

# CONFIDENTIAL MEMORANDUM

## CLIFF INVESTMENT FUND LLC

**Private Placement of Thirty-Six Units of Investor Member Interests  
In a Michigan Limited Liability Company ("Units")  
\$100,000 Per Unit**

Cliff Investment Fund LLC ("Company") is a newly organized Michigan limited liability company formed for the purpose of acquiring defaulted mortgage loans at a discount to the outstanding loan balance from banks and other sources, through entities formed by the Company for such purpose, and by investment in other entities which own, purchase, sell, lease, develop or manage such assets.

Thirty-six (36) Units are being offered to Qualified Investors in one (1) Unit increments ("Offering") with each unit being \$100,000.00; provided, however, the Manager of the Company shall have the discretion to accept investments for fractional portions of a Unit in the Manager's discretion. Subscription documents and any proceeds will be escrowed until the initial Closing. If this does not occur by December 31, 2012 Termination Date") the escrowed documents and proceeds will be returned to Subscribers without interest; provided, however, the Company may elect to extend the Offering to January 31, 2013, by mailing written notice to all Subscribers who have completed and delivered the subscription documents by the Termination Date. Notwithstanding the foregoing, the Company has broad discretion as to the use of proceeds from the Offering and Investors will be relying on the judgment of the Manager regarding the application of such proceeds so the Manager may, in its sole discretion, elect to close the Offering without having raised the full \$3,600,000 and obtaining subscriptions for thirty-six (36) Units and to cause the Company to accept less than the full Offering amount, and proceed to Closing on any of the Mortgage Loan Acquisitions or Project Entities (as hereinafter described) prior to the subscription of all thirty-six (36) Units provided that the Company has enough funds, in Manager's discretion, to make such investments in the Mortgage Loan Acquisitions or Project Entities, as applicable. Further, Manager shall also have the right to acquire Units and put in its own equity to complete the Offering except that any investment by Manager or its Affiliates will be on the same terms and conditions as the Investor Members.

<u>Offering</u>	<u>Selling Price to Investors</u>
Per Unit	\$100,000
Total Maximum:	\$3,600,000

The date of this Confidential Memorandum ("Memorandum") is December 18, 2012.

Offeree: \_\_\_\_\_

Number \_\_\_\_\_

**ANY INVESTMENT IN THE COMPANY IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK WITH NO ASSURANCE OF ANY ECONOMIC RETURN. PLEASE SEE THE "RISK FACTORS" SECTION OF THIS CONFIDENTIAL MEMORANDUM AND FOLLOWING NOTICES FOR A SUMMARY OF THESE RISKS AND FOR ADDITIONAL NOTICES TO ALL PROSPECTIVE INVESTORS.**

### **NOTICES**

**THE UNITS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED ("SECURITIES ACT") OR ANY STATE SECURITIES LAWS AND THEY ARE OFFERED PURSUANT TO CERTAIN EXEMPTIONS FROM REGISTRATION THEREUNDER. THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION DOES NOT PASS UPON THE MERITS OF OR GIVE ITS APPROVAL TO ANY SECURITIES OFFERED OR THE TERMS OF THE OFFERING, NOR DOES IT PASS UPON THE ACCURACY OR COMPLETENESS OF ANY OFFERING CIRCULAR OR OTHER SELLING LITERATURE. THESE SECURITIES HAVE NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES AGENCY. NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AGENCY HAS MADE A DETERMINATION THAT THE SECURITIES OFFERED HEREUNDER ARE EXEMPT FROM REGISTRATION.**

**NO REPRESENTATION OR ASSURANCE OF ANY KIND IS INTENDED OR SHOULD BE INFERRED WITH RESPECT TO THE ECONOMIC RETURN THAT MAY RESULT FROM AN INVESTMENT IN THE UNITS. NO ASSURANCE CAN BE GIVEN THAT CHANGES IN ECONOMIC OR OTHER CIRCUMSTANCES WILL NOT ADVERSELY AFFECT THE COMPANY AND ANY INVESTMENT IN THE COMPANY. NO ASSURANCE CAN BE GIVEN THAT THE FINAL TERMS OF ANY PROJECT INVESTED BY THE COMPANY WILL NOT VARY FROM ANY GENERAL TERMS SUMMARIZED IN THIS MEMORANDUM.**

**THIS INVESTMENT INVOLVES A HIGH DEGREE OF RISK. SEE THE SECTION ENTITLED "RISK FACTORS". PROSPECTIVE INVESTORS SHOULD CONSIDER INVESTMENT IN THE COMPANY ONLY AFTER CAREFUL EVALUATION OF THE RISK FACTORS AND OTHER INFORMATION SET FORTH IN THIS PRIVATE PLACEMENT MEMORANDUM, INCLUDING ITS EXHIBITS ("MEMORANDUM"). ANY PROSPECTIVE INVESTOR UNABLE TO BEAR THE ECONOMIC RISK OF A LOSS OF THE ENTIRE INVESTMENT OR WHICH REQUIRES LIQUIDITY WITH RESPECT TO THE INVESTMENT, SHOULD NOT INVEST IN THE UNITS.**

**THERE IS NO EXISTING MARKET FOR AN INVESTMENT IN THE COMPANY AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. INVESTORS WILL BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. INTERESTS IN THE COMPANY WILL BE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND CANNOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE COMPANY'S OPERATING AGREEMENT, AND AS PERMITTED UNDER THE SECURITIES ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO A REGISTRATION OR AN EXEMPTION THEREFROM.**

**PROSPECTIVE INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF AN INVESTMENT, INCLUDING THE MERITS AND RISKS INVOLVED. THIS MEMORANDUM IS NOT TO BE CONSTRUED AS INVESTMENT, LEGAL OR TAX ADVICE. INVESTORS SHOULD NOT CONSTRUE ANY STATEMENT IN THIS MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE MANAGER, ANY AFFILIATE OF THE MANAGER, OR ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS OR ATTORNEYS AS INVESTMENT, LEGAL OR TAX ADVICE. EACH INVESTOR SHOULD CONSULT WITH ITS OWN INVESTMENT ADVISOR, LEGAL COUNSEL AND ACCOUNTANT AS TO ANY INVESTMENT, LEGAL, TAX AND OTHER MATTERS CONCERNING AN INVESTMENT IN THE COMPANY.**

**NO PERSON HAS BEEN AUTHORIZED TO MAKE REPRESENTATIONS, OR GIVE ANY INFORMATION WITH RESPECT TO THE UNITS EXCEPT THE INFORMATION CONTAINED IN THIS MEMORANDUM. NO OFFERING LITERATURE, INFORMATION OR MATERIALS MAY BE EMPLOYED IN THE OFFERING OF THE UNITS EXCEPT FOR THIS MEMORANDUM.**

**THIS MEMORANDUM HAS BEEN PREPARED SOLELY FOR THE BENEFIT OF CERTAIN PERSONS INTERESTED IN THE OFFERING AND MAY NOT BE USED FOR ANY OTHER PURPOSE OR BY ANY OTHER PERSON. ANY REPRODUCTION OR DISTRIBUTION OF PART OR ALL OF THIS MEMORANDUM, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE COMPANY IS PROHIBITED. BY ACCEPTING DELIVERY OF THIS MEMORANDUM, THE RECIPIENT AGREES TO RETURN IT TO THE COMPANY IN THE EVENT THAT THE RECIPIENT DETERMINES NOT TO PURCHASE THE UNITS.**

**NO REPRESENTATION, ASSURANCE OR ADVICE IS GIVEN WITH RESPECT TO THE TAX CONSEQUENCES RESULTING FROM AN INVESTMENT IN THE COMPANY AND EACH INVESTOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. ANY STATEMENTS CONTAINED HEREIN REGARDING ANY FEDERAL TAX ISSUE IS NOT INTENDED AS TAX ADVICE AND CANNOT BE USED BY ANY PERSON FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH PERSON UNDER THE INTERNAL REVENUE CODE.**

**PROSPECTIVE INVESTORS ARE URGED TO CAREFULLY REVIEW THIS MEMORANDUM, THE OPERATING AGREEMENT, AND THE SUBSCRIPTION AGREEMENT, TOGETHER WITH SUCH OTHER INFORMATION WHICH MAY BE REQUESTED BY THE PROSPECTIVE INVESTOR, IN ORDER TO FULLY COMPREHEND AND EVALUATE ANY INVESTMENT IN THE COMPANY. PROSPECTIVE INVESTORS ARE INVITED TO ASK QUESTIONS OF, AND OBTAIN ADDITIONAL INFORMATION FROM THE MANAGER OF THE COMPANY PRIOR TO MAKING AN INVESTMENT IN THE COMPANY.**

**THIS MEMORANDUM CONTAINS SUMMARIES OF VARIOUS AGREEMENTS, DOCUMENTS, INFORMATION AND LEGAL AUTHORITIES WHICH DO NOT PURPORT TO BE COMPLETE AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE ORIGINAL AGREEMENTS, DOCUMENTS, INFORMATION AND LEGAL AUTHORITIES MENTIONED HEREIN, ALL OF WHICH SHALL BE**

PROVIDED TO ANY PROSPECTIVE INVESTOR UPON WRITTEN REQUEST TO THE COMPANY.

THIS OFFERING IS BEING MADE TO QUALIFIED INVESTORS AND NOT TO THE PUBLIC AT LARGE. THE COMPANY RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO REJECT ANY OR ALL SUBSCRIPTIONS FOR THE UNITS AND WITHDRAW THIS OFFERING FROM ANY OR ALL OF THE OFFEREEES AT ANY TIME WITHOUT FURTHER NOTICE.

NO ACTION HAS BEEN TAKEN BY THE COMPANY THAT WOULD, OR IS INTENDED TO, PERMIT A PUBLIC OFFER OF THE SECURITIES IN ANY COUNTRY OR JURISDICTION WHERE ANY SUCH ACTION FOR THAT PURPOSE IS REQUIRED. ACCORDINGLY, THE SECURITIES MAY NOT BE OFFERED OR SOLD, DIRECTLY OR INDIRECTLY, AND NEITHER THIS MEMORANDUM NOR ANY OTHER INFORMATION MEMORANDUM, PROSPECTUS, FORM OF APPLICATION, ADVERTISEMENT OR OTHER DOCUMENT OR INFORMATION MAY BE DISTRIBUTED OR PUBLISHED IN ANY COUNTRY OR JURISDICTION EXCEPT UNDER CIRCUMSTANCES THAT WILL RESULT IN COMPLIANCE WITH ANY APPLICABLE LAWS AND REGULATIONS.

WITH RESPECT TO CERTAIN STATES, THE COMPANY MUST CONFIRM THAT YOUR STATE'S SECURITIES LAWS PERMIT THE SALE OF UNITS TO YOU. ACCORDINGLY, PRIOR TO OBTAINING CLEARANCE IN YOUR STATE OF RESIDENCE, PLEASE DO NOT ATTEMPT TO SUBSCRIBE.

#### NOTICE TO MICHIGAN RESIDENTS

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE MICHIGAN UNIFORM SECURITIES ACT, AS AMENDED, PURSUANT TO AN EXEMPTION FROM REGISTRATION. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE OFFICE OF FINANCIAL AND INSURANCE SERVICES OF THE MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES ("DEPARTMENT"), NOR HAS THE DEPARTMENT PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM.

#### IRS Circular 230 Notice

The information provided in this Memorandum is not intended, and cannot be used by any person, for the purpose of avoiding penalties that may be imposed on such person by the Internal Revenue Service. This Memorandum supports the promotion and marketing of the Units offered hereby. Prospective investors should seek advice based on their particular circumstances from an independent tax advisor.

**TABLE OF CONTENTS**

	<u>Page</u>
NOTICES .....	ii
NOTICE TO MICHIGAN RESIDENTS .....	iv
IRS Circular 230 Notice .....	iv
OVERVIEW OF COMPANY .....	1
ORGANIZATION .....	1
INVESTMENT OBJECTIVES .....	1
Project Entities .....	2
Selection of Mortgage Loan Acquisitions .....	2
Existing Mortgage Loan Acquisition Opportunities .....	3
FINANCIAL PRO-FORMA .....	4
Pro-forma Notes: .....	5
Project Holding Period .....	6
Project Financing .....	6
MANAGEMENT OF THE COMPANY .....	6
Manager .....	6
Key Personnel of Manager .....	7
Compensation and Fees of Manager .....	8
Liability and Indemnification of Manager .....	8
ALLOCATION OF COMPANY ECONOMIC BENEFITS .....	8
Allocation of Profits and Losses from Operations .....	8
Cash Distributions .....	8
CAPITAL CONTRIBUTIONS; ADDITIONAL CAPITAL; DILUTION .....	█
TRANSFER, REMOVAL OR WITHDRAWAL .....	█
LIMITED LIABILITY .....	10
FISCAL YEAR, REPORTS, RECORDS AND MEETINGS .....	10
DISSOLUTION OF THE COMPANY .....	10
AMENDMENT OF THE OPERATING AGREEMENT .....	11
DESCRIPTION OF OFFERING .....	11
Qualified Investors .....	11
How to Subscribe .....	12
ESTIMATED USE OF PROCEEDS .....	14

TAX CONSEQUENCES .....	14
General .....	15
Status as a Partnership for Tax Purposes .....	15
Character of Income and Loss .....	15
Taxable Year and Tax Reporting .....	15
Taxation of Members .....	15
Allocations of Company and Project Entities Tax Items .....	16
Deductions .....	16
Limitations on Use of Company's Losses and Deductions.....	16
Basis Limitations .....	16
At Risk Limitations .....	16
Passive Loss Limitations .....	16
Other Tax Risks .....	17
RISK FACTORS .....	17
No Operating History .....	17
Competition, General Mortgage Loan Buying and Real Estate Investment Risks.....	17
Conflicts of Interest.....	18
Tax Conflicts .....	18
Lack of Control Over Certain Project Entities and the Mortgage Loan Acquisitions .....	18
Offering Price .....	19
Restrictions on Transfer; Lack of Trading Market .....	19
Risk of Dilution .....	19
Uninsured Losses .....	19
Environmental Liability Risks.....	19
Tax Risks.....	20
Changes in Tax Law.....	20
Possibility of Audit .....	20
Individual Tax Considerations.....	20
Partnership Tax Issues.....	20
Inclusion of the Company's Taxable Income.....	21
Income on Disposition of Company's Property or Units.....	21
Unrelated Business Taxable Income.....	21
MEMORANDUM UPDATES; DEFINITIONS .....	21

## OVERVIEW OF COMPANY

### ORGANIZATION

**THIS MEMORANDUM CONTAINS SUMMARIES OF VARIOUS AGREEMENTS, DOCUMENTS, INFORMATION AND LEGAL AUTHORITIES WHICH DO NOT PURPORT TO BE COMPLETE AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE ORIGINAL AGREEMENTS, DOCUMENTS, INFORMATION AND LEGAL AUTHORITIES MENTIONED HEREIN, ALL OF WHICH SHALL BE PROVIDED TO ANY PROSPECTIVE INVESTOR UPON WRITTEN REQUEST TO THE COMPANY.**

Cliff Investment Fund LLC (“The Company”) was formed on December 17, 2012, as a Michigan limited liability company, for the purpose of acquiring defaulted mortgage loans at a discount to the outstanding loan balance from banks and other lender sources, through entities formed by the Company for such purpose, and by investment in other entities which may have already acquired interests in such mortgage loans. The Company has no operating history. The duration of the Company shall continue until it is dissolved as provided under the Operating Agreement. The Company is managed exclusively by the Manager of the Company. **See Management of Company.**

The Company’s business and operations are governed by the terms and provisions of the Company’s Operating Agreement, a copy of which is attached as Exhibit A to this Memorandum. The rights and obligations of Members of the Company, including voting rights, the management and operation of the Company, and the allocation and distribution of Company profits, losses and cash, are governed by and set forth in the Operating Agreement. Prospective investors should carefully review the Operating Agreement and each investor shall be required to agree to and accept all of the terms and provisions of the Operating Agreement.

### INVESTMENT OBJECTIVES

**NO REPRESENTATION OR ASSURANCE OF ANY KIND IS INTENDED OR SHOULD BE INFERRED WITH RESPECT TO THE ECONOMIC RETURN THAT MAY RESULT FROM AN INVESTMENT IN THE UNITS. NO ASSURANCE CAN BE GIVEN THAT CHANGES IN ECONOMIC OR OTHER CIRCUMSTANCES WILL NOT ADVERSELY AFFECT THE COMPANY AND ANY INVESTMENT IN THE COMPANY. NO ASSURANCE CAN BE GIVEN THAT THE FINAL TERMS OF ANY PROJECT INVESTED BY THE COMPANY WILL NOT VARY FROM ANY GENERAL TERMS SUMMARIZED IN THIS MEMORANDUM.**

The primary investment objective of the Company is to obtain investment gains through the acquisition of defaulted mortgage loans that will be acquired at a discount from various banks and other sources, which loans are all to be secured by first-priority mortgages on various properties that are located in Michigan (the “Mortgage Loan Acquisitions”). Based on assumptions outlined in the FINANCIAL PRO-FORMA below and subject to all sections of this Memorandum the Manager projects an approximate 24% pre-tax internal rate of return for the Investment Members. Mortgage Loan Acquisitions may or may not produce interim operating

income for the Company subject to restructuring and negotiations of any such mortgage loans with the underlying borrowers. Accordingly, while there may be some interim cash return generated in connection with the Mortgage Loan Acquisitions, it is also possible that any return of the investment will be solely supported through the sale of foreclosed property, the resale of any such mortgage loans or the refinancing or pay-off of such mortgage loan that may result from negotiations with any borrowers.

***Project Entities.*** The Company may pursue the Mortgage Loan Acquisitions by investing in other entities, which may be formed by the Company or other parties (each a "Project Entity" or in plural "Project Entities"). To this end, the Company may acquire part or all of the ownership interests in a Project Entity that already exists and which may already own certain mortgage loans. While not currently anticipated, it is also possible that the Company may acquire an interest in a Project Entity in certain circumstances as a limited partner, member or investor and, in which case, it is possible that the Company may not manage, operate or control the Project Entity. Project Entities invested in by the Company may also be invested in, managed, operated and/or controlled by the Manager or Affiliates of the Manager and the Company may control only those Project Entities which are wholly owned by the Company.

***Selection of Mortgage Loan Acquisitions.*** The Manager will be responsible for selecting the Project Entities and the Mortgage Loan Acquisitions in which the Company will invest, as well as the nature of the Company's investment in Project Entities. In evaluating each of the Mortgage Loan Acquisitions and Project Entities in which the Company will invest, the Manager has considered various criteria, including the following:

- (a.) Each Mortgage Loan Acquisition must involve a mortgage loan that is being acquired for a discount off of the outstanding principal loan balance.
- (b.) Each of the Mortgage Loan Acquisitions will be secured by first-priority mortgage loans on real property located in the Michigan area.
- (d.) Underlying real property will include land intended for a mixture of uses including but not limited to residential, commercial, retail and industrial/office.
- (e.) Based upon the reasonable projection of the Manager, Mortgage Loan Acquisitions will be selected that enable the Company to sell its ownership interest in such Mortgage Loan Acquisitions within two to five years.
- (f.) The capitalization for each Mortgage Loan Acquisition and potential income earned will be determined so that the Company has sufficient funds to pay all acquisition costs of the Mortgage Loan Acquisition and retain sufficient funds for taxes and other expenses.
- (f.) Each Mortgage Loan Acquisition may or may not be supported by personal guaranties, and such personal guaranties may be considered as a potential source of recovery, but will not be relied on as the sole source of recovery.

- (g.) Each Project Entity profitability projections are sufficient enough for the Manager to believe that Company investment objectives of a minimum of ten percent (10%) internal rate of return will be met, or exceeded.

Notwithstanding the foregoing, there is a possibility that certain criteria may be overlooked or otherwise not realistic to achieve in light of the fact that the Company may benefit by acquiring a portfolio of loans from one seller and not individual mortgage loans. Accordingly, the Company will analyze a portfolio of loans as a collective whole to evaluate the overall portfolio and may need to acquire some mortgage loans that are less desirable than others in order to obtain an entire portfolio that when evaluated as a whole will still produce the returns desired by the Company.

***Existing Mortgage Loan Acquisition Opportunities.*** Two opportunities to have already been identified and will be acquired by the Company as follows: The Company has entered into a purchase agreement with Blue Nile Holdings, LLC, to acquire (through another entity formed by Company) a portfolio of four mortgage loans, and the Company will also acquire all of the membership interests of CP Squared Capital, LLC, an entity affiliated with Manager, which is currently under contract with MB Financial to acquire the one mortgage loan identified in number 5 below this paragraph with Jones Property Development, LLC as the borrower. The loan portfolios to be acquired (through acquisition of a membership interest in Blue Nile Holdings, LLC and of CP Squared Capital, LLC, as applicable) will both ultimately be acquired for a total purchase price of \$3,530,000. The combined five mortgages have an unpaid collective balance (including principal, past due interest, fees and borrower payments) of approximately \$14,393,372. **(PLEASE NOTE, HOWEVER, THAT IT IS NOT EXPECTED THAT THE COMPANY WILL EVER REALIZE OR RECOVER THE AFOREMENTIONED UNPAID PRINCIPAL BALANCE OR ANYWHERE NEAR THIS AMOUNT.)** Blue Nile Holdings, LLC has already entered into a forbearance arrangement with two of the borrowers identified in numbers 1 and 2 below this paragraph, and Manager expects to enter into another forbearance agreement with the borrower identified in Note 5 and is expected to foreclose on the real property or negotiate forbearance agreements with the remaining two borrowers that are operating the gas stations. A general description of the secured real property for each of the mortgage loans to be acquired is as follows:

1. **Borrower:** Detroit Landholdings [REDACTED], L.L.C

*General Description of Secured Real Property:* Approximately 16,817 square foot commercial/industrial block building located in Detroit, Michigan that is currently leased by Grainger Industrial Supply under a lease that has approximately another 3 years remaining on its initial lease term at a rental rate of approximately \$10,000 per month.

2. **Borrower:** Detroit Landholdings [REDACTED], LLC

*General Description of Secured Real Property:* Approximately 39,947 square foot commercial/industrial block building located in Detroit, Michigan that is currently being used by a collision business pursuant to a month-to-month lease.

3. **Borrower:** West Gate B.P., LLC

*General Description of Secured Real Property:* Operating gas station located at [REDACTED]

4. **Borrower:** C & H Real Estate Cooley Lake, LLC

*General Description of Secured Real Property:* Operating gas station located at [REDACTED]

5. **Borrower:** Jones Property Development, LLC

*General Description of Secured Real Property:* An operational 18 hole golf course in Okemos, Michigan and approximately 250 entitled and unsold residential lots situated on an approximately 300 plus acre development. (Note also that approximately one-half of the infrastructure is in place for the sale of the residential lots.)

### **FINANCIAL PRO-FORMA**

The financial forecasts set forth below have been compiled by the Manager, based upon certain assumptions made by the Manager concerning future events and circumstances with respect to the Company. The achievement of any such financial forecasts may be affected by fluctuating economic conditions and is dependent on the occurrence of future events that cannot be assured. Some assumptions inevitably will not materialize and unanticipated events and circumstances may occur subsequent to the date of this Memorandum. **THE ACTUAL RESULTS ACHIEVED MAY VARY FROM THE FORECASTS AND ILLUSTRATIONS AND SUCH VARIATIONS MAY BE MATERIAL.**

Pro-Forma Cash Flow	2013	2014
Interest from Detroit (See Note 1)	\$100,000	
Extension Fee Detroit (See Note 1)	\$6,000	
Payoff of Detroit (See Note 1)	\$1,200,000	
Interest from C and H (See Note 2)	\$50,000	
Payoff of C and H (See Note 2)	\$500,000	
Pay down of Jones Dev. (See Note 3)	\$2,400,000	
Sale of West Gate Property (See Note 4)		\$725,000
Totals	\$4,256,000	\$725,000

Investor Member Schedule	Acquisition Cost	2013	2104
Investor 10% Return		\$360,000	
Investor Capital Contribution		\$3,600,000	
Investor Participating Split		\$177,600	\$435,000
	-\$3,600,000	\$4,137,600	\$435,000

Investor Member Projected IRR	24.63%
-------------------------------	--------

***Pro-forma Notes:***

1. Detroit Landholdings [REDACTED], L.L.C and Detroit Landholdings [REDACTED], LLC referred to above as (the "Detroit Notes") are under a collective memorandum of understanding (forbearance arrangement). As part of the forbearance arrangement, a fixed interest rate of 10%, payable monthly, and a stipulated outstanding loan amount of \$1,200,000 (after a down payment of \$200,000 that has already occurred) has been negotiated with the borrower of the Detroit Notes. To support the monthly interest payments, Blue Nile receives rent checks from the tenant, Grainger Industry Supply, in an amount of \$10,000 per month. The initial extension of the maturity date is through April 30, 2013. If the borrowers of the Detroit Notes desire to extend the loans beyond April 30, 2013, they will have to pay an extension fee of \$6,000 for the first six month extension and an extension fee of \$11,000 for a subsequent six months. At each extension, borrowers must make a down payment towards the loans in the amount of \$100,000. For the purposes of the projections above, Manager has assumed the Detroit Notes will be paid off in approximately one year.
2. Foreclosure of the mortgage has commenced and either a sale of the property will occur or a forbearance agreement will be in place with a negotiated reduced stipulated loan outstanding amount. Manager believes that a forbearance agreement will be negotiated with a stipulated outstanding loan amount of \$500,000 with a 10% interest payment due monthly. For the purposes of the projections above, Manager is assuming the loan will be paid off at the end of 2013.
3. A forbearance arrangement is anticipated to be negotiated with Jones Property Development, LLC wherein borrower will be required at or after closing on the mortgage loan by CP Squared Capital, LLC from MB Financial to have made a \$700,000 principal payment in exchange for an extension of the maturity date under the loan for one more year and reduction of the loan amount to a stipulated \$2,400,000 subject to compliance with the forbearance agreement. It is contemplated that the borrower will also have the ability to extend the maturity date of the loan for one additional year for a non-refundable extension fee payment of \$25,000 plus an additional \$400,000 loan payment to reduce the outstanding amount to \$2,000,000. For the purposes of the projections above, Manager assumes that the borrower will not extend the maturity of the loan after the initial year, and that ultimately the note will be sold/assigned to a third-party or otherwise paid off by the borrower for the \$2,400,000 stipulated loan amount. Note that Manager may need to use short-term bridge financing in the amount of \$700,000 or greater, which financing would be provided by the Company by Manager or its Affiliates in order to make the initial acquisition of the mortgage loan from MB Financial, which bridge financing is anticipated to be paid back with the initial projected pay-down from borrower of \$700,000.
4. Foreclosure of the mortgage has commenced and either a sale of the property will occur or a forbearance agreement will be in place with a negotiated reduced stipulated loan outstanding amount. For the purposes of the projections above, Manager is assuming that the property will be sold at the end of 2014.

**Project Holding Period.** Although the life of the investment is expected to be approximately two years; provided, however, this holding period is subject to extreme variation given the uncertain nature for sale of real estate and varying circumstances for each of the mortgage loans, and thus return of investment to the Company and ultimately to the Investors, could be substantially shorter or substantially longer than the anticipated holding period.

**Project Financing.** It is anticipated that the acquisition of the Project Entities will solely be financed with equity investments, but third-party financing, bridge financing, seller financing, or a combination of any of the foregoing depending upon the Mortgage Loan Acquisitions and the reasonable judgment of the Manager may be used.

#### **MANAGEMENT OF THE COMPANY**

The Manager shall manage the business and affairs of the Company. The Manager shall direct, manage and control the business of the Company. Except as otherwise provided in the Operating Agreement, the Manager shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things the Manager deems necessary or desirable in the furtherance of the Company's business.

The Manager shall be the manager of the Company until such time as it resigns or is removed, for "good cause" (as defined in the Operating Agreement). In performing its duties, the Manager shall be entitled to rely on information, opinions, reports, financial statements and other financial data prepared or given by qualified and licensed (when a license is required to provide such information) accountants, attorneys, investment advisors, engineers, land planners and other professionals and consultants.

The Manager is not required to manage the Company as its sole and exclusive function, and it, and its owners do have other business interests and will engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of the Operating Agreement, to share or participate in such other investments or activities of the Manager, or its member, or to the income or proceeds derived therefrom. The Manager and its member shall have a right to compete with the business of the Company, and to be entitled to enter into any business ventures that they so desire.

**Manager.** The Manager of the Company is Blue House Management Company ("Manager"). The Manager was formed on December 18, 2012 to manage the Company and has no operating history. The Manager has and is expected to have only a nominal net worth. The Manager is currently the sole member of the Company. The address and contact information of the Manager is:

Blue House Management Company

[REDACTED]

Tel: [REDACTED]

## ***Key Personnel of Manager.***

### **Peter Savarino, Chief Executive Officer**

Peter has been in the property acquisition/development business for the past fifteen years. His project experience includes multi-family apartments, office condominium and residential condominiums. He has participated from the master planning, financing, zoning as well as the construction side of the development business. His background is in the financial services industry. Peter is the co-founder of Creo Global Capital LLC. Creo Global Capital manages money for small institutions as well as high net individuals.

The majority of his recent projects/investments are in several states including Michigan, Louisiana and in the Phoenix, Arizona market. His most recent projects include The Villas in Surprise, Arizona. This was a 286-unit class A apartment complex built from scratch and was sold in 2006. Coursey Place in Baton Rouge, Louisiana, sold in 2011.

Peter also has experience in the private equity world and has sat on the Board of Directors for BioSys, sold to Eastman Chemical in 2006. He currently sits on the Board of Directors of BioLumix, Inc.

### **Chris Westfall, President**

Chris has a demonstrated track record of successful transaction execution, having advised on more than one hundred acquisition, divestiture and corporate finance related transactions. Chris is a proven investment banking professional with a broad range of knowledge and expertise in mergers and acquisitions. His career includes leading internal corporate development teams in a number of strategic acquisition and divestiture transactions. M&A advisory experience also includes representing strategic and private equity buyers in all phases of the acquisition process, and by representing subsidiaries and divisions of public companies and large privately held businesses for sale. Chris is the co-founder of Creo Global Capital LLC. Creo Global Capital manages money for small institutions as well as high net individuals

Additionally, Chris' corporate finance experience includes recapitalizations, capital restructurings and strategic advisory. He has led numerous origination and execution teams delivering advisory services and negotiating transactions with such companies as: Baird Capital, Chrysler, Eagle-Picher, Fiserv, General Electric, HIG Capital, KRG Capital, The Limited, MidOcean Partners, Omnicare, R.L. Polk, Sun Capital, TRW, and Tomkins PLC.

### **Chris Kouza, Asset Manager**

Chris is responsible for sourcing the Mortgage Acquisitions in which the Company is going to invest and already has been in the process of negotiating with several of the borrowers under the mortgage loans.

Chris is the former General Counsel for Peoples State Bank. As General Counsel for a bank, Chris became very familiar with banking regulations, commercial loan portfolios and negotiating with working-out troubled loans and assets with borrowers. Chris has parlayed his experience at

the bank, his contacts and loan work-out skills into the purchase and sale of several troubled loans involving in excess of \$100,000,000 in the past two years

***Compensation and Fees of Manager.*** The Company shall pay the Manager, as compensation for its service rendered to the Company, a one-time management fee (“Management Fee”) equal to one percent (1%) of the total Capital Contributions made by the Investor Members.

Further, in the event the Manager shall bear any actual out-of-pocket costs in connection with the acquisition of any Project, or any operating or other costs with respect to any Project or the Company (the “Closing and Operating Expenses”), the Manager shall *not* be deemed to have made any capital contributions to the Company as a result of paying the Closing and Operating Expenses. Rather such expenses shall be deemed reimbursable expenses. The Company shall reimburse such Manager for the Closing and Operating Expenses if and when the Company has sufficient Net Cash from Operations to make such reimbursement.

In addition to the above compensation, the Manager also shares in the profits and distributions of the Company. See **Allocation of Company Economic Benefits.**

***Liability and Indemnification of Manager.*** The Manager shall not be liable to the Company or to any Member for errors in business judgment or otherwise in the exercise of his authority or the taking of any other action as Manager, except in the case of the receipt of a financial benefit to which the Manager is not entitled, the Manager’s knowing violation of law, or the Manager’s approval of a distribution in violation of the Operating Agreement or applicable law (“Excluded Acts”). To the fullest extent permitted by law, the Company shall indemnify and hold the Manager harmless against any claims, suits, judgment, losses, damages or expenses (including, without limitation, interest, attorneys’ fees and court costs) incurred by the Manager (including claims of the Company or Members) as a result of any actions of the Manager, except for Excluded Acts.

#### **ALLOCATION OF COMPANY ECONOMIC BENEFITS**

The allocation of Company profits and losses, and distributions to its Members are provided for in the Operating Agreement and the following summary is qualified in its entirety by reference to the Operating Agreement.

***Allocation of Profits and Losses from Operations.*** Allocations of Profits will generally be made as follows: (a) first, to the Members to recoup Losses previously allocated to them; (b) second, to the Investor Members in an amount equal to ten percent (10%) per annum of the Investor Members’ unreturned Capital Contributions (“Priority Return”); and (c) thereafter, to the Members, including the Manager, in proportion to their Participating Percentages (i.e. 60% to the Investor Members and 40% to the Manager).

Allocation of Losses will generally be made as follows: (a) first, to recoup Profits previously allocated to the Members; (b) thereafter, to the Members in accordance with their Participating Percentages, to the extent of each Member’s Capital Account.

***Cash Distributions.*** Once the Manager determines that the Company has sufficient net cash available for distribution to the Members, current distributions are made to the Members in the

following order: (a) first, pro rata to the Investor Members in an amount equal to ten percent (10%) per annum of the Investor Members' unreturned Capital Contributions; (b) second, pro rata to the Investor Members until the Investor Members have received cash distributions equal to their total Capital Contributions and (c) thereafter, to the Members, including the Manager, in accordance with their Participating Percentages (i.e. 60% to the Investor Members and 40% to the Manager). Other than the payment of the one-time fee to the Manager or the reimbursement of costs more specifically discussed in the Operating Agreement, all Investor Members will receive their cumulative Priority Return and a return of their invested capital before the Manager receives cash distributions from the Company.

Upon any liquidation of the Company, distributions are made to the Members as follows: (a) first, pro rata to the Investor Members in an amount equal to ten percent (10%) per annum of the Investor Members' unreturned Capital Contributions; (b) second, pro rata to the Investor Members until the Investor Members have received cash distributions equal to their total Capital Contributions; and (c) thereafter, to the Members in accordance with their respective positive Capital Account balances, as adjusted for all allocations of Profits and Losses and previous distributions as required in the Operating Agreement.

#### **CAPITAL CONTRIBUTIONS; ADDITIONAL CAPITAL; DILUTION**

The initial capital contributions of the Investor Members consist of the amounts paid for Units in the Company. The Manager has made a capital contribution of \$1 for the Membership Interest of the Manager of the Company.

In the event that the Manager determines that the Company needs additional funds, the Manager may request additional capital from the Investor Members. As stated in further detail in the Operating Agreement, no Investor Member is obligated to make any additional capital contributions to the Company, however, in the event that not all the Investor Members contribute their proportionate share of the additional capital, the Manager will adjust all of the Investor Members' Participating Percentages to reflect the unequal capital contributions made by the Investor Members.

The Manager may also solicit additional capital contributions from persons other than existing Investor Members. In such a case, the Participating Percentages of all the Investor Members (including newly admitted Members), shall be adjusted to reflect each Investor Member's capital contribution. Neither the Manager's Membership Interest or Participating Percentage will be affected by any additional capital contributions from the Investor Members or by the addition of additional Investor Members. The Manager's Participating Percentage will remain fixed at forty percent (40%).

#### **TRANSFER, REMOVAL OR WITHDRAWAL**

**THERE IS NO EXISTING MARKET FOR AN INVESTMENT IN THE COMPANY AND NONE IS EXPECTED TO DEVELOP IN THE FUTURE. INVESTORS WILL BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. INTERESTS IN THE COMPANY WILL BE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, AND**



**CANNOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE COMPANY'S OPERATING AGREEMENT, AND AS PERMITTED UNDER THE SECURITIES ACT, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO A REGISTRATION OR AN EXEMPTION THEREFROM.**

The Operating Agreement provides that no Member shall be entitled to transfer, assign, convey, sell encumber or any way alienate his Membership Interest except with the prior written consent of the Manager and upon compliance with the Securities Act and applicable state securities law requirements. No Member shall have the right to withdraw his capital contributions or to demand and receive property of the Company or any distribution in return of his capital contributions, except as specifically provided in the Operating Agreement.

#### **LIMITED LIABILITY**

Members of the Company are not liable, in such capacity, for any debts or obligations of the Company, except to the extent of their respective capital contributions and any amounts wrongfully distributed to them by the Company.

#### **FISCAL YEAR, REPORTS, RECORDS AND MEETINGS**

The fiscal year of the Company and methods of accounting shall be established by the Manager. The Manager shall provide annual reports to its Members containing such financial and other information designated by the Manager or provided for in the Operating Agreement. No annual or regular meetings of the Members of the Company are required or planned. The Manager shall be responsible for scheduling the time and place of any meetings of the Members of the Company and notifying the Members thereof. The Manager shall maintain the books and records of the Company, which shall be available for inspection to the Members or for any proper purpose upon reasonable notice and during normal business hours.

Additionally, the Manager anticipates providing to all Investor Members a Cliff Investment Fund LLC update letter on a periodic basis, which is intended to include an analysis of activity related to all fund assets, and acquisition and disposition activities, as applicable, related to the fund.

#### **DISSOLUTION OF THE COMPANY**

Pursuant to the Operating Agreement, the Company shall be dissolved and its affairs wound up, upon the first to occur of the following events ("Liquidating Events"): (a) the sale of all of the Company's assets; (b) the consent of a Majority-in-Interest of the Members; or (c) the entry of a decree of dissolution against the Company. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors, Manager and Members. The Manager shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property, and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed pursuant to the terms of the Operating Agreement.

## **AMENDMENT OF THE OPERATING AGREEMENT**

Amendments to the Operating Agreement that: (a) are of an inconsequential nature and do not affect the rights of the Members in any material respect, or (b) are in the opinion of counsel to the Company necessary to maintain the status of the Company as a “partnership” for federal income tax purposes, or (c) are required to admit a new Member due to additional capital contributions, may be made by the Manager through use of the powers of attorney granted in the Operating Agreement. All amendments other than those permitted shall require the affirmative consent of a Majority In Interest of the Members of the Company.

## **DESCRIPTION OF OFFERING**

This Offering is a private offering of thirty-six (36) Units to Qualified Investors. The purchase price for each Unit is \$100,000. The purchase price has been determined by the Manager in its judgment, taking into consideration the amount of money needed for investment. The purchase price has not been the subject of arm’s length negotiation. The minimum investment is one Unit absent the consent of Manager. The Manager may, in its discretion, accept subscriptions of fractional Units.

The term of the Offering (“Offering Period”) will commence on the date of this Memorandum and will terminate on December 31, 2012 provided however, the Manager may extend the Offering Period to a date not later than January 31, 2013, in the sole discretion of the Manager. Notwithstanding anything contained herein to the contrary, the Company has broad discretion to the use of proceeds from the Offering and the Investor Members will be relying on the judgment of the Manager regarding the application of such proceeds. In addition, the Manager may, in its sole discretion, elect to close the Offering without having raised the full \$3,600,000, which may negatively impact the Company’s ability to close upon the acquisition of the Properties and to meet loan closing conditions and covenants, as well as the Company’s financial condition and results of operations. Further, Manager shall also have the right to acquire Units and put in its own equity to complete the Offering except that any investment by Manager or its Affiliates will be on the same terms and conditions as the Investor Members.

This Offering is not underwritten and the Company has not employed any placement agent, broker or sales persons in connection herewith. The Company intends to offer the Units solely through the efforts of the Manager of the Company.

***Qualified Investors.*** Participation in purchase of the Units is suitable only for persons of adequate financial means, who can bear the risk of loss of the entire investment, and who have no need for liquidity with respect to their investment. To participate in the investment, an Investor must be a “Qualified Investor” at the time of the investment, which, for this purpose, means a Person that the Manager believes is “accredited” within the meaning of Regulation D promulgated under the Act. An accredited investor includes the following:

- (a.) A natural person whose individual net worth or joint net worth with that person’s use as of the date hereof is in excess of \$1,000,000;
- (b.) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of

\$300,000 in each of those years and has reasonable expectation of reaching the same income level in the current year;

- (c.) A director or executive officer of the Manager;
- (d.) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and either:
  - The investment decision has been made by a plan fiduciary, as defined in Section 3(21) of ERISA, which is either a bank, savings and loan association, insurance company or registered investment adviser, or
  - The employee benefit plan has total assets in excess of \$5,000,000, or
  - If a self-directed plan, investment decisions are made solely by persons that are accredited investors and all participants and beneficiaries in such plan are accredited investors;
- (e.) A trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring Interests, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of Regulation D under the 1933 Act;
- (f.) An entity in which each of the equity owners are accredited investors as defined in Rule 501(a) of Regulation D. (This category may include revocable living trusts, but no any other form of trust.); or
- (g.) Any other person or entity otherwise qualifying as an accredited investor under Regulation D promulgated under the Act.

By signing and delivering the Subscription Agreement evidencing its obligation to subscribe for Investor Member interests, the Investor will represent and warrant to the Company and the Manager that it satisfies the foregoing suitability standards. The Manager also may, in its discretion, require prospective Investors to furnish additional financial or other information or guaranties and make or cause to be made such additional inquiries as may be necessary or appropriate to determine whether or not a prospective Investor may or should be admitted to the Company.

Prospective Investors are cautioned that investment in the Units may not be suitable or appropriate for all prospective Investors who satisfy the Qualified Investor standards. For this reason, each prospective Investor is encouraged to consult with its own financial, legal and tax advisors prior to making an investment in the Units.

**How to Subscribe.** A prospective Investor who is a Qualified Investor may subscribe by completing and submitting the following "Subscription Documents":

- (a.) Completing and executing the Purchaser Questionnaire which is Exhibit B to this Memorandum;

- (b.) Executing the Investor Member Signature Page to the Operating Agreement which is Exhibit C-1;
- (c.) Completing and executing the Subscription agreement which is Exhibit C-2 to this Memorandum;
- (d.) Delivering to the Manager the foregoing documents and a check in the amount of \$100,000 per Unit made payable to Cliff Investment Fund LLC to be held in a Company bank account at Bank of America until the initial Closing. At Investor's option, in lieu of delivering the check described in subsection (d), Investor Member may elect to wire such funds in accordance with wiring instructions to be provided by Manager; and
- (e.) Completing and executing the W-9 Form which is Exhibit C-3 to this Memorandum.

The Manager shall (i) record the receipt of Subscription Documents, (ii) deposit the check referred to in (d) above to the bank account with Bank of America, and (iii) review the Purchaser Questionnaire and Subscription and notify each Investor within thirty (30) days of receipt of its Subscription Documents if its subscription has been accepted or rejected. A closing will take place at a time selected by the Manager after acceptable subscriptions for the thirty-six (36) Units have been received ("Closing"). Notwithstanding the foregoing, the Company has broad discretion as to the use of proceeds from the Offering and Investors will be relying on the judgment of the Manager regarding the application of such proceeds so the Manager may, in its sole discretion, elect to close the Offering without having raised the full \$3,600,000 and obtaining subscriptions for thirty-six (36) Units and to cause the Company to accept less than the full Offering amount, and proceed to Closing on any of the Mortgage Loan Acquisitions or Project Entities prior to the subscription of all thirty-six (36) Units provided that the Company has enough funds, in Manager's discretion, to make such investments in the Mortgage Loan Acquisitions or Project Entities, as applicable. At the Closing or earlier closing of any of the Mortgage Loan Acquisitions, Investors will be admitted as Investor Members, the interests of the Investors previously admitted will be reduced to reflect their share of the total commitment of Capital Contributions to the Company, the subscription proceeds shall be delivered to the Company (and interest earned thereon shall be returned to each Investor), and the Subscription Documents will be released from escrow and closing documents distributed to the purchasers of the Units. If subscriptions acceptable to the Manager in amount sufficient to make any Mortgage Loan Acquisitions have not been received by the Extended Offering Termination Date or if the Manager determines that the Mortgage Loan Acquisitions are not feasible by the Extended Offering Termination Date, the Manager will return the Subscription Documents and shall return the sums submitted pursuant hereto (including any interest earned on the sums in such bank account, while held in trust net of standard bank charges) to the subscribers.

### ESTIMATED USE OF PROCEEDS

The following table reflects the Company's estimated use of the gross proceeds derived from the sale of the Thirty-Six (36) Units:

	Maximum Offering 36 Units	
	Dollar Amount	%
SOURCES:		
Gross Proceeds (estimated)	\$3,600,000	100.00%
USES:		
Organization and Offering Expenses <sup>1</sup>	\$34,000	.94%
Management Fee	\$36,000	1.00%
Investments in the Mortgage Loan Acquisitions and Company Reserves <sup>2</sup>	\$3,530,000	98.06%
<b>TOTAL APPLICATION OF GROSS PROCEEDS</b>	<b>\$3,600,000</b>	<b>100.00%</b>

<sup>1</sup> Includes legal, accounting, printing and other expenses of the organization of the Company and the offering of Units. The Manager will be reimbursed for third-party organization and offering expenses including, without limitation attorneys' fees, if any, advanced on behalf of the Company.

<sup>2</sup> Company Reserves shall be determined by the Manager and may fluctuate from time to time. Reserves may be used for either loans or additional capital contributions to any of the particular Mortgage Loan Acquisitions as the Manager shall deem necessary, to cover operating expenses relative to any of the Mortgage Loan Acquisitions or the underlying properties securing any such mortgage loans such as by way of example only protective advances for real property taxes.

### TAX CONSEQUENCES

**NO REPRESENTATION, ASSURANCE OR ADVICE IS GIVEN WITH RESPECT TO THE TAX CONSEQUENCES RESULTING FROM AN INVESTMENT IN THE COMPANY AND EACH INVESTOR SHOULD CONSULT WITH ITS OWN TAX ADVISOR WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. ANY STATEMENTS CONTAINED HEREIN REGARDING ANY FEDERAL TAX ISSUE IS NOT INTENDED AS TAX ADVICE AND CANNOT BE USED BY ANY PERSON FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH PERSON UNDER THE INTERNAL REVENUE CODE.**

**General.** The discussion below is only a summary of a limited number of the federal income tax considerations applicable to an investment in the Company, and does not address state or local tax considerations or the special tax consequences that would apply to non-U.S. investors, tax-exempt investors or other investors having a special legal status (such as dealers, banks, thrifts, trusts, or insurance companies), or investors holding their Units other than as a capital asset. The discussion below is based upon the Internal Revenue Code, existing judicial decisions, and administrative regulations and published rulings, each of which is subject to change, possibly on a retroactive basis. Because of the limited scope of the discussion provided below, and because the tax consequences of an investment in the Company will vary depending on individual circumstances, prospective investors are strongly urged to consult with their own tax advisors before making an investment in the Company. This summary is not intended as tax advice to the Members of the Company or to any prospective investors.

**Status as a Partnership for Tax Purposes.** The Company intends to take the position that it will be treated as a partnership, and not as an association taxable as a corporation, for federal income tax purposes. As a consequence, the Company should not itself be subject to federal income tax, but each Member will be required to report its distributive share of the Company's income, gain, loss, deductions and credits (including the Company's share of all such items of each Project Entities) on such Member's tax returns.

**Character of Income and Loss.** Each Member will be required to report on its income tax return such Member's distribute share of the Company's taxable income or tax loss (and any other relevant tax items) for the Member's taxable year with or within which the taxable year of the Company ends. The character of such items, whether capital or ordinary, for federal tax purposes will be determined by the Company and each Project Entity. Depending on the extent of their development activities, the Company or a Project Entity may be considered a "dealer." For federal income tax purposes, a "dealer" is one who holds property primarily for sale to customers in the ordinary course of its business. It is not clear whether the Company or any Project Entity will be considered a "dealer" for federal income tax purposes. If the Company or a Project Entity is deemed a "dealer" the gain from the sale of property will be considered ordinary in nature and taxed at a higher rate for federal income tax purposes.

**Taxable Year and Tax Reporting.** The Company anticipates using the calendar year as its Fiscal Year and taxable year and will file information tax returns for each taxable year. The Company will provide each Member with income tax information relevant to such Member's income tax return. In general, Members of the Company must treat the Company's tax items on their own federal income tax returns consistently with the Company's treatment of such items on their information returns.

**Taxation of Members.** As noted above, each Member will be required to report on its income tax return such Member's distributive share of the Company's taxable income or tax loss (and any other relevant tax items) for the Member's taxable year with or within which the taxable year of the Company ends, regardless of the amount (if any) of the cash distributions that have been made to such Member by the Company for such year and regardless of whether any such distribution, together with all prior distributions to such Member, are sufficient to return such Member's Capital Contributions. Thus, it is possible that Members will incur tax liabilities that exceed the amount of cash distributions made to them. In that event, Members could be required

to satisfy from other sources their tax obligations arising from allocations of income to them by the Company. In general, a Member will be taxed on cash distributions only to the extent that such distributions exceed the Member's tax basis in its Interest in the Company (which Member's tax basis in its Interest will vary from time to time in accordance with rules prescribed by the Code). Members are urged to consult with their own tax advisors concerning the flow-through of the Company's taxable income to the Members and the effect of cash distributions.

***Allocations of Company and Project Entities Tax Items.*** The Operating Agreement contains allocations of Profits, Losses and other tax items, including various special allocations. Allocations of tax items will also be made between the Company and the other owner(s), if any, of each Project Entity tax items in the applicable partnership or operating agreement of such Project Entity. Although it is believed that such allocations generally will be respected for federal income tax purposes, there can be no assurance that the Service will not successfully assert a contrary position. If some or all of the allocations contained in the Operating Agreement or a Project Entity's partnership or operating agreement were to be disregarded, the Members' respective shares of Profits, Losses and other tax items could be materially and adversely affected.

***Deductions.*** The Company expects that it and the Project Entities will generally claim deductions for fees, expenses and other items when permitted by applicable law. However, it is possible that the Service could attempt to challenge the treatment of any such item, as to timing, amount or character. If the Service is successful in any such challenge, the effect could be to increase the income allocable to the Investor Members, which could correspondingly increase their tax liability.

***Limitations on Use of Company's Losses and Deductions.*** Each Member's ability to claim its distributive share of the Company's income tax loss or deductions is subject to a number of limitations. If any one of these limitations are applicable, a Prospective Investor's ability to use its distributive share of the Company's income tax loss or deductions to offset other income will be limited.

***Basis Limitations.*** A Member cannot claim Company losses in excess of his basis in the Company. Generally, a Member's basis equals his cash contributions to the Company, adjusted for allocated income, gains, losses and distributions, and further adjusted for his allocable share of liabilities.

***At Risk Limitations.*** A Member may only claim a loss from a business or investment activity to the extent of the amount for which the Member is "at risk" for such activity. A taxpayer is generally not considered at risk with respect to amounts borrowed if the debt is non-recourse.

***Passive Loss Limitations.*** For individual, trusts and personal service corporations, there are restrictions on deducting losses resulting from "passive activities." Losses from passive activities can only be used to offset income from other passive activities; losses from passive activities can not be used to offset other forms of income such as salaries, wages and certain investments. The Code defines a passive activity as a trade or business in which the taxpayer does not

“materially participate.” Investment in the Company will be considered an investment in a passive activity and any gains or losses will be characterized as passive gains or losses.

**Other Tax Risks.** An investment in the Company carries with it certain other material tax considerations and risks, including (i) the possibility that the relationship between the Company (and/or a Project Entities) and some other party may be re-characterized in a fashion that would adversely affect the anticipated tax treatment of the Company (and/or an Project Entities) and its Members; (ii) the possibility that tax benefits of an investment in the Company that are available for federal income tax purposes may not be available for state and/or local income tax purposes; (iii) the possibility that the state taxing authorities may take positions with respect to state income tax matters which are not consistent with the Service’s position with respect to federal income tax matters, even though state law may be the same as federal law regarding the issues involved; and (iv) the possibility that an investment in the Company may impact the alternative minimum tax, as it may be applicable to a Member. Prospective investors should consult with their own tax advisors with regard to these and other matters.

### **RISK FACTORS**

**ANY INVESTMENT IN THE COMPANY IS SPECULATIVE AND INVOLVES A HIGH DEGREE OF RISK WITH NO ASSURANCE OF ANY ECONOMIC RETURN.**

**IN ADDITION TO THE FOLLOWING IDENTIFIED RISKS, BUSINESSES ARE OFTEN SUBJECT TO RISKS NOT FORESEEN OR FULLY APPRECIATED BY MANAGEMENT. PRIOR TO INVESTING IN THE UNITS, A PROSPECTIVE INVESTOR, ITS LEGAL AND FINANCIAL ADVISORS SHOULD REVIEW AND CONSIDER THE FOLLOWING RISKS ASSOCIATED WITH SUCH AN INVESTMENT. IN REVIEWING THESE RISK FACTORS, POTENTIAL INVESTORS AND THEIR ADVISORS SHOULD KEEP IN MIND THAT OTHER POSSIBLE RISKS COULD HAVE A MATERIAL IMPACT ON THE COMPANY AND ITS BUSINESS.**

**No Operating History.** The Company is newly organized, has not engaged in any business operations to date, and accordingly, has no operating history. The Company was organized for the purposes of investing in Project Entities and investing in Mortgage Loan Acquisitions. No assurance can be given regarding the Company’s success in identifying financially beneficial real estate development opportunities and no assurances can be given regarding the Company’s actual results or returns. The Units are a speculative investment and no assurance can be given that the Company will be profitable in the future.

**Competition, General Mortgage Loan Buying and Real Estate Investment Risks.** The Company is in competition with other real estate and/or note-buying investors and developers located within the United States and abroad that may have greater financial and other resources available to them and more extensive experience in acquiring mortgage loans and managing or otherwise developing the underlying real estate than the Company. Competition among private and institutional purchasers of mortgage loans has increased substantially in recent years due, in part, to many real estate values coming down in past years past and the additional competition

may make it more difficult for the Company to negotiate better pricing and opportunities for the Mortgage Loan Acquisitions. The business of acquiring mortgage loans is highly sophisticated and involves certain inherent risks, including those described in this Memorandum, some of which are beyond the control of the Company and/or cannot be predicted at this time. Furthermore, the marketability and value of the Mortgage Loan Acquisitions and the underlying secured real estate depends in large part on factors beyond the control of the Company, including, without limitation, (a) changes in general or local economic conditions; (b) the availability of comparable property in an area; (c) fluctuation in interest rates; (d) changes in land-use and zoning restrictions, environmental protection and occupational safety; (e) unavailability of mortgage and/or refinance funds which may render the sale and/or refinance of property difficult; (f) the financial condition of tenants, buyers and sellers of properties; (g) changes in real estate tax rates and other operating expenses; (h) the imposition of rent controls; (i) energy and other natural resource shortages; (j) changes in the Internal Revenue Code and other tax law; and (k) acts of God, natural disasters and uninsurable losses. The mortgage loans to be acquired by the Company may be from borrower's that are in default and any mortgage loans may produce only a nominal income from payments, and in some cases, may produce no operating income. Furthermore, if the underlying real property securing any particular Mortgage Loan Acquisitions ultimately needs to be foreclosed upon, there is no guaranty that the Project Entity will be successful in its foreclosure efforts and the borrowers may put up various defenses to such foreclosure or employ other strategies such as bankruptcy which may result in significant delays and ultimately significant losses to the Company including, without limitation, the possibility that any particular mortgage loan may be uncollectable. Finally, even if the underlying property is foreclosed upon (or otherwise obtained through some similar deed-in-lieu arrangement or negotiation with a borrower), there can be no assurance that a buyer for the real estate could be found or a price obtained sufficient to generate a positive return for the Investor Members.

***Conflicts of Interest.*** The key personnel of the Manager, itself or through various Affiliates may also have businesses or other investments in the Michigan area which may be directly competitive with the Company and inconsistent with the overall goals and interest of the Company.

***Tax Conflicts.*** The Company will designate the Manager as the Tax Matters Member with responsibility for dealing with the Internal Revenue Service ("Service") in the negotiation of any settlement of disputed tax matters or in the litigation thereof. It should be noted that the tax laws impose special penalties upon promoters (a term that may include the Manager) which could give rise to a conflict on the part of Manager in negotiating with the Service on behalf of the Company and on its own behalf.

***Lack of Control Over Certain Project Entities and the Mortgage Loan Acquisitions.*** It is possible that the Company will not have voting control of a Project Entity or any other joint venture, common ownership or investment vehicle in which the Company invests the proceeds of this Offering. As such, the Company may not have the right to direct the management and decisions of a Project Entity, Mortgage Loan Acquisition or any other entity or joint venture in which the Company invests. The Company's interests may be different than the interests of other investors in the Project Entity, Mortgage Loan Acquisition or other investment and due to the lack of voting control, the Company may not be able to direct the Project Entity, Mortgage

Loan Acquisition or other investment vehicles to take actions most beneficial to the Company. In such cases, (i) the Company's partners or co-venturers might become bankrupt; (ii) the Company's partners or co-venturers might, at any time, have economic or other business interests or goals which are inconsistent with the Company's business interests or goals; and (iii) the Company's partners or co-venturers may be in a position to take action contrary to, or inconsistent with the Company's policies or objectives.

**Offering Price.** The offering price and other terms of the offering of the Units of the Company have been determined by the Company after analyzing several factors, including the projected financial results of the Company and the acquisitions that it intends on making without any independent evaluation or verification and bear no relationship to earnings, assets or other recognized criteria of value. The offering price and other terms are not based upon the historical earnings or operations of the Company and should not be considered as a representation of what the market value of the Units may be at any given time.

**Restrictions on Transfer; Lack of Trading Market.** Participation in the Company is suitable for persons of adequate means to provide for their current financial and personal needs and who have no need for liquidity of this participation. The Units are being offered in reliance upon exemptions that depend in part upon the investment intent of the Members. Units may be acquired for investment purposes only and not with a view to resale or distribution. For such reasons, there is little liquidity in an investment in the Company. The Units in the Company have not been registered under the Securities Act and cannot be resold unless the sale is registered under the Securities Act or an exemption from such registration is available. There is currently no public market for the Units, and the Company does not intend to take steps to develop a trading market for the Units. The Company's Operating Agreement contains certain additional contractual limitations on the transfer of the Units.

**Risk of Dilution.** In the event that the Manager determines that the Company needs additional funds, the Manager may request additional capital from the members. As stated in further detail in the Operating Agreement, in the event that not all the Members contribute his proportionate share of the additional capital, the Manager will adjust all the Members' Participating Percentages to reflect the unequal capital contributions made by the Members. The Manager may also solicit additional capital contributions from persons other than existing Members. In such a case, the Participating Percentages of all the Members (including newly admitted Members), shall be adjusted to reflect each Member's capital contribution.

**Uninsured Losses.** Certain types of losses, including acts of war or civil disturbance and, in certain geographic areas, flood, earthquake, hurricane and other risks of catastrophic nature are either uninsurable or not economically insurable. Should such a loss occur, the Company could lose its invested capital and any anticipated cash flows and profits therefrom.

**Environmental Liability Risks.** Under various federal, state and local laws, a real estate owner may be liable for the costs of removal or remediation of certain hazardous or toxic substances on or in such property without regard to whether the owner knew of, or was responsible for, the presence of such substances. The cost of any required remediation and the owner's liability therefore are generally not limited under such laws and could exceed the value of the property and/or the owner's aggregate assets. No assurance can be given that the environmental

assessments and updates conducted by the Company, the Project Entity or in any other entity or investment vehicles in which the Company invests and others have identified all potential environmental liabilities, that no prior owner created any material environmental condition not known to the Company the Project Entity or the independent consultants preparing such assessments, that no environmental liabilities have developed since such assessments were prepared, or that future uses or conditions (including, changes in applicable laws and regulations) will not result in the impositions of environmental liability.

**Tax Risks.** Each Prospective Investors should consult his own legal, tax and financial advisors in order to fully understand the tax risks associated with an investment in the Company as well as the individual tax ramifications that may result from being a Member. The following is a summary of some of those tax risks:

**Changes in Tax Law.** Future changes in federal tax law resulting from legislative, administrative or judicial decisions may have adverse tax consequences to a Prospective Investor's investment in the Company, which cannot be predicted.

**Possibility of Audit.** An audit of the Company's tax returns by the Internal Revenue Service ("Service") may result in the Company incurring substantial legal and accounting costs defending such an audit, even if the Service's challenge proves unsuccessful. An audit of the Company's tax returns may also result in an audit of the separate income tax returns of the Members and potentially requiring such Members to incur legal and accounting fees in defending such an audit. A successful challenge by the Service of the validity of the tax allocation provisions contained in the Operating Agreement or the appropriateness of the deductibility of the fees and payments to the Manager and their Affiliates, as applicable, may reduce the amount of the deductions available to the Members, thereby increasing their taxable income.

**Individual Tax Considerations.** The tax ramifications of being a Member in the Company is entirely dependent upon the specific tax situation of the Prospective Investor in both the current year and in future years. A prospective Investor should carefully review its specific tax situation with its tax advisor prior to investing in the Units to fully understand the tax consequences of being a Member in the Company.

**Partnership Tax Issues.** As discussed above, it is the Company's intention for the Company to be taxed as a partnership for federal, state and local income tax purposes. The goal for being taxed as a partnership is to avoid two levels of taxation, one at the Company and another level of tax when amounts are distributed. However, if the Company were to be determined to be taxable as a corporation, all of the Company's income would be subject to two levels of taxation. The Company would pay income tax on its taxable income and the Members would also pay income tax on the distributions from the Company.

***Inclusion of the Company's Taxable Income.*** Because the Company will be taxed as a partnership for federal, state and local income tax purposes, each Member will be required to include in its taxable income its distributive share of the Company's income and gain, if any. The inclusion of that income will probably generate a tax liability for the Members. Even though the Company will attempt to distribute a sufficient amount of cash to the Members to permit the Members to pay such tax liabilities, there is no assurance that the Company will have sufficient cash flow to make such distributions. Therefore, each Member may have a tax liability of an amount greater than distributions from the Company, if any. In such an event, a Member could be required to satisfy that tax obligation from other sources.

***Income on Disposition of Company's Property or Units.*** It is possible that an Investor's federal income tax liability upon a Project's sale or other disposition of property, or upon the sale or other disposition of its Units, could exceed the actual cash proceeds from the sale or disposition.

***Unrelated Business Taxable Income.*** The Company may, in some cases, be offering Units for sale to trusts and entities that are exempt from federal taxation. There is a risk that this participation may not be considered suitable for such trusts since an investment in the Company has substantial risks. In addition, the return could be characterized as unrelated business taxable income ("UBTI") for the trusts or other entity as set forth in Section 511 of the Internal Revenue Code. UBTI is income derived from any trade or business regularly carried on by the organization when the conduct of such trade or business is not substantially related to the organization's performance of its exempt function. The trustee considering participation in the Company should consult its tax advisor regarding this matter prior to investing in the Company.

#### **MEMORANDUM UPDATES; DEFINITIONS**

Certain information may be subsequently supplied to prospective investors through amendment to this Memorandum or otherwise. Investors also may ask the Company questions concerning the terms and conditions of the Offering and the Company's proposed activities and the Manager. The Company will provide answers to such questions and provide such information to the extent that it possesses such answers or information or can obtain such information without unreasonable effort or expense. Any capitalized terms used but not defined herein shall have the meaning ascribed to them in the Company's Operating Agreement.

**PROSPECTIVE INVESTORS ARE URGED TO CAREFULLY REVIEW THIS MEMORANDUM, THE OPERATING AGREEMENT, AND THE SUBSCRIPTION AGREEMENT, TOGETHER WITH SUCH OTHER INFORMATION WHICH MAY BE REQUESTED BY THE PROSPECTIVE INVESTOR, IN ORDER TO FULLY COMPREHEND AND EVALUATE ANY INVESTMENT IN THE COMPANY. PROSPECTIVE INVESTORS ARE INVITED TO ASK QUESTIONS OF, AND OBTAIN ADDITIONAL INFORMATION FROM THE MANAGER OF THE COMPANY PRIOR TO MAKING AN INVESTMENT IN THE COMPANY.**

# EXHIBIT "A"

---

EXHIBIT A

**OPERATING AGREEMENT FOR  
CLIFF INVESTMENT FUND LLC**

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED, AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS AN OPINION OF COUNSEL IS DELIVERED TO THE COMPANY THAT IS SATISFACTORY TO THE MANAGER AND STATES THAT SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

---

**OPERATING AGREEMENT  
OF  
CLIFF INVESTMENT FUND LLC  
A Michigan Limited Liability Company**

**TABLE OF CONTENTS**

ARTICLE 1 Formation of Company .....	1
1.1 Formation.....	1
1.2 Name.....	1
1.3 Principal Place of Business.....	1
1.4 Term.....	1
1.5 Intent.....	1
1.6 Statutory Agent .....	1
1.7 Purpose.....	1
ARTICLE 2 Definitions.....	2
ARTICLE 3 Capital Contributions.....	8
3.1 Initial Capital Contributions.....	8
3.2 Additional Capital Contributions.....	8
3.3 Compromise of a Member's Liability.....	10
3.4 Withdrawal of Capital.....	10
3.5 Member Loans.....	10
3.6 Additional Members.....	10
3.7 Capital Accounts .....	11
ARTICLE 4 Allocation of Profits and Losses.....	12
4.1 Allocation of Profits and Losses .....	12
4.2 Special Allocations.....	13
4.3 Curative Allocations.....	14
4.4 Code Section 704(c) Allocations.....	15
ARTICLE 5 Distributions .....	15
5.1 Net Cash.....	15
5.2 Restrictions and Distributions.....	15
ARTICLE 6 Books and Records .....	16
6.1 Accounting Method .....	16
6.2 Accounting Period.....	16
6.3 Records, Audits and Reports.....	16
6.4 Returns and Other Elections .....	16
6.5 Financial and Operations Reporting.....	16
ARTICLE 7 Management of the Company .....	16
7.1 Duties of Manager .....	16
7.2 Number, Tenure and Qualifications .....	16
7.3 Manager Has No Exclusive Duty To Company.....	16
7.4 Bank Accounts .....	17
7.5 Removal .....	17
7.6 Resignation.....	17

7.7	Vacancies .....	17
7.8	Manager's Duty of Loyalty.....	17
█	Compensation of Manager.....	17
7.10	Closing and Operating Expenses.....	18
ARTICLE 8 Powers of Manager .....		18
8.1	Powers of the Manager .....	18
8.2	Matters Requiring Approval of Members.....	19
8.3	Liability of the Manager. ....	19
8.4	Indemnification .....	20
8.5	Consent to the Acquisition of All State Associates of Pinal XIV, LLC.....	20
ARTICLE █ Rights and Obligations of Members .....		20
█	Original Members.....	20
█	List of Members .....	21
█	Limitation of Liability .....	21
█	Priority and Return of Capital.....	21
█	Representations of Members.....	21
ARTICLE 10 Meetings of Members .....		22
10.1	Special Meetings .....	22
10.2	Place of Meetings .....	22
10.3	Notice of Meeting.....	22
10.4	Meeting of All Members.....	22
10.5	Quorum .....	23
10.6	Manner of Acting .....	23
10.7	Proxies .....	23
10.8	Action by Members Without a Meeting .....	23
█	Voting by Ballot .....	23
10.10	Waiver of Notice .....	23
ARTICLE 11 Transfer and Assignment of Interests .....		24
11.1	Transfer and Assignment of Interests.....	24
11.2	Further Restrictions on Transfer of Interests .....	24
11.3	Substitution of Members.....	24
11.4	Effective Date of Permitted Transfers .....	24
11.5	Rights of Legal Representatives.....	24
11.6	No Effect to Transfers in Violation of Agreement.....	25
ARTICLE 12 Dissolution and Termination .....		25
12.1	Dissolution .....	25
12.2	Winding Up.....	25
12.3	Compliance With Timing Requirements of Treasury Regulations.....	26
12.4	Manager's Responsibility .....	26
ARTICLE 13 Miscellaneous Provisions.....		27
13.1	Inurement .....	27
13.2	No Limit on Personal Activities.....	27
13.3	Further Assurances .....	27
13.4	Execution of Additional Instruments.....	27
13.5	Membership Interests .....	27

13.6	Notice.....	27
13.7	Governing Law.....	27
13.8	Waiver of Jury Trial .....	28
■	Waiver of Action for Partition .....	28
13.10	Not for Benefit of Creditors .....	28
13.11	Amendments .....	28
13.12	Rules of Construction .....	28
13.13	Incorporation of Definitions, Recitals and Exhibits.....	29
13.14	Merger.....	29
13.15	Severability .....	29
13.16	Waivers .....	29
13.17	Legal Counsel.....	29
13.18	Company's Legal Counsel.....	30
13.19	Execution .....	30
13.20	Counterparts .....	30

## OPERATING AGREEMENT

OF

### CLIFF INVESTMENT FUND LLC

A Michigan Limited Liability Company

THIS OPERATING AGREEMENT is made by and among the Members of Cliff Investment Fund LLC, a Michigan limited liability company (the "Company").

#### ARTICLE 1 FORMATION OF COMPANY

**1.1 Formation.** On December 18, 2012, the Company was organized as a Michigan limited liability company pursuant to the Act. The Articles of Organization of this Company are hereby adopted and incorporated by reference in this Operating Agreement. In the event of any inconsistency between the Articles of Organization and this Operating Agreement, the provisions of the Articles of Organization shall govern. The parties shall from time to time execute such amendments of the Articles of Organization and do such filings, recordings and other acts as may be appropriate to comply with the Act.

**1.2 Name.** The name of the Company shall be "Cliff Investment Fund LLC."

**1.3 Principal Place of Business.** The principal place of business of the Company within the State of Michigan shall be [REDACTED]. The Company may locate its principal place of business and registered office at any other place or places as the Manager may from time to time deem advisable.

**1.4 Term.** The term of the Company shall be from the date of the filing of the Articles of Organization with the State of Michigan and shall continue in existence for the period fixed in the Articles, unless the Company is earlier dissolved in accordance with either the provisions of this Agreement or the Act.

**1.5 Intent.** It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a "partnership" for federal and state income tax purposes. It is also the intent of the Members that the Company *not* be operated or treated as a "partnership" for purposes of Bankruptcy Code Section 303. No Manager or Member shall knowingly or intentionally take any action inconsistent with the express intent of the parties.

**1.6 Statutory Agent.** The statutory agent for service of process shall be Peter Savarino, or such other person or entity as the Manager shall from time to time designate.

**1.7 Purpose.** The general purpose of the Company shall be acquiring defaulted Mortgage Loans at a discount to the outstanding loan balance from banks and other lending sources (collectively "Mortgage Loan Acquisitions."). The Company will engage in Mortgage

Loan Acquisitions by acquiring defaulted Mortgage Loans directly or through entities formed by the company for such purpose, or by investment in other entities which own Mortgage Loans.

## **ARTICLE 2** **DEFINITIONS**

Throughout this Operating Agreement, unless the context otherwise requires, the following word or words shall have the meanings specified below:

“*Act*” shall mean the Michigan Limited Liability Company Act, 1993 P.A. 23, as the same may be amended from time to time.

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

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

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

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

“*Affiliate*” means, when used with reference to a specified Person, (a) any Person who has a familial relationship by blood, marriage, or otherwise with such other Person or any Affiliate thereof, (b) any Person that directly or indirectly controls, or is controlled by, or is under common control with the specified Person, (c) any Person that is an officer or director of managing member of, or general partner in, the specified Person or of which the specified Person is an officer, director, managing member, or general partner, and (d) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of the outstanding voting securities of the specified Person, or with respect to the manager, any Person that, directly or indirectly, is the beneficial owner of any of the membership interests of the manager. “*Affiliate*” of the Company or the Manager does not include a Person who is a partner in one or more partnerships or joint ventures with (x) the Company, and (y) any other Affiliate of the Company, provided that such Person is not otherwise an Affiliate of the Company or the Manager. For purposes of this definition, “control” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meaning correlative to the foregoing.

“*Agreement*” or “*Operating Agreement*” shall mean this Operating Agreement, as originally executed and as amended from time to time.

“*Applicable Day Count Fraction*” shall mean with respect to any Distribution Period (or portion thereof), the actual number of days in such Distribution Period (or portion thereof) divided by 365.

“*Articles of Organization*” shall mean the Articles of Organization filed with the State of Michigan for the purpose of forming the Company.

“*Assignee*” shall have the meaning set forth in Section 11.3.

“*Bankruptcy Code*” shall mean the Federal Bankruptcy Code, 11 United States Code Sections 101 *et seq.*, as the same may be amended from time to time.

“*Capital Account*” shall have the meaning assigned to such term in Section 3.7.

“*Capital Contribution*” shall mean, with respect to any Member, the amount of money and the initial Gross Asset Value of any properties contributed to the Company by the Member. Capital Contribution shall include each Member’s Initial Capital Contribution and Additional Capital Contributions.

“*Capital Contribution Date*” shall mean the date on which a Member makes a Capital Contribution.

“*Closing and Operating Expenses*” shall have the meaning set forth in Section 7.10.

“*Code*” shall mean the Internal Revenue Code of 1986, as amended.

“*Company*” shall mean Cliff Investment Fund LLC, a Michigan limited liability company.

“*Company Counsel*” shall have the meaning set forth in Section 13.18.

“*Company Minimum Gain*” shall have the meaning of Partnership Minimum Gain set forth in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

“*Confidential Memorandum*” shall mean the Confidential Memorandum dated December 18, 2012 previously provided each Member.

“*Contributing Member*” shall have the meaning set forth in Section 3.2.2.1.

“*Depreciation*” shall mean, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis. If the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes, and such adjusted basis is

zero, then Depreciation of the Gross Asset Value of such asset shall be determined under any reasonable method selected by the Manager.

“*Distribution Date*” shall mean the date on which a Member receives a distribution regarding its Priority Return.

“*Distribution Period*” shall mean the applicable period from (and including) the Capital Contribution Date to (but excluding) the first Distribution Date occurring thereafter or from (and including) a Distribution Date to (but excluding) the next subsequent Distribution Date.

“*Entity*” means any general partnership, limited partnership, limited liability company, corporation, joint stock company, trust, estate, association or any other business entity.

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

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

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as reasonably determined by the Manager;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values in accordance with Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, as of the following times:

(i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution;

(ii) the distribution by the Company to a Member, as consideration for a Membership Interest in the Company, of more than a *de minimis* amount of Company property; and

(iii) the liquidation of the Company as defined in Section 1.704-1 (b)(2)(ii)(g) of the Treasury Regulations;

provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed by the Company to any Member shall be the gross fair market value of such asset on the date of distribution, as determined in accordance with the principles set forth in Section 1.704-1 (b)(2)(iv)(f) of the Treasury Regulations;

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Sections 734(b) or 743(b) but only to the extent that such adjustments are taken into account in

determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and Section 4.2.6 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the Manager determines that an adjustment pursuant to subsection (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d); and

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

The fair market value determinations contemplated herein shall be made by the Manager and either the contributing or distributee Member, as the case may be.

*"Indemnitees"* shall have the meaning set forth in Section 8.4.

*"Initial Capital Contribution"* shall mean the Initial Capital Contribution determined in accordance with Section 3.1 hereof.

*"Initial Manager"* shall have the meaning set forth in Section 7.2.

*"Investor Member"* shall mean all Members who are not a Manager.

*"Liquidating Event"* shall have the meaning set forth in Section 12.1.

*"Losses"* shall have the meaning assigned below in the definition of "Profits" and "Losses."

*"Majority-in-Interest"* shall mean Members (including the Manager) owning Participating Percentages greater than fifty (50%) percent. As of the date of this Agreement, the Members listed in Exhibit B are the only Members owning the Participating Percentages. Therefore, unless and until any other Members hold any Participating Percentages, such Members shall be the only Members voting or approving on any action requiring the vote or approval of a Majority-in-Interest of the Members.

*"Management Fee"* shall have the meaning set forth in Section [REDACTED].

*"Manager"* shall mean Blue House Management Company a Michigan corporation, or any successor Manager appointed pursuant to Section 7.7.

*"Member"* shall mean each of the Persons who executes this Agreement as a Member, including the Manager, and any other person or persons who may subsequently be designated as a Member of the Company pursuant to the terms of this Agreement.

*"Member Nonrecourse Debt"* has the meaning of Partner Nonrecourse Debt set forth in Treasury Regulations Section 1.704-2(b)(4).

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

*“Member Nonrecourse Deductions”* has the meaning of Partner Nonrecourse Deductions set forth in Treasury Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2).

*“Membership Interest”* shall mean the ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled under the Act and pursuant to this Agreement, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and with the requirements of the Act.

*“Mortgage Loan Acquisition”* shall have the meaning set forth in Section 1.7.

*“Mortgage Loan”* shall be a loan secured by real property.

*“Net Cash”* shall mean the gross cash proceeds from Company operations and sales less the portion thereof used to pay or establish reserves for all Company expenses (including any Management Fee or Closing and Operating Expenses owed to the Manager), debt payments (including Member loans), capital costs and improvements, replacements, escrow deposits, required reserves and contingencies, all as reasonably determined by the Manager. *“Net Cash”* shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established.

*“Net Invested Capital”* shall mean, with respect to each Investor Member, the excess (if any) of the cumulative Capital Contributions (whether cash or property) made by such Member pursuant to Section 3.1.2 of this Agreement, over the cumulative distributions of Net Cash Receipts made to such Member under Sections 5.1.3 and 12.2.3 of this Agreement. Contributions of services shall be disregarded.

*“Non-Contributing Member”* shall have the meaning set forth in Section 3.2.2.

*“Participating Percentages”* shall be the percentage interests in Profits and Losses of the Company initially as set forth in Exhibit A of this Agreement as adjusted pursuant to the terms of this Agreement.

*“Pending Transactions”* shall have the meaning set forth in Section 8.5.

*“Person”* or *“Persons”* shall mean individuals, partnerships, corporations, limited liability companies, unincorporated associations, trusts, estates and any other type of entity.

*“Priority Return”* shall mean an amount equal to the product of (a) the Priority Return Rate for such Distribution Period, or portion thereof, times (b) such Member’s Net Invested Capital, times (c) the Applicable Day Count Fraction for such Distribution Period or portion thereof (cumulative but not compounded).

*“Priority Return Rate”* shall mean ten percent (10%) per annum.

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

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

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

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

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

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period; and

(f) Notwithstanding the foregoing, no item of income, gain, loss, deduction or credit that is specially allocated pursuant to Section 4.2 hereof shall be taken into account in computing Profits or Losses.

*“Project Entity”* shall mean a limited partnership or a limited liability company in which the Company has invested as a limited partner or acquired an interest in and that owns (or co-owns) a Mortgage Loan. If applicable, any reference to “partnership agreement” in the case of a limited liability company shall be interpreted to mean “operating agreement” and reference to “limited partner” or “limited partner interest” shall be interpreted to mean “member” or “membership interest”.

*“Regulatory Allocations”* shall have the meaning set forth in Section 4.3.

*“Resignation”* shall mean the decision or determination of a Member no longer to continue as a Member, upon written notice to the Manager on behalf of the Company. The filing of a Resignation by any Member does not relieve the Member from any liability existing at the time of the filing of his Resignation.

“*Treasury Regulations*” or “*Regulations*” shall mean the regulations promulgated by the United States Treasury in interpreting the Code.

“*Unit*” shall have the meaning set forth in Section 3.1.2.

### **ARTICLE 3** **CAPITAL CONTRIBUTIONS**

#### **3.1 Initial Capital Contributions.**

**3.1.1 Manager's Capital Contributions.** The Manager has made a Capital Contribution to the Company of an amount set forth opposite its name on Exhibit A.

**3.1.2 Investor Members' Capital Contributions.** Each Investor Member has agreed to make a Capital Contribution to the Company in increments of \$100,000 (“Unit”). The Manager may, however, in its sole and absolute discretion accept Capital Contributions in fractional Units. The precise amount of each Investor Member's agreed-upon Capital Contribution is set forth opposite its name on Exhibit A. No Investor Member shall be required to make payments to the Company in excess of its Capital Contribution, except as required by law. An Investor Member's Capital Contribution shall be made in cash unless each other Investor Member consents in writing to a Capital Contribution in other property.

**3.1.2.1.** The aggregate Capital Contributions of the Investor Members shall be a maximum of Three Million Six Hundred Thousand Dollars (\$3,600,000) and the Manager reserves the right to close the offering at an amount less than the maximum amount if it so desires.

**3.1.2.2.** The provisions of the Operating Agreement notwithstanding, the Manager is authorized upon closing on the investment by the Company in the last Project Entity or Mortgage Loan Acquisition to correct each Investor Member's Capital Contribution so that the payments and/or Capital Contributions to each of the Project Entities or Mortgage Loan Acquisition are equal for all Investor Members based upon the respective Units, or fraction thereof, subscribed for by each Investor Member in the Partnership.

**3.1.2.3.** If the Company does not promptly use any Capital Contribution of the Investor Members to make a required capital contribution to a Project Entity, a Mortgage Loan Acquisition or to pay proper fees or expenses of the Company, the Manager shall temporarily invest such amount, pending use for either of such purposes, in short-term United States government securities, short-term securities issued or fully guaranteed by United States government agencies, short-term certificates of deposit (or time or demand deposits) in commercial banks with deposits insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of not less than \$100,000,000, commercial paper having a Moody's rating of Prime-1 or Prime-2 or a Standard & Poor's rating of A-1 or A-2, or securities of public investment companies registered with the Securities and Exchange Commission, with assets in excess of \$100,000,000 and with a significant portion of such assets being invested in substantially the same type of investment as any of the foregoing. Interest or dividends earned on amounts so invested shall be added to the Cash Flow of the Company and shall be distributed as provided in ARTICLE 5. Any Capital Contribution installment (or portion thereof) not used

or committed to pay the Company's obligations or expenses or funding of Company reserves as deemed necessary by the Manager within twelve (12) months of the date of payment thereof by the Investor Members shall be promptly returned to the Investor Members, pro rata based upon the amount of their Capital Contributions from the last capital call made, and such sums shall be deemed a return of capital.

### **3.2 Additional Capital Contributions.**

**3.2.1** If Manager determines the Company needs additional funds, after obtaining the affirmative vote or approval of a Majority-in-Interest, Manager may request the contribution of additional capital from the Investor Members, which shall be contributed in the same ratios as the Initial Capital Contributions of the respective Investor Members, by giving written notice to the Investor Members of such additional Capital Contribution needs, and a designated date when such contributions are required to be paid, which date shall be at least thirty (30) days following such notification.

**3.2.2** If any Investor Member (the "Non-Contributing Member") fails to make its share of any requested additional Capital Contribution to the Company at the time and in the amount required by this Agreement:

**3.2.2.1.** Manager shall give written notice to the other Investor Members (the "Contributing Members"), who shall have the option for a period of thirty (30) days following receipt of such notice to make some or all of the Non-Contributing Member's additional Capital Contribution in the same ratios as the Initial Capital Contributions of the respective Contributing Members or in such other proportion as the Contributing Members may agree;

**3.2.2.2.** If following such thirty (30) day period, any of the Contributing Members have not paid their respective share of the Non-Contributing Member's additional Capital Contribution, then: (a) Manager shall give written notice to the Contributing Members who did pay their share of the Non-Contributing Member's additional Capital Contribution of the amount that remains unpaid; and (b) such Contributing Members shall have the option for ten (10) days following receipt of such notice to pay the remaining amount in the same ratios as the Initial Capital Contributions of such Contributing Members or in such other proportion as such Contributing Members may agree or as Manager may approve. If following such ten (10) day period any portion of the unpaid additional Capital Contribution remains unpaid, the Manager may, at its option, pay all or part of such unpaid additional Capital Contribution;

**3.2.2.3.** Following payment of any additional Capital Contributions by Contributing Members under Section 3.2.2.1 or Section 3.2.2.2 above, the Participating Percentages of the Investor Members shall be adjusted so that each Investor Member's percentage of the total aggregate amount of the Participating Percentages held by all Investor Members equals the percentage that each Investor Member's total cash Capital Contributions bears to the total cash Capital Contributions made by all Investor Members. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the Participating Percentage of the Manager be subject to dilution pursuant to this Section 3.2.2.3.

**3.2.2.4.** Manager shall give written notice to all of the Members of the revised Participating Percentages and the Manager's determination of the unused Participating Percentage shall be final and binding upon all the Members.

**3.2.3** The remedy provided in Section 3.2.2 above is the sole and exclusive remedy against a Member that fails to make its share of any requested additional Capital Contribution to the Company.

**3.3 Compromise of a Member's Liability.** The obligation of an Investor Member to make a contribution to the Company may be compromised only by a unanimous written consent of the Members.

**3.4 Withdrawal of Capital.** No Investor Member shall have the right to withdraw his capital contributions or to demand and receive property of the Company or any distribution in return of his capital contributions, except as specifically provided in this Agreement or required by the Act. No Investor Member shall be entitled to interest on his Capital Contributions.

**3.5 Member Loans.** Any Member may lend or advance money to the Company, provided such Member receives the prior approval of the Manager. If any Member shall make any loan or loans to the Company or advance any money on the Company's behalf, the amount of any such loan or advance shall not be treated as a contribution to the capital of the Company but shall be a debt due from the Company. The amount of any such loan or advance by a lending Member shall be repayable out of the next available cash of the Company and shall bear interest at the rate provided in any written agreement executed by the lending Member and the Manager on behalf of the Company. None of the Members shall be obligated to make any loan or advance to the Company that is not expressly provided for herein.

**3.6 Additional Members.**

**3.6.1** Following the admission of a new Investor Member, and such new Investor Member's Capital Contributions, the Participating Percentages of the Investor Members shall be adjusted so that each Investor Member's Participating Percentage of the total aggregate amount of the Participating Percentages held by all Investor Members (including the newly admitted Investor Member) equals the percentage that each Investor Members total cash Capital Contributions bears to the total Cash Contributions made by all Investor Members. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall the Participating Percentage of the Manager be subject to dilution pursuant to this Section 3.6.1.

**3.6.2** In the event that the Manager determines that the Company needs additional funds and the Investor Members are unwilling or unable to make additional contributions in accordance with this Agreement, the Manager may, in its discretion, issue additional Membership Interests to new Investor Members of the Company and the new Investor Members shall be admitted as Members upon the new Investor Member executing such documents as the Manager reasonably requires including, but not limited to, this Agreement.

**3.6.3** The Manager shall give written notice to all of the Members of the revised Participating Percentages and the Manager's determination of the revised Participating Percentages shall be final and binding upon all the Members.

**3.7 Capital Accounts.** A separate Capital Account shall be maintained for each Member in accordance with Code Section 704(b) and Treasury Regulations Section 1.704-1(b)(2)(iv). Each Member's Capital Account shall be increased by:

**3.7.1** such Member's Capital Contributions;

**3.7.2** such Member's distributive share of Profits and any items of income or gain that are specially allocated pursuant to Section 4.2 to such Member; and

**3.7.3** the amount of any Company liabilities that are assumed by such Member (not including increases in such Member's share of Company liabilities pursuant to Section 752(a) of the Code or that are secured by any Company property distributed to such Member).

**3.7.4** Each Member's Capital Account will be decreased by:

**3.7.4.1.** the amount of any cash and the Gross Asset Value of any other Company property distributed to such Member pursuant to any provision of this Agreement (excluding decreases in such Member's share of Company liabilities pursuant to Section 752(b) of the Code);

**3.7.4.2.** such Member's distributive share of Losses and any items of expense or loss that are allocated pursuant to Section 4.2 hereof to such Member; and

**3.7.4.3.** the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed to the Company by such Member.

For purposes of this Section 3.7, except as otherwise provided in Code Section 752(c), liabilities are considered assumed only to the extent the assuming party is thereby subjected to personal liability with respect to such obligation, the obligee is aware of the assumption and can directly enforce the assuming party's obligation, and, as between the assuming party and the party from whom the liability is assumed, the assuming party is ultimately liable. If any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that such Capital Account relates to the transferred Membership Interest. The Capital Accounts of all of the Members shall be adjusted to reflect any adjustments to the Gross Asset Value of any Company assets pursuant to subsections (b) and (c) of the definition herein of "Gross Asset Value" as if the Company recognized gain or loss from the sale of such assets at their fair market value on the date of the revaluation.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations, and shall be interpreted and applied in a manner consistent with such Regulations. If the Manager shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Manager may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to ARTICLE 12 hereof upon the dissolution of the Company. The Manager shall make any appropriate modifications if

unanticipated events (for example, the acquisition by the Company of oil or gas properties) might otherwise cause this Agreement not to comply with Sections 1.704-1 (b) or 1.704-2 of the Treasury Regulations, The Manager also shall make any appropriate modifications in the event the Company makes an election pursuant to Code Section 754 in order to comply in all respects with Sections 1.704-1(b) and 1.704-2 of the Treasury Regulations.

**ARTICLE 4**  
**ALLOCATION OF PROFITS AND LOSSES**

**4.1** **Allocation of Profits and Losses.** Except as otherwise provided in Section 4.2 hereof, Profits and Losses for each Fiscal Year shall be allocated as follows:

**4.1.1** **Profits.** Profits shall be allocated to the Members in the following order of priority:

**4.1.1.1.** First, Profits shall be allocated to the Members to the extent and in proportion to their share of the Losses, until the cumulative Profits allocated pursuant to this Section 4.1.1.1 are equal to the cumulative Losses allocated pursuant to Section 4.1.2.3 below for all prior periods;

**4.1.1.2.** Second, Profits shall be allocated to the Members to the extent and in proportion to their share of the Losses, until the cumulative Profits allocated pursuant to this Section 4.1.1.2 are equal to the cumulative Losses allocated pursuant to Section 4.1.2.2 below for all prior periods;

**4.1.1.3.** Third, to the Investor Members to the extent and in proportion to the excess, if any, of (i) such Investor Member's cumulative Priority Return accrued from the Capital Contribution Dates of each Capital Contribution through the last day of the fiscal year, less (ii) the cumulative profits allocated to such Member pursuant to this Section 4.1.1.3; and

**4.1.1.4.** Thereafter, the balance of the Profits, if any, shall be allocated to the Members in accordance with the Member's respective Participating Percentages.

**4.1.2** **Losses.** Losses shall be allocated to the Members in the following order of priority:

**4.1.2.1.** First, to the extent Profits have been allocated pursuant to Section 4.1.1.4, hereof for any prior period, Losses shall be allocated first to offset any Profits allocated pursuant to Sections 4.1.1.4 hereof. Such Losses shall be allocated among the Members in proportion to their respective shares of the Profits being offset; and

**4.1.2.2.** Thereafter, Losses shall be allocated to the Members in accordance with their respective Participating Percentages.

**4.1.2.3.** The aggregate Losses allocated pursuant to this Section 4.1.2 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a

consequence of an allocation of Losses pursuant to this Section 4.1.2.3, the limitation set forth in this Section 4.1.2.3 shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

## **4.2 Special Allocations.**

**4.2.1 Minimum Gain Chargeback.** Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this ARTICLE 4, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company's Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 4.2.1 is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistent therewith.

**4.2.2 Member Minimum Gain Chargeback.** Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this ARTICLE 4, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member's Nonrecourse Debt during any Fiscal Year, each member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 4.2.2 is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

**4.2.3 Qualified Income Offset.** In the event any Member, in such capacity, unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(2)(d)(4) and 1.704-1(b)(2)(ii)(d)(5) (regarding certain mandatory allocations under Treasury Regulations regarding family partnerships, the so-called varying interest rules, or certain in-kind distributions), or 1.704-1(b)(2)(ii)(d)(6) (regarding certain distributions, to the extent they exceed certain expected offsetting increases in a Member's Capital Account), items of Company income and gain shall be specially allocated in an amount and a manner sufficient to eliminate, as quickly as possible, the deficit balances in the Member's Capital Account created by such adjustments, allocations or distributions. Any special allocations of items of income or gain pursuant to this Section 4.2.3 shall be taken into account in computing subsequent allocations of Profits pursuant to this ARTICLE 4, so that the net

amount of any items so allocated and the Profits, Losses or other items allocated to each Member pursuant to this Article shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to this ARTICLE 4 as if such unexpected adjustments, allocations or distributions had not occurred.

**4.2.4 Gross Income Allocation.** In the event any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.2.4 shall be made only if and to the extent that such member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this ARTICLE 4 have been made as if Section 4.2.3 and this Section 4.2.4 were not in the Agreement.

**4.2.5 Member Nonrecourse Deductions.** Any Member Nonrecourse Deductions for any Fiscal year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

**4.2.6 Section 754 Adjustment.** To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations, to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations.

**4.2.7 Allocations Relating to Taxable Issuance of Company Interests.** Any income, gain, loss, or deduction realized as a direct or indirect result of the issuance of an interest by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

**4.3 Curative Allocations.** The allocations set forth in Section 4.2 (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 4.3. Therefore, notwithstanding any other provision of this ARTICLE 4 (other than the Regulatory Allocations), the Manager shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determine(s) appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such member would have had if the Regulatory Allocations were not part of the agreement and all Company items were allocated pursuant to Section 4.1. In exercising its discretion under this Section 4.3 the Manager shall take into account future Regulatory

Allocations under Sections 4.2.1 and 4.2.2 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 4.2.5.

**4.4 Code Section 704(c) Allocations.** In accordance with Section 704(c) of the Code and the applicable Treasury Regulations issued thereunder, income gain, loss and deduction with respect to any property contributed to the capital of the Company, shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company property is adjusted pursuant to subsection (b) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Manager in any manner that reasonably reflects the purpose of this Agreement. Allocations made pursuant to this Section 4.4 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

## **ARTICLE 5** **DISTRIBUTIONS**

**5.1 Net Cash.** Except as otherwise provided in ARTICLE 12 of this Agreement, the Manager may, in its discretion, make distributions of the Net Cash to the Members, from time to time, in the following order and priority:

**5.1.1** First, to the Manager as reimbursement of the Closing and Operating Expenses and in payment of the Management Fee (to the extent such Management Fee has not yet been paid) until all such expenses have been reimbursed or paid in full;

**5.1.2** Second, to the Investor Members, in proportion and to the extent of the excess, if any, of (i) such Investor Member's cumulative Priority Return from the Capital Contribution Dates of each Capital Contribution through such Distribution Date over (ii) all prior distributions to such Investor Member pursuant to this Section 5.1.2 and Section 12.2.2.

**5.1.3** Third, pro rata to the Investor Members until each Investor Member has received aggregate cash distributions pursuant to this Section 5.1.3 and Section 12.2.3 equal to 100% of its Capital Contributions;

**5.1.4** The balance, if any, to the Members in accordance with their Participating Percentages.

**5.2 Restrictions and Distributions.** Except as otherwise permitted under the Act, the Manager shall not make a distribution if, after giving the distribution effect, the Company would not be able to pay its debts as they become due in the usual course of business or the Company's total assets would be less than the sum of its total liabilities. The effect of the distribution shall be measured at the time set forth in the Act.

**ARTICLE 6**  
**BOOKS AND RECORDS**

**6.1 Accounting Method.** The books and records of account of the Company shall be maintained in accordance with the method of accounting as determined by the Manager.

**6.2 Accounting Period.** The Company's accounting period shall be determined by the Manager.

**6.3 Records, Audits and Reports.** At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. The Manager shall create and distribute to all Members from time to time a report containing an analysis of the activity of the Company's assets, and acquisitions and dispositions entered into by the Company or a Project Entity.

**6.4 Returns and Other Elections.** The Manager shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members on or before one hundred twenty days following the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in its sole discretion.

**6.5 Financial and Operations Reporting.** On an annual basis, the Manager shall provide to the Members a narrative report setting forth the current status of all Project Entities and Mortgage Loan Acquisitions including substantive material changes with regard to each item. The Manager shall, as soon as available and in any event not later than one hundred twenty days after the end of each Fiscal Year, provide to each member internally prepared financial statements of the Company, including a balance sheet as of the end of such year (prepared on a book basis), statements of changes in the Members' Capital Accounts during such year, and statements of profit and loss for such year.

**ARTICLE 7**  
**MANAGEMENT OF THE COMPANY**

**7.1 Duties of Manager.** The Manager shall manage the business and affairs of the Company. The Manager shall direct, manage and control the business of the Company to the best of its ability. Except as otherwise provided in this Agreement, the Manager shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things the Manager deems necessary or desirable in the furtherance of the Company's business.

**7.2 Number, Tenure and Qualifications.** Blue House Management Company shall be the Manager of the Company ("Initial Manager"). The Initial Manager shall be and act as the sole Manager of the Company until such time as the Initial Manager resigns or is removed pursuant to Section 7.5 hereof.

**7.3 Manager Has No Exclusive Duty To Company.** No Manager shall be required to manage the Company as its sole and exclusive function, and it and its Affiliates may have

other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Manager or Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager, another Member or of any of their Affiliates or to the income or proceeds derived therefrom.

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

**7.5 Removal.** The Manager may be removed as the Manager only for good cause upon the vote of the Investor Members holding greater than seventy-five (75%) percent of the total Participating Percentages held by all Investor Members. For purposes of this Section 7.5 "good cause" shall be limited to the Manager's willful breach of any material provision of this Agreement that causes material and demonstrable injury to the Company or the Manager's proven dishonesty or fraudulent conduct in its capacity as the Manager. Written notice of the intent to remove the Manager shall be served upon the Manager by the Members. Such notice shall set forth in particular detail the reasons for such removal. Removal shall be a meeting called expressly for that purpose no sooner than twenty-one (21) days following such notice. Both (i) a meeting of the Manager and a Majority-in-Interest and (ii) the affirmative vote of the Investor Members owing greater than seventy-five (75%) percent of the Participating Percentages of all Investor Members, shall be required as precondition to the giving of such notice and holding such meeting. At the meeting the Manager shall have an opportunity to respond to all allegations against it and provide information to the Members. If the cause for removal of the Manager is of a type that may be cured, the Manager shall not be removed as long as the Manager cures such cause for removal within thirty (30) days or, if such cause for removal is not capable of being cured within thirty (30) days, the Manager is diligently pursuing the cure of such cause. If the Manager in good faith contests such removal within ten (10) days following the removal meeting, then the Manager shall not be removed until and unless a final determination is made.

**7.6 Resignation.** Any Manager of the Company may resign at any time by giving written notice to the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice.

**7.7 Vacancies.** Any vacancy occurring for any reason in the Manager's office shall be filled by the approval of a Majority-in-Interest.

**7.8 Manager's Duty of Loyalty.** Each Manager shall have a right to compete with the business of the Company. Each Manager shall have a duty to only expend reasonable efforts on behalf of the Company and its business. Each Manager shall be entitled to enter into any business ventures that he so desires.

**Compensation of Manager.** The Company shall pay the Manager, as compensation for its service rendered to the Company, a one-time management fee ("Management Fee") equal to one percent (1%) of the total initial Capital Contributions made by the Investor Members. The Management Fee shall be paid by the Company after the initial Capital Contributions have been made and the offering is closed by the Manager.

**7.10 Closing and Operating Expenses.** In the event one or more Managers shall bear any actual out-of-pocket costs in connection with acquisition of the Property, or any operating or other costs with respect to the Property on behalf of the Company (the "Closing and Operating Expenses"), such Manager shall *not* be deemed to have made any capital contributions to the Company as a result of paying the Closing and Operating Expenses. Rather such expenses shall be deemed reimbursable expenses. The Company shall reimburse such Manager for the Closing and Operating Expenses if and when the Company has sufficient Net Cash from Operations to make such reimbursement in accordance with Section 5.1.1 above.

## **ARTICLE 8 POWERS OF MANAGER**

**8.1 Powers of the Manager.** Without limiting the generality of Section 7.1 above and except as otherwise specifically provided or limited in this Agreement, including, without limitation, the limitations contained in Section 8.2 below, the Manager shall have the following authority when acting on behalf of the Company:

**8.1.1** to execute and deliver on behalf of the Company all instruments and documents, without limitation, negotiable instruments, mortgages, security agreements, financing statements and other documents necessary to the operation of the Company's business including, without limitation, any documents necessary in connection with the Pending Transactions;

**8.1.2** maintain reasonable reserves for the purpose of paying any and all types of costs or expenses;

**8.1.3** to purchase liability and other insurance to protect the Company's property and business;

**8.1.4** to hold and own any Company real and/or personal property in the name of the Company;

**8.1.5** to invest any Company funds temporarily in time deposits, short-term governmental obligations, commercial paper or other investments;

**8.1.6** to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

**8.1.7** sell, exchange, lease, assign, convey, offer, finance, refinance, mortgage or otherwise dispose of or encumber all, substantially all or any portion of the assets of the Company, including, without limitation, any Project Entity or any Mortgage Loan Acquisition;

**8.1.8** commence or settle any litigation involving the Company;

 to contract with other Persons for management, consulting or other services;

**8.1.10** to enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve;

**8.1.11** to do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business, including paying the fees and expenses described in this Agreement and delegating duties and authority to others when deemed necessary or appropriate; and

**8.1.12** to distribute the Company's cash or property to the Members in the manner contemplated by this Agreement.

**8.1.13** borrow money on behalf of the Company (including from a Manager, upon routine and customary terms, for closing costs, operating expenses or rezoning or platting expenses) and to hypothecate, encumber or grant security interests in the assets of the Company to secure repayment of the borrowed sums.

**8.2** **Matters Requiring Approval of Members.** The following actions shall require the approval of a Majority-in-Interest:

**8.2.1** file any petition for relief under the Bankruptcy Code or similar law on behalf of the Company or make any assignment for the benefit of creditors on behalf of the Company; and

**8.2.2** reinvest any sale or refinancing proceeds received more than one (1) years from the date hereof from a Mortgage Loan Acquisition or a Project Entity, except in temporary investments pending distribution;

**8.2.3** approve a plan of merger or consolidation of the Company with or into one or more Persons;

**8.2.4** modify the limited liability of a Member;

**8.2.5** change or reorganize the Company into any other legal form;

**8.2.6** except as permitted by Section 12.1 (pertaining to Dissolution of the Company), take any action that will cause the dissolution of the Company;

**8.2.7** materially change the Company's purposes as set forth in Section 1.7 of this Operating Agreement;

**8.2.8** amend this Operating Agreement, except as otherwise provided herein; and.

**■** any other action for which the Act expressly requires the approval of the Members.

**8.3** **Liability of the Manager.** No Manager shall, by virtue of such status, have any personal liability for any of the Company's debts, liabilities, or obligations. To the fullest extent

permitted by the Act or any other applicable laws presently or hereafter in effect, no Manager shall be personally liable to the Company or its Members for or with respect to any acts or omissions as a Manager of the Company, provided that this Section shall not eliminate or limit the liability of a party for any of the following: (i) the receipt of a financial benefit to which the Manager is not entitled; (ii) for approving a distribution by the Company in violation of the Act; or (iii) a knowing violation of law. Any repeal or modification of this Section shall not adversely affect any right or protection of a Manager with respect to any acts or omissions taken or not taken prior to such repeal or modification.

**8.4 Indemnification.** The Company shall indemnify, defend and hold each Manager and its Affiliates, members, managers, officers, agents, employees, accountants, attorneys, successors and assigns (collectively, the "Indemnitees") harmless from and against any losses, claims, costs, damages and liabilities, including, without limitation, judgments, fines, amounts paid in settlement and expenses (including, without limitation, attorneys' fees and expenses, court costs, investigation costs and litigation costs) incurred by any Indemnitee in any civil, criminal or investigative proceeding in which it is involved or threatened to be involved by reason of such party being a Manager, officer, employee or agent of the Manager or Company, provided that such party acted in good faith, within what he reasonably believed to be the scope of his authority, acted for a purpose which he reasonably believed to be in the best interests of the Company and acted in compliance with the provisions of this Operating Agreement; provided, however, (i) that the Company shall not be required to indemnify any Indemnitee, for any loss, expense or damage which the Company may suffer as a result of (A) the receipt by such Indemnitee of a financial benefit to which he/it is not entitled; (B) the vote by such Indemnitee for a distribution by the Company in violation of the Act; (C) such Indemnitee's knowing violation of law; and (ii) any liability hereunder shall be limited solely to the assets and properties of the Company, and no Member or Manager shall have any liability or obligation hereunder.

**8.5 Consent to the Acquisition of Existing Company Membership Interests.** Each Investor Member by executing this Agreement hereby agrees and consents to the Company's acquisition (or a Company and owned by the Company) of the portfolio of four mortgage loans from Blue Nile Holdings, LLC pursuant to a loan sale agreement and the acquisition of all of the membership interests of CP Squared Capital, LLC (collectively, the "Pending Transactions"). Each Investor Member hereby agrees and acknowledges that: (a) the Confidential Memorandum discloses all material facts and reasons related to the Pending Transactions; (b) to the extent a Member has had any questions with respect to the Pending Transactions, such Member has had a full and complete opportunity to make inquiry of the Manager and has had all of its questions answered to its full and complete satisfaction; and (c) the terms and conditions upon which the Company will enter into the Pending Transactions including, but not limited to the purchase price, are fair and reasonable in all respects.

## ARTICLE ■ RIGHTS AND OBLIGATIONS OF MEMBERS

■ **Original Members.** The original Members of the Company shall be those persons who have signed this Operating Agreement.

■ **List of Members.** Upon the written request of any Member, the Manager shall provide a list showing the names, addresses and interests of all Members of the Company.

■ **Limitation of Liability.** Each Member's liability for the debts and obligations of the Company shall be limited as set forth in this Agreement, the Act and other applicable law. No Member shall have personal liability for any Company debt unless such Member executes a written document accepting such personal liability.

■ **Priority and Return of Capital.** No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or Distributions; provided, however, that this Section shall not apply to loans (as distinguished from Capital Contributions) a Member has made to the Company.

■ **Representations of Members.**

■ Each Member hereby represents and warrants to the other Members and to the Company that such Member;

■ Understands and agrees that its Membership Interest in the Company has not been registered under the Securities Act of 1933 or any similar state law regulating the offer or sale of securities and, therefore, such Membership Interest may not be transferred except in accordance with an effective registration under such Act and state law, or pursuant to an available exemption therefrom;

■ Takes his Membership Interest for his own account and not with any intent towards the resale or distribution thereof;

■ Has read and fully understands and agrees to be bound by all of the terms and provisions of this Agreement;

■ To the extent that such Member has had any questions with respect to the Company, this Agreement, or any other matter bearing upon such Member's decision to enter into the Company, has had a full and complete opportunity to make inquiry of the Manager and has had all of its questions answered to its full and complete satisfaction;

■ Is capable of evaluating the relative merits and risks presented by an investment in the Company, and to the extent the Member has desired to do so, the Member has consulted with his own independent legal, tax and investment advisers, and has determined that the investment in the Company is suitable to the Member, both in terms of its investment objectives and in terms of its financial situation;

■ Understands that the investment in the Company is a HIGH RISK, ILLIQUID INVESTMENT, that transfer of the Membership Interest is restricted pursuant to the Agreement, and that there presently exists no market for the Membership Interest and it is unlikely that one will develop; that transfers, offers, or sales of the Membership Interest are subject to the restrictions and conditions of the Securities Act of 1933 and applicable state securities laws, among which are included a requirement that, prior to a transfer, offer, or sale, either a registration statement under such act and under the applicable state securities laws be

filed covering Membership Interests in the Company, or an exemption from registration under such act and under such state securities laws is available;

██████. The Company has reasonable grounds to believe that the Member has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective participation, or the Member and his purchaser representative(s) (as defined in Rule 501 under the Securities Act of 1933) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective participation and that such Member is able to bear the economic risk of the participation; and

██████. ACKNOWLEDGES THE COMPANY WILL PURCHASE THE MORTGAGE LOANS OR DIRECT AND INDIRECT INTERESTS IN MORTGAGE LOANS ON A SPECULATIVE BASIS, AND THERE IS NO GUARANTY THAT SUCH MORTGAGE LOANS WILL MAINTAIN THEIR VALUE OR INCREASE IN VALUE.

██████ Any other provision of this Agreement to the contrary notwithstanding, each Member agrees that such Member will not sell, assign, or otherwise transfer all or any portion of its Membership Interest in the Company to any Person who does not similarly represent and warrant and similarly agree not to sell, assign, or transfer such Interest, or portion thereof, to any Person who does not similarly represent, warrant, and agree.

## **ARTICLE 10** **MEETINGS OF MEMBERS**

**10.1 Special Meetings.** Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, or Members holding a Majority-in-Interest.

**10.2 Place of Meetings.** The Manager may designate any place, either within or outside of the State of Michigan, as the place of meeting for any annual meeting or for any special meeting called by the Manager. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the principal office of the Company in the State of Michigan.

**10.3 Notice of Meeting.** Written notice stating the place, day and hour of the meeting of Members and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than five nor more than twenty-one (21) days before the date of the meeting, either personally or by certified or registered mail, by or at the direction of the Manager or other persons calling the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the books of the Company, with postage thereon prepaid. If three successive letters mailed to the last-known address of any Member of record are returned as undeliverable, no further notices to such Member shall be necessary until another address for such Member is delivered in writing to the Company.

**10.4 Meeting of All Members.** If all of the Members shall meet at any time and place, either within or outside of the State of Michigan, and consent to the holding of a meeting at such

time and place, such meeting shall be valid without call or notice, and at such meeting any action of the Members may be taken.

**10.5 Quorum.** Members holding a Majority-in-Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Interests of the Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that percentage of Membership Interests of the Members whose absence would cause less than a quorum.

**10.6 Manner of Acting.** Except as otherwise provided herein, if a quorum is present, the vote of the Members holding a Majority-in-Interest present at the meeting and entitled to vote on the subject matter shall be the act of the Members.

**10.7 Proxies.** At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**10.8 Action by Members Without a Meeting.** Action required or permitted to be taken at a meeting of Members, other than for the removal of the Manager and other actions described in Section 7.5, may be taken without a meeting of Members if the action is evidenced by one or more counterparts of written consents, delivered to each Member entitled to vote, and signed by Members representing at least the amount of Membership Interests that would have been required to approve such action had an actual meeting been held. Such consents shall be delivered to the Manager for filing with the Company records. The Manager shall promptly deliver a copy of such consents to those Members who have not signed the consents.

**10.9 Voting by Ballot.** Voting on any question or in any election may be by voice vote, unless the Manager or any Member demands that voting be by ballot.

**10.10 Waiver of Notice.** When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. The attendance of a Member at any meeting shall constitute a waiver of notice, waiver of objection to defective notice of such meeting, and a waiver of objection to the consideration of a particular matter at the meeting unless the Member, at the beginning of the meeting, objects to the holding of the meeting, the transaction of business at the meeting, or the consideration of a particular matter at the time it is presented at the meeting.

**ARTICLE 11**  
**TRANSFER AND ASSIGNMENT OF INTERESTS**

**11.1 Transfer and Assignment of Interests.** No Member shall be entitled to transfer, assign, convey, sell, encumber or in any way alienate its Membership Interest (collectively "Transfer"), 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 without limiting the absolute discretion of the Manager in granting or withholding its consent to any Transfer, the Manager may condition such consent upon the receipt of such legal, securities, tax and other opinions, and such other assurances, from any Member desiring to engage in a Transfer, all in such form and substance acceptable to Manager and at the sole cost of such Member. Transfers in violation of this ARTICLE 11 shall only be effective to the extent set forth in Section 11.6 hereof. After the consummation of any Transfer of a Membership Interest, the Membership 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 of the terms and provisions of this Agreement.

**11.2 Further Restrictions on Transfer of Interests.** In addition to other restrictions found in this Agreement, the Members shall not Transfer their respective Membership Interests without compliance with all applicable federal and state securities law (including without limitation satisfaction of requirements for registration or qualifications for exemption from registration in the judgment of the Manager), or if the Membership Interest to be Transferred, when added to the total of all other Membership Interests Transferred in the preceding twelve (12) consecutive months prior thereto, would cause the tax termination of the Company under code Section 708(b)(1)(B).

**11.3 Substitution of Members.** An assignee of a Membership Interest ("Assignee") shall have the right to become a substitute Member only if: (a) the requirements of Sections 11.1 and 11.2 hereof are satisfied; (b) the Assignee executes an instrument satisfactory to the Manager accepting and adopting the terms and provisions of this Agreement; and (c) the Assignee pays any reasonable expenses in connection with the Assignee's admission as a new Member. The admission of an Assignee as a substitute Member shall not result in the release of the Member who assigned the Interest from any liability that the Investor Member may have to the Company.

**11.4 Effective Date of Permitted Transfers.** Any Transfer of a Membership Interest shall be effective as of the date upon which the requirements of Sections 11.1, 11.2 and 11.3 (as the case may be) hereof have been met. The Manager shall provide the Members with written notice of such Transfer as promptly as possible after the requirements of such sections have been met. Any transferee of a Membership Interest shall take subject to the restrictions on transfer imposed by this Agreement.

**11.5 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 the Articles or this Agreement to give an assignee the right to become a Member.

**11.6 No Effect to Transfers in Violation of Agreement.** Upon any Transfer of a Membership Interest in violation of this Agreement, the transferor Member shall be in material default of this Agreement and the transferee shall have no right to exercise any rights in connection to access to information regarding the Company, exercise any right of a Member related to the business and affairs of the Company or to become a Member, but such transferee shall only be entitled to receive the share of Profits, Losses or other compensation by way of income and the return of contributions to which the transferor of such Membership Interest would otherwise be entitled. Unless the transferee of a Membership Interest becomes a Member, the transferor Member continues to be a Member and to have all obligations and liabilities of, and the power to exercise any rights of a Member, including the right to vote.

## **ARTICLE 12**

### **DISSOLUTION AND TERMINATION**

#### **12.1 Dissolution**

**12.1.1** The Company shall be dissolved upon the occurrence of any of the following events ("Liquidating Events"):

**12.1.1.1.** the sale of all of the Company's interest in the Property or Project Entities;

**12.1.1.2.** The unanimous written agreement of all of the Members; or

**12.1.1.3.** The entry of a decree of dissolution against the Company.

**12.2 Winding Up.** Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Manager (or, in the event there is no remaining Manager, any Person elected by a Majority-in-Interest of the Members pursuant to Section 12.4) shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property, and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

**12.2.1** First, to the payment and discharge of all of the Company's debts and liabilities to creditors including debts and liabilities owed to the Manager and Members;

**12.2.2** Second, to the Investor Members, in proportion to and to the extent of the excess if any, of (i) such Investors Member's cumulative Priority Return from the Capital Contribution Dates of each Capital Contribution through such Distribution Date over (ii) all prior distributions to such Investor Member pursuant to Section 5.1.2 or this Section 12.2.2;

**12.2.3** Third, pro rata to the Investor Members until each Investor Member has received cash distributions pursuant to Section 5.1.3 and this Section 12.2.3 equal one hundred percent (100%) of its Capital Contributions.

**12.2.4** Thereafter, to the Members who have positive Capital Accounts, in accordance with such positive Capital Account balances, but only after such Capital Accounts have been adjusted for all prior contributions, distribution and allocations for all Fiscal Years (including the Fiscal Year during which the liquidation occurs);

**12.3 Compliance With Timing Requirements of Treasury Regulations.** In the event the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, distributions shall be made pursuant to this ARTICLE 12 to the Members who have positive Capital Accounts in compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Treasury Regulations. If any Member has a deficit balance in such Member's Capital Account (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever. In the discretion of the Manager, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this ARTICLE 12 may be:

**12.3.1** Distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Manager arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Manager, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or

**12.3.2** Withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

**12.4 Manager's Responsibility.** Upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of each Member, such Member shall have no recourse against the Manager, any of its Affiliates or any other Member. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Manager, who is hereby authorized to take all actions necessary to accomplish such distribution, including, without limitation, selling any Company assets the Manager deems necessary or appropriate to sell. In the event of removal or resignation of the Manager and the failure to appoint a new Manager, the winding up of the affairs of the Company and the distribution of its assets shall be conducted by such persons or entities as may be selected by a vote of a Majority-in-Interest of the Members, which persons are authorized to do any and all acts and things authorized by law for these purposes.

**ARTICLE 13**  
**MISCELLANEOUS PROVISIONS**

**13.1 Inurement.** This Agreement shall be binding upon, and inure to the benefit of, all parties hereto, their personal and legal representatives, guardians, successors, and assigns to the extent, but only to the extent, that assignment is provided for in accordance with, and permitted by, the provisions of this Agreement.

**13.2 No Limit on Personal Activities.** Nothing herein contained shall be construed to limit in any manner the Manager, Members or their respective Affiliates, agents, servants, and employees, in carrying out their own respective businesses or activities.

**13.3 Further Assurances.** The Members and the Company agree that they and each of them will take whatever action or actions are deemed by counsel to the Company to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end the Members and the Company agree that they will execute, acknowledge, and deliver any further instruments or documents that may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement, or any of the provisions hereof.

**13.4 Execution of Additional Instruments.** Each Member hereby agrees to execute and deliver to the Manager within five (5) days after receipt of the Manager's written request therefor, such other and further statements of interest and holdings, designations, powers of attorney and other instruments as the Manager deems necessary to comply with any laws, rules or regulations.

**13.5 Membership Interests.** Each of the Members and any substituted or additional Members admitted hereby covenant, acknowledge and agree that all Membership Interests in the Company shall for all purposes be deemed personalty and shall not be deemed realty or any interest in the real property owned by the Company.

**13.6 Notice.** All notices, demands and other communications to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given after:

**13.6.1** personal delivery;

**13.6.2** one (1) Business Day from the transmission by fax; or

**13.6.3** three (3) Business Days from deposit in United States mail, registered or certified mail, return receipt requested and postage prepaid to the last known address of the party to whom notice is being given. As used in this Agreement, "Business Day" shall mean a day other than a Saturday, Sunday or a day observed as a legal holiday by the United States government or the State of Michigan,

**13.7 Governing Law.** This Agreement shall be governed and construed in accordance with the internal substantive laws of the State of Michigan (without reference to choice of law principles). The Members hereby irrevocably submit to the process, jurisdiction, and venue of the courts of the State of Michigan, Oakland County, and to the process, jurisdiction and venue

of the United States District Court of Michigan, Eastern District of Michigan for purposes of suit, action or other proceedings arising out of or relating to this Agreement. Without limiting the generality of the foregoing hereby waive and agree not to assert by way of motion, defense or otherwise in any such suit, action or proceeding any claim that any such Member is not personally subject to the jurisdiction of the above-named courts, that suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper.

**13.8 WAIVER OF JURY TRIAL.** ON BEHALF OF THEMSELVES, AND THEIR SUCCESSORS OR ASSIGNS, THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE MANAGER, A PROJECT ENTITY, THEIR MEMBERSHIP INTERESTS, OR THE COMPANY.

**Waiver of Action for Partition.** 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 the property of the Company.

**13.10 Not for Benefit of Creditors.** The provisions of this Agreement are intended only for the regulation of relations among Members and the Company. This Agreement is not intended for the benefit of non-Member creditors and does not grant any rights to or confer any benefits on non-Member creditors or any other person who is not a Member or Manager.

**13.11 Amendments.** Amendments to this Agreement that: (a) are of an inconsequential nature and do not affect materially rights of the Members; or (b) are in the opinion of counsel to the Company necessary to maintain the status of the Company as a "partnership" for federal income tax purposes, or (c) admit a new Member pursuant to Section 3.6, may be made by the Manager, or (d) adjust an Investor Member's Participating Percentage and change Exhibit A in accordance with ARTICLE 3. Any amendments made pursuant to part (b) of this Section 13.11 shall be deemed effective as of the date of this Operating Agreement. Copies of any amendments not requiring the Member's approval shall be sent to the Members. For all amendments other than those permitted by the first sentence of this Section 13.11, the Manager shall submit to the Members any such proposed amendment together with the recommendation of the Manager as to its adoption. A vote of an amendment to this Operating Agreement shall be taken within thirty (30) days thereof unless otherwise extended by applicable laws and/or regulations. A proposed amendment shall become effective at such time as it has been approved by a Majority-in-Interests.

**13.12 Rules of Construction.** For all purposes of this Agreement except as otherwise expressly provided or unless the context of this Agreement requires otherwise:

**13.12.1 References.** The words "herein," "hereby," "hereunder," "hereof," "hereinbefore," "hereinafter," and other words of similar import refer to this Agreement and not solely to the particular portion thereof in which any such word is used. All references herein to particular Articles, Sections, Subsections or other subdivisions are references to Articles, Sections, subsections, paragraphs, sentences or other subdivisions of this Agreement,

**13.12.2 Pronouns.** All pronouns used in this Agreement shall be deemed to include masculine, feminine, and neuter, and the plural shall be deemed to include the singular and the plural whenever necessary or appropriate to effect the intent of this Agreement.

**13.12.3 Accounting Terms.** All other accounting terms not otherwise defined herein have the meaning assigned to them in accordance with generally accepted accounting principles as in effect from time to time.

**13.12.4 Headings.** The subject headings included in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions,

**13.13 Incorporation of Definitions, Recitals and Exhibits.** The parties hereto acknowledge the accuracy of the definitions and recitals set forth in this Agreement and incorporate the same herein. All exhibits described herein are hereby incorporated in this Agreement as a part of this Agreement.

**13.14 Merger.** All prior and contemporaneous agreements, statements, and understandings with respect to the subject matter of this Agreement, if any, among the parties hereto, or their agents, are merged into this Agreement, and this Agreement shall constitute the entire agreement among the parties.

**13.15 Severability.** If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, but such term or provision shall be reduced or otherwise modified by such court or authority only to the minimum extent necessary to make it valid and enforceable, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any term or provision cannot be reduced or modified to make it reasonable and permit its enforcement, it shall be severed from this Agreement and the remaining terms shall be interpreted in such a way as to give maximum validity and enforceability to this Agreement. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

**13.16 Waivers.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**13.17 Legal Counsel.** Each Member has been represented by its own separate legal counsel of its choice in connection with the execution of this Agreement or has elected not to be represented by legal counsel. Each Member hereby agrees and acknowledges that the Member: (i) has read this Agreement and understands all of its provisions; (ii) has been advised to seek the advice of his own independent legal counsel in connection with this Agreement and the Company; (iii) has been advised that a conflict of interest may exist between the interests of such Member and the interests of the Manager; (iv) that Aidenbaum Schloff and Bloom PLLC

("ASB") has represented the Manager; (v) ASB has not represented the interests of any other Member or the Company (even though the legal fees incurred by the Manager in connection with the formation of the Company shall be reimbursed to the Manager by the Company). Each Member hereby consents to ASB's representation of the Manager, agrees that the Company may engage ASB as legal counsel, from time to time and waives, to the extent such conflict is permitted to be waived by applicable Michigan Rules of Professional Conduct any conflict of interest of ASB in connection with any of the foregoing.

**13.18 Company's Legal Counsel.** The Manager may employ such legal services as are necessary or desirable to conduct the business of the Company ("Company Counsel").

**13.19 Execution.** The Members acknowledge that this Agreement is being executed at a time following the organization of the Company, but desire and intend that this Agreement shall be effective as of the date listed above, which is the date of the formation of the Company, and shall govern all affairs of the Company from such date.

**13.20 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute a single instrument. The partially executed signature page of any counterpart of this Agreement may be attached to any other partially executed counterpart of this Agreement without impairing the legal effect of the signature(a) on such signature page. Fax copies of the executed signature pages of this Agreement shall be effective and binding upon the parties as if such signatures were original signatures.

**MANAGER:**

Blue House Management Company

By: \_\_\_\_\_  
Peter Savarino  
Its: Chief Executive Officer

**[INVESTOR MEMBER SIGNATURE PAGES TO BE ATTACHED]**

**COUNTER-PART SIGNATURE PAGE TO THE  
OPERATING AGREEMENT OF  
CLIFF INVESTMENT FUND LLC**

TO BE EXECUTED BY EACH INVESTOR MEMBER

The undersigned hereby confirms the making of an initial capital contribution of \_\_\_\_\_ to Cliff Investment Fund LLC, a Michigan limited liability company (the "Company") and executes this counter-part signature page to the Operating Agreement of the Company (the "Agreement") to adopt, accept and confirm and agree to be bound by all of the terms and conditions of the Agreement. The Manager (as described in the Agreement) reserves the right to complete the Exhibits and attach this counter-part signature page and other signature pages, as applicable, to the Agreement and to take such other actions as may be allowed by the Agreement.

\_\_\_\_\_  
(Legal Name of Investor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Tax Identification Number

Contact information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e-mail: \_\_\_\_\_  
phone: \_\_\_\_\_  
fax: \_\_\_\_\_

**EXHIBIT A**  
**CLIFF INVESTMENT FUND LLC**  
**INITIAL CAPITAL CONTRIBUTIONS**

<u>Manager</u>	<u>Amount</u>	<u>Participating Percentage</u>
Blue House Management Company	\$1.00	40%
 <u>Investor Members*</u>		
 Total Investor Members	<hr/>	<hr/> 60%
 Total of All Members	<hr/>	<hr/> 100%

\*Each Investor Member's Participating Percentage shall be determined by the Manager in accordance with ARTICLE 3 and Manager shall have the right to update this Exhibit A upon completion of the capital contributions.

## EXHIBIT "B"

**Exhibit B**

**INVESTOR MEMBER PURCHASER QUESTIONNAIRE FOR PURCHASE OF MEMBERSHIP UNITS IN  
CLIFF INVESTMENT FUND LLC**

(to be completed by all prospective Investors)

The amount of your proposed investment is \$ \_\_\_\_\_

1. Name of Prospective Investor: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_  
Marital Status: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_

2. Home Address: \_\_\_\_\_  
\_\_\_\_\_

3. Business Address: \_\_\_\_\_  
\_\_\_\_\_

4. Telephone Numbers: Home: \_\_\_\_\_ Business: \_\_\_\_\_

5. My employment history during the past five (5) years to the present is as follows:

Employment Position or Occupation	Nature of Duties	From - To
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. My education and degrees received (college and higher) are as follows:

School	Degree	Year Received
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. My net worth (exclusive of the value of my homes, automobiles and personal effects) is \_\_\_\_\_

Cash Assets: \_\_\_\_\_

Marketable Securities (value at lower of cost or market value): \_\_\_\_\_

Total Liquid Assets \_\_\_\_\_

8. My taxable income for federal income tax purposes for the years 2009 through 2011 is as follows:

2011: \_\_\_\_\_  
2010: \_\_\_\_\_  
2009: \_\_\_\_\_

9. I estimate that my taxable income for federal income tax purposes for 2012 will be \_\_\_\_\_ and for 2013 will be \_\_\_\_\_.

10. I do not have contingent liabilities which I reasonably anticipate could cause me to require cash in excess of the amount of cash readily available to me except:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Please answer the following question "yes" or "no."

(a) My net worth, or the joint net worth of myself and my spouse, at the time of this purchase, will exceed one million dollars (\$1,000,000.00).

\_\_\_\_\_

(b) My income has exceeded two hundred thousand dollars (\$200,000.00), exclusive of my spouse or three hundred thousand dollars (\$300,000.00) inclusive of my spouse, in each of the two (2) most recent years and I reasonably expect my income to exceed \$200,000.00 exclusive of my spouse or \$300,000.00 inclusive of my spouse in the current year.

\_\_\_\_\_

(c) My total investment will not exceed ten percent (10%) of my net worth or joint net worth with my spouse at the time of this purchase.

\_\_\_\_\_

(d) Are there any suits pending or judgment outstanding against you?

\_\_\_\_\_

If yes, please list amounts, status and details below.

- (e) I recognize the speculative nature of the prospective investment and am able to bear the economic risk of a total or partial loss of my investment.

[Redacted]

- (f) I am purchasing the Units for my own account and not with a view to or for distribution.

[Redacted]

- (g) I believe I have, by myself, sufficient knowledge and experience in financial business and tax matters to be capable of evaluating the merits and risks of the prospective investment.

[Redacted]

In the event the answer to (g) above is "no," I will have an attorney, accountant or other advisor ("Purchaser Representative") review my proposed investment in the Company.

Yes \_\_\_\_\_ No \_\_\_\_\_

If a Purchase Representative is used, please provide the following information regarding such person:

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

- 12. The following is a description of my knowledge and experience in financial and business matters which I believe qualifies me as being capable of evaluating the merits and risks of an investment in restricted securities of a limited liability company with significant financial and tax consequences:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have previously purchased the following restricted securities which were sold to me with reliance on the private offering exemption from registration under the 33 Act.

Year	Type of Security	Nature of Issuer	Amount of Investment

13. ENTITIES ONLY

*(Questions 13-15 must be completed for all entity signatories that are corporations, partnerships, trusts and other entities.)*

IF INVESTMENT WILL BE MADE BY MORE THAN ONE AFFILIATED ENTITY, PLEASE COMPLETE A COPY OF THIS QUESTIONNAIRE FOR EACH ENTITY.

Name \_\_\_\_\_  
(Exact name of entity and jurisdiction of formation)

Address of Principal  
Place of Business \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone Number (\_\_\_\_) \_\_\_\_\_

Type of Entity (corporation, partnership, trust, etc.) \_\_\_\_\_

Was entity formed for the purposes of this investment?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, all shareholders, partners or other equity owners must answer questions 1-13 of this Questionnaire. If the above answer is no, please continue completing this form.

14. ENTITIES NET WORTH

Please state the investing entity's net worth at the time the securities will be purchased:

\$ \_\_\_\_\_.

15. BUSINESS

Please check the appropriate box to indicate which of the following accurately describes the nature of the business conducted by the investing entity:

- a corporation, organization described in Section 501(c)(3) of the Internal Revenue Code, a Massachusetts or similar business trust or a partnership, in each case, not formed for the purpose of this investment, with total assets in excess of \$5,000,000;
- private business development company not formed for purposes of this investment, with total assets in excess of \$5,000,000;
- a U.S. venture capital fund which invests primarily through private placements in non-publicly traded securities and makes available (either directly or through co-investors) to the portfolio companies significant guidance concerning management, operations or business objectives;
- a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;
- an investment company registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act;
- a bank as defined in Section 3(a)(2) or a savings and loan association or other institution defined in Section 3(a)(5)(A) of the Securities Act of 1933 acting in either an individual or fiduciary capacity;
- an insurance company as defined in Section 2(13) of the Securities Act of 1933;
- an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 whose investment decision is made by a fiduciary which is either a bank, savings and loan association, insurance company, or registered investment advisor, or whose total assets exceed \$5,000,000, or, if a self-directed plan, a plan whose investment decisions are made solely by persons who are accredited investors;
- an entity not located in the U.S. and whose equity owners are neither U.S. citizens nor U.S. residents;

a trust with total assets in excess of \$5,000,000 whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(II) of the Securities Act of 1933.

Other. Describe. \_\_\_\_\_

~~IN WITNESS WHEREOF~~ I have executed this Questionnaire this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(signature of prospective investor)

**EXHIBIT "C-1"**

**EXHIBIT C-1**

**COUNTER-PART SIGNATURE PAGE TO THE  
OPERATING AGREEMENT OF  
CLIFF INVESTMENT FUND LLC**

TO BE EXECUTED BY EACH INVESTOR MEMBER

[REDACTED] undersigned hereby confirms the making of an initial capital contribution of [REDACTED] to Cliff Investment Fund LLC, a Michigan limited liability company (the "Company") and executes this counter-part signature page to the Operating Agreement of the Company (the "Agreement") to adopt, accept and confirm and agree to be bound by all of the terms and conditions of the Agreement. The Manager (as described in the Agreement) reserves the right to complete the Exhibits and attach this counter-part signature page and other signature pages, as applicable, to the Agreement and to take such other actions as may be allowed by the Agreement.

[REDACTED]

\_\_\_\_\_  
(Legal Name of Investor)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Tax Identification Number

Contact information:

\_\_\_\_\_  
\_\_\_\_\_  
e-mail: [REDACTED]  
phone: [REDACTED]  
fax: \_\_\_\_\_

EXHIBIT "C-2"

## EXHIBIT C-2

**Cliff Investment Fund LLC,**  
a Michigan limited liability company

### SUBSCRIPTION AGREEMENT FOR UNITS OF MEMBERSHIP INTERESTS

Cliff Investment Fund LLC ("Cliff Investments" or the "Company") was organized under the laws of the State of Michigan as a limited liability company. Cliff Investments is in the business of acquiring mortgage loans at a discount off of the principal balance that are secured by real property in the Michigan area

Investors, whose subscriptions are accepted by the Company, shall be issued units ("Units") of Membership Interests ("Interests") of the Company at the initial purchase price of \$100,000.00 per Unit. The offering period for Units is open until December 31, 2012 and may be extended until January 31, 2013. The aggregate of the Offering is \$3,600,000.00. Only investors who are considered "accredited investors" as that term is defined in Rule 501 of The Securities Act of 1933 may purchase Interests in the Company.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME AND MAY LOSE ALL OF THEIR INVESTMENT.

THE OFFERING OF THESE SECURITIES DOES NOT CONSTITUTE AN OFFER OR SOLICITATION TO ANYONE IN ANY JURISDICTION WHERE SUCH AN OFFER OR SOLICITATION IS NOT AUTHORIZED OR MAY NOT LAWFULLY BE MADE.

**Cliff Investment Fund LLC,**  
a Michigan limited liability company

**SUBSCRIPTION AGREEMENT**

Purchaser's Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Number of Units: \_\_\_\_\_  
Total Investment: \$ \_\_\_\_\_

Dear Company:

1. Application. The undersigned, intending to be legally bound, hereby subscribes for the number of Membership Units of Cliff Investment Fund LLC, a Michigan limited liability company (the "Company"), set forth above at the purchase price of \$100,000.00 per Unit. The undersigned understands that this subscription may be accepted or rejected in whole or in part by the Company in its sole discretion and that this subscription is and shall be irrevocable unless the Company for any reason rejects this subscription.
  
2. Subscription Procedure.
  - (a) The execution of this Subscription Agreement constitutes a binding offer to purchase the Interests and an agreement to hold open the offer to purchase the Interests until the subscription is accepted or rejected by the Company. No subscriptions will be valid unless accepted in writing by an officer of the Company. To subscribe for Interests, the undersigned must deliver to the Company one originally executed Subscription Agreement and a check payable to the order of "Cliff Investment Fund LLC" in the full amount subscribed (or wire instructions to an account for the Company may be designated). If the Company rejects all or a portion of this subscription, the Company will promptly mail or cause to be mailed to the undersigned a check for all, or the appropriate portion, of the amount submitted with the subscription without interest.
  
  - (b) Until the initial Closing as described in the attached Confidential Offering Memorandum (the "Memorandum"), subscriptions and any funds will be held in escrow by the Manager. Additional subscriptions will be accepted and funds deposited from time to time until the earlier to occur of the sale of all of the Interests offered herein, the initial Closing or termination of the Offering in Manager's discretion. All subscription proceeds not accepted by the Company will be promptly refunded **without interest unless such interest is earned in a deposit account** and after all refunds have been made, the Company will have no further liability to the subscribers whose subscriptions were rejected or if the Manager otherwise determines not to proceed to the initial Closing for any reason.
  
3. Representations and Warranties. The undersigned represents and warrants as follows:
  - (a) The undersigned has received, at least 48 hours prior to the date hereof, and carefully reviewed the Memorandum, the Company's Operating Agreement, including all attached exhibits (the "Operating Agreement") and this Subscription Agreement and has relied only on the information contained in such Agreements delivered to the undersigned; no oral representations have been made or oral information furnished to the undersigned in connection with the purchase of the Interests which were in any way inconsistent with the Memorandum or Operating Agreement; and the undersigned and/or his advisors have had a reasonable opportunity to ask questions of and receive answers from the Company concerning the Interests.
  
  - (b) In addition to his own evaluation, the undersigned has relied upon his professional advisor(s), if any, in evaluating such Interests as an investment. Either the undersigned has a pre-existing personal or business relationship with the Company or by reason of his own business or financial experience or the business and financial experience of the undersigned's professional advisor(s) (who is not affiliated with or

compensated directly or indirectly by the Company or any affiliate or selling agent of the Company with whom he has consulted and upon whose advice he has relied), the undersigned has the capacity to protect his interests in connection with this transaction. Either the undersigned or the undersigned together with the his professional advisor(s), if any, with whom he has consulted and upon whose advice he has relied, has such knowledge and experience in business and financial matters as will enable the undersigned to evaluate the merits and risks of the prospective investment in the Company and to make an informed investment decision.

- (c) The undersigned is able to bear the economic risks of an investment in the Interests for an indefinite period and at the present time can afford the loss of such investment.
- (d) The undersigned meets at least one of the following conditions:

**[PLEASE INITIAL AT LEAST ONE WHICH IS APPLICABLE]**

\_\_\_ (i) The undersigned, alone or jointly with his spouse, has a net worth of at least One Million Dollars (\$1,000,000); OR

\_\_\_ (ii) The undersigned, alone, had a gross income for the prior year and has a prospective gross income for the current year of at least Two Hundred Thousand Dollars (\$200,000); OR

\_\_\_ (iii) The undersigned jointly with his spouse, had a gross income for the prior year and has a prospective gross income for the current year of at least Three Hundred Thousand Dollars (\$300,000);

- (e) The undersigned understands that the Interests have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or registered or qualified under applicable Blue Sky laws, and are being offered pursuant to the non-public offering exemptions thereunder and that in this connection the Company is relying on the representations set forth in this Subscription Agreement and the information provided in the Subscriber's Questionnaire;
- (f) The undersigned understands and agrees that (i) the Interests will be "restricted securities" as described in the 1933 Act and that such Interests may not be offered or transferred in any manner unless they are subsequently registered under the 1933 Act (or there is an applicable exemption from such registration) and qualified or registered under applicable Blue Sky laws (or there is an applicable exemption from such qualification or registration); (ii) an opinion of counsel acceptable to the Company has been rendered stating that such offer or transfer will not violate, or cause the Company to violate, any federal or state securities law; (iii) all applicable provisions described in the Operating Agreement are complied with before any Interests may be transferred; and (iv) the Interests are not being acquired with a view towards resale, fractionalization, division or distribution;
- (g) The undersigned and his professional advisor have been furnished with all materials relating to the Company or anything set forth in the Operating Agreement which they have requested and have been afforded the opportunity to make inquiries of and have received answers from representatives of the Company concerning the Company, the terms and conditions of the offering of the Interests or any other matters relating to the Company, and have further afforded the opportunity to obtain any additional information necessary to verify the accuracy of any representations or information set forth in the Operating Agreement and exhibits attached thereto (to the extent the Company possesses such information or could acquire it without unreasonable effort or expense);
- (h) The undersigned has been furnished and has carefully read the Operating Agreement including the materials which are exhibits thereto or enclosed therewith or otherwise supplied to him, and is aware that:
  - (i) Investment in the Company is speculative and involves high economic and other risks and dependence upon a number of factors which cannot be controlled or foreseen as outlined in the Operating Agreement including the possibility of a total loss of his investment in the Corporation; and

- (ii) No federal or state agency has passed upon the Interests being offered, made any finding or determination as to the fairness or accuracy of information contained in the Operating Agreement or endorsed the Operating Agreement or the Interests.
  - (i) If the undersigned is a partnership or corporation, such partnership or corporation was not formed for the purpose of investing in the Company; and
  - (j) The undersigned and his purchaser representative, if any, understand that any certificates representing the Interests shall bear a legend, restricting the transferability of the Interests.
4. Indemnification. The undersigned agrees to indemnify and hold harmless any placement agent for the Company, the Company, and its agents, representatives and employees from and against all liability, damage, loss, cost and expense (including reasonable attorneys' fees) which they may incur by reason of the failure of the undersigned to fulfill any of the terms or conditions of this Subscription Agreement, or by reason of any inaccuracy or omission in the information furnished by the undersigned herein or any breach of the representations and warranties made by the undersigned herein or in connection with the Operating Agreement, or in any document provided by the undersigned to the Company.
5. Agreement with Respect to Resale and Assignment. The undersigned agrees that no Interests will be resold nor any rights or interests in and under this Agreement assigned without complete compliance with all the terms and provisions contained in the Operating Agreement and its exhibits, any legends contained on the Unit certificates, if any, and any applicable federal or state securities or Blue Sky laws.
6. Restrictions on Membership Interests. The undersigned acknowledges and agrees that there is only one class of Membership Interests in the Company, but that the Managing Member of the Company has authority, subject to the Non-Managing Members approval on certain occasions, to operate and control the activities of the Company.

**The Interests may only be sold, pledged, gifted or otherwise transferred subject to the transferability restrictions set forth in the Operating Agreement.**

7. Power of Attorney. In connection with the Interests of Subscriber to be acquired pursuant to this Agreement, Subscriber hereby irrevocably constitutes and appoints the Manager the true and lawful attorney-in-fact of Subscriber in Subscriber's name, place and stead to make, execute, acknowledge, deliver and file any of the following documents (whether under seal or otherwise): (a) the Operating Agreement and all documents permitted to be executed thereunder, and (b) to the extent consistent with the provisions of the Operating Agreement (i) all amendments and/or restatements of the Operating Agreement adopted in accordance with the provisions thereof, (ii) all documents that may be required to effect the dissolution of the Company pursuant to the Operating Agreement, and (iii) otherwise to take any such further action as may be necessary in connection with any aspect of the operations of the Company by giving the Manager full power and authority to do and perform each and every act and thing whatever requisite and necessary to be done in and about the foregoing as fully as the undersigned might or could do if personally present, and by hereby ratifying and confirming all that the Manager shall lawfully do or cause to be done by virtue thereof. This foregoing power of attorney is coupled with an interest, is irrevocable and shall survive and be unaffected by any subsequent disability, or incapacity of Subscriber (or if Subscriber is a corporation, company, trust, association, limited liability company or other legal entity by the dissolution or termination thereof).
8. Miscellaneous.
- (a) This Subscription Agreement shall survive the death or disability of the undersigned and shall be binding upon the undersigned's heirs, executors, administrators, successors and permitted assigns.
  - (b) This Subscription Agreement has been duly and validly authorized, executed and delivered by the undersigned and constitutes the valid, binding and enforceable agreement of the undersigned. If this Subscription Agreement is being completed on behalf of a corporation, partnership or trust, it has been completed and executed by an authorized corporate officer, general partner or trustee.

- (c) The Operating Agreement, this Subscription Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof and together supersede all prior discussions or agreements in respect thereof. Subscriber agrees that Subscriber (a) shall become a Member as of the date of entry of Subscriber's name as a Member on the books and records of the Fund and (b) shall be bound by each and every term of the Operating Agreement.
- (d) Within five (5) days after receipt of a written request from the Company, the undersigned agrees to provide such information, to execute and deliver such documents and to take, or forbear from taking, such actions or provide such further assurances as reasonably may be necessary to correct any errors in documentation, to comply with any and all laws to which the Company is subject or to effect the terms of the Operating Agreement.
- (e) The Company shall be notified immediately of any change in any of the information contained above occurring prior to the undersigned's purchase of the Interests or at any time thereafter for so long as the undersigned is a holder of the Interests.

THE INTERESTS REFERRED TO HEREIN HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MUST BE ACQUIRED FOR INVESTMENT PURPOSES ONLY AND NOT WITH A VIEW TOWARD DISTRIBUTION OR RESALE, AND MAY NOT BE MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR OFFERED TO BE SO TRANSFERRED WITHOUT (i) AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE REGULATIONS PROMULGATED PURSUANT THERETO, UNLESS EXEMPT THEREFROM, AND REGISTRATION UNDER APPLICABLE STATE SECURITIES LAWS, UNLESS EXEMPT THEREFROM, (ii) AN OPINION OF COUNSEL, THAT ANY SUCH TRANSACTION SHALL NOT VIOLATE, OR CAUSE THE COMPANY TO VIOLATE, ANY FEDERAL OR STATE SECURITIES LAWS, AND (iii) COMPLIANCE WITH ALL APPLICABLE PROVISIONS PRESCRIBED IN THE OPERATING AGREEMENT. THE SECURITIES OFFERED HEREBY HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THE OPERATING AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

**BY SIGNING BELOW, THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT HE HAS RECEIVED, AND UNDERSTANDS THE TERMS OF THE SUBSCRIPTION AGREEMENT AND THE OPERATING AGREEMENT INCLUDING THE DESCRIPTION OF CERTAIN RISKS ASSOCIATED WITH THIS INVESTMENT.**

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

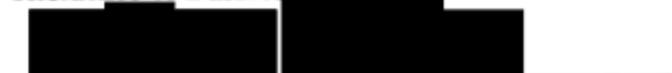


(Signature of Subscriber)



(Print or Type Name)

Residence or Business Address:



Street



City State Zip Code

[Redacted]

Social Security or Taxpayer Identification

U.S. Citizen  Yes  No

Mailing Address (if different from Residence or Business Address):

Street

City State Zip Code

EXHIBIT "C-3"

# Request for Taxpayer Identification Number and Certification

**Give Form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	Name (as shown on _____)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input checked="" type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____	
	<input type="checkbox"/> Exempt payee	
	Address _____	Requester's name and address (optional)
	City _____	
	List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number

			-						
--	--	--	---	--	--	--	--	--	--

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign Here**      Signature of U.S. person

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

#### Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

#### Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

#### Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

#### Specific Instructions

##### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

**Partnership, C Corporation, or S Corporation.** Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA) name" on the "Business name/disregarded entity name" line.

**Disregarded entity.** Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

**Note.** Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

**Limited Liability Company (LLC).** If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

**Exempt Payee**

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
  2. The United States or any of its agencies or instrumentalities,
  3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
  4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
  5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
  7. A foreign central bank of issue,
  8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
  9. A futures commission merchant registered with the Commodity Futures Trading Commission,
  10. A real estate investment trust,
  11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
  12. A common trust fund operated by a bank under section 584(a),
  13. A financial institution,
  14. A middleman known in the investment community as a nominee or custodian, or
  15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for <input type="checkbox"/>
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

**Part II. Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

**Signature requirements.** Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>3</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor <sup>4</sup>
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.