UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON ASSOCIATES LLC II, ANDOVER ASSOCIATES, L.P., ANDOVER ASSOCIATES LLC I, ANDOVER ASSOCIATES (QP) LLC,

Plaintiffs,

-VS-

BEACON ASSOCIATES MANAGEMENT CORP.; ANDOVER ASSOCIATES MANAGEMENT CORP.; INCOME PLUS INVESTMENT FUND; DAVID FASTENBERG, TRUSTEE, LONG ISLAND VITREO-RETINAL CONSULTANTS 401K FBO DAVID FASTENBERG, ET AL., Civil Action No. 1:14-cv-02294 (AJP)

Defendants.

DECLARATION OF BRIAN E. WHITELEY

- I, Brian E. Whiteley, hereby declare on oath and state as follows:
- 1. I am a partner with the law firm of Hiscock & Barclay, LLP, counsel for Income-Plus Investment Fund in the above-captioned matter. I am a member in good standing of the Massachusetts and New York bars and have been admitted pro hac vice to practice law before the Court in this matter.
- 2. Attached hereto as Exhibit 1 is a true and accurate copy of the Civil Docket for Case #1:09-cv-06910-CM, *Beacon Associates Management Corp. v. Beacon Associates LLC*, United States District Court for the District of Massachusetts (the "Prior Action").
- 3. Attached hereto as Exhibit 2 is a true and accurate copy of the Beacon Associates LLC I Amended and Restated Operating Agreement, dated as of April 1, 2004, as originally docketed in the Prior Action at Docket No. 40-8.

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Attached hereto as Exhibit 3 is a true and accurate copy of a memorandum

prepared by Citrin Cooperman & Company, LLP, as originally docketed in the Prior Action at

Docket No. 26-5.

5. Attached hereto as Exhibit 4 is a true and accurate copy of a letter dated May 27,

2009 from Roberts & Holland LLP to Beacon Associates Management Corp., as originally

docketed in the Prior Action at Docket No. 26-2.

Signed under the pains and penalties and perjury this 27 day of August, 2014

Dated: August 27, 2014

Brian E. Whiteley

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2014, I electronically filed the foregoing Declaration

using the CM/ECF system, which sent electronic or other notification of such filing to all counsel

of record in this case.

/s/ Brian E. Whiteley

Brian E. Whiteley

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