the “**Partnership Representative**”) and shall serve until he resigns or is removed as Partnership Representative under this Section 11.4(a). The Partnership Representative may be removed at any time by the affirmative vote or written consent of the Manager. In the event the Partnership Representative resigns or is removed, the Manager shall appoint a successor Partnership Representative. The Partnership Representative shall appoint a “designated individual” within the meaning set forth in Regulation 301.6223-1 (a “**Designated Individual**”) to act on behalf of the Partnership Representative with respect to the matters set forth in this Section 11.4(a) and the Partnership Representative shall have sole authority and discretion in appointing, removing and replacing the Designated Individual.

(b) The Company shall indemnify and reimburse the Partnership Representative for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred by the Partnership Representative with any administrative or judicial proceeding with respect to the tax liability of the Company, and against any and all loss, liability, cost or expense, including judgments, fines, amounts paid in settlement and attorneys’ fees and expenses, incurred by the Partnership Representative in any civil, criminal or investigative proceeding in which the Partnership Representative is involved or threatened to be involved by virtue of being the Partnership Representative, except such loss, liability, cost or expense arising as a result of the Partnership Representative’s gross negligence, fraud, malfeasance or intentional misconduct. The payment of all such expenses shall be paid in priority over distributions to any Member. The Manager is authorized to increase the Company’s reserves by an amount necessary to cover the Company’s reasonably anticipated future obligations to make payments to reimburse or indemnify the Partnership Representative under this Section 11.4(b).

(c) For any Taxable Year in which the Company is eligible to make an election under Code § 6221(b) to have Subchapter C of Chapter 63 of the Code not apply to the Company, the Company shall timely make such election, and the Members shall promptly take any actions and shall provide the Company with all information necessary to make such election. Any Member whose act or failure to act prevents the Company from filing a timely election under this Section

11.4(c) shall indemnify the Company for, and hold it harmless from, any costs the Company may incur that would have been avoided had the election been made.

(d) No later than ten (10) business days after it has knowledge of an audit or other proceeding under the Revised Partnership Audit Procedures, the Partnership Representative shall notify each Member of the existence of such audit or other proceeding. Each Member shall have the right to have a tax advisor of his, her or its own choosing participate in, but not direct, the prosecution or defense in such audit or proceeding at such Member's sole expense. The Partnership Representative shall make commercially reasonable efforts to facilitate such tax advisor's participation.

(e) If the Company receives a notice of proposed partnership adjustment under Code § 6231(a)(2), the Partnership Representative will make commercially reasonable efforts to (i) make any modifications available under Code § 6225(c)(3), (4) and (5); and (ii) if requested by a Member, provide to such Member information that will allow such Member to file amended federal income tax returns and pay the taxes due on such returns, if any, under procedures described in Code § 6225(c)(2), to the extent that such amended return and payment of any related federal income taxes would reduce the taxes payable by the Company with respect to the imputed underpayment amount (after taking into account any modifications described in clause (i) of this Section 11.4(e)).

(f) If the Company is obligated to pay any amount of tax, penalty, interest, other assessments or charges determined under Subchapter C of Chapter 63 of the Code, including by the Bipartisan Budget Act of 2015 (Pub. L. 114-74) (a "**Company Level Tax**"), each Member (or former Member) to which the assessment or payment relates (an "**Indemnifying Member**") shall indemnify the Company for, and pay, the Indemnifying Member's allocable share of the Company Level Tax. Each Indemnifying Member's allocable share of the Company Level Tax shall be determined in good faith by the Manager. Promptly upon notification by the Manager of the Indemnifying Member's obligation to indemnify the Company, an Indemnifying Member shall make a payment to the Company of immediately available funds, at the time and in the amount and manner directed by the Manager. Amounts paid to the Company under this Section 11.4(f) by an Indemnifying Member who is not a Member of the Company at the time such payment is made shall not be treated as a Capital Contribution.

(g) The Members' obligations under Section 11.4(f) shall survive the termination, dissolution, liquidation and winding up of the Company, and shall survive the Disposition of all or any part of a Member's Membership Interests in the Company. The Company may pursue and enforce all rights and remedies it may have against an Indemnifying Member under this Section 11.4(g), including instituting a proceeding governed by the applicable terms of this LLC Agreement to collect such payments.

## **ARTICLE 12**

### **DISPOSITION OF MEMBERSHIP INTERESTS**

**Section 12.1 Limitations.** An Assignee of a Membership Interest under this Article 12 shall have only those rights of an Assignee as described more fully in Section 13.1 and shall have

no right to become a Member of the Company unless such Assignee is admitted as a Substitute Member or Additional Member in accordance with Section 13.2 or Section 13.3, as applicable.

**Section 12.2 Transfer Restrictions.** No Member shall Transfer all or any portion of its, his or her Membership Interests in the Company except in strict compliance with the terms and conditions of Section 12.3 and all other applicable provisions of this LLC Agreement.

**Section 12.3 Consent.** No Member will Transfer all or any portion of its, his or her Membership Interests, unless:

(a) prior to the Transfer, the Company receives, unless waived by the Manager in writing, an opinion of counsel satisfactory to the Manager that such Transfer is not subject to registration under, or is exempt from the registration requirements of, the applicable state, federal and other securities laws;

(b) prior to the Transfer, the Company receives from the transferee such information and transferee executes such agreements that the Manager may reasonably require, including, but not limited to, any taxpayer identification number and any agreement that may be required by the Taxing Jurisdiction;

(c) the Transfer will not cause, or be reasonably likely to cause, the Company to become subject to the reporting requirements of the Securities Exchange Act of 1934 or otherwise become subject to increased regulation by the United States Securities and Exchange Commission or any other federal or state governmental authority;

(d) contemporaneously with the Transfer, the transferee shall execute the LLC Agreement and any other instruments as the Manager may deem necessary or desirable, in form and substance satisfactory to the Manager, and the transferee shall pay all reasonable expenses, including attorneys' fees, incurred by the Company in connection with such Transfer; and

(e) the transferor has received the prior written consent of the Manager.

**Section 12.4 Assignee Limitations.** All restrictions, including the restrictions contained in this Article 12, on Transfers of Membership Interests shall also apply to any Assignees of Membership Interests.

## **ARTICLE 13**

### **ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS**

**Section 13.1 Rights of Assignees.** Notwithstanding anything to the contrary contained in this LLC Agreement, the only rights, if any, which an Assignee of a Member shall have are those rights associated with the Economic Interest received and such Assignee shall not receive any right to participate in the management of the business and affairs of the Company; provided, however, that in the event an Assignee is an existing Member of the Company, such Assignee shall receive all rights to participate in the management of the business and affairs of the Company incident to the transferred Membership Interests. An Assignee is only entitled to receive the Distributions and return of capital, and to be allocated the Profits and Losses attributable to a transferred Membership Interests.

**Section 13.2 Admission of Substitute Members.** An Assignee of a Membership Interest shall be admitted as a Substitute Member and entitled to all the rights of the Member who initially assigned the Membership Interests only with the approval of the Manager, which approval may be granted or withheld subject to the discretion of such parties. If so admitted, the Substitute Member has all the rights and powers and is subject to all the restrictions and liabilities of the Member originally assigning the Membership Interests. The admission of a Substitute Member, without more, shall not release the Member originally assigning the Membership Interests from any liability to the Company that may have existed prior to the approval.

**Section 13.3 Admission of Additional Members.** From the date of formation of the Company, any Person acceptable to the Manager may become an Additional Member of the Company for such consideration as the Manager shall determine, subject to the terms and conditions of this LLC Agreement. No Additional Member shall be entitled to any retroactive allocation of income, gain, loss, deduction or credit by the Company. The Manager may, at its option, at the time the Additional Member is admitted, close the Company's books (as though the Taxable Year had ended) or make pro rata allocations of income, gain, loss, deduction or credit to the Additional Member for that portion of the Taxable Year in which the Member was admitted in accordance with the provisions of § 706(d) of the Code and the Regulations promulgated thereunder. Upon admission of an Additional Member, this LLC Agreement shall be amended in order to reflect such additional Member's Membership Interests in the Company.

## **ARTICLE 14 DISSOLUTION AND LIQUIDATION**

**Section 14.1 Dissolution.** The Company shall be dissolved and its affairs wound up prior to such date, upon the first to occur of the following events "Event of Dissolution"):

- (a) the written consent of the Manager and a Majority of the Members;
- (b) the merger of the Company where the Company is not the successor limited liability company in such merger or the consolidation of the Company with one or more limited liability companies or other entities;
- (c) the sale, exchange, involuntary conversion or other disposition or transfer of all or substantially all of the assets of the Company;
- (d) the passage of 90 consecutive days during which the Company has no Members, provided that the Membership Interest of a natural person who is the sole Member may pass by will or Applicable Law to the Member's heirs, successors, or assigns pursuant to Section 17707.01(c) of the Act; or
- (e) the entry of a decree of judicial dissolution pursuant to Section 17707.03 of the Act.

**Section 14.2 Distribution of Assets on Dissolution.** Dissolution of the Company shall be effective on the day on which the Event of Dissolution occurs. On the occurrence of an Event of Dissolution, the Manager shall file a certificate of dissolution with the California Secretary of State pursuant to the Act, unless such a filing is not required by the Act, but the Company shall not

terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in this Agreement, and the Articles of Organization have been canceled as provided in Section 14.4. Upon the occurrence of one of the events described in Section 14.1, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary or appropriate for, winding up the Company business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this LLC Agreement shall continue in full force and effect until such time as the Property has been distributed pursuant to this Section 14.2 and the Company has terminated. The Manager shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof, and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

(a) First, to the payment and discharge of all of the Company's known debts and liabilities to creditors other than Members;

(b) Second, to the payment and discharge of all of the Company's debts and liabilities to Members, including the establishment of reserves in compliance with the Act; and

(c) The balance, if any, to the Members pro rata in accordance with the outstanding positive balances in their respective Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods.

Each Member understands and agrees that by accepting the provisions of this Section 14.2 setting forth the priority of the distribution of the assets of the Company to be made upon its liquidation, such Member expressly waives any right that it, as a creditor of the Company, might otherwise have under the Act to receive distributions of assets pari passu with the other creditors of the Company in connection with a distribution of assets of the Company in satisfaction of any liability of the Company, and hereby subordinates to said creditors any such right.

**Section 14.3 Deficit Restoration Obligation.** In the event that the Company is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), if the Manager has a deficit balance (after giving effect to all contributions, distributions and allocations) as a result of receiving distributions under this Agreement with respect to its Profits Interest, then the Manager, shall make Capital Contributions related to the deficit caused by such distributions in an amount equal to the lesser of (i) the Profits Interest Amount, or (ii) the amount of such deficit in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). Except as otherwise provided in the previous sentence of this Section 14.3, no Member shall have any obligation to restore any deficit balance in its Capital Account. The foregoing provisions of this Section 14.3 are intended to satisfy the requirements of Treasury Regulation §1.704-1(b)(3) and shall be interpreted consistently therewith.

**Section 14.4 Certificate of Cancellation and/or Dissolution.** On completion of the distribution of the assets of the Company as provided in Section 14.2, the Manager shall file a certificate of cancellation and a certificate of dissolution with the California Secretary of State if

required under the Act and shall cause the cancellation of all qualifications and registrations of the company as a foreign limited liability company in jurisdictions other than the State of California and shall take such other actions as may be necessary to terminate the Company.

## **ARTICLE 15 AMENDMENT; CERTIFICATES**

**Section 15.1 LLC Agreement May Be Modified.** This LLC Agreement may be modified as provided in this Article 15 (as the same may from time to time be amended). No Member or Manager shall have any vested rights in this LLC Agreement.

**Section 15.2 Amendment or Modification of LLC Agreement.** This LLC Agreement may be amended or modified only by an instrument in writing executed by a Majority of Members or all such Members as are required by this LLC Agreement to approve the matters implemented by such amendment. Any such written amendment or modification will be binding upon the Company and each Member. Notwithstanding the foregoing, Manager may, without the consent of any other Member, amend this LLC Agreement (a) to satisfy any requirement, condition, guideline, directive, order, ruling or regulation of any governmental authority or as otherwise required by applicable law; (b) to reflect the admission of substitute, additional or successor Members, and the issuance and Transfer of Membership Interests; in accordance with this LLC Agreement; (c) to qualify or continue to qualify the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct business; (d) to cure any ambiguity or correct or supplement any provision herein contained which may be incomplete or inconsistent with any other provision contained herein; or (e) to correct any typographical or scrivener's error contained herein.

**Section 15.3 Certificates for Membership Interests.** At the election of the Manager, the Company may issue, but shall not be required to issue, to each Member a certificate in the form determined by the Manager, which shall evidence the Membership Interests of the Company. If issued, the following provisions shall apply with respect to the certificates representing the Membership Interests:

(a) All certificates shall be consecutively numbered. The name of the Person owning the Membership Interests, and the date of issue, shall be entered upon the Company's books. Each certificate shall be signed by the Manager of the Company. A record of such certificates shall be kept with the Company's books and records.

(b) All certificates surrendered to the Company shall be canceled, and no new certificates shall be issued until the former certificates for an equal number of Membership Interests shall have been surrendered and canceled except in cases of a lost or destroyed certificate. Any Person claiming a certificate to be lost or destroyed shall make an affidavit of that fact, and advertise the same as the Manager may require, whereupon the new certificate may be issued of the same tenor and for the same number of Membership Interests as the one alleged to be lost or destroyed, but always subject to the approval of the Manager.

(c) Subject to the restrictions on transfer contained in this LLC Agreement, Membership Interests of the Company shall be transferable by the holder thereof or by its duly

authorized agent or attorney, upon surrender of the certificate properly endorsed or together with a properly signed power of transfer.

(d) Subject to the restrictions on transfer contained in this LLC Agreement, the Manager shall have the power and authority to make all such rules and regulations as they may deem expedient concerning the issue, transfer and regulation of the certificates for the Membership Interests of the Company.

(e) The certificates representing the Membership Interests of the Company shall bear the following legend:

“THE LIMITED LIABILITY COMPANY INTERESTS IN R&N FARMING I, LLC (THE “COMPANY”) DESCRIBED IN THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, EFFECTIVE AS OF APRIL 25, 2023, AS THE SAME SHALL BE AMENDED FROM TIME TO TIME (THE “LLC AGREEMENT”) HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR UNDER ANY LAWS OR ACTS OF ANY STATES OR JURISDICTIONS IN RELIANCE UPON EXEMPTIONS UNDER THOSE LAWS AND ACTS. THE SALE OR OTHER DISPOSITION OF THE LIMITED LIABILITY COMPANY INTERESTS IS RESTRICTED AS STATED IN THE LLC AGREEMENT. THE LIMITED LIABILITY COMPANY INTERESTS IN THE COMPANY MAY BE ACQUIRED FOR INVESTMENT PURPOSES ONLY. THESE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (1) THE SECURITIES ACT, (2) ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION, AND (3) THE TERMS AND CONDITIONS OF THE LLC AGREEMENT. NO LIMITED LIABILITY COMPANY INTERESTS IN THE COMPANY WILL BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THE LLC AGREEMENT.”

**Section 15.4 Appointment of Attorney-in-Fact.** Each Member does hereby constitute, appoint and grant to the Manager and each Person who is or hereafter becomes a manager of the Company, full power to act without the others, as its true and lawful representative and attorney-in-fact, in its name, place and stead, to make, execute, sign (where applicable, as a deed), acknowledge and deliver or file (so long as such Person continues to be a manager of the Company): (i) the Certificate; (ii) any amendment to, modification to, restatement of or cancellation of the Certificate or this Agreement adopted in accordance with Section 15.2; (iii) all instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Company; (iv) all instruments, documents and certificates which may be required to effectuate the dissolution and termination of the Company; (v) any certificate or form required to apply for or purchase insurance of any kind, or any governmental program related to farming or food, including without limitation,

grants, crop insurance, environmental remediation and erosion; (vi) state or federal tax forms; and (vii) Subscription Agreements or any other such agreements, including this Agreement or any transfer agreement, to admit a new or additional Member to the Company. The powers of attorney granted herein shall be deemed to be coupled with an interest, are intended to secure a proprietary interest of the Manager and the obligations of each Member hereunder, shall be irrevocable and shall survive the withdrawal, death, dissolution, bankruptcy, disability, incapacitation or incompetency of a Member. Without limiting the foregoing, the powers of attorney granted herein shall not be deemed to constitute a written consent of any Member for purposes of Section 15.2. Each Member hereby agrees to be bound by any representation made by the attorney-in-fact acting in good faith pursuant to such power of attorney and hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the attorney-in-fact taken in good faith pursuant to this power of attorney.

## **ARTICLE 16**

### **MISCELLANEOUS PROVISIONS**

**Section 16.1 Entire Agreement.** Except for such written agreements expressly contemplated by this LLC Agreement, this LLC Agreement constitutes the entire agreement among the Members. Each Member hereby acknowledges that in executing this LLC Agreement, such Member has not been induced, persuaded or motivated by any promise or representation made by any other Person, unless expressly set forth herein.

#### **Section 16.2 Investment Representations.**

(a) Each of the undersigned Members acknowledges and understands (i) that the Membership Interests evidenced by this LLC Agreement have not been registered under the Securities Act of 1933 or the acts or laws of any states or other jurisdictions (collectively, the “**Securities Acts**”) because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Securities Acts providing for issuance of securities not involving a public offering; (ii) that the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment purposes only and not with a view toward the resale or distribution thereof; and (iii) that exemption from registrations under the Securities Acts would not be available if the Membership Interests were acquired by a Member with a view toward the resale or distribution thereof.

(b) Each Member hereby confirms to the Company that such Member is acquiring the Membership Interests for such own Member’s own account, for investment purposes only and not with a view toward the resale or distribution thereof. Each Member acknowledges and understands that the Company is under no obligation to register the Membership Interests or to assist such Member in complying with any exemption from registration under the Securities Acts if such Member should at a later date wish to dispose of their Membership Interests. Furthermore, each Member understands that the Membership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange Commission unless such Member is not an “affiliate” of the Company and the Membership Interests have been beneficially owned and fully paid for by such Member for at least one (1) year.



(c) Each Member, prior to acquiring Membership Interests, has made an investigation of the Company and its business, and the Company has made available to each Member, all information with respect to the Company which such Member needs to make an informed decision to acquire the Membership Interests. Each Member has relied on his, her or its own tax and legal advisors in connection with such Member's decision to acquire Membership Interests. Each Member considers himself, herself or itself to be a person possessing experience and sophistication as an investor which are adequate for the evaluation of the merits and risks of such Member's investment in the Membership Interests.

**Section 16.3 Rights of Creditors and Third Parties.** This LLC Agreement is entered into by and among the Company, the Manager and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees, provided that the Manager and other Persons referenced in Article 8 are intended third party beneficiaries of such Sections. This LLC Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by the Act or other applicable statute, no such creditor or third party shall have any rights under this LLC Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

**Section 16.4 Changes in Applicable Law.** In the event that any covenant, condition, or other provision contained in this LLC Agreement, or any part of the business of the Company (whether or not conducted by the Company) is determined to be invalid, void or illegal, the Manager shall amend this LLC Agreement, any other affected agreements, and/or the manner in which the business of the Company is conducted to comply with such laws. For purposes of this Section 16.4, a good faith determination of illegality by the Manager based on an opinion of counsel shall be sufficient to trigger the application of this Section 16.4. Any decisions regarding the manner in which such illegality will be addressed shall require the agreement of the Manager.

**Section 16.5 Interpretation.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this LLC Agreement hereby agree to the terms and conditions contained herein. It is the express intention of the Members that this LLC Agreement and the Certificate shall be the sole source of agreement of the Members on the issues addressed herein, and, except to the extent a provision of the LLC Agreement expressly incorporates federal income tax rules by reference to sections (§§) of the Code or Regulations or is expressly prohibited or ineffective under the Act, the LLC Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. To the extent any provision of this LLC Agreement is prohibited or ineffective under the Act, the LLC Agreement shall be considered amended to the smallest degree possible in order to make the agreement effective under the Act. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this LLC Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

**Section 16.6 Governing Law.** This LLC Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of California, and specifically the Act, applied without respect to any conflicts-of-law principles.

**Section 16.7 Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any applicable laws, rules or regulations.

**Section 16.8 Captions.** The captions as to contents of particular articles, sections or paragraphs contained in this LLC Agreement and the table of contents hereto are inserted for convenience and are in no way to be construed as part of this LLC Agreement or as a limitation on the scope of the particular articles, sections or paragraphs to which they refer.

**Section 16.9 Waivers.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this LLC Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. For the avoidance of doubt, nothing contained in this Section 16.9 shall diminish any of the explicit and implicit waivers described in this LLC Agreement.

**Section 16.10 Equitable Remedies.** Each party hereto acknowledges that a breach or threatened breach by such party of any of its obligations under this LLC Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

**Section 16.11 Rights and Remedies Cumulative.** The rights and remedies provided by this LLC Agreement are cumulative and the use of any one right or remedy by any Member shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Members may have by law, statute, ordinance or otherwise.

**Section 16.12 Construction.** For purposes of this LLC Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this LLC Agreement as a whole (d) “dollar” and “\$” shall refer to United States dollars; (e) any matter requiring the approval or consent of a Person or Persons shall require the express prior written consent or approval (which may be in the form of an email) of the applicable Person(s); and (f) any matter that is required to be approved by any provision shall, once so approved, be deemed approved for all other purposes of this LLC Agreement. The definitions given for any defined terms in this LLC Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (i) to Articles, Sections and Exhibits mean the Articles and

Sections of, and Exhibits attached to, this LLC Agreement; (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This LLC Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this LLC Agreement to the same extent as if they were set forth verbatim herein.

**Section 16.13 Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this LLC Agreement, their respective heirs, legal representatives, successors and permitted assigns.

**Section 16.14 Counterparts.** The Members are permitted to execute this LLC Agreement in one or more counterparts, each of such counterparts is to be deemed to be an original copy of this LLC Agreement and all of which, when taken together, are to be deemed to constitute one and the same agreement. The exchange of copies of this LLC Agreement and of signature pages by facsimile, electronic mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) is to constitute effective execution and delivery of this LLC Agreement as to the Members. Signatures of the Members transmitted by facsimile, electronic mail, or other means of electronic transmission (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) are to be deemed to be their original signatures for all purposes.

**Section 16.15 Company Counsel.** The Manager or its affiliate has retained legal counsel in connection with the formation of the Company and expects to retain legal counsel (collectively, “**Company Counsel**”) in connection with the operation of the Company. Except as otherwise agreed to by the Manager in writing in its sole discretion, Company Counsel is not representing and shall not represent the Members in connection with the formation of the Company, the offering of Interests, the management and operation of the Company, or any dispute which may arise between the Members on one hand and the Manager, the Company on the other (the “**Company Legal Matters**”). Except as otherwise agreed to by the Manager in writing in its sole discretion, each Member shall, if it wishes counsel on a Company Legal Matter, retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel. The Members shall execute on behalf of themselves and the Company consent(s) to the representation of the Company necessary for such representation under the Rules of Professional Conduct or similar rules governing the conduct of attorneys. Each Member acknowledges that Company Counsel represented the Manager, and not any other Member, in the negotiation and documentation of this LLC Agreement. Each Member acknowledges that Company Counsel has and continues to represent both the Manager and its principals and Affiliates in matters unrelated to the Company and the Project. After the Effective Date, Company Counsel will not represent any Member with respect to its investment in the Company in the absence of a clear and explicit agreement to such effect between such Member and Company Counsel, and without such written agreement Company Counsel shall owe no duties directly to such Member. Each Member hereby

acknowledges and waives any actual or potential conflict of interest created as a result of Company Counsel preparing this LLC Agreement or continuing to represent the Manager or its principals or Affiliates. Each Member acknowledges it has had the opportunity to consult independent legal counsel regarding this LLC Agreement and the implications of executing this LLC Agreement prior to the time it executed this LLC Agreement. Each Member further agrees it will promptly sign such further and additional conflict waivers relating to the preparation of this LLC Agreement as Company Counsel may from time to time request.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amended and Restated Limited Liability Company Agreement as of the Effective Date.

TRINITY AGRI MANAGEMENT, LLC, as  
Manager and a Member

By: \_\_\_\_\_

Name: Riley Chaney

Title: President

By: \_\_\_\_\_

Name: Nino Carvalho

Title: Vice President

R&N FARMING OZ I, LLC

By: Trinity Agri Management, LLC

Its: Manager

By: \_\_\_\_\_

Name: Riley Chaney

Title: President

By: \_\_\_\_\_

Name: Nino Carvalho

Title: Vice President

## ADDENDUM 1

### Qualified Opportunity Zone Business Addendum

#### Introduction

1. The Company, the Manager, and the Members hereby represent, warrant, covenant, and agree to comply with the requirements, restrictions, and limitations upon actions of the Company (for purposes of this Addendum, the term “Company” shall include a subsidiary that is disregarded for income tax purposes), the Manager, and the Members (all capitalized terms used in this Addendum and not otherwise defined shall have the meanings set forth in this Agreement, Section 1400Z-2 of the Code or the Regulations, as applicable) contained in this Addendum.

#### Definitions

2. Capitalized words and phrases used in this Addendum have the following meanings:

(a) **“Addendum”** shall mean this Qualified Opportunity Zone Business Addendum, which is incorporated by reference into the Agreement.

(b) **“Disallowance Event”** means any event which results in a final administrative or judicial determination by the IRS or other taxing authority that the Company is not treated as a QOZB or substantially all of the tangible property of the Company is not treated as Qualified Opportunity Zone Business Property (other than a Disallowance Event arising directly as a result of any action or inaction of Investor Member).

(c) **“Inclusion Event”** means, with respect to gains invested by Investor Member in the Company as a Capital Contribution to obtain Qualified Opportunity Zone Benefits, any transaction that would result in the recognition of deferred gains as taxable income by Investor Member (other than an Inclusion Event arising directly as a result of any action or inaction of Investor Member).

(d) **“Investment Period”** means the period commencing on the date on which Investor Member is admitted to the Company and ending on the later of (i) the tenth (10th) anniversary of such date or (ii) the date that Investor Member disposes all of its Units, unless otherwise agreed to in writing by the Investor Member.

(e) **“Investor Member”** means R&N Farming OZ I, LLC, a California limited liability company.

(f) **“IRS”** means the Internal Revenue Service.

(g) **“OZ Statute”** shall mean Code Section 1400Z-2, together with those Regulations from time to time promulgated thereunder.

(h) **“QOF Member” or “QOF Members”** means any Investor Member and any other Member that is certified or intends to certify as a Qualified Opportunity Fund.

(i) **“QOZB”** has the meaning set forth in Article 1.

(j) **“Qualified Opportunity Fund”** means a “qualified opportunity fund” as such term is defined in Section 1400Z-2(d)(1) of the Code and the applicable Regulations.

(k) **“Qualified Opportunity Zone”** means a census tract designated as a “qualified opportunity zone” under and pursuant to Section 1400Z-1 of the Code.

(l) **“Qualified Opportunity Zone Benefits”** has the meaning set forth in Article 1.

(m) **“Qualified Opportunity Zone Business Property”** means “qualified opportunity zone business property” as defined in Section 1400Z-2(d)(2)(D) of the Code and the applicable Regulations.

### **Compliance with General Rules**

3. The Company will treat all Capital Contributions from the QOF Members as being made in exchange for Membership Interests, and will take all actions to ensure that the Membership Interests issued to the QOF Members constitute “qualified opportunity zone partnership interests” pursuant to Section 1400Z-2(d)(2)(C) of the Code.

4. The Company will not take any action to disqualify the Membership Interests issued to the QOF Members as “qualified opportunity zone partnership interests” pursuant to Section 1400Z-2(d)(2)(C) of the Code.

5. The Company has elected to qualify and will continue to elect qualification as a domestic partnership for purposes of Section 301.7701-3(b)(1)(A) of the Regulations.

6. The Company is organized for the purpose of being a QOZB pursuant to Section 1400Z-2(d)(3) of the Code, and the Company will comply with the requirements of a QOZB pursuant to Section 1400Z-2(d)(3) of the Code, as amended from time to time, and any current and future guidance, rules or Regulations promulgated thereunder.

7. Substantially all (defined as at least seventy percent (70%)) of the tangible property owned or leased by the Company<sup>1</sup> shall be “Qualified Opportunity Zone Business Property” pursuant to Section 1400Z-2(d)(2)(D) of the Code, meaning substantially all of such tangible

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<sup>1</sup> This tangible property test is measured using the value of each item of owned tangible property based upon (i) the Company’s applicable financial statements as such applicable financial statements are described in Section 1.475(a)-4(h) of the Regulations or (ii) at the election of the Company, the adjusted cost basis (the alternative valuation method), as described under the Regulations. Under the Regulations, leased tangible property has a value equal to the sum of the present values of the payments due pursuant to the lease agreement (including renewals with pre-defined rent), at the time the lease is entered by the Company, using a discount rate equal to the short-term applicable federal rate under Section 1274(d)(1) of the Code based on semiannual compounding, as published by the IRS for the month that the Company enters the lease.

property, including without limitation, the Company's real property and improvements, meets all of the following requirements:

(a) such tangible property will be used in a "trade or business" of the Company pursuant to Section 1400Z-2(d)(2)(D) of the Code.

(b) such tangible property was or will be acquired by the Company by purchase (as defined in Section 179(d)(2) of the Code) after December 31, 2017;

(c) such tangible property was or will be acquired by the Company from an unrelated party pursuant to the requirements of Section 1400Z-2(d)(2)(D), Section 1400Z-2(e)(2) and Section 179(d)(2) of the Code<sup>2</sup>;

(d) the original use<sup>3</sup> of such tangible property in a Qualified Opportunity Zone commenced with the Company, or alternatively, the Company substantially improved or will substantially improve such tangible property<sup>4</sup>; and

(e) during substantially all (defined as at least ninety percent (90%)) of the Company's holding period of such tangible property, substantially all (defined as at least seventy percent (70%)) of the use of such property shall be in a Qualified Opportunity Zone.<sup>5</sup>

8. With respect to tangible property that the Company substantially improved or intends to substantially improve, the materials and supplies used to construct such improvements satisfy the requirements to be treated as Qualified Opportunity Zone Business Property as described above.

9. To the extent necessary to meet the 70% asset test described in Paragraph 7 above, purchased tangible property used to substantially improve non-original use tangible property will be located in the same Qualified Opportunity Zone (or a contiguous Qualified Opportunity Zone)

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<sup>2</sup> For purposes of Section 179(d)(2)(A) of the Code "20 percent" should be substituted for "50 percent" for purposes of measuring whether a party is a related person.

<sup>3</sup> For purposes of Section 1400Z-2 of the Code, "original use" shall have the meaning attributed to such term in the Regulations and future guidance promulgated under Section 1400Z-2 of the Code.

<sup>4</sup> Tangible property is substantially improved if, during any 30-month period after the Company's acquisition of the tangible property, additions to basis in respect to such tangible property in the hands of the Company exceed an amount equal to the adjusted basis of such tangible property at the beginning of such 30-month period in the hands of the Company. The Regulations and Revenue Ruling 2018-29 provide that, for land with existing improvements, for purposes of the "substantial improvement test" for the improvements, the basis of the improvements does not include the basis attributable to the land. Under the Regulations, unimproved land is not required to be substantially improved; provided, however, such provision is not applicable to land without existing improvements or minimal improvements if the land is purchased by the Company with an expectation, an intention, or a view not to improve the land by more than an insubstantial amount within 30 months after the date of purchase. The application of the substantial improvement rules to land are set forth in the Regulations and may be established in future guidance or Regulations promulgated under Section 1400Z-2 of the Code.

<sup>5</sup> The testing of the holding period requirement and the definition of "use" in a Qualified Opportunity Zone are further discussed in the Regulations.



as such non-original use property, will be used in the same trade or business as such non-original use property, and will improve the functionality of such non-original use property.

10. With respect to real property purchased by the Company, (i) such real property satisfied the vacancy requirements under the Regulations in order to treat such real property as “original use” property, or such real property has been or will be substantially improved by the Company, and (ii) at the time that such real property was purchased, there was no plan, intent, or expectation that the acquired real property would be repurchased by the seller of such property for an amount of consideration other than fair market value (determined at the time of repurchase).

11. At least fifty percent (50%) of the gross income of the Company shall be derived from the active conduct of a trade or business of the Company in a Qualified Opportunity Zone where the Company is located, as determined under a permissible method described in Section 1400Z2(d)-1(d)(3)(i) of the Regulations.<sup>6</sup>

12. At least forty percent (40%) of the Company’s intangible property is used in the active conduct of a trade or business in a Qualified Opportunity Zone where the Company is located in accordance with Section 1400Z2(d)-1(d)(3)(ii) of the Regulations.

13. The Company shall hold less than five percent (5%) of its average of the aggregate unadjusted basis of the property of the Company in debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property specified in Regulations promulgated under Section 1397C of the Code (“**Nonqualified Financial Property**”), except that Nonqualified Financial Property shall not include (1) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or (2) debt instruments described in Section 1221(a)(4) of the Code.<sup>7</sup>

14. The Company will comply with the requirements of the working capital safe harbor described in the Regulations with respect to each Capital Contribution from a Member (or group of Capital Contributions from one or more Members, if made on the same day).

15. To the extent necessary to comply with Section 1400Z-2 of the Code, the Company will deliver a written plan to the Members on or about the date of each Member’s Capital Contribution including a budget for the growth and expansion of the Company, which may include

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<sup>6</sup>The Regulations provide four methods that may be used by the Company to test the 50% gross income requirement. The Regulations also provide, for purposes of Section 1400Z-2 of the Code, that the ownership and operation (including leasing) of real property generally constitutes the active conduct of a trade or business, but merely entering into a single triple-net lease with respect to real property owned by the Company will not be considered the active conduct of a trade or business. The requirement for the “active conduct of a trade or business” will have the meaning attributed to such requirement in the Regulations promulgated under Section 1400Z-2 of the Code.

<sup>7</sup> Working capital assets are treated as reasonable in amount for purposes of Section 1400Z-2(d)(3)(A)(ii) of the Code if the following three requirements are met: (i) the amounts are designated in writing for development of a trade or business, including when appropriate the acquisition, construction, and/or substantial improvement of tangible property, in a Qualified Opportunity Zone, (ii) there is a written schedule consistent with the start-up of a trade or business for the expenditure of the working capital assets, and under the schedule the working capital assets must be spent within 31 months of the receipt by the business of the assets, and (iii) the working capital assets are actually used in a manner substantially consistent with (i) and (ii) (the “**Working Capital Safe Harbor**”).

the acquisition, construction, and/or substantial improvement of the Company's tangible property and growth and expansion of its business in a Qualified Opportunity Zone, which shall include a written schedule for the expenditure of working capital assets over a period not to exceed thirty-one (31) months from the Company's receipt of a Capital Contribution from the QOF Members (the "**Written Plan and Schedule**").

16. The Company will use its working capital and other assets in a manner substantially consistent with the Written Plan and Schedule, whether one or more.

17. Tangible property that is improved, constructed, manufactured or produced by the Company pursuant to a Written Plan and Schedule shall be completed within thirty-one (31) months from the date of Company's receipt of the funds governed by such Written Plan and Schedule; provided, however, if tangible property is subject to multiple overlapping or sequential applications of the working capital safe harbor (in which the requirements, including a separate Written Plan and Schedule, are satisfied for each application thereof and the working capital assets related to each application are expended in accordance therewith) and the subsequent infusions of working capital assets form an integral part of the Written Plan and Schedule covered under the initial application of the working capital safe harbor to such tangible property, then such tangible property must be completed within sixty-two (62) months from the commencement of the first working capital safe harbor applicable to such tangible property.

18. The Company will not own equity interests in other Persons (except for equity positions in a "disregarded entity" for federal tax purposes that is wholly owned by the Company).

19. No portion of the Company's trade or business, to the extent any property of the Company is leased to a tenant, no tenant's trade or business utilizing such property includes any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

20. In order to maximize the Qualified Opportunity Zone Benefits to each QOF Member, the Company does not intend to dispose of substantially all of the Company's assets prior to the date which is the later of (i) the tenth (10<sup>th</sup>) anniversary of the last Capital Contribution by a QOF Member or (ii) the date that all QOF Members have disposed of all their Membership Interests, unless otherwise unanimously agreed to in writing by the QOF Members.

### **Distributions**

21. The Manager shall make commercially reasonable efforts not to make distributions that would exceed the adjusted basis of any QOF Member's Membership Interests under Section 731 of the Code or cause any "inclusion event" (as defined in the Regulations) to a QOF Member.

22. The Company shall make commercially reasonable efforts not to distribute refinancing proceeds to the QOF Members in violation of guidance, rules, or Regulations promulgated under Section 1400Z-2 of the Code relating to distribution of debt proceeds.

23. In compliance with Paragraph 21, the Company will make commercially reasonable efforts to make distributions (in a manner consistent with this Agreement) to the

Members prior to December 31, 2026 in order for the QOF Members to satisfy the potential tax liability associated with the investment of deferred gains through a Qualified Opportunity Fund.

24. If the Company sells or otherwise disposes of substantially all of its assets after the tenth (10<sup>th</sup>) anniversary of any QOF Member's last Capital Contribution, all proceeds of such sale shall be distributed to the Members within ninety (90) days of the date of such sale or disposition.

### **Records and Additional Reporting**

25. The Company shall maintain books and records necessary to support its status as a QOZB, including (i) on a semi-annual basis, a balance sheet on behalf of the Company to ensure that at least 70% of the Company's assets are Qualified Opportunity Zone Business Property as described herein, and (ii) if necessary, on an annual basis, prepare, or cause to be prepared, a *Bardahl* calculation on behalf of the Company in order to determine an amount of cash that may be held as "reasonable amounts of working capital" during a given 12-month business cycle and to cause a distribution of such assets in excess of such calculations, and (iii) any other books and records reasonably requested by the QOF Members to satisfy any reporting requirements as a QOF or recordkeeping requirements set forth in Section 1400Z-2 of the Code (and the Regulations promulgated thereunder) to support the position that the Company qualifies or is eligible to qualify as a QOZB (and the Company shall provide a copy of the foregoing to the QOF Members).

26. The Company will supply all data, reports or statements required by the IRS for purposes of satisfying any reporting requirements imposed by the IRS and the United States Department of Treasury in connection with compliance with Section 1400Z-2 of the Code and the Regulations promulgated thereunder.

### **QOF Member Consents**

27. Notwithstanding anything to the contrary in this Agreement, the Company, the Manager and the Members (as applicable) shall not, without unanimous prior written consent of the QOF Members (such consent to be made in the manner prescribed in this Agreement), take any action (or omission) that would:

- (a) cause the Company to fail to qualify as a QOZB;
- (b) result in a final administrative or judicial determination by the IRS or other taxing authority that the Company is not treated as a QOZB or substantially all of the tangible property of the Company is not treated as Qualified Opportunity Zone Business Property;
- (c) result in the recognition of deferred gains as taxable income by such QOF Member (other than arising directly as a result of any action or inaction of such QOF Member); or
- (d) violate any provision of this Addendum.

### **Opportunity Zone Representations, Warranties, and Covenants**

28. The Manager shall manage and operate the Company in such a manner that, in the Manager's reasonable discretion, will cause the Company to continue to be in compliance with the OZ Statute consistent with its purposes and intent as further described herein, and in order to maximize the Qualified Opportunity Zone Benefits available therefrom for so long as it remains in the best interests of the Company to do so, in the determination of the Manager and subject to any consent rights reserved to the Members under this Agreement, and shall have the express power and authority to take such actions and to make such decisions consistent therewith, provided that such decisions do not materially impair or alter the rights of one or more of the Members in favor of any other Member, nor result in a material diminution in the assets of the Company. Without limiting the foregoing, the Members acknowledge and agree that the Company may hold and maintain its investments for an extended period of time beyond the Investment Period. So long as qualification as a QOZB under the OZ Statute remains feasible for the Company, the Manager will make best efforts to take such action so the Company meets the requirements of a QOZB, and the Company complies with the requirements and limitations in the Addendum.

### **Limitation on Transfers Resulting in Disallowance or Inclusion Event**

29. No Transfer may be made if such Transfer or issuance would cause a Disallowance Event or an Inclusion Event for the Investor Member.

## EXHIBIT A

<b>Membership Interests</b>		
<b>Name and Address of Members</b>	<b>Initial Capital Contributions</b>	<b>Percentage Interests</b>
Trinity Agri Management, LLC 3213 West LaCosta Avenue Fresno, California 93711	\$100	[ ]%
R&N Farming OZ I, LLC 3213 West LaCosta Avenue Fresno, California 93711		[ ]%
<b>TOTAL</b>	<b>\$[--]</b>	<b>100.00%</b>

## EXHIBIT B

<b>Asset Management Fee</b>	The Company will pay the Manager an annual Asset Management Fee in the amount equal to 0.50% of the aggregate Capital Contributions to the Company and the total debt of the Company. The Asset Management Fee shall be payable in monthly installments in arrears as of the last day of each calendar month (each such payment date, the “ <b>Asset Management Fee Payment Date</b> ”). The Asset Management Fee for any partial month shall be prorated. Pursuant to Section 4.6(b) of the LLC Agreement, during the period beginning on the effective date of the LLC Agreement and ending December 31, 2026, the Manager has irrevocably elected to (i) waive 25% of the Asset Management Fee in return for rights under the LLC Agreement with respect to the Profits Interest Amount and (ii) receive 75% of the Asset Management Fee paid in cash. After December 31, 2026, the Asset Management Fee shall be paid in cash to the Manager.
<b>Farm Management Fee</b>	The Company will pay Trinity Farm Management, LLC, an affiliate of the Manager, an annual farm management fee in the amount of \$180 per farmable acre of the Project.