

LIMITED LIABILITY COMPANY AGREEMENT

FOR

BLACKBURNE & BROWN EQUITY PRESERVATION FUND, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (“Agreement”) is made as of _____, 20__, by and among Blackburne & Brown Mortgage Company, Inc., a California corporation (“B&B”) and the Persons admitted as Capital Members pursuant to the terms of this Agreement.

RECITALS

A. On April 22, 2003, a Certificate of Formation for Blackburne & Brown Equity Preservation Fund, LLC, a limited liability company (the “Company”) formed under the laws of the State of Delaware, were filed with the Delaware Secretary of State.

B. The parties desire to adopt and approve a limited liability company agreement for the Company.

AGREEMENT

NOW, THEREFORE, the parties hereto by this Agreement set forth the limited liability company agreement for the Company under the laws of the State of Delaware upon the terms and subject to the conditions of this Agreement.

ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below (all terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement):

1.1 “Act” shall mean the Delaware Limited Liability Company Act, codified in Title 6 of the Delaware Code Annotated, Sections 18-101 et seq., as the same may be amended from time to time.

1.2 “Additional Capital Contributions” shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed to the Company in exchange for Additional Capital Units in a Membership Class.

1.3 “Additional Preferred Return” shall have the meaning set forth in Section 3.4(b).

1.4 “Additional Capital Units” shall have the meaning set forth in Section 3.4.

1.5 “Additional Capital Request” shall have the meaning set forth in Section 3.4(a).

1.6 “Affiliate” shall mean any individual, partnership, corporation, trust or other entity or association, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Person. The term “control,” as used in the immediately preceding sentence, means, with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

1.7 “Agreement” shall mean this Limited Liability Company Agreement, as originally executed and as amended from time to time.

1.8 “Available Cash” shall mean Cash Flow From Operations and/or Sale or Refinancing Proceeds. Available Cash shall be determined separately for each Membership Class with respect to the Cash Flow from Operations and/or Sale or Refinancing Proceeds attributable to the Property corresponding to each Membership Class.

1.9 “Bankruptcy” shall mean with respect to any Person: (a) the filing of an application by such Person for, or his or her consent to, the appointment of a trustee, receiver, or custodian of his or her other assets; (b) the entry of an order for relief with respect to such Person in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by such Person of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of such Person unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure by such Person generally to pay his or her debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of his or her inability to pay his or her debts as they become due.

1.10 “Capital Account” shall mean with respect to any Capital Member the capital account that the Company establishes and maintains for such Capital Member pursuant to Section 3.4 below, which shall consist of the total of each Member’s Capital Sub-Accounts.

1.11 “Capital Contribution” shall mean the total value of cash and fair market value of property (including promissory notes or other obligation to contribute cash or property) contributed to the Company for interests in one or more Membership Classes by Capital Members.

1.12 “Capital Members” shall mean purchasers of Units admitted to the Company as Members of one or more Membership Classes in exchange for a Capital Contribution, and “Capital Member” shall mean any one of the Capital Members. To the extent that the Manager purchases Units in one or more Membership Classes on its own behalf for cash, the Manager shall also be a Capital Member with respect to such Membership Class.

1.13 “Capital Sub-Account” shall mean with respect to any Member, the capital sub-account that the Company establishes and maintains for such Member pursuant to Section 3.5

below, which corresponds to the Capital Contribution made by a Member in a particular Membership Class.

1.14 “Cash Flow From Operations” shall mean the gross revenues received from a Property from any source other than Sale or Refinancing Proceeds, less all costs, expenses, debts and obligations of the Property. Cash Flow from Operations shall be determined separately for each Property corresponding to each respective Membership Class and shall include only that cash received by the Membership Class from the operations of such Property (or distributions from a Joint Venture) that the Manager, in its reasonable business judgment, deems available for distribution to the Members of the corresponding Membership Class, taking into account all debts, liabilities, and obligations of the Membership Class relating to such Property then due and amounts that the Manager deems necessary to place into reserves taking into account actual or potential debts, obligations or liabilities of the Membership Class.

1.15 “Certificate” shall mean the Certificate of Formation as originally executed and filed with the Delaware Secretary of State, as amended from time to time.

1.16 “Class Minimum Gain” shall have the meaning ascribed to the term “Partnership Minimum Gain” in the Regulations Section 1.704-2(d).

1.17 “Class Percentage Interest” shall mean, as to each Membership Class, the respective percentage interest of a Capital Member equal to a fraction, expressed as a percentage, obtained by dividing the total number of Units owned by a Member in the Membership Class by the total number of Units owned by all Members in the Membership Class, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement. Each Member may hold Units in one or more Membership Classes and may have a different Class Percentage Interest in each such Membership Class.

1.18 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, the provisions of succeeding law, and to the extent applicable, the Regulations.

1.19 “Company” shall mean Blackburne & Brown Equity Preservation Fund, LLC, a Delaware a limited liability company.

1.20 “Economic Interest” shall mean the right to receive distributions of the Company’s assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company, or except as may be expressly provided in the Act.

1.21 “Fiscal Year” shall mean the Company’s fiscal year, which shall be the calendar year.

1.22 “Joint Venture” shall mean any limited liability company, limited partnership or any other entity formed pursuant to a Joint Venture Agreement for the purpose of acquiring a Property.

1.23 “Joint Venture Agreement” shall mean any limited partnership agreement or limited liability company agreement, operating agreement, or other agreement entered or to be entered into by the Company and the owner of a Property in connection with any Joint Venture formed to acquire a Property.

1.24 “Majority of All Capital Members” shall mean one or more Percentage Interests which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests.

1.25 “Majority of the Class” shall mean one or more Percentage Interests which taken together exceed fifty percent (50%) of the aggregate of all Percentage Interests in a Membership Class.

1.26 “Manager” shall mean B&B or any successor manager appointed pursuant to the terms of this Agreement.

1.27 “Member Nonrecourse Debt” shall have the meaning ascribed to the term “Partner Nonrecourse Debt” in Regulations Section 1.704-2(b)(4).

1.28 “Member Nonrecourse Deductions” shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt relating to a Membership Class.

1.29 “Members” shall mean the Capital Members of any Membership Class and the Manager. “Member” shall mean any one of the Members.

1.30 “Membership Class” shall mean a designated series or class of Membership Interests in the Company established by the Manager from time to time pursuant to Section 3.1, to acquire a specific Property attributable to such Membership Class through the direct acquisition of the Property or through the purchase of interests in a Joint Venture. Each Membership Class created by the Company shall be designated alphabetically (i.e., Class A, Class B, Class C, etc.) and shall be set forth in corresponding Schedules to this Agreement.

1.31 “Membership Interest” shall mean a Member’s entire interest in one or more Membership Classes of the Company, including without limitation any and all rights, benefits and privileges pertaining thereto.

1.32 “Nonrecourse Liability” shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.33 “Percentage Interest” shall mean a fraction expressed as a percentage equal to the quotient of (a) all Units owned by a Capital Member in one or more Membership Classes, divided by (b) the total number of Units outstanding in all Membership Classes created by the Company.

1.34 “Person” shall mean an individual, general partnership, limited partnership, limited liability company, corporation, trust, estate, real estate investment trust association or any other entity.

1.35 “Preferred Return” shall mean an amount equal to a cumulative return of eight percent (8%) per annum, non-compounded, on the balance of a Capital Member’s Unreturned Capital Contribution for each Membership Class outstanding from time to time.

1.36 “Profits” and “Losses” shall mean the income, gain, loss, deductions, and credits of the Company in the aggregate or separately stated, as appropriate, determined in accordance with generally accepted accounting principles employed under the method of accounting at the close of each fiscal year on the Company’s information tax return filed for federal income tax purposes. Profits and Losses shall be determined separately for each Property, and shall be allocated solely to the Manager and the Capital Members of the Membership Class corresponding to each such Property, as more particularly described below.

1.37 “Promotional Interest” shall mean B&B’s 30% interest in all distributions of Cash Flow from Operations, Sale or Refinancing Proceeds and all allocations of profits and losses for each Membership Class as set forth in Sections 6.1, 6.2, 6.3 and 6.4.

1.38 “Property” shall mean each parcel of real property and all related improvements acquired by the Company for a corresponding Membership Class.

1.39 “Regulations” shall, unless the context clearly indicates otherwise, mean the regulations currently in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code.

1.40 “Sale or Refinancing Proceeds” shall mean net proceeds received directly or indirectly by the Company from the sale or other disposition by the Company of a Property or any other capital assets (including insurance proceeds from damage or destruction of any such capital assets not applied to repair or reconstruct same, condemnation proceeds, or consideration with respect to a deed in lieu of foreclosure), or from any financing or refinancing of a Property, after the application of (i) any sums paid, accrued or assumed by the Membership Class in connection with any such sale, disposition or borrowing, including without limitation the repayment of existing loans, the payment of brokerage commissions, finder’s fees, insurance premiums, documentary transfer taxes or other taxes, escrow fees, recording costs, loan fees, attorneys’ and other professional fees and costs, and any fees due the Manager, and (ii) any amounts that the Manager, in its reasonable business judgment, deems necessary to place into reserves to take into account actual or potential debts, obligations or liabilities of the Membership Class. Sale or Refinancing Proceeds shall be determined separately for each Property corresponding to each responsive Membership Class.

1.41 “Schedules” shall mean the schedules attached to this Agreement from time to time upon the establishment of a new Membership Class setting forth: (1) the class designation; (2) a list of the Members of such Membership class; (3) the Initial Capital Contributions of such Members; (4) the number of Units held by each Member in the Membership Class; (5) and the initial Class Percentage Interest of each such Member.

1.42 “Unit” shall mean each unit of a Capital Member’s Membership Interest in a Membership Class of the Company, as issued in consideration of each initial Capital

Contribution of \$1,000 made pursuant to Section 3.3 below, or such other amount as may be determined pursuant to Section 3.4 below.

1.43 “Unreturned Additional Capital Contribution” means the total Additional Capital Contributions of a Capital Member with respect to each Membership Class, reduced by the aggregate distributions of Available Cash previously made to such Capital Member for such Membership Class during the term of the Membership Class pursuant to Sections 6.1(a) and 6.2(a), below.

1.44 “Unreturned Capital Contributions” means, as of any given time, the total Capital Contributions of a Capital Member to a Membership Class reduced by the aggregate distributions of Available Cash previously made to such Capital Member from such Membership Class during the term of the Company pursuant to Sections 6.1 and 6.2 below, but not less than zero.

ARTICLE II **ORGANIZATIONAL MATTERS**

2.1 Name. The name of the Company shall be Blackburne & Brown Equity Preservation Fund, LLC, which name may be changed by the Manager with notice to all Members.

2.2 Term. The term of this Agreement shall commence as of the date the Certificate was filed with the Delaware Secretary of State and shall continue indefinitely until terminated as hereinafter provided.

2.3 Office and Agent. The principal office of the Company shall be located at 4811 Chippendale Drive, Suite 101, Sacramento, California 95841 or at such other location as the Manager may determine. The registered agent shall be as stated in the Certificate or as otherwise determined by the Manager.

2.4 Addresses of Members and Manager. The respective addresses of the Members and the Manager shall be maintained by the Company at its principal office.

2.5 Purpose of Company. The Company and each Membership Class thereof shall have the following business purpose:

(a) the business of acquiring, holding, managing and ultimately disposing of Property or membership or limited partnership interests in Joint Ventures and taking all actions required as a partner or member thereof;

(b) such other activities directly related to the foregoing business as may be necessary, advisable, or appropriate, in the reasonable opinion of the Manager to further the foregoing business.

ARTICLE III
MEMBERSHIP CLASSES AND CAPITAL CONTRIBUTIONS

3.1 Membership Classes. The Manager shall create, from time to time, a separate Membership Class for the purpose of acquiring a direct or indirect ownership interest in a Property, either by direct purchase of the Property or by acquisition of an interest in a Joint Venture. Units in the Company represent a Membership Interest in a designated Membership Class, only, and all of the rights, powers, obligations and liabilities of a Member under this Agreement shall relate solely to the Property corresponding to such Membership Class. Separate and distinct records shall be maintained by the Company for each Membership Class, and the Property and all related assets and debts, liabilities, obligations and expenses associated with the corresponding Membership Class shall be held and accounted for separately from the assets and debts, liabilities, obligations and expenses of the Company generally and from those of any other Membership Class. Members may, but shall not be obligated to, purchase and hold Units of more than one Membership Class; provided, however, that the Company shall have no obligation to offer or sell Units in any Membership Class to existing Members of any other Membership Class at any time.

3.2 Membership Class Limited Liability. The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to any particular Membership Class shall be enforceable against the assets of such Membership Class only, and not against the assets of the Company generally or any other Membership Class, and none of the debts, liabilities, obligations or expenses incurred, contracted for or otherwise existing with respect to any other Membership Class shall be enforceable against the assets of such Membership Class. The Manager shall not incur any debts, liabilities or obligations in the name of the Company generally other than ordinary and necessary general operating expenses to maintain the Company's existence in good standing and its compliance with applicable requirements of state and federal tax and securities laws. Notice of the limitations on liabilities of each Membership Class provided for in this Section 3.2 shall, for the life of the Company, be set forth in the Certificate on file with the Delaware Secretary of State as required by Section 18-215 of the Act.

3.3 Capital Contributions and Class Percentage Interest. The initial Capital Contribution, the number of Units held by each Member and the initial Class Percentage Interest of each Capital Member in each Membership Class shall be set forth in a Schedule attached to this Agreement corresponding to each such Membership Class created by the Company. The Manager is authorized, without any consent or approval by the Capital members, to create new Membership Classes and to amend this Agreement from time to time by adding Schedules reflecting the creation of such new Membership Classes.

3.4 Additional Capital Contributions. In the event the Manager determines, in its sole judgment, that additional capital is necessary or appropriate for the operation of the Property held by any Membership Class, the Manager may create and issue additional Units ("Additional Capital Units") in such Membership Class and may request that the Capital Members of the Membership Class contribute additional capital to the Membership Class by purchasing Additional Capital Units as follows:

(a) In the event the Manager determines that additional capital is necessary with respect to any Property, the Manager shall notify the Capital Members of the corresponding Membership Class, in writing (an “Additional Capital Request”), and shall set forth the reason for the necessity of the additional capital, the amount of additional capital required, the terms and purchase price for the Additional Capital Units being offered (which may have a price of more or less than \$1,000 per Unit and have an Additional Preferred Return as defined below) and the amount of additional capital requested from each Capital Member in the Membership Class based upon the number of Units owned by each Capital Member in such Membership Class.

(b) Within twenty (20) days of the date of the Additional Capital Request, or such additional time as stated in the Additional Capital Request, each Capital Member in the Membership Class shall have the right but not the obligation to purchase Additional Capital Units in the Membership Class on the terms and conditions stated in the Additional Capital Request. If the Manager determines that the issuance of Additional Capital Units is required, the Manager may, in its sole discretion: (i) provide that the failure of a Capital Member to purchase Additional Capital Units on the terms and conditions set forth in the Additional Capital Request will result in the loss of all voting and approval rights granted under this Agreement with respect to all of the Units held by such Capital Member in that Membership Class; and/or (ii) provide that all distributions of Cash Flow from Operations or Sale or Refinancing Proceeds attributable to that Membership Class shall be made solely to holders of Additional Capital Units in that Membership Class until they receive 100% of their Unreturned Additional Capital Contribution plus an amount equal to a cumulative return of up to twenty-five percent (25%) per annum on the balance of a Capital Member’s Unreturned Additional Capital Contribution (an “Additional Preferred Return”). The Manager shall have the authority to set the Additional Preferred Return, if any, to be paid in respect of Additional Capital Units.

(c) Each Capital Member in the Membership Class shall receive a credit to that Capital Member’s Capital Sub-Account in the amount of any Additional Capital Units purchased for that Membership Class, and each such Member’s new Class Percentage Interest shall be a fraction, expressed as a percentage, equal to such Capital Member’s total Units held in the Membership Class (including such Capital Member’s Additional Capital Units in the class), divided by the new total of all Units in the Membership Class (including all Additional Capital Units) held by all Capital Members in the Membership Class such that, to the extent that the existing Capital Members in a class fail to purchase all of the Additional Capital Units offered in the Additional Capital Request, the non-purchasing Capital Members’ Class Percentage Interests will be diluted accordingly.

(d) In the event any Capital Member or Capital Members of a Membership Class fail to purchase all of the additional Units set forth in the Additional Capital Request, the Manager will send a supplemental notice to the remaining Capital Members of that Membership Class notifying such Capital Members of the remaining available Additional Capital Units for sale and the conditions upon which the remaining Capital Members in the Membership Class may purchase the remaining Additional Capital Units (the “Supplemental Notice”). To the extent that the existing Capital Members of the Membership Class fail to purchase all of the Additional Capital Units offered in the Additional Capital Request for the purchase price and within the time required by the Manager in the Additional Capital Request and the Supplemental Notice, the Manager shall have the right to sell the Additional Capital Units of that Membership

Class to Capital Members of other Membership Classes or to third parties and to admit additional Capital Members into the Membership Class pursuant to Section 4.3 below.

3.5 Capital Accounts and Sub-Accounts. The Company shall establish an individual Capital Account for each Capital Member and an individual Capital Sub-Account with regard to each class of Units purchased by the Capital Member, which Sub-Accounts shall be credited with the amount of each Capital Member's initial Capital Contribution for each Membership Class. Thereafter, the Company shall determine and maintain each Capital Sub-Account in accordance with Regulations Section 1.704-1(b)(2)(iv). If a Capital Member transfers all or a part of his or her Membership Interest in accordance with this Agreement, such Capital Member's Capital Sub-Account attributable to the transferred Membership Interests shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(1).

3.6 No Interest. No Capital Member shall be entitled to receive any interest on his or her Capital Contributions.

ARTICLE IV **MEMBERS**

4.1 Limited Liability. No Member shall be personally liable for any debt, obligation, or liability of the Company generally or any debt, obligation or liability of any Membership Class of which they are not a Member, whether that liability or obligation arises in contract, tort, or otherwise.

4.2 Manager as Member. B&B shall act as the initial Manager of each Membership Class and shall also be a Member of the Company. To the extent that B&B purchases Units or Additional Capital Units for cash on its own, B&B shall also be a Capital Member of such Membership Class and shall be entitled to all rights of Capital Members set forth herein.

4.3 Admission of Additional Members. In the event that the existing Capital Members of any Membership Class fail to purchase Additional Capital Units pursuant to paragraph 3.4 in the full amount that the Manager determines is required in order to accomplish the purposes set forth in the Additional Capital Request or the Supplemental Notice, the Manager may issue Additional Capital Units to Members of other Membership Classes or to non-Members, and may admit new Capital Members to the Membership Class on such terms and conditions as the Manager deems appropriate, subject to the following conditions:

(a) the new Capital Members shall purchase their Additional Capital Units for cash and their offering shall be subject to the prior right of the existing Capital Members in the Membership Class to purchase their pro-rata shares of such Additional Capital Units and to contribute additional capital pursuant to Section 3.4 above; and

(b) the Additional Capital Units issued in return for such additional capital contribution shall reduce on a proportionate basis the Class Percentage Interests of all Capital Members of the Membership Class, and the terms and conditions of the Additional Capital Units may include priorities as to the return of capital contributions and preferred returns that are prior or senior to, or in such other order in relation to, the existing Units or Additional Capital Units

held by the current Capital Members in the Membership Class as the Manager may determine and set forth in the Additional Capital Request and/or Supplemental Notice.

4.4 Withdrawal. No Member may withdraw or resign from any Membership Class or withdraw his or its Capital Contribution to such Membership Class prior to the dissolution and winding up of the Membership Class.

4.5 Transactions With The Company. A Member may lend money to and transact other business with any Membership Class of the Company and/or the Joint Venture. Subject to other applicable law, such Member has the same rights and obligations with respect thereto as a Person who is not a Member.

4.6 Members Are Not Agents. The management and direction of the Company and each Membership Class thereof is vested solely in the Manager. No Member, acting solely in the capacity of a Member, is an agent of any Membership Class or the Company generally nor can any Member in such capacity bind nor execute any instrument on behalf of the Company or any Membership Class.

4.7 Meetings of Members. No annual or regular meetings of the Members is required. Meetings of the Members to vote upon any matters on which the Members are authorized to take action under this Agreement may be called at any time by the Manager or one or more Members holding not less than ten percent (10%) of the outstanding Membership Interests entitled to vote on a matter. Upon request in writing to the Manager by any Members entitled to call a meeting, the Manager shall cause notice to be given to the Members that a meeting will be held at a time requested by the Members calling the meeting, not less than fifteen (15) nor more than sixty (60) days after receipt of the request. Written notice of the meeting shall be given either personally or by first class mail not less than ten (10) nor more than sixty (60) days before the date of the meeting to the Members. Included with the notice shall be a detailed statement of the action proposed. A majority of the Membership Interests entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the Members.

4.8 Voting Rights. Except as expressly provided in this Agreement, Members shall have no voting, approval or consent rights.

ARTICLE V

MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management of the Company by Manager. Subject to any provisions of this Agreement relating to actions required to be approved by the Capital Members, if any, the business, property and affairs of the Company shall be managed and all powers of the Company shall be exercised by or under the direction of the Manager.

5.2 Election of Managers.

(a) Number, Term, and Qualifications. The Company shall initially have one (1) Manager, which shall be B&B. If the Manager is the subject of a bankruptcy, dies, becomes disabled, resigns or is removed pursuant to Sections 5.2(b) and 5.2(c), then one or more replacement managers may be appointed by the affirmative vote or written consent of a Majority

of All Capital Members. The occurrence of any event terminating a Person as a Manager who also is a Member or a Capital Member shall not affect such Person's rights as a Member (including B&B's Promotional Interest) or a Capital Member with respect to any Membership Class, or constitute withdrawal as a Member or Capital Member from such Membership Class. If the number of Managers is changed, the Certificate shall be amended, if necessary, to accurately reflect whether the Company has only one Manager or more than one Manager. A Manager need not be a Member.

(b) Resignation. The Manager may resign at any time by giving written notice to the Members. The resignation of the Manager shall take effect upon receipt of that notice or at such later time as shall be specified in the notice; and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Manager shall not affect the Manager's rights as a Member or a Capital Member in any Membership Class and shall not constitute a withdrawal of the Manager as a Member or Capital Member.

(c) Removal. The Manager shall be subject to removal with or without cause by the affirmative vote of a Majority of All Capital Members of the Company.

5.3 Powers of Managers.

(a) General Powers. Without limiting the generality of Section 5.1, but subject to any express limitations set forth elsewhere in this Agreement, the Manager shall have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise, on behalf and in the name of the Company, all of the powers necessary to further the purpose of the Company as set forth in Section 2.5 including, without limitation, the power to:

(i) Establish new Membership Classes for the Company from time to time and issue Units in such Membership Classes on terms and conditions determined by the Manager in its sole discretion;

(ii) Enter into such agreements and engage in such other activities as the Manager deems necessary to acquire, manage or dispose of any Property or the Company's interest in any Joint Venture or otherwise to fulfill the purposes of the Company, as set forth in Section 2.5 above;

(iii) Negotiate and enter into, and make all decisions and take all actions on behalf of, and/or required of, the Company pursuant to any Joint Venture Agreement;

(iv) Sell or otherwise dispose of any property and assets owned by the Company, or any part thereof, or any interest therein;

(v) Borrow money from any Person on such terms as the Manager deems appropriate, issue evidences of indebtedness in connection therewith, refinance, increase the amount of, modify, amend, or change the terms of, or extend the time for the

payment of any indebtedness or obligation of the Company, and secure such indebtedness by pledge, security interest, or other liens on Company assets;

(vi) Guarantee the payment of money or the performance of any contract or obligation of any Person;

(vii) Sue on, defend, or compromise any and all claims or liabilities in favor of or against the Company or submit any or all such claims or liabilities to arbitration;

(viii) Retain legal counsel, auditors, accountants, property managers, brokers and other professionals and consultants and to hire employees in connection with the Company business, and to pay therefor such remuneration as the Managers may determine;

(ix) Enter into operating agreements, partnership agreements, and other documents and instruments in connection with becoming a member, partner, shareholder or other beneficial owner of any Person for the purposes described in Section 2.5 above; and

(x) Expend sums and do all other things necessary or appropriate in connection with the foregoing.

5.4 Members Have No Managerial Authority. The Members shall have no power to participate in or direct the management of the Company, to vote upon or approve or disapprove any matter or action, except as expressly provided in this Agreement. Unless expressly and duly authorized in writing to do so by the Manager, no Member shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

5.5 Performance of Duties; Liability of Manager. The Manager shall not be liable to the Company, any Membership Class, or to any Member for any loss or damage sustained by the Company, any Membership Class or any Member, unless the loss or damage shall have been the result of fraud, deceit, reckless or intentional misconduct, or a knowing violation of law by the Manager.

5.6 Devotion of Time. The Manager shall not be obligated to devote all of its time or business efforts to the affairs of the Company or any Membership Class thereof. The Manager shall devote whatever time, effort, and skill it deems appropriate for the operation of the Company.

5.7 Competing Activities. The Manager and his agents, employees and Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company nor any Capital Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Manager shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even

if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Manager shall have the right to hold any investment opportunity or prospective economic advantage for his own account or to recommend such opportunity to Persons other than the Company. The Capital Members hereby waive any and all rights and claims which they may otherwise have against the Manager and his agents, employees, and Affiliates as a result of any of such activities.

5.8 Transactions Between the Company and the Manager. Notwithstanding that it may constitute a conflict of interest, the Manager may, and may cause his Affiliates to, engage in any transaction with the Company and any Joint Venture (including, without limitation, the purchase, sale, lease, or exchange of any property or the rendering of any service or the loan of any money to the Company) or any Membership Class thereof so long as such transaction is not expressly prohibited by this Agreement and so long as the terms and conditions of such transaction, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing them and in similar transactions between parties operating at arm's length.

5.9 Reimbursement of Expenses. Each Membership Class of the Company shall reimburse the Manager for all out-of-pocket costs incurred by the Manager in connection with the creation of the Membership Class and the acquisition, operation and management of the corresponding Property.

5.10 Officers. The Manager may appoint officers to the Company or to any one or more Membership Classes at any time. Such officers, if deemed necessary by the Manager, may include a president, vice president, secretary, and chief financial officer. The officers shall serve at the pleasure of the Manager, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. No officer need be a resident of the State of California or the State of Delaware or a citizen of the United States. The Manager's officers or trustees may serve as officers of the Company or to any of the Company's Membership Classes. The officers shall exercise such powers and perform such duties as shall be determined from time to time by the Manager. Subject to the rights, if any, of an officer under a contract of employment, any officer may be removed, either with or without cause, by the Manager at any time. Any officer may resign at any time by giving written notice to the Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party. A vacancy in any office may be filled by the Manager in its discretion.

5.11 Exculpation and Indemnification. Neither the Manager, nor its shareholders, officers, directors, employees or agents, shall have any liability whatsoever to any Membership Class or to any Member of any Membership Class for any loss suffered by such Membership Class or any Member thereof which arises out of any action or inaction of the Manager or any of its shareholders, officers, directors, employees or agents, so long as the Manager or such other Person, in good faith, determined that such course of conduct was in the best interests of such Membership Class and did not constitute fraud, bad faith or willful misconduct. The Manager and its shareholders, officers, directors, employees and agents and the employees and agents of

the Company shall be entitled to be indemnified and held harmless by the Membership Class, at the expense the Membership Class, against any loss, expense, claim or liability (including reasonable attorneys' fees, which shall be paid as incurred) resulting from the assertion of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Company relating to a Membership Class, including claims or legal proceedings brought by a third party or by Members, on their own behalf or as a Company derivative suit, so long as the party to be indemnified determined in good faith that such course of conduct which caused the loss, expense, claim or liability was in the best interests of the Company, was acting on behalf of or performing services for the Company, and such loss, expense, claim or liability was not the result of gross negligence, fraud, bad faith or gross misconduct; provided, that any such indemnity shall be paid solely from the assets of the Membership Class. Notwithstanding the foregoing, an indemnitee shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless either: (a) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee; (b) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee; or (c) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made; and prior to seeking such approval, the court has been apprised of the position of the California Commissioner of Corporations and the SEC with respect to indemnification for securities laws violations.

5.12 Liability Insurance. The Company shall not incur the cost of any portion of liability insurance that insures the Manager for any liability for which the Manager is prohibited from being indemnified under Section 5.11.

ARTICLE VI

CASH DISTRIBUTIONS; ALLOCATIONS OF PROFITS AND LOSSES

6.1 Cash Flow From Operations. Cash Flow From Operations, if any, derived from each respective Property shall be distributed to the Manager and to Members of the Membership Class corresponding to that Property as follows:

(a) First, to the Capital Members of such Membership Class holding Additional Capital Units (if any) in proportion to their respective Unreturned Additional Capital Contributions for such Membership Class until such Capital Members have received aggregate distributions pursuant to this clause (a) sufficient to reduce their Unreturned Additional Capital Contributions for such Membership Class to zero;

(b) Second, to the Capital Members of such Membership Class holding Additional Capital Units, in proportion to their respective Additional Preferred Returns for such Membership Class (if any), until such Additional Preferred Returns are paid in full; and

(c) Thereafter, seventy percent (70%) to the Capital Members of such Membership Class in accordance with their respective Class Percentage Interests, and thirty percent (30%) to the Manager.

6.2 Sale of Refinancing Proceeds. Sale or Refinancing Proceeds derived from a Property shall be distributed to the Manager and to Members of the Membership Class corresponding to that Property, not later than ninety (90) days after the closing of the transaction giving rise to such Sale or Refinancing Proceeds, in the following order of priority:

(a) First, to the Capital Members of such Membership Class holding Additional Capital Units (if any), in proportion to their respective Unreturned Additional Capital Contributions, until such Capital Members have received aggregate distributions pursuant to this clause (a) sufficient to reduce their Unreturned Additional Capital Contributions for such Membership Class to zero;

(b) Second, to the Capital Members of such Membership Class holding Additional Capital Units, in proportion to their respective Additional Preferred Returns (if any), until such Additional Preferred Returns are paid in full; and

(c) Third, to the Capital Members of such Membership Class, in proportion to their respective Unreturned Capital Contributions, until the Capital Members have received aggregate distributions pursuant to this clause (c) sufficient to reduce their Unreturned Capital Contribution to zero;

(d) Fourth, to the Capital Members of such Membership Class, in proportion to their respective Preferred Return, until such Preferred Returns are paid in full;

(e) Thereafter, seventy percent (70%) to the Capital Members of such Membership Class in proportion to their respective Class Percentage Interests, and thirty percent (30%) to the Manager.

6.3 Losses. Losses with respect to a Fiscal Year, derived from or attributable to a Property shall be allocated in the following order of priority: (a) first, to the Capital Members of the corresponding Membership Class in accordance with their Class Percentage Interests, until their Capital Sub-Account has been reduced to zero, and (b) thereafter 70% to Capital Members and 30% to the Manager. Notwithstanding the foregoing, allocations of Losses to a Member shall be made only to the extent that such allocations will not create a deficit Capital Sub-Account balance for that Member in excess of an amount, if any, equal to such Capital Member's share of Class Minimum Gain. Any Losses not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent the other Members are not limited in respect of the allocation of Losses under this Section 6.3). Any Losses reallocated under this Section 6.3 shall be taken into account in computing subsequent allocations of Profits and Losses pursuant to this Article 6, so that the net amount of any item so allocated and the Profits and Losses allocated to each Member pursuant to this Article 6, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article 6 if no reallocation of Losses had occurred under this Section 6.3.

6.4 Profits. Profits with respect to a Fiscal Year derived from or attributable to a Property shall be allocated to the Managers and to the Capital Members of the corresponding Membership Class as follows, unless otherwise specifically provided below:

(a) First, to the Members of such Membership Class to the extent of, and in reverse order of, any prior allocations of Losses to those Members by reason of any allocations of Losses to such Membership Class under Section 6.3 above, as reduced by all prior allocations of Profits pursuant to this subsection 6.4(a);

(b) Second, to the Capital Members of such Membership Class until they have been allocated Profits under this clause 6.4(b) during the term of the Company equal to their Preferred Return;

(c) Third, to the Capital Members of such Membership Class until they have been allocated Profits under this clause 6.4(c) during the term of the Company equal to their Preferred Return; and

(d) Thereafter, seventy percent (70%) to the Capital Members of such Membership Class in proportion to their respective Class Percentage Interests, and thirty percent (30%) to the Manager.

6.5 Special Allocations.

(a) Minimum Gain Chargeback. Notwithstanding Section 6.4, if there is a net decrease in Class Minimum Gain during any Fiscal Year, each Member of a Membership Class shall be specially allocated items of income and gain attributable to the Membership Class for such Fiscal Year (and, if necessary, in subsequent fiscal years) in an amount equal to the portion of such Member's share of the net decrease in Class Minimum Gain that is allocable to the disposition of the property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.5(a) shall be made in proportion to the amounts required to be allocated to each Membership Class Member under this Section 6.5(a). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.5(a) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Chargeback of Class Minimum Gain Attributable to Member Nonrecourse Debt. Notwithstanding Section 6.4 of this Agreement, if there is a net decrease in Class Minimum Gain attributable to a Member Nonrecourse Debt, during any Fiscal Year, each Membership Class Member who has a share of the Class Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of class income and gain attributable to the Membership Class for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Class Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt (which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5)). Allocations pursuant to this Section 6.5(b) shall be made in proportion to the amounts required to be allocated to each Membership Class Member under this Section 6.5(b). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.5(b) is

intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions. Notwithstanding Section 6.4, any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their Class Percentage Interests.

(d) Member Nonrecourse Deductions. Notwithstanding Section 6.4, those items of loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Membership Class for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

(e) Qualified Income Offset. Notwithstanding Section 6.4, if a Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Sub-Account in excess of such Member's share of Class Minimum Gain, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.5(e) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VI so that the net amount of any item so allocated and the income, gain, and losses allocated to each Member pursuant to this Article VI to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Section 6.5(e) if such unexpected adjustments, allocations, or distributions had not occurred.

(f) General Expense Allocations. Notwithstanding Section 6.3, (i) the initial organization and syndication expenses of the Company shall be allocated to and borne by the first five Classes of Membership Interests created by the Company; and (ii) all other general operating expenses of the Company that are not specifically attributable to a particular Property or Class shall be allocated among and borne equally by all Membership Classes existing as of the end of the Fiscal Year in which the expenses were incurred.

6.6 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VI, in accordance with Code Section 704(c) and the Regulations promulgated 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 of the Membership Class 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 fair market value on the date of contribution. Allocations pursuant to this Section 6.6 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Sub-Account or share of profits, losses, or cash distributions pursuant to any provision of this Agreement.

6.7 Allocations in Respect of a Transferred Interest. If any Membership Interest is transferred, or is increased or decreased by reason of the admission of a new Member or

otherwise, during any Fiscal Year of the Company, each item of income, gain, loss, deduction, or credit of each Membership Class of the Company for such Fiscal Year shall be assigned pro rata to each day in the particular period of such Fiscal Year to which such item is attributable (i.e., the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day shall be allocated to the Member based upon his or her respective Membership Interest at the close of such day.

6.8 Obligations of Members to Report Allocations. The Members are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their shares of Company income and loss for income tax purposes.

ARTICLE VII

TRANSFER AND ASSIGNMENT OF INTERESTS

7.1 Transfer and Assignment of Interests. Except as expressly provided in Sections 7.3 and 7.4 below, no Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate (collectively “Transfer”) all or any part of any Membership Interest or any Economic Interest or other interest therein, whether voluntarily, involuntarily or by operation of law, except with the prior written consent of the Manager, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act), as the Manager may determine in its sole and absolute discretion. After the consummation of any Transfer of any part of a Membership Interest or Economic Interest or other interest therein, the interest so transferred shall continue to be subject to the terms and provisions of this Agreement and any further transfers shall be required to comply with all the terms and provisions of this Agreement.

7.2 Substitution of Members. A transferee of a Membership Interest shall have the right to become a substitute Member only if the transferee executes an instrument satisfactory to the Manager accepting and adopting the terms and provisions of this Agreement and pays any reasonable expenses in connection with his or her admission as a new Member. The admission of a substitute Member shall not result in the release of the Member who assigned the Membership Interest from any liability that such Member may have to the Company or any Membership Class.

7.3 Permitted Transfers. Notwithstanding Section 7.1 above, the Membership Interest of any Member may be transferred (subject to compliance with Section 7.2) by the Member to any Affiliate or by testamentary transfer or intestate succession to any spouse, parent, sibling, child or grandchild of the Member, or to a trust for the benefit of the Member or any relative of the Member, it being agreed that in executing this Agreement, the Manager has consented to any such Transfers by the Member. Any permitted Transfer of all or any portion of a Membership Interest shall be effective as of the date upon which the requirements of Section 7.2 have been met, unless the parties to such assignment have previously specified a later date. The Manager shall provide the Members of the Membership Class in which the transfer is made with written notice of such transfer as promptly as possible after the requirements of Section 7.2 have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

7.4 Rights of Legal Representatives. If a Member who is an individual dies or is adjudged by a court of competent jurisdiction to be incompetent to manage the Member's person or property, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights for the purpose of settling the Member's estate or administering the Member's property, including any power the Member has under this Agreement to give an assignee the right to become a Member, subject in all events to the restrictions and limitations of this Article VII.

7.5 No Effect to Transfers in Violation of Agreement. Any attempted or purported Transfer of a Membership Interest or any portion thereof or Economic Interest therein in violation of this Article VII shall be void and of no force or effect for any purpose.

ARTICLE VIII ACCOUNTING, RECORDS, REPORTING BY MEMBERS

8.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes. The books and records of each Membership Class and the Property attributable thereto shall be maintained separate and distinct from each other Membership Class and reflect all the transactions made by the Membership Class and shall be appropriate and adequate to maintain the limitation of the liabilities of each Membership Class pursuant to Section 18-215 of the Act and for the Company's business with respect to such class. The Company shall maintain at its principal office in California all of the following:

- (a) A current list of the full name and last known business or residence address or each Member and of each holder of an economic interest in each Membership Class set forth by Membership Class in alphabetical order, together with the contribution and the share in profits and losses of each member and holder of an economic interest;
- (b) A current list of the full name and business or residence address of each Manager;
- (c) A copy of the Certificate and all amendments thereto which shall at all times reflect the limited liabilities of each Membership Class as set forth in this Agreement, together with any powers of attorney pursuant to which the Certificates or any amendments thereto were executed;
- (d) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;
- (e) A copy of this Agreement and any and all amendments thereto together with any powers of attorney pursuant to which the Agreement or any amendments thereto were executed;
- (f) Copies of the financial statements of the Company, if any, for the six most recent Fiscal Years; and

(g) The books and records of the Company, if any, for at least the current and past four Fiscal Years.

8.2 Annual Reports. The Manager shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' federal and state income tax returns. The Manager shall send or cause to be sent to each Member within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns.

8.3 Bank Accounts. The Manager shall maintain the funds of each Membership Class in separate bank accounts in the name of the Company and designated by class, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person or the funds of one Membership Class to be commingled with the funds of the Company generally or with the funds of another Membership Class.

8.4 Tax Matters Partner for the Company. The Manager is designated as the Tax Matters Partner, as defined in Code Section 6231, to represent the Company, at the Company's expense, in connection with all examinations of the affairs of the Company by tax authorities, including resulting judicial and administrative proceedings, and shall expend the funds for professional services and costs associated therewith. All expenses incurred by the Company pursuant to Section 8.3 shall be allocated proportionately by all Membership Classes.

ARTICLE IX **INDEMNIFICATION**

The Company shall indemnify any Person (other than the Manager which shall be entitled to indemnification pursuant to Section 5.11) who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he, she or it is or was a Member, manager, officer, employee or other agent of the Company or any Membership Class thereof that, being or having been such a Member, manager, officer, employee or agent, he or she is or was serving at the request of the Company as a manager, director, officer, employee or other agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to hereinafter as an "agent"), to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. The Manager shall be authorized, on behalf of the Company, to enter into indemnity agreements from time to time with any Person (including Affiliates of the Manager) entitled to be indemnified by the Company or any Membership Class thereof, upon such terms and conditions as the Manager deems appropriate in its business judgment.

ARTICLE X **DISSOLUTION AND WINDING UP**

10.1 Dissolution of Membership Class. A Membership Class of the Company shall be terminated and the Units of that Membership Class redeemed, without the dissolution of the Company, on the first to occur of the following:

- (a) Upon the written election of the Manager; or
- (b) The sale of all or substantially all of the Property corresponding to that Membership Class.

10.2 Winding Up of Membership Class. Upon the occurrence of any event specified in Section 10.1, the Membership Class shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of the creditors of the Membership Class. The Manager shall be responsible for overseeing the winding up and liquidation of the Membership Class, shall take full account of the Membership Class liabilities and assets, shall cause its Property and other assets to be sold as promptly as is consistent with obtaining the fair market value thereof and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in accordance with Section 10.7. The Manager shall be entitled to reasonable compensation for such services.

10.3 Dissolution of Company. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

- (a) Upon the entry of a decree of judicial dissolution of the Company pursuant to Section 18-802 of the Act;
- (b) Upon the written election of the Manager; or
- (c) The termination and redemption of all Membership Classes and the sale of all or substantially all of the assets of Company.

10.4 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 10.3, the Manager shall execute and file a Certificate of Cancellation pursuant to the Act.

10.5 Winding Up of the Company. Upon the occurrence of any event specified in Section 10.3, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating the assets of all Membership Classes, and satisfying the claims of their creditors. The Manager or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold as promptly as is consistent with obtaining the fair market value thereof and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in accordance with Section 10.7. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Manager or Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

10.6 Distributions in Kind. Any non-cash asset distributed to one or more Members of the Company or any Membership Class thereof shall first be valued at its fair market value to determine the Profits or Losses that would have resulted if such asset were sold for such value, such Profits or Losses shall then be allocated pursuant to Article VI, and the Members' Capital Sub-Account(s) shall be adjusted to reflect such allocations. The amount distributed and charged

to the Capital Sub-Account of each Member receiving an interest in such distributed asset shall be the fair market value of such interest (net of any liability secured by such asset that such Member assumes or takes subject to). The fair market value of such asset shall be determined by the Manager or by the Members of the applicable Membership Class or if any Member of the Membership Class objects, by an independent appraiser (any such appraiser must be recognized as an expert in valuing the type of asset involved) selected by the Manager or liquidating trustee and approved by the Members of the Membership Class.

10.7 Liquidating Distributions. After determining that all known debts and liabilities of the terminating Membership Class(es) in the process of winding-up, including, without limitation, debts and liabilities to Members who are creditors of each dissolving Membership Class, have been paid or adequately provided for, and notwithstanding any provision of Section 6.1 above to the contrary, the remaining assets shall be distributed to the Members in accordance with their respective positive Capital Sub-Account balances, after taking into account allocations of Profits and Losses for the Membership Class for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Membership Class is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

10.8 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member of each Membership Class shall only be entitled to look solely to the assets of the Membership Class(es) of which he, she or it is a Member for the return of his or her positive Capital Sub-Account balance and shall have no recourse for his or her Capital Contribution or Additional Capital Contribution and/or share of Profits (upon dissolution or otherwise) against the Manager, any other Member or any other Membership Class.

ARTICLE XI **MISCELLANEOUS**

11.1 Legal Representation. Counsel to the Company may also be counsel to the Manager or any Affiliate of the Manager. The Manager may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction ("Rules"). The law firm that has acted as legal counsel to the Manager in connection with the formation of the Company and the preparation of this Agreement ("Company Counsel") has represented the interests solely of the Manager. Each Member acknowledges that Company Counsel does not represent any Member in the absence of a clear and explicit written agreement to such effect between the Member and Company Counsel, and that in the absence of such agreement Company Counsel shall owe no duties directly to any Member. Notwithstanding any adversity that may develop, in the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and the Manager (or Affiliate), on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Manager (or its Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that Company Counsel has represented only the interests of the Manager and not the other Members in connection with the formation of the

Company and the creation of any Membership Class by the Company and the preparation of this Agreement, and each Member acknowledges that it has been afforded the opportunity to consult with independent counsel with regard thereto.

11.2 Complete Agreement. This Agreement constitutes the complete and exclusive statement of agreement among the Members and Manager with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members and Manager or any of them. No representation, statement, condition or warranty not contained in this Agreement will be binding on the Members or Manager or have any force or effect whatsoever.

11.3 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the Members, and their respective successors and assigns.

11.4 Governing Law. This Agreement shall be construed and enforced in accordance with, and shall be governed, by the laws of the State of Delaware.

11.5 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of the Manager or a particular Member or his or her counsel.

11.6 Arbitration. Except as otherwise provided in this Agreement, any controversy or dispute arising out of this Agreement, the interpretation of any of the provisions hereof, or the action or inaction of any Member or Manager hereunder shall be submitted to arbitration in San Francisco, California, under the commercial arbitration rules then existing of the JAMS/Endispute (“JAMS”), using a single neutral arbitrator selected from the panel of JAMS. In addition to all other rights and powers of the arbitrator, and not by limitation, the arbitrator shall have the right to issue injunctions for specific performance and other affirmative relief. The arbitrator is empowered to determine the prevailing party as an overall matter or on an issue by issue basis. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Section, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section.

11.7 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

11.8 Notices. Except as otherwise expressly provided for in this Agreement, all notices that the Manager or Company or any Capital Member may desire or may be required to give any other Capital Member shall be in writing and shall be deemed duly given when delivered personally or when delivered by confirmed facsimile transmission or one (1) business

day after deposit with Federal Express or other nationally recognized overnight carrier service or four (4) business days after being deposited in the United States mail, first-class postage prepaid, in any such case addressed to the Capital Member's address as shown in the Schedules attached hereto or otherwise in the books of the Company pursuant to written notification to the Manager. Notices to the Manager or to the Company shall be delivered to the Company's principal place of business, as set forth in Section 2.3 above or as hereafter changed as provided herein.

11.9 Amendments. Except with respect to matters that may be changed or effected by the Manager acting alone or by the vote of written consent of some or all Members as expressly set forth in this Agreement, this Agreement may only be amended by a written instrument signed by the Manager and by a Majority of the Class for each Membership Class that would be materially affected by the proposed amendment.

11.10 Attorney Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

11.11 Time is of the Essence. All dates and times in this Agreement are of the essence.

11.12 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

11.13 No Interest in Company Property; Waiver of Action for Partition. No Member has any interest in specific property of the Company. Without limiting the foregoing, each Member irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to any Property of the Company.

11.14 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

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

MANAGER:

BLACKBURNE & BROWN MORTGAGE
COMPANY, INC., a California Corporation

By: _____

Its: _____

MEMBER:

BLACKBURNE & BROWN MORTGAGE
COMPANY, INC., as Attorney-in-Fact for the
Persons Listed in the Schedules attached hereto

By: _____

Its: _____

Schedule

Membership Class _____

Class Property: _____

<u>Capital Member Name and Address</u>	<u>Capital Members Initial Capital Contribution</u>	<u>Number of Units</u>	<u>Class Percentage Interest</u>
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