

**[NAME OF PROPERTY OWNING ENTITY], LLC**

**CONFIDENTIAL INFORMATION STATEMENT  
CONCERNING AN INDIRECT INVESTMENT IN  
[NAME OF APARTMENT COMMUNITY] [(CITY, STATE)]**

TO: Prospective purchasers of a membership interest in [Name of Property Owning Entity], LLC, a [State] limited liability company

FROM: [Name of Manager Entity], LLC, a [State] limited liability company

DATE: [Month, Day], 2020

We have received from you an expression of interest in investing in [Property Owning Entity], LLC (the "**Company**"), which will, in turn, acquire [Name of Apartment Community], a [\_\_\_\_\_]-unit apartment community (the "**Project**") situated upon a [\_\_\_\_\_]-acre tract (the "**Land**") located at [Address/Property Description] (the Project and the Land, collectively, the "**Property**"). This Confidential Information Statement ("**Information Statement**") will outline the risk factors of this investment, the role and compensation of [Manager Entity], LLC ("**Manager**"), and summarize the governing organizational documents of the Company, the vehicle through which prospective investors under this offering will participate in the ownership of the Property.

**NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC") NOR ANY STATE SECURITIES REGULATORS HAVE APPROVED OR DISAPPROVED THE SECURITIES OFFERED HEREIN, OR DETERMINED IF THIS INFORMATION STATEMENT IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**[Name of Apartment Community].**

The Company has accepted or will accept assignment of that certain [Purchase Agreement Name] between [Transferring Purchaser], LLC, a [State] [Form of Entity] and [Seller Name], a [State] [Form of Entity] (the "**Seller**"), dated [Month, Day, Year] (the "**Contract of Sale**"), whereby Seller agreed to sell the Property for the purchase price of \$[\_\_\_\_\_]. Prospective investors in the Company are evaluating the purchase of membership interests in the Company as the means by which they would indirectly participate in the ownership of the Property. The Company will contract with H&H Property Management and Investment LLC (hereinafter H&H Property Management and Investment LLC may be referred to as the "**Property Manager**" when the context requires) to manage the Property pursuant to the terms of the Property Management Agreement (as defined below). H&H Property Management and Investment LLC is an affiliate of the Manager, both being majority-owned and controlled by Andrew Lancaster.

In connection with the purchase of the Property, the Company will enter into a loan agreement with [Lender Name] (the "**Lender**") pursuant to which the Company will borrow

approximately \$[Maximum Loan Amount] (the "**Loan**"). The Loan will be secured by a first mortgage lien on the Property. The Loan will have [Interest Rate terms]. It will have a [\_\_\_\_\_] -year term (the "**Term**") during which the Company will be required to make monthly payments of principal and interest based on a [\_\_\_\_\_] (\_\_\_\_)-year amortization schedule, with a balloon payment then being due at the end of such Term. [Modify foregoing paragraph as necessary to describe interest rate, repayment terms, etc.]

The total capital to be contributed by investors in the formation and capitalization of the Company is approximately \$[Equity to be Raised], which will be used by the Company, along with the proceeds of the Loan, to (i) acquire the Property, (ii) pay closing costs and fees (including fees owed to the Company, Manager and affiliates hereunder) and fund Lender escrows, and (iii) establish reserves.

In order to acquire a membership interest in the Company (a "**Membership Interest**"), you are asked to commit to contribute capital of at least \$[Minimum Investment Amount] (which will equate to approximately (i) a \_\_\_\_% membership interest in the Company and, indirectly, (ii) a \_\_\_\_% interest in the Property).<sup>1</sup> The Company, however, reserves the right to waive these minimum investment requirements in its sole discretion. All deposits and payments will be held in a money market escrow account at [Bank Name] pending finalization of the transactions described herein. In the event the entire amount of capital is not committed, or in the event that the transactions described in this Information Statement do not close, your payments, together with any interest earned on the same, will be refunded to you. Note, however, that if the transactions contemplated in this Information are finalized, any interest earned will belong to the Company.

If, but only if, the Company and the Property are sufficiently profitable to so permit, each purchaser of a Membership Interest will receive priority distribution rights under the Operating Agreement pursuant to which each such purchaser will receive aggregate distributions in an amount equal to the sum of their contributed capital plus a "preferred return" equal to eight percent (8%) per annum, simple interest (i.e., not compounded) (the "**Preferred Return**") prior to the Manager receiving any distributions. Thereafter, distributions, if any, will be split sixty-five percent (65%) to the purchasers hereunder, and thirty-five percent (35%) to the Manager.

If, after reading this Information Statement and reviewing it with your advisers, you wish to acquire a Membership Interest, you should sign the signature pages of the attached Operating Agreement of the Company (the "**Operating Agreement**") and return such signed signature pages with your initial capital contribution. The standard form of H&H Property Management and Investment LLC's Property Management Agreement (the "**Property Agreement**") is summarized below and, when available, complete copies will be provided to you upon request.

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<sup>1</sup> Note that the percentages in this sentence assume aggregate capital contributions to the Company in an amount equal to \$ \_\_\_\_\_. Upon the closing of the transactions contemplated in this Information Statement, the Company will provide to each Member upon request his, her or its respective actual direct ownership percentage in the Company and indirect ownership percentages in the Property. If necessary, the figures used in this Information Statement will be adjusted accordingly based on the actual amounts contributed.

## MEMBER SUITABILITY

Acquisition of Membership Interests involves a high degree of risk and is suitable only for persons of substantial financial means who have no need for liquidity in this investment. The Membership Interests will be sold only to persons who (1) commit to contribute capital to the Company in a minimum of \$[Minimum Investment Amount], (2) qualify as, and represent as to that qualification in writing that they are, "accredited investors" (as defined in Rule 501 of Regulation D ("**Regulation D**") promulgated under the Securities Act of 1933, as amended (the "**Securities Act**")), and (3) otherwise satisfy the Member suitability standards established by the Company. The Company retains the right, in its sole discretion, to accept investments of smaller amounts and to accept or reject subscriptions.

By executing the Operating Agreement and delivering the signature pages thereto the Company, each prospective Member represents and warrants that he meets ALL of the following requirements:

(a) S/He has received, read, and fully understands this Information Statement, [Confidential Brochure] previously provided to her/him (the "**Brochure**"), the Operating Agreement, and all related exhibits and attachments. S/He understands that this Information Statement supersedes the Brochure and replaces the Brochure in its entirety as of the date of this Information Statement; and that, accordingly, s/he is basing his decision to acquire a Membership Interest solely on this Information Statement and the Operating Agreement, and all attachments and exhibits thereto (the "**Offering Documents**"). S/He has relied only on the information contained in the Offering Documents and has not relied upon any representations made by any other person, whether written or oral;

(b) S/He understands that the Membership Interests have not been registered with the United States Securities and Exchange Commission in reliance upon one or more exemptions from registration set forth in the Securities Act. In addition, s/he understands that the Membership Interests have not been registered with any state securities regulators in reliance upon certain exemptions from registration set forth in applicable state securities laws. S/He understands that this offering of Membership Interests is being made only to "accredited investors" as defined in Regulation D, and that the participation of unaccredited investors in the ownership of the Company may cause one or more of the exemptions from federal and/or state registration upon which the Company is relying to be unavailable to the Company. S/He further understands that if he does not meet the definition of an "accredited investor" that s/he may not purchase a Membership Interest in this or any other offering;

(c) S/He understands that her/his overall commitment to investments that are not readily marketable is not disproportionate to her/his individual net worth, and his acquisition of the Membership Interest will not cause such overall commitment to become excessive;

(d) S/He has been afforded the opportunity to consult with his own legal counsel and personal financial, tax and real estate advisors with respect to her/his proposed acquisition of a Membership Interest and an indirect ownership interest in the Property;

(e) S/He can bear, and is willing to accept, the economic risk of losing her/his

entire investment in the Membership Interest;

(f) S/He is acquiring the Membership Interest for her/his own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Membership Interest;

(g) S/He understands that this Information Statement contains statements about future events and expectations that are characterized as "forward-looking statements". S/He understands that forward-looking statements are based on the Company's beliefs, assumptions and expectations of future economic performance and intended business activities of the Company and the various other vehicles described herein, taking into account the information currently available to the Company. S/He understands that these statements are not statements of historical fact, and that forward-looking statements involve risks and uncertainties that may cause actual results, performance or financial conditions to be materially different from the expectations of future results, performance or financial conditions that are expressed or implied in such forward-looking statements. S/He understands that factors that could contribute to these differences include, but are not necessarily limited to, the risk factors discussed in this Information Statement. S/He understands that the Company expressly limits and qualifies any forward-looking statement entirely by these cautionary factors. S/He understands that the words "believe", "may", "will", "should", "anticipate", "estimate", "expect", "intends", "objective" or similar words, or the negative of such words, are intended to identify forward-looking statements, and s/he has been cautioned not to put undue reliance or expectation on forward-looking statements. Finally, s/he understands that the Company disclaims any intent or obligation to update any forward-looking statements, whether as a result of new information, future events, or otherwise, whether occurring before or after the date of this Information Statement; and

(h) S/He is an "accredited investor" as defined under Regulation D and as further described below.

In addition to certain large institutional investors, an "accredited investor" is an investor who meets one or more of the following tests:

(1) S/He is a natural person who had individual income in excess of \$200,000 in each of the two most recent years, or joint income with her/his spouse in excess of \$300,000 in each of these years, and has a reasonable expectation of reaching the same income level in the current year;

(2) S/He is a natural person whose individual net worth, or joint net worth with his spouse, exceeds \$1,000,000 at the time of the purchase of the Membership Interest, not including the equity value of her/his primary residence;

(3) It is an organization described under Section 501(c)(3) of the Internal Revenue Code, a corporation, a limited liability company or a partnership, not formed for the specific purpose of acquiring the Membership Interest, with total assets in excess of \$5,000,000;

(4) It is an entity in which each of the equity owners is an "accredited investor"; or

(5) It is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Membership Interest, whose purchase is directed by a "sophisticated person" as defined in Rule 506(b)(2)(ii) of Regulation D.

For purposes of calculating "net worth" above, such term is defined as the difference between total assets and total liabilities, including home furnishings and personal automobiles, but not including the equity value of one's primary residence.

Representations with respect to the foregoing and certain other matters will be made by each prospective Member in the Operating Agreement attached hereto. The Company will rely on the accuracy of each of the representations set forth in the Operating Agreement and may require additional evidence at any time prior to the acquisition of the Membership Interest. You are not obligated to supply any of the requested information, but your proposed acquisition of a Membership Interest may be denied if you fail to supply any information so requested.

The Company will have the right, in its sole discretion, to refuse to sell a Membership Interest to any prospective member of the Company (a person to whom any such Membership Interest is sold, a "**Member**" and, collectively, the "**Members**") if it believes that a prospective Member does not meet the applicable membership standards, the Membership Interest otherwise constituted an unsuitable investment for the prospective Member, for any other reason, or for no reason.

## **RISK FACTORS**

**You should be aware that ownership of Membership Interest is speculative and involves a high degree of risk.**

### **Risks Relating to the Formation and Internal Operation of the Company and its Investment in the Property.**

1. ***The Company is a new entity with no prior operating history.*** As a newly-formed entity with no prior operating history, the Company is subject to the risks involved with any speculative new venture. The Company cannot assure that its investment in the Property will be profitable or even that it will recover its investments in the Property; and it cannot, accordingly, assure that distributions will be made in amounts sufficient to return invested capital to Members, provide the Preferred Return or, indeed, be made at all.

2. ***With very few exceptions, the Company is managed and controlled by Manager, not its Members.*** All significant decisions regarding the Company's and the Property's affairs will be determined and controlled by the Manager. You should not invest in a Membership Interest if you do not accept and understand that your investment is a passive one, and that your ability as a Member, to control the ownership and management of the Property will be limited.

3. ***The Company does not guarantee any cash distributions.*** The Company cannot make any assurance that cash distributions will, in fact, be made or, if made, that distributions will be made when anticipated or as projected. You should understand that cash distributions in

an amount equal to the Preferred Return or even any portion of your invested capital cannot be guaranteed.

4. ***Members of the Company may be asked to contribute additional capital to the Company if the actual closing costs and operating budgets for the Property exceed applicable estimates.*** Procedures for additional capital contributions and consequences for failure to make these contributions are set forth in the Operating Agreement and described below in the sections entitled "Summary of the Operating Agreement".

5. ***Members may experience losses upon the dissolution and termination of the Company.*** In the event of a dissolution or termination of the Company, the proceeds realized from the liquidation of the Company's assets will be distributed among the Members (and, possibly, the Manager), but only after the satisfaction of the claims of third-party creditors of the Company, including the Lender, and payment of certain fees owed to the Property Manager or its affiliates. The ability of a Member to recover all or any portion of such Member's investment in the Company or any portion of the Preferred Return under such circumstances will, accordingly, depend on the amount of net proceeds realized by the Company from such liquidation processes and the amount of claims to be satisfied therefrom. There can be no assurance that the Company will recognize gains on liquidation.

### **Property Risks**

6. ***Lease Up.*** There can be no assurance that the Property will be substantially occupied at projected rents. There can be no assurance that the Property will achieve or maintain adequate occupancy rates. In addition, lease-up of any unoccupied units may be achievable only at rental rates less than those assumed in the Company's projections or with the provision of rental concessions, both of which would adversely affect operating cash flow. There can be no assurance that the Property Manager will be able to lease any units or maintain profitable levels of occupancy. In addition, it may be necessary to make substantial concessions in terms of rent and lease incentives to attract new tenants or to keep existing tenants. If these expenditures and concessions continue to be necessary, or in fact were to increase, the financial performance of the Property, and by necessary implication, the Company, may be adversely affected. In addition, tenants and lease guarantors, if any, may be unable to make their lease payments. Defaults by a significant number of tenants could, depending on the number of units affected and the ability to successfully find substitute replacement tenants, have a material adverse effect on the financial performance of the Property and, by necessary implication, the Company and its Members.

7. ***The acquisition of a Membership Interest is not a diversified investment.*** An acquisition of a Membership Interest represents an indirect investment in a single apartment community in a single real estate market. Therefore, an investment in the Company is not a diversified investment. A Member's return on his investment in the Company may be lower than if the Company owned direct or indirect interests in more than one property. Therefore, the poor performance of the Property would be likely to have a negative and severe impact on the financial conditions and/or performance of the Company and its Members.

## **Financing Risks**

8. ***The Loan is full recourse.*** The Loan is full recourse to the Company and is personally guaranteed by Andrew Lancaster. Given the statutory protections accorded by a limited liability company structure, the Loan will be effectively nonrecourse to the Members. Upon an uncured event of default under the Loan, the Lender will have the right to foreclose on the Property and/or trigger Mr. Lancaster's guarantor obligations. Though a deficiency is unlikely given the loan-to-value ratio, if the Lender was able to obtain deficiency judgment following a foreclosure, then, generally, its only remaining recourse would be to pursue Mr. Lancaster's guaranty. If foreclosure were to occur, however, the Company and the Members would to lose their entire investment in the Property.

9. ***The Lender is likely to have the right to approve any transfer of Membership Interests or any transfer of any other ownership interests described herein.*** The Lender has numerous rights under the Loan documents, including the right to approve any change in membership or management of the Company and/or the Property.

10. ***The Property is leveraged.*** The Property is expected to have an initial loan-to-value of approximately [\_\_\_\_\_]%. As a result of this leverage, a decrease in rental revenues of the Property may materially and adversely affect the Property's cash flow and, in turn, the ability of the Company to make distributions to its Members. The Company cannot assure that future cash flow will be sufficient to satisfy the debt service payments on any borrowed funds and also cover operating expenses. If the revenue from the Property is insufficient to pay the Company's debt service and operating expenses, the Company would be required to use working capital or other reserves or seek additional funds. The Company cannot assure that additional funds would be available, if needed, or, if such funds were available, that they would be available on terms acceptable to the Company. If the Company is unable to pay its debt service and operating expenses, the Lender could foreclose on the Property, the Company would be likely to lose its entire investment, and this would necessarily negatively and severely impact the financial condition and performance of the Company and its Members.

11. ***Restrictions on transfer and encumbrance of the Property.*** The terms of the Loan prohibit the transfer or further encumbrance of or any interest in the Property except with the Lender's prior written consent, which consent may be withheld. The terms of the Loan provide that, upon violation of these restrictions on transfer or encumbrance, the Lender may declare the entire amount of the Loan, including principal, interest, prepayment penalties and other charges, to be immediately due and payable. If the Lender declares the Loan to be immediately due and payable, the Company will have a binding obligation to immediately repay the Loan in full. If the Company is unable to obtain replacement financing or otherwise failed to immediately repay the Loan in full, the Lender might invoke its remedies under the Loan documents, including proceeding with a foreclosure sale that is likely to result in the Company losing its entire interest in the Property, which, in turn, would negatively and severely impact the financial condition and performance of the Company and the Members.

12. ***Possible delays in sale.*** It is anticipated that the Property will be sold in approximately [\_\_\_\_\_] (\_\_\_\_\_) years. However, it may not be possible to sell the Property at the prices indicated in the Company's projections or at all in such a time frame. If the Property is

not sold, is sold after a holding period that is longer than anticipated, and/or is sold at a price that is less than the price indicated in the Company's projections, this will necessarily and negatively impact the financial condition and performance of the Company and its Members.

### **Real Estate Risks**

14. ***The Land will be acquired with limited representations and warranties.*** The Property has been acquired with limited representations and warranties from the Seller or any other party regarding the condition of the Property, latent or patent construction defects, the presence of hazardous substances in, on and/or around the Land, the status of governmental approvals and entitlements and other significant matters affecting the use, ownership and enjoyment of the Property. As a result, if defects in the Property or other matters adversely affecting the Property are discovered, the Company may be unable to pursue a claim for damages against the Seller or any other party. The extent of damages that the Company may incur as a result of such matters cannot be predicted, but such matters potentially could result in a significant adverse effect on the value of the Land and/or the Project to be constructed thereon which, in turn could result in a significant adverse effect on the Company and its Members.

15. ***General risk of investment in the Property.*** The economic success of an investment in the Company will depend upon the results of the operations of the Property, which will be subject to those risks typically associated with investments in real estate generally, and investments in multi-family housing communities specifically. Fluctuations in raw material and/or labor costs during any renovations, and fluctuations in vacancy rates, rent schedules and operating expenses following the development of the Property, can adversely affect operating results or render the sale or refinancing of the Property difficult or unattractive. There is no assurance that certain assumptions as to the future levels of occupancy of the Property, cost of improvements or future costs of operating the Property will be accurate since such matters will depend on events and factors beyond the control of the Company. Such factors include continued validity and enforceability of the leases, vacancy rates for properties similar to the Property, financial resources of tenants and rent levels near the Property, adverse changes in local population trends, market conditions, neighborhood values, local economic and social conditions, supply and demand for property such as the Property, competition from similar properties, interest rates and real estate tax rates, governmental rules, regulations and fiscal policies, the enactment of unfavorable real estate, rent control, environmental or zoning law, and hazardous material law, uninsured losses, effects of inflation, and other risks.

16. ***Environmental liabilities are possible and can be costly.*** Federal, state and local laws impose liability on a landowner for releases or the otherwise improper presence on the premises of hazardous substances. This liability may be without regard to fault for, or knowledge of, the presence of such substances. A landowner may be held liable for hazardous materials brought onto the property before it acquired title and for hazardous materials that are not discovered until after it sells the property. Similar liability may occur under applicable state law. The Seller has made only limited representations as to the absence of hazardous substances. If any hazardous materials are found in the Property in violation of law at any time, the Company, along with the Seller or any other third-party owner of the Property may be jointly and severally liable for all cleanup costs, fines, penalties and other costs. This potential liability may continue after the Company sells the Property and may apply to hazardous materials present



within the Property before the Company acquired the Property. If losses arise from hazardous substance contamination that cannot be recovered from a responsible party, the financial viability of the Property may be substantially affected. In extreme cases, the Property may be rendered worthless, or worse, where the owners are obligated to pay cleanup costs in excess of the value of the Property.

The Company has received preliminary results of a Phase I environmental site assessment of the Land from a nationally-recognized environmental consultant, and its report does not indicate any material adverse environmental impacts on the Land. Nonetheless, there can be no assurance that hazardous materials are not currently on or within the Land or will not at some point in the future be on or within the Land, with the risk of substantial damages, legal fees and loss of tenants, any or all of which will likely result in a significant adverse effect on the Company and its Members.

17. ***Substantial risk of mold contamination.*** Mold contamination has been linked to a number of health problems, resulting in recent litigation by tenants seeking various remedies, including monetary damages and the ability to terminate their leases. Several insurance companies have reported a substantial increase in mold-related claims, causing a growing concern that real estate owners might be subject to increasing lawsuits regarding mold contamination. Accordingly, there can be no assurance that a mold condition will not exist on or within the Property, with the risk of substantial damages, legal fees and loss of tenants any or all of which will likely result in a significant adverse effect on the Company and its Members.

18. ***Risk that the Property will not be in compliance with the Americans with Disabilities Act.*** Under the Americans with Disabilities Act of 1990 (the "ADA"), public accommodations must meet certain federal requirements related to access and use by disabled persons. If the Property was not constructed so as to be in initial compliance with the ADA, or if such compliance lapses at any point during the Company's ownership and operation of the Property, the Company may be required to pay for improvements to bring the Property into compliance with the ADA. To comply with the ADA requirements, the Company could be required to remove access barriers at significant cost, and non-compliance could result in the imposition of fines by the federal government or an award of damages to private litigants. State and federal laws in this area are constantly evolving, and could place a greater cost or burden in the future on the Company, as the owner of the Property. This, in turn, could result in a significant adverse effect on the Company and its Members.

19. ***Availability of financing and market conditions in the future may adversely affect the Property.*** Market fluctuations in real estate financing may affect the availability and cost of funds needed in the future for the Property. In addition, credit availability has been restricted in the past and may become restricted again in the future. Restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect the Property and the ability of the Company to operate and/or sell the Property at a profit or at any price. This, in turn, could result in a significant adverse effect on the Company and its Members.

20. ***Insurance.*** The Company will, through its control of the Property, attempt to maintain adequate insurance coverage against liability for workers' compensation, personal

injury and property damage. However, there is no assurance that insurance will be sufficient to cover any such liabilities. If a loss occurs at the Property that is partially or completely uninsured, direct and indirect investors, including the Company and its Members, may lose all or some portion of their investment in the Property. This, in turn, could result in a significant adverse effect on the Company and its Members.

21. ***Low Income Housing Tax Credits.*** The Project is currently enrolled in the Low Income Housing Tax Credit Program under Section 42 of the Internal Revenue Code (the "**LIHTC Program**"). The "credit period" has expired, and thus there are no further tax credits available to the Company under the LIHTC Program. However, the Project remains in the "extended compliance period" under the terms of the LIHTC Program, which means that the Project must continue to offer a certain number of low-income rental units and comply with certain other requirements under the LIHTC Program through the end of the extended compliance period. The extended compliance period will expire on [\_\_\_\_\_, 202\_\_], at which point the Property will be released from all rent restrictions under the LIHTC Program. The Company plans to attempt to remove the Project from the LIHTC Program via the "qualified contract" process before the expiration of the extended compliance period, though there is no guarantee that this process will be successful. Removing the Property from the LIHTC Program restrictions is not an impediment to the financial viability of your investment in the Property, and we have not assumed such removal in our analyses and projections for the Property. [*To be tailored to each new transaction.*]

### **Federal Income Tax Risks**

There are risks associated with the federal income tax aspects of an investment in the Company. The income tax consequences of an investment in the Company are complex, and tax legislation could be enacted in the future to the detriment of the Company and/or its Members. Because the tax impact of ownership of a Membership Interest may differ depending on individual tax circumstances, each prospective investor must consult and rely on his own independent tax advisor concerning the tax aspects of the offering set forth in this Information Statement and his individual situation. No representation or warranty of any kind whatsoever is made with respect to any federal or state tax matters related to a purchase of a Membership Interest, and the Company has not retained the services of a separate tax attorney or other financial adviser to represent the interests of the prospective purchasers of Membership Interests.

### **COMPENSATION OF THE MANAGER AND OTHERS**

The following is a description of compensation that may be received by the Manager and others from the Company (and, therefore, indirectly from the Members) in connection with the acquisition, ownership and financing of the Property. The fees described in items 1, 2 and 3 of this Section entitled "Compensation of the Manager and Others" will be funded in part out of the initial capital to be contributed to the Company (the net proceeds of which will subsequently be invested by the Company in the Property).

1. ***Reimbursement of Land Acquisition Expenses.***

The Manager has incurred and will incur certain expenses in connection with the acquisition of the Property, including due diligence costs, Loan fees and costs, and attorneys' fees. The Manager will be reimbursed for these expenses by the Company. The exact amount of these costs is impracticable to determine at this time; you should know, however, that each Member's respective share of such costs will be funded out of the initial capital being contributed.

2. ***Due Diligence Fees.*** The Manager will receive a due diligence fee of \$ \_\_\_\_\_ [OR equal to one percent (1%) of the purchase price under the Contract of Sale] from the Company in consideration of its due diligence investigation of the Property and the assessment as to the Project's viability.

3. ***Refinance/Disposition Fee.*** Upon the refinance, sale or other disposition of the Property, the Company will pay a fee to the Manager in an amount equal to one percent (1%) of the refinance loan amount or sales price for the Manager's services in arranging the financing or sale.

4. ***Property Management Fee.*** The Property Manager will receive from the Company a property management fee of five and one-half percent (5.5%) of gross revenues (as defined in the Property Management Agreement) received by the Property, plus an initial start-up fee equal to \$5,000.

5. ***Guarantor Fee.*** To the extent that a personal guaranty is required in connection with the Loan or any future financing of the Property, the Manager and/or its controlling owner(s) will provide such guaranty and thereby will be entitled to receive from the Company a guarantor fee equal to one percent (1%) of the loan amount.

## CONFLICTS OF INTEREST

Owners, officers and/or employees of the Manager will own (whether directly or indirectly) Membership Interests (albeit, in the aggregate, less than a controlling interest) in the Company. Affiliates of the Manager act, and will continue to act, as manager of other entities and other properties, some of which may compete with the Property. Each prospective investor in the Company should understand that the Manager and its affiliates have existing responsibilities, and may have additional responsibilities in the future, to provide management and services to a number of other entities and properties.

### **Legal Representation**

Chambliss, Bahner & Stophel, P.C. ("**Counsel**") acts as counsel to the Company, the Manager, the Property Manager and their respective affiliates in connection with the transactions contemplated by this Information Statement, and it is anticipated that such representations will continue in the future. Counsel also will represent additional entities formed by or in connection with the Manager and its affiliates in the future. As a result, conflicts may arise in the future and, if those conflicts cannot be resolved or the consent obtained of the respective parties to the continuation of the multiple representations after full disclosure of any such conflict, Counsel will withdraw from representing one or more of the conflicting interests with respect to the

specific matter involved. Counsel will not be deemed to have represented, or to be representing, in any respect whatsoever, any of the Members, other than various affiliates of the Manager holding Membership Interests.

## SUMMARY OF THE OPERATING AGREEMENT OF THE COMPANY

1. **General.** The rights and obligations of the Company and its Members will be governed by the Operating Agreement, a copy of which is attached hereto, and which may be subject to revision and approval by the Lender. Any prospective purchaser of a Membership Interest should review and understand the Operating Agreement in its entirety before purchasing such Membership Interest. The following is merely a summary of some of the significant provisions of the Operating Agreement and is qualified in its entirety by the full text thereof.

The Company has been formed under the Tennessee Revised Limited Liability Company Act (the "**LLC Act**"). Persons whose capital contributions are accepted by the Company will be admitted into the Company as Members.

The character and general nature of the business to be conducted by the Company is to acquire, own, lease, improve and otherwise deal with the Property. The principal place of business and the mailing address of the Company will be 608 S. Holtzclaw Avenue, Chattanooga, TN 37404. The telephone number for the Company is (423) 752-0708.

2. **Management by the Manager.** The Company is a manager-managed limited liability company. As such, the Manager, not the Members, will have the exclusive management and control of all aspects of the Company's business; therefore, each Member must be willing to delegate the management of the Company to the Manager. In the course of its management of the Company, the Manager may employ such persons, including, under certain circumstances, affiliates of certain Members and/or the Manager, as it deems necessary for the efficient operation of the Company. The Manager may take action at a meeting of the Manager called in accordance with the provisions of the Operating Agreement and the LLC Act or by a written consent to action executed by the Manager whose approval is required to take such action.

3. **Manager.** The Manager shall serve until its resignation (upon 60 days' prior written notice to the Members), removal by the Members in accordance with the terms of the Operating Agreement, or the appointment of its successors by the Members. The Manager shall be responsible for taking the significant majority of governance and decision-making actions designated in the Operating Agreement. Among other things, the Manager is specifically authorized to:

(a) Send any notices required or permitted to be given by any provision of the Operating Agreement on behalf of the Company and to receive notices on behalf of the Company;

(b) If deemed necessary and advisable by Counsel, take all action and sign all documents necessary to qualify the Company to do business in jurisdictions other than [State where Property is located] as determined by Counsel;

(c) Cause the Company to acquire the Property and operate and manage the Property, subject to the terms of the Property Management Agreement; and

(d) Cause the Company to borrow the funds contemplated under the Loan and, in connection therewith, encumber the Property to the extent required by the Lender.

4. ***Limited Liability and Indemnification of Members.*** Assuming that the Company is operated in accordance with the terms of the Operating Agreement, a Member generally will not be liable for the obligations of the Company in excess of his, her or its total capital contributions and share, if any, of the Company's undistributed profits. However, a Member may be liable for any distributions made to such Member if, after such distribution, (1) the remaining assets of the Company are not sufficient to pay the Company's then outstanding liabilities (including any environmental liabilities), or (2) the Company is unable to pay its debts as they become due in the normal course of business.

The Operating Agreement provides that a Member will not be personally liable for the expenses, liabilities or obligations of the Company solely because he is a Member; provided, however, that a Member *will* be liable for (1) any action or omission which was taken or not taken as the case may be, in bad faith or with the knowledge at the time of the acts or omissions that such acts or omissions were clearly in conflict with and adverse to the interests of the Company or its Members, or (2) any action or omission that results in an improper personal benefit with respect to the Member. Therefore, each Member will have a more limited right of action against another Member than he, she or it would have absent such exculpatory provisions in the Operating Agreement.

Additionally, the Operating Agreement generally provides for indemnification by the Company of each Member and the Manager, to the fullest extent permitted by the LLC Act, for any claims, liabilities and other losses that such Member or the Manager may suffer because such Member or the Manager was the Manager or a Member, not arising out of any action or omission which was taken or not taken as the case may be, in bad faith or with the knowledge at the time of the acts or omissions that such acts or omissions were clearly in conflict with and adverse to the interests of the Company or its Members, or any action or omission that results in an improper personal benefit with respect to the Member or the Manager.

5. ***Conflict of Interest Transactions.*** No Member shall engage in any transaction with the Company in which the Member has a direct or indirect interest unless such transaction is (a) on terms and conditions comparable to those that are customary for similar transactions in the marketplace, (b) authorized, approved or ratified by the Manager knowing the material facts of the transaction and the Member's interest, or (c) authorized under the Operating Agreement. The Members acknowledge that the Manager and the Property Manager are both majority-owned and controlled by Andrew Lancaster.

6. ***Capital Calls.*** The Company may make capital calls to its Members if, in the discretion of the Manager, such funds are needed for the operation of the Company and/or the Company's investments described herein. If any Member fails to contribute his, her, or its pro rata share of any capital call, the other Members will have the option under the Operating Agreement to make the additional capital contribution of the nonpaying Member, and the

Membership Interests of the nonpaying Member will be diluted in accordance with the terms of the Operating Agreement.

7. ***Distributable Cash.*** Cash available for distribution, if any, will be distributed to the Members and the Manager as follows:

(a) First, one hundred percent (100%) to the Members, pro rata in accordance with their respective percentage Membership Interests, until each Member has received a "preferred return" of eight percent (8%) per annum, not-compounded, on such Member's net contributed capital;

(b) Second, one hundred percent (100%) to the Members, pro rata in accordance with their respective percentage Membership Interests, until each Member has received aggregate distributions equal to her or his contributed capital; and

(c) Lastly, sixty-five percent (65%) to the Members, pro rata in accordance with their respective percentage Membership Interests, and thirty-five percent (35%) to the Manager.

8. ***Allocations.*** Except as otherwise required by the regulatory allocations set forth in the Operating Agreement, the Company's profits and losses, and each item of income, gain, loss and deduction entering the computation thereof, will be allocated among the Members as necessary to cause their capital accounts to be in proportion to their percentage Membership Interests.

9. ***Books and Records.*** The Company is required to keep or cause to be kept the following books of account and records:

(a) A copy of the Company's federal, state, and local income tax returns for each fiscal year;

(b) A current list of the name and last known business, residence, or mailing address of each Member and their respective assignees, the percentage Membership Interest of all such persons and their respective capital account balances;

(c) A copy of the Company's Articles of Organization (the "**Articles**"), the Operating Agreement, and all amendments thereto, together with copies of any written powers of attorney pursuant to which the Articles, the Operating Agreement, and all amendments thereto have been executed; and

(d) Information regarding the amount of cash, and a description and statement of the agreed value of any other property or services, contributed by each Member to the Company, and the cash, property and services that each Member has agreed to contribute to the Company in the future.

Each Member shall have the right to obtain from the Company copies of such records and such other information regarding the affairs of the Company, for any purpose reasonably related

to the Member's Membership Interest, subject to reasonable standards prescribed by the Manager.

10. ***Fiscal Year.*** The fiscal year of the Company will be the calendar year.

11. ***Restrictions on Transfer.*** A Member may only sell, assign or otherwise transfer all of his, her or its Membership Interest if all of the following conditions are satisfied:

(a) The Manager either, (I) consents in writing to such transfer as specified in the Operating Agreement, (II) the transferee is a permitted transferee as described in the Operating Agreement, or (III) the transferring Member first offers the other Members a right of first refusal to purchase the transferred Membership Interest as described in the Operating Agreement;

(b) The Membership Interest must have been registered under federal or state securities laws, or an exemption from such registration must exist, and, if required by the Company, the Company must receive an opinion of counsel satisfactory to the Manager that such Membership Interest is exempt from registration;

(c) The transfer will not cause any default or otherwise accelerate the payment date of any loan to the Company, or the loan of any entity in which the Company is a direct or indirect equity owner;

(d) Such transfer must not cause the Company to be treated as an association taxable as a corporation for federal income tax purposes;

(e) Such transfer does not subject the Company to publicly traded partnership status under the Internal Revenue Code;

(f) Such transfer will not result in the termination of the Company as a partnership for federal income tax purposes;

(g) The transferee or assignee delivers his, her, or its written acceptance and adoption of the provisions of the Operating Agreement and executes such instruments as the Manager may deem necessary or advisable to effect the transfer of the Membership Interest, and all fees incurred in the transfer are paid by or on behalf of the transferring Member; and

(h) Such transfer is not to a minor or to any person who, for any reason, lacks the capacity to contract for himself under applicable law; provided, however, that this limitation shall not restrict any transfers permitted by the Operating Agreement to a custodian or trustee for a minor or other person who lacks such contractual capacity.

12. ***Repurchase Option.*** The Operating Agreement provides that, upon the happening of any of the following events to a Member, the Company, the other Members, or both in tandem may repurchase the Membership Interest held by the applicable Member:

(a) The occurrence of a bankruptcy event;

(b) Any transfer of a Membership Interest by reason of a separation agreement, divorce, equitable or community or marital property distribution, judicial decree or other court order relating to the division or partition of property between spouses (unless such transfer is consented to by the Manager);

(c) The death, adjudication of incompetence, or dissolution and winding up of a Member (unless the applicable Membership Interest is transferred within a reasonable period of time from the happening of such event to a permitted transferee or a person consented to by the Manager);

(d) Any other purported involuntary transfer or encumbrance of a Membership Interest not permitted by the Operating Agreement that the Company is required by law to recognize; and

(e) In the case of a Member that is an entity, the "Change in Control" of the Member. For purposes of the Offering Documents, "**Change in Control**" means (i) the merger or consolidation of that Member with another entity pursuant to which the Member is not the surviving entity, (ii) the reorganization of the Member, or (iii) any sale, assignment, gift, pledge, hypothecation, exchange or other disposition or encumbrance resulting in a transfer of 50% or more of the equity interests of the Member to persons other than permitted transferees or persons consented to by the Members.

13. ***Drag Along.*** If the Manager receives a bona fide third party offer to acquire all of the Membership Interests of the Company, and the Manager believes it to be in the best interests of the Company and its Members for the Company to accept such offer, all of the Members shall (a) sell all of their Membership Interests pursuant to applicable offeror, and (b) execute such documents as the Members determine are necessary to effect such sale.

14. ***Term.*** The term of the Company will continue indefinitely unless terminated by the Members or Manager as provided in the Operating Agreement.

15. ***Dissolution of the Company.*** The Company will be dissolved and its affairs wound up upon the earliest to occur of the following:

(a) The approval of the Members as specified in the Operating Agreement;

(b) The entry of a decree of judicial dissolution of the Company, or the administrative dissolution of or for the Company as provided in the LLC Act, unless action is taken to cure the administrative dissolution as permitted under the LLC Act;

(c) Unless the Members consent to the continuance of the Company following such event, the sale of the Property; or

(d) The cessation of membership of the last remaining Member, unless the assignee or the fiduciary of the estate of the last remaining Member agrees in writing that the business of the Company may be continued until the admission of the assignee or the fiduciary of the estate of the Member or its designee to the Company as a Member, effective as of the occurrence of the event that causes the withdrawal of the last remaining Member.



16. ***Distributions upon Liquidation of the Company.*** Any cash remaining upon dissolution and termination of the Company after paying creditors and establishing any reserves determined by the liquidator to be reasonably necessary for the Company will be distributed to the Members as described in the Operating Agreement.

17. ***In Kind Distribution.*** Certain non-liquidating and liquidating distributions may be made to the Members in kind rather than in cash.

18. ***Amendments.*** The Operating Agreement and Articles may only be amended upon the approval of the Members; provided however, that no such amendment shall:

(a) Increase the liability of any Member under the Operating Agreement without such Member's consent; or

(b) Materially and adversely affect the rights of a Member to allocations and distributions under the Operating Agreement without such Member's consent, except to the extent reasonably required in connection with any changes in ownership permitted or required by the Operating Agreement.

The Members may not amend the section of the Operating Agreement that deals with amendments without the unanimous consent of all Members. All amendments must be in writing.

## SUMMARY OF THE PROPERTY MANAGEMENT AGREEMENT

### General

The rights and obligations regarding the management of the Property and compensation paid to the Property Manager will be governed by that certain Property Management Agreement for the Property, a copy of which will be provided once available upon request (the "**Property Management Agreement**"). Any prospective purchaser of a Membership Interest in the Company should review the Property Management Agreement in its entirety before purchasing such Membership Interest. The following is merely a summary of some of the significant provisions of the Property Management Agreements and is qualified in its entirety by reference to the full text thereof.

### Term

The Property Management Agreement will remain in effect until the earliest of:

- a termination by the Company during the initial 24 months of the term of the Property Management Agreement for cause, as set out in the Property Management Agreement;
- a termination, with or without cause, by the Company subsequent to the initial 24 months of the term of the Property Management Agreement; or
- a termination at any time by the Property Manager upon 90 days' written notice to the Company.

### Rights and Duties of the Property Manager

Subject to the Manager's oversight and control, the Property Manager will have the sole and exclusive right to manage, operate, and maintain the Property. Among other things, the Property Manager will have the right to negotiate and enter into leases, to incur costs and expenses, and to pay the Property's operating costs and expenses from the Property's cash flow or reserves. The Property Management Agreement provides that the Property Manager will supervise and direct the management and operation of the Property on behalf of the Company in an efficient and satisfactory manner consistent with like quality properties.

### Compensation

As compensation for its services, the Property Manager will receive compensation for services rendered or to be rendered only as specified in the Property Management Agreement; provided that the Property Manager also will be entitled to certain reimbursements for its out-of-pocket costs and on-site personnel costs. The Property Management Agreement provides that the initial management fee will be 5.5% of the gross monthly revenue (as defined in the Property Management Agreement) actually collected from the Property for the preceding month. In addition, the Property Manager may be paid an additional fee for supervising and managing any repairs and renovations as set forth in the Property Management Agreement.

## **Expenses**

All expenses incurred in connection with the operation and maintenance of the Property will be borne by the Company.

## **Indemnification of Property Manager**

The Property Management Agreement provides that the Company is obligated to indemnify and hold harmless the Property Manager from liability except if and to the extent due to any act or omission which constitutes negligence or willful misconduct on the part of the Property Manager or from any action or omission by the Property Manager in breach of the Property Management Agreement or which is beyond the scope of Property Manager's authority under the Property Management Agreement under the circumstances described therein. You should carefully read the Property Management Agreements prior to purchasing a Membership Interest in the Company.