DIVERSY FUND

"Opportunity Fund I"

DF Distressed Opportunities Fund, LLC

a Delaware Limited Liability Company

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

Effective as of December 16, 2024

NEITHER THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE OR FOREIGN REGULATORY AUTHORITY HAS APPROVED OR DISAPPROVED THIS LIMITED LIABILITY COMPANY AGREEMENT OR THE UNITS (THE "**INTERESTS**") PROVIDED FOR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. THE COMPANY IS UNDER NO OBLIGATION TO REGISTER OR QUALIFY THE INTERESTS UNDER THE SECURITIES ACT OR ANY STATE SECURITIES LAWS.

AN INTEREST MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER THE SECURITIES ACT AND APPLICABLE STATE AND FOREIGN SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE MANAGER, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER (AS SUCH TERM IS DEFINED IN THIS LIMITED LIABILITY COMPANY AGREEMENT) OF AN INTEREST IS FURTHER SUBJECT TO OTHER RESTRICTIONS, THE TERMS AND CONDITIONS WHICH ARE SET FORTH HERE

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
DF DISTRESSED OPPORTUNITIES FUND, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this "**Agreement**") of **DF Distressed Opportunities Fund, LLC**, a Delaware limited liability company (the "**Company**"), is made and entered into as of December 15, 2024, by and among the Company, DF Manager, LLC (the "**Manager**") and those Persons that have executed or will execute this Agreement as Members.

RECITALS

A. The Certificate of Formation was filed, and the Company was formed, on January 9, 2023.

B. Pursuant to Section 15.1 of the Company's Limited Liability Company Agreement (the "**LLCA**") dated March 1, 2023, the Members and the Manager agree to amend and restate the LLCA as set forth herein.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. ORGANIZATION

1.1. FORMATION.

The Certificate was filed in the office of the Secretary of State of the State of Delaware in accordance with, and pursuant to, the Act on January 9, 2023.

1.2. NAME AND TERM.

The name of the Company is DF Distressed Opportunities Fund, LLC. The Company will continue in existence until dissolved under the Act and this Agreement.

1.3. OFFICES; AGENT.

The Manager can designate and change the location of the Company's principal office and other offices, if any. The Certificate identifies the Company's registered office in Delaware and the registered agent for service of process. The Manager can change such registered office and registered agent.

1.4. BUSINESS AND PURPOSE OF THE COMPANY.

The Company is organized for the principal purposes of: (a) making investments of the kind and nature described in the Company's PPM; (b) managing, supervising, and disposing of such investments and other property received as distributions in kind from Fund Investments; and (c) engaging in such other activities incidental or ancillary thereto as the Manager, in its sole discretion, deems necessary or advisable.

1.5. NO STATE LAW PARTNERSHIP.

Nothing in this Agreement will be construed to: (a) create a partnership (limited or general; by

statute or at common law) among the Members (except for federal and state income tax purposes); (b) cause any Member to be a member or joint venturer of any other Member; (c) authorize any Member to act as general agent for any other Member; or (d) subject the Members to joint and several liability or vicarious liability for the obligations of the other Members.

ARTICLE 2. DEFINITIONS.

Capitalized terms not otherwise defined herein have the meanings set forth on Exhibit A.

ARTICLE 3. UNITS

3.1. In General.

All Membership Interests in the Company shall be denominated in Units. Subject to the other provisions of this Agreement (including those governing the Members' respective rights to receive allocations of Net Profits and Net Losses and Distributions), each Unit shall have the rights, and be subject to the obligations, equivalent to those of each other Unit of the same class hereunder, and each Unit of the same class shall represent an equal Economic Interest in the Company (subject to the other provisions of this Agreement).

3.2. Classes of Units.

The Company shall have two classes of Units: Class A Units and Class D Units. The Company is hereby authorized (i) to sell and issue up to an aggregate of 250,000 Class A Units on an as needed basis, and (ii) to admit the persons who acquire such Units as Members. The Members agree that the Class D Unit issued to DiversyFund, Inc., a Delaware corporation (the "**Sponsor**"), which is the sole owner of the Manager, as of the Effective Date, is fully vested, and such Class D Unit is not subject to any restrictions, terms, or conditions that are not set forth in this Agreement.

3.3. Restrictions, Terms, and Conditions.

Units held by a Member may be subject to such restrictions, terms, and conditions (in addition to or in lieu of the restrictions, terms, and conditions in this Agreement, the PPM, and the Subscription Agreement) as established by the Manager upon issuance of such Units (including any vesting, unvesting, redemption and forfeiture terms), all of which additional restrictions, terms, and conditions, if any, shall be set forth in a written instrument signed by an authorized person of the Manager and provided to such Member.

ARTICLE 4. MEMBERS

4.1. Admission of Members.

4.1.1. Offering Period.

The Manager may hold an initial closing of the Offering and begin admitting Members on any date determined by the Manager (the "**Initial Closing**"). After the Initial Closing, the Manager may admit Members and accept increases in the Capital Contributions of existing Members at subsequent closings.

4.1.2. Accession to Agreement.

Each Person who is to be admitted as a Member or Substitute Member pursuant to this Agreement shall accede to this Agreement by executing, together with the Manager, a counterpart signature page to this Agreement providing for such admission, which shall be deemed for all purposes to constitute an amendment to this Agreement providing for such admission, but shall not require (a) the consent or approval of, nor (b) the provision of notice to, any other Member. The Manager shall make any necessary filings with the appropriate governmental authorities and take such actions as are necessary under applicable law to effectuate such admission. By its admission to the Company, each Member or Substitute Member ratifies and agrees to be bound by all actions of the Manager taken in accordance with this Agreement prior to such Member's or Substitute Member's admission.

4.2. MEMBERS ARE NOT AGENTS; NO PARTICIPATION IN MANAGEMENT.

No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind nor execute any instrument on behalf of the Company. The Members (in their capacity as such) shall not participate in the control, management, direction, or operation of the affairs of the Company.

4.3. LIMITED LIABILITY.

The Members shall not have any liability to the Company for the repayment, satisfaction, or discharge of the Company's debts, liabilities, and obligations, except to the extent provided in any non-waivable provisions of the Act; provided, however, that each Member shall have the obligation to pay to the Company (a) the unpaid portion, if any, of its Capital Contribution, and (b) any other amounts that such Member expressly is required to pay to the Company pursuant to this Agreement or pursuant to such Member's Subscription Agreement.

4.4. EFFECT OF DEATH, DISSOLUTION, OR BANKRUPTCY.

Upon the death, incompetence, Bankruptcy, insolvency, liquidation or dissolution of a Member, the rights and obligations of such Member under this Agreement shall inure to the benefit of, and shall be binding upon, such Member's , and each such Person shall be treated as an assignee of such Member's interest and shall only be admitted as a Substitute Member in accordance with **Section 11.3**.

4.5. AFFILIATE MEMBERS.

Without limiting the Manager's authority to enter into a side letter or similar arrangement with a Member, the Members acknowledge and agree that the Manager may, in its sole discretion, waive or reduce any Management Fee and/or the Carried Interest that would otherwise be borne by, and payable or distributable in respect of, any Member that is a Manager Related Person or an Affiliate thereof (including the family members of, and any entity controlled by, any such Person), without granting corresponding benefits to the other Members.

4.6. MEMBER REPRESENTATIONS.

4.6.1. Affirmation; Certain Changes.

Each Member hereby makes and reaffirms, as of the date of its admission to the Company, all subscriber representations and warranties contained in the Subscription Agreement to which such Member is a party. Each Member shall promptly notify the Manager of any change in control relating to such Member. Each Member shall promptly notify the Manager of any change to its status as: (a) an

employee benefit plan subject to ERISA or Section 4975 of the Code or any comparable provision of applicable law regulating such Member as a benefit/pension plan or substantial equivalent; (b) an entity deemed to hold "plan assets" of such a plan pursuant to the Plan Assets Regulation; or (c) a "benefit plan investor" within the meaning of the Plan Assets Regulation.

4.6.2. Tax Withholding.

Except to the extent set forth in a notice provided to the Manager, each Member hereby represents that allocations, distributions, and other payments to such Member by the Company are not subject to tax withholding under the Code. Each Member hereby agrees to promptly notify the Manager if any allocation, distribution, or other payment previously exempt from such withholding becomes or is anticipated to become subject thereto.

4.6.3. Anti-Money Laundering.

The Members acknowledge that the Company will seek to comply with all applicable laws concerning money laundering and similar activities. In furtherance of such efforts, each Member hereby represents and agrees that, to the best of such Member's knowledge based upon appropriate diligence and investigation: (a) none of the cash or property that is paid or contributed to the Company by such Member shall be derived from, or related to, any activity that is criminal under U.S. or other applicable law or would otherwise cause the Company, the Manager, or any member or equityholder thereof to be in violation of U.S. or other applicable law; and (b) no contribution or payment to the Company by such Member shall (to the extent that such matters are within the control of such Member) cause the Company nor the Manager to be in violation of any AML Law. A Member shall promptly notify the Manager if any of the foregoing fail to be true and accurate with respect to such Member.

4.6.4. Violation of Law.

Each Member hereby represents and agrees that it is not, and will not be during the term of the Company, in violation of applicable law to the extent that such violation would impose upon the Company or the Manager a material onerous reporting, tax withholding, registration, licensing, or other expense, burden or obligation (disregarding for this purpose any violation by a Member that results solely from a corresponding violation by the Company or by virtue of the Company being deemed to hold "plan assets" within the meaning of the Plan Assets Regulation). A Member shall promptly notify the Manager if any representation it has made pursuant to this **Section 4.6.4** or in its Subscription Agreement is not, or has ceased to be, true and accurate in any material respect with respect to such Member. The Manager may rely on any representation, warranty, and covenant made by a Member pursuant to this **Section 4.6.4** or in its Subscription Agreement.

4.7. CERTAIN RESTRICTIONS ON MEMBERS

No Member shall: (a) in addition to the obligations under **Section 17.8**, disclose to any non-Owner other than their lawyers, accountants or consultants and/or commercially exploit any of the Company's business practices, financial results, reports, trade secrets or any other information not generally known to the business community; (b) perform, or fail to perform, any other act or deed with the intention of harming the business operations of the Company; (c) Make any statement, whether written or oral, indirectly or indirectly, including but not limited to on social media, or perform any act which in any way would (i) injure an interest of or disparage or be construed negatively about the Company, the Manager or any of their respective principals, officers, managers or employees or (ii) be detrimental to the Company's relationships and dealings with existing or potential customers, investors and lenders; or (d) perform any act contrary to this Agreement.

ARTICLE 5. MANAGEMENT AND CONTROL OF THE COMPANY

5.1. MANAGEMENT BY THE MANAGER.

5.1.1. In General.

The Company shall have one Manager. The initial Manager is DF Manager, LLC.

5.1.2. Resignation and Removal.

(a) Except as permitted under **Section 11.3.4** or this **Section 5.1**, the Manager shall not voluntarily withdraw, and shall not be removed from its position as the sole Manager of the Company.

(b) The Manager may be removed from its position as such for Cause, upon at least 30 days' written notice, by the affirmative vote of Members holding at least all of the outstanding Units of the Company; *provided* that in the event of resignation or removal for Cause, the Manager shall continue to hold its previously issued Class D share(s).

(c) The Manager may not be removed from its position as such without Cause.

5.1.3. Effect of Resignation or Removal.

Following the withdrawal or removal of the Manager under this **Section 5.1**, or the occurrence of any other event that terminates the Manager's status as the Manager of the Company under the Act, the Manager's share of distribution and allocations under **ARTICLE 10** and **ARTICLE 9** shall be unchanged; *provided* that the Manager shall only be entitled to receive Carried Interest Distributions with respect to those Fund Investments that the Company had made or committed to make as of the date of such withdrawal or removal. Nothing in this **Section 5.1.3** shall relieve the Manager of any actual liability under applicable law for a withdrawal in violation of **Section 5.1.2(a)** or any act that constitutes Cause.

5.1.4. Vacancies.

Any Manager vacancy created or caused by removal, death, resignation, or disqualification shall be filled by an approval of the Majority of the Members.

5.2. MANAGEMENT BY THE MANAGER.

5.2.1. Exclusive Control.

Subject to the provisions of this Agreement, and in accordance with the purpose of the Company as set forth in **Section 1.4**, the Manager shall have complete and exclusive power and authority to perform acts associated with the management and control of the Company and its business, including the power and authority to do those things set forth in **Section 5.2.2**. The Manager may appoint such agents of the Company as it reasonably deems necessary who may, under the direction of the Manager, exercise such powers of the Manager in the management of the Company and hold such offices and perform such duties in connection therewith as determined from time to time by the Manager.

5.2.2. Non-Exhaustive List of Duties.

In furtherance of **Section 5.2.1**, subject to the restrictions herein contained, the Manager has the power and authority on behalf of and in the name of the Company and any subsidiary, without any further act, approval or vote of the Members or any other Person, to implement and fulfill the purposes and objectives of the Company and any subsidiary and to exercise any rights and powers the Company and any subsidiary may possess, including:

(a) make all decisions concerning the investigation, selection, negotiation, structuring, commitment to, monitoring of, and disposition of Fund Investments, including the merger, conversion, or disposition of all or substantially all the assets of the Company or of any subsidiary whether within the ordinary course of business or otherwise;

(b) acquire, hold, sell, transfer, exchange, pledge and dispose of assets, Fund Investments, and other property of the Company or cause any subsidiary to acquire, hold, sell, transfer, exchange, pledge, and dispose of any of its assets, Fund Investments, and other property, and exercise all rights, powers, privileges, and other incidents of ownership or possession with respect thereto, including the exercise of any voting rights of the Company and any subsidiary with respect to Fund Investments;

(c) borrow money, issue evidence of indebtedness and otherwise to procure extensions of credit for the Company and subsidiaries, to guarantee liabilities of third parties, to hedge interest rate changes on borrowings, to use as collateral for any such obligations the Capital Contributions or the capital commitments to any subsidiary and any other assets of the Company and subsidiaries, and to prepay in whole or in part, refinance, increase, modify, or extend such obligations;

(d) cause the Company or any subsidiary to provide financing as the Manager deems appropriate in connection with making, holding, or disposing of Fund Investments;

(e) to hold assets of the Company in the name of one or more trustees, nominees, other agents or, directly or indirectly, though one or more subsidiaries, and to cause any such subsidiary to have such tax status as the Manager may deem appropriate. Manager Related Persons may have management rights and financial interests in subsidiaries so long as such arrangements preserve in all material respects the overall economic relationship and rights of the Members (considering any costs, expenses, and taxes paid or payable or to be paid by such subsidiaries);

(f) incur and pay all operating, administrative, trading, and other Company Expenses (including taxes and similar charges) of the Company and subsidiaries, pay for, or reimburse the Manager (and other Manager Related Persons) for, Company Expenses reasonably incurred by them on behalf of the Company or any subsidiary, and pay all debts and obligations of the Company and any subsidiary, to the extent that funds of the Company or such subsidiary, as applicable, are available therefor;

(g) employ or retain any qualified Person to perform services or provide advice on behalf of the Company and subsidiaries and pay reasonable compensation therefor;

(h) open, conduct business regarding, draw checks or other payment orders upon, and close cash, checking, custodial or similar accounts with banks or brokers on behalf of the Company and subsidiaries and pay the customary fees and charges applicable to transactions in respect of all such accounts;

(i) compromise, arbitrate, or otherwise adjust claims in favor of or against the Company or any subsidiary, and commence, join, or defend litigation with respect to the Company or any assets of the Company or any subsidiary, at the Company's expense;

(j) cause the Company or any subsidiary to enter into construction management, property management, leasing, financing, guarantee, development, sales, servicing and special servicing or other service provider arrangements with respect to any asset of the Company or any subsidiary, including agreements that provide for incentive compensation;

(k) cause the Company or any subsidiary to enter into, make and perform upon such contracts, agreements and other undertakings, and to do such other acts, as it may deem necessary or advisable for, or as may be incidental to, the conduct of the investments and activities of the Company or any subsidiary;

(l) cause the Company or any subsidiary to enter into transactions with Manager Related Persons subject to **Section 6.7**;

(m) cause the Company or any subsidiary to enter into joint ventures and other arrangements with third parties with respect to the acquisition, ownership, development, improvement, permitting, financing, disposition, and other activities with respect to any real property in which the Company has a direct or indirect interest;

(n) act as the "partnership representative" under the Code and in any similar capacity under state, local or non-U.S. law;

(o) make all elections for U.S. federal, state, local and non-U.S. tax matters for the Company and any subsidiary, including an election under Section 754 of the Code or an election to have the Company treated as an "electing investment partnership" for purposes of Section 743 of the Code, but excluding elections specifically prohibited by **Section 16.8.4**;

(p) carry on any other activities necessary to, in connection with, or incidental to, any of the foregoing or the business of the Company and subsidiaries generally; and

(q) act for the Company and subsidiaries in all other matters.

5.2.3. Third-Party Reliance.

Third parties dealing with the Company may rely conclusively upon the Manager's certification that it is acting on behalf of the Company and that its acts are authorized. The Manager's execution of any agreement or document on behalf of the Company is sufficient to bind the Company for all purposes.

5.2.4. Manager's Discretion.

To the fullest extent permitted by applicable law and notwithstanding any other provision of this Agreement, whenever in this Agreement the Manager or other Covered Person is permitted or required to make a decision: (a) in its "discretion" or "sole discretion" or under a grant of similar authority or latitude, then the Manager or such other Covered Person shall have a duty to give consideration to the interests of the Company, but shall be entitled to consider also such other interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interests of, or factors affecting, any other Person; or (b) in its "good faith" or under another express standard, then the Manager or such other Covered Person shall act under such express standard and shall not be subject to any other or different standard.

5.2.5. Delegation by the Manager.

(a) The Manager may, in its sole discretion, delegate any of the management or

administrative responsibilities of the Manager under this Agreement to an Affiliate or, subject to **Section 6.7**, to any other Manager Related Person; provided, however, that the Manager may delegate the authority to select investment opportunities or to make investment-related decisions on behalf of the Company only to the extent that: (i) such activities are subject to the supervision of the Manager; and (ii) the Manager has the power to terminate such delegation in its sole discretion. Any delegation by the Manager pursuant to this **Section 5.2.5** shall not relieve the Manager of its own duties and obligations to the Company as set forth in this Agreement.

(b) The Manager may appoint one or more individuals as Company officers, delegate to them their duties and responsibilities, and determine their tenure of office, compensation and other terms of service. The same individual can hold any number of offices.

(c) Subject to any employment or consulting agreement, each officer will serve at the pleasure of the Manager, which can remove any officer, with or without Cause, and modify or limit the duties and responsibilities of any officer.

5.2.6. Devotion of Time and Effort.

(a) This **Section 5.2.6** and **0** specify the obligations of the Manager to provide (and to cause certain other Manager Related Persons to provide) time, effort, and investment opportunities for the benefit of the Company. Subject in all events to the specific provisions of this **Section 5.2.6** and **0**, the Members: (i) acknowledge that Manager Related Persons and their respective clients are or may be involved in other financial, investment, and professional activities, including: management of or participation in the business and operations of Sponsor, and other investment vehicles and other Affiliates of Sponsor; real estate, venture capital, private equity and public equity investing; purchases and sales of securities; investment and management counseling; investment banking; underwriting and brokerage activities; leasing and lending activities; property management activities; providing mergers and acquisitions, restructuring and other financial advisory services; otherwise making investments or presenting investment opportunities to third parties; and serving as officers, directors, advisors and agents of other companies; and (ii) agree that Manager Related Persons and their respective clients may engage for their own accounts and for the accounts of others in any such ventures and activities (without regard to whether the interests of such ventures and activities conflict with those of the Company). Except as specifically set forth in this **Section 5.2.6** or **0**: (A) neither the Company nor any Member shall have any right by virtue of this Agreement or the existence of the Company or any subsidiary in and to such ventures or activities or to the income or profits derived therefrom; and (B) the Manager Related Persons and their respective clients shall have no duty or obligation to make any reports to the Members or the Company with respect to any such ventures or activities.

(b) Throughout the term of the Company, the Manager shall devote to the Company and subsidiaries such time and effort as is reasonably necessary to diligently manage the Fund Investments and affairs of the Company and subsidiaries.

(c) The Manager or the Principals (or their respective Affiliates) may organize and, subject to **Section 6.2**, commence investing on behalf of a Successor Fund at any time.

(d) The Members acknowledge that the Manager may be prohibited from taking action for the benefit of the Company due to confidential information acquired or obligations incurred in connection with the management of or as a result of investments by an Other Fund or another outside activity permitted to Manager Related Persons under this **Section 5.2.6**. No Person shall be liable to the Company or any Member for any failure to act for the benefit of the Company in consequence of a prohibition described in the preceding sentence.

5.2.7. Anti-Money Laundering and Anti-Terrorism.

Notwithstanding anything to the contrary contained in this Agreement, the Company and the Manager, in its own name and on behalf of the Company, shall be authorized without the consent of any Person, including any other Member, to take such actions (including any actions set forth in any Subscription Agreement) as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures.

5.3. ORDINARY OPERATING EXPENSES.

The Manager shall pay all ordinary overhead and administrative expenses incurred by the Manager in connection with maintaining and operating its offices (including salaries, rent and equipment expenses), including regulatory and compliance expenses but not including any Company Expenses.

ARTICLE 6. INVESTMENTS AND ACTIVITIES.

6.1. INVESTMENT PERIOD.

The "**Investment Period**" of the Company will begin on the Initial Closing and end on the seven-year anniversary of the Initial Closing, unless extended at the sole discretion of the Manager. Following the expiration or termination of the Investment Period, as it may be extended, the Company may not make any new Fund Investments; *provided* that after the expiration or termination of the Investment Period, the Company may: (a) complete any investment in a new Fund Investment as to which the Company, a subsidiary, or a Manager Related Person has entered into a letter of intent, agreement in principle or binding agreement prior to the expiration or termination of the Investment Period; (b) make any follow-on investment in or to support existing Fund Investments; and (c) fund any other Company commitments to or other obligations in respect of any existing Fund Investment.

6.2. INVESTMENT LIMITATIONS.

6.2.1. Restrictions.

Except as otherwise approved by a Majority of the Members, the Company shall not make any direct or indirect Fund Investment in, or invest in any debt securities principally secured by, real property located outside the U.S.

6.2.2. Plan Asset Regulations.

The Manager intends to operate the Company in such a manner so that the assets of the Company will not be considered "plan assets" within the meaning of the Plan Asset Regulations. The Manager does not intend to permit investments in the Fund by Benefit Plan Investors.

6.3. POLICIES WITH RESPECT TO INVESTMENT OPPORTUNITIES.

6.3.1. Third Parties.

The Members acknowledge that the best interests of the Company may be served by making investment opportunities available (in whole or in part) to Members or third parties, which may be made by or through a Co-Investment Vehicle. Nothing in this Agreement shall limit the authority of the Manager, acting in good faith, to make investment opportunities available to other Persons (including Manager Related Persons), including through participation in a co-investment program or otherwise.

6.3.2. Investment Terms.

Any participation allocated to the Company in any investment in which any Member or any one or more of its respective equityholders, officers, directors, employees or other related Persons participates need not be on the same terms or in amounts proportional to investments made by any of such Persons; *provided* that no Manager Related Person shall be entitled to participate in any such investment on terms more favorable than the terms of the Company's participation in such investment (taking into account the economics of the subsidiaries).

6.3.3. Other Opportunities.

The foregoing provisions of this **Section 6.3** shall not be applied to prevent: (i) any Entity in which the Company has an investment from acquiring or disposing of any investment (at such times and on such terms as it shall select in its sole discretion); or (ii) any Person from exercising pre-emptive or similar rights it holds in respect of any investment opportunity.

6.3.4. Other Funds; Co-Investments and Cross-Investments.

Subject to **ARTICLE 8** and in accordance with its investment allocation procedures, the Manager may, in its sole and absolute discretion, offer investment opportunities (or portions thereof) to an Other Fund. In addition, subject to **Section 6.7**, the Manager may cause the Company and subsidiaries to coinvest or cross-invest in the same investment with an Other Fund. The Members acknowledge that such investment practices involve an inherent conflict of interest and agree that the Manager shall have no liability attributable to or based upon such conflict of interest in the absence of intentional harm to the Company by the Manager or a member thereof (it being understood that causing an Other Fund to take advantage of an investment opportunity or to exercise any legal or contractual rights available to it shall not be deemed intentional harm to the Company). Without limitation on the foregoing, the Manager shall have the authority to cause the Company and subsidiaries to transfer to an Other Fund (without receiving any consideration therefor) the opportunity to take advantage of pre-emptive and similar investment rights held by the Company or any subsidiary.

6.4. **COMPANY BORROWING**

6.4.1. Use of Leverage.

(a) The Manager may cause the Company or any subsidiary to borrow funds and issue guarantees on a secured or unsecured basis, including by obtaining one or more credit facilities, and may secure such borrowings or guarantees with assets of the Company or such subsidiary. The Members acknowledge that the Company expects to, and agrees that it is permitted to, directly or indirectly, deploy a substantial amount of leverage in connection with its investments.

(b) After the termination of the Investment Period, neither the Company nor any subsidiaries shall borrow any additional amounts pursuant to any credit facility that is secured by the Capital Contributions, except in connection with capital calls permitted to be made after the Investment Period.

6.4.2. Pledge of Capital Contributions.

In connection with any borrowings by the Company or any subsidiaries, the Manager is authorized to, directly or indirectly, collect, pledge, hypothecate, assign, transfer and grant security interests in (a) any Company collateral account to which the payment by the Members of their Capital Contributions are made, (c) its right to call capital from the Members, and (c) the Company's right to receive the funds

from such call (and any related rights of the Manager and the Company). In connection with any such borrowing, if required by the lender, each Member shall: (i) execute and deliver appropriate estoppel certificates and parent entity guarantees (to the extent required by lenders to the Company or any subsidiaries); (ii) deliver required Opinions of Counsel regarding the due formation, valid existence and good standing of such Member and the due authorization, valid execution and delivery of its Subscription Agreement and this Agreement and any documents executed in connection with any such borrowing, and such other opinion issues as may be requested by such lenders; and (iii) execute such other instruments and take such other action as the Manager or such lenders may reasonably require in order to effect any such borrowings by the Company or any subsidiaries.

6.5. UBTI; ECI.

The Members acknowledge and agree that the Company incur (a) "unrelated business taxable income" within the meaning of Sections 512 and 514 of the Code, (b) items of income realized by the Company effectively connected with the conduct of a trade or business within the United States or otherwise subject to regular U.S. federal income taxation on a net basis, including income realized by the Company from the disposition of a "United States real property interest" (as defined in Section 897(c) of the Code), and (c) income derived from the conduct of a commercial activity (as defined in Treasury Regulations Section 1.892-4T), in each case in respect of certain investments and related activities of the Company. Nothing in this Agreement will require the Manager or any Affiliate to take any action in respect of the Company to avoid or mitigate the incurrence of such income by any Member. The Manager shall have no obligation to notify any Member in the event that any such income has been generated.

6.6. Other Investment Vehicles.

6.6.1. Feeder Vehicles.

The Members acknowledge that, for legal, tax, regulatory or other reasons, the Manager may determine that it is appropriate for multiple Persons to invest in the Company indirectly through a single entity that is admitted to the Company as a Member (each such entity, "**Feeder Vehicle**"). For any or all purposes under this Agreement, but subject to the requirements of applicable law, the Manager may treat the Company interest of a Feeder Vehicle as a collection of separate Member interests (with aggregate Capital Contributions equal to the Capital Contribution of such Feeder Vehicle) which correspond to the separate investor's interests in such Feeder Vehicle, as reasonably determined by the Manager. In addition, the Manager may admit as a Member (and may enter into special arrangements relating to) a feeder investment vehicle that has been organized and is managed by a third party for the purpose of facilitating investment in the Company and may elect to treat such feeder investment vehicle as a Feeder Vehicle for all purposes under this Agreement. All "company expenses" and all "organizational expenses" of any Feeder Vehicle shall constitute "**Company Expenses**" and "**Organization and Offering Expenses**," as applicable, for purposes of this Agreement. For the avoidance of doubt, the Class D Member's Carried Interest shall be calculated on the gross Investment Proceeds distributed to a Feeder Vehicle, without deduction for any taxes or other expenses borne by such Feeder Vehicle or its investors.

6.6.2. Parallel Funds.

(a) Notwithstanding anything in this Agreement to the contrary, the Manager may form one or more other limited partnerships or other investment vehicles or investment advisory programs to invest in parallel with the Company (each a "**Parallel Fund**") in order to comply with securities laws or to address legal, tax, regulatory or other similar issues of investors in such entity or program or (B) for the purpose of facilitating a co-investment by a Person whose participation in a co-investment

program with the Company is believed by the Manager to be in the overall best interests of the Company (any such Parallel Fund organized or established pursuant to this clause, a "**Co-Investment Vehicle**"). The terms and conditions applicable to the participants in any Parallel Fund under its governing documents shall be substantially the same as the terms and conditions applicable to the Members under this Agreement, subject to any applicable differences to address the legal, tax, regulatory or other similar issues for which such Parallel Fund was organized or, in the case of a Co-Investment Vehicle, to reflect the terms of the applicable co-investment program, which may include economic arrangements that materially differ from those set forth in this Agreement. Only those vehicles and other arrangements designated as such by the Manager shall be deemed to be Parallel Funds

(b) To the extent reasonably practicable taking into account applicable circumstances, and except (i) where restricted or prohibited by law, rule, regulation, policy or other similar and applicable restriction or (ii) where the potential returns to investors in the Company or a Parallel Fund would be unattractive due to tax, legal, regulatory, policy or other similar considerations, each Parallel Fund shall invest in every Fund Investment made by the Company at the same time and on substantially the same terms as the Company, *provided* that the terms of any Co-Investment Vehicle may provide that such Co-Investment Vehicle will not be required to invest in all Fund Investments made by the Company. Except as otherwise reasonably determined by the Manager or otherwise approved by a Majority of the Members, Fund Investments shall be allocated between and among the Company and any Parallel Fund in proportion to the capital commitments to each entity, to the extent practicable. The Company and any Parallel Funds shall dispose of their Fund Investments at the same time, and in the same relative amounts, to the extent reasonably practicable.

(c) Amounts that constitute Organization and Offering Expenses or Company Expenses will generally be borne by the Company and each Parallel Fund in proportion to the capital commitments to each entity, except for expenses arising from a Fund Investment in which the Company and one or more Parallel Funds participate, which will be borne by the Company and such Parallel Fund proportionately to their respective amounts invested in such Fund Investment, *provided* that any such expenses that are specially attributable to the Company or a particular Parallel Fund, as determined in the good faith discretion of the Manager, shall be borne by the Company or such Parallel Fund.

(d) If, upon any Subsequent Closings of the Company or any Parallel Fund or as a result of any contribution default by, or excusal or withdrawal of, a Member of the Company or a similar equityholder of a Parallel Fund, or for any other reason, there is a change in the ratios of the aggregate capital commitments of each such entity to the Combined Capital Contributions of all such entities, then the Manager may, to the extent it is able, (A) adjust the allocation of existing Fund Investments between and among such entities, including by transferring a portion of such investments from one entity to another, (B) adjust the respective amounts paid by such entities in respect of Company Expenses and Organization and Offering Expenses and (C) redistribute such amounts among such entities, to reflect as nearly as practicable the situation that would have existed if the respective capital commitments of each entity had always been in the same relative proportions as after the change in the ratio of capital commitments.

6.6.3. Alternative Investment Structures.

(a) Notwithstanding anything in this Agreement to the contrary, and in addition to the Manager's authority to form a Parallel Fund, if the Manager determines in good faith that for legal, tax, regulatory or other similar reasons it is desirable that an investment be made utilizing an alternative investment structure, the Manager shall be permitted to structure the making of all or any portion of such investment outside of the Company, by requiring any Member or Members to, and such Member

or Members shall, make such investment either directly or indirectly in, and become a limited partner, member, stockholder or other equity owner of, one or more entities other than the Company that may be organized as a U.S. or non-U.S. partnership, limited liability company, corporation or other entity (each, an "**Alternative Investment Vehicle**")(i) of which the Manager or an Affiliate of the Manager shall serve as general partner, manager or in a similar capacity and (ii) that will invest on a parallel basis with, or in lieu of, the Company, as the case may be. Nothing in this **Section 6.6.3** shall restrict or apply to the formation or the operation of a Parallel Fund.

(b) Any Alternative Investment Vehicle (or the entity in which such Alternative Investment Vehicle invests) shall provide for the limited liability of the Members as a matter of the organizational documents of such Alternative Investment Vehicle (or the entity in which such Alternative Investment Vehicle invests) and as a matter of local law.

(c) The Members and the Manager (or its Affiliate) to the extent of their investment participation in an Alternative Investment Vehicle may be required to make capital contributions directly to such Alternative Investment Vehicle to the same extent, for the same purposes and on substantially the same terms and conditions as Members are required to make capital contributions to the Company, and such capital contributions shall reduce the amount each such Member is required to contribute to the Company to the same extent that it would be reduced if made to the Company.

(d) The provisions of this **Section 6.6.3** may be effected by initially forming an Alternative Investment Vehicle, in whole or in part, as an investment of the Company, and then distributing the interests in such investment as a special distribution not otherwise subject to the terms of this Agreement to such Members, and in such amounts, as is necessary or desirable in order to effectuate the purposes of this **Section 6.6.3**, as determined by the Manager.

(e) Notwithstanding any provision in this Agreement to the contrary, the economic provisions of this Agreement (other than, **Section 8.4** and related provisions hereof) and the partnership or similar agreement or instrument governing each Alternative Investment Vehicle are intended to be, and shall be, construed in all material respects and effected in such a manner as to cause each Member individually, and the Manager and its Affiliated entities that may be utilized to effectuate this **Section 6.6.3** collectively, to receive, subject to the legal, tax, regulatory or similar reasons for utilizing the alternative investment structure, the same aggregate allocations and distributions, at substantially the same times, from the Company and any Alternative Investment Vehicles (collectively, the "**Company Group**") as they would have been entitled to receive if (i) all capital contributions to the Company Group were made to, and all distributions from the Company Group were made by, the Company, (ii) all Company Group Fund Investments were initially acquired by, and were at all times held by, the Company, (iii) all Company Group expenses (including management fees incurred or paid by any Alternative Investment Vehicle) were incurred and borne solely by the Company and (iv) all Company Group management fee reductions were made with respect to the Company; provided, however, that (A) all expenses associated with the creation, operation and liquidation or sale of an Alternative Investment Vehicle will be borne by the Members who directly or indirectly own interests in that Alternative Investment Vehicle, (B) if an Alternative Investment Vehicle is not a partnership for tax purposes, the calculations described in this **Section 6.6.3** shall be made, to the extent appropriate, as if such Alternative Investment Vehicle were a partnership and (C) distributions and allocations with respect to a particular Alternative Investment Vehicle may be calculated separately from those of the Company (and vice versa) if, in the determination of the Manager upon written advice of counsel, such aggregation would increase the likelihood of any legal or regulatory constraints or create contractual or business risk, or would result in any tax consequences, that would be undesirable for the Company or any of its Members. Without limiting the foregoing, there shall be no duplication of management fees, management fee reductions, or general partner clawback obligations among entities that comprise the

Company Group. In the event that a Member transfers any portion of its interest hereunder in the absence of a corresponding transfer of a proportionately equivalent interest of such Member in each other Alternative Investment Vehicle in which it is a limited partner or similar investor, or if any limited partner or similar investor in any Alternative Investment Vehicle transfers any portion of its interest in any of such entity without a corresponding transfer of a proportionately equivalent interest hereunder, such corresponding transferred and retained interest shall continue to be subject to the provisions of this **Section 6.6.3**, unless otherwise determined by the Manager in its sole discretion. Except as otherwise determined by the Manager on or about the time of formation of the Alternative Investment Vehicle, any issue regarding the interpretation of how the Company and the Alternative Investment Vehicle interact shall be governed by the laws of the jurisdiction in which the Alternative Investment Vehicle has been organized.

(f) The terms and conditions applicable to an Alternative Investment Vehicle shall be substantially the same as the terms and conditions applicable to the Company, including matters affecting regulated Members; provided, however, that (A) such terms and conditions may vary to address the tax, legal or regulatory concerns that led to the formation of such Alternative Investment Vehicle and (B) provisions in the governing documents of the Alternative Investment Vehicle and the corresponding provisions of this Agreement shall be coordinated and, if necessary, adjusted to carry out the purpose and intent of this Section 5.7(c). Investments made by Alternative Investment Vehicles alongside (rather than in lieu of) the Company shall be made and disposed of by the Company and such Alternative Investment Vehicle at substantially the same time and on substantially similar terms, subject in each case to any tax, regulatory or legal restrictions.

6.6.4. Withdrawal and Admission of Members to or from Parallel Funds or Feeder Vehicles.

Notwithstanding any other provision in this Agreement, the Manager may, in its sole discretion, but shall not be required to, cause or permit an existing Member to withdraw from the Company and instead invest the withdrawn amount indirectly in the Company through any Feeder Vehicle, or cause or permit a member, limited partner, or similar equityholder of a Feeder Vehicle to withdraw from such Feeder Vehicle and instead admit such Person as a Member of the Company in order to invest the withdrawn amount directly through the Company and, in connection therewith, take any other action necessary to effect such change in the direct or indirect investment of such Person in the Company. Notwithstanding any other provision in this Agreement, the Manager may also, in its sole discretion, but shall not be required to, cause or permit an existing Member to withdraw from the Company and instead invest the withdrawn amount through any Parallel Fund, or cause or permit any member, limited partner, or similar equityholder of a Parallel Fund to withdrawing from any Parallel Fund to be admitted as a Member of the Company in order to invest the withdrawn amount through the Company and, in connection therewith, take any other action necessary to effect such change in the investment of such Person in the investments of the Company and such Parallel Fund.

6.7. TRANSACTIONS WITH MANAGER RELATED PERSONS.

6.7.1. In General.

(a) In addition to the services relating to the fees specified in Section 7.2, the Company and subsidiaries may retain Manager Related Persons to provide services related to Fund Investments including but not limited to asset management (including property management, back office and similar services), leasing, construction management, development management, procurement and sourcing, and broker-arranged financing, so long as (i) such services are provided on overall terms that the Manager determines in good faith are on an arm's length basis similar to those that could be obtained in a transaction with an unaffiliated qualified provider of comparable services, and (ii) the Company or

subsidiaries, as applicable, may terminate such arrangements without penalty or cost (other than amounts accrued and unpaid for services performed prior to the date of termination at the contractual rates then in effect) at any time after the Manager is removed for Cause. In addition, Manager Related Persons may be entitled to receive certain transaction fees from the Fund, a subsidiary or a third party in connection with the acquisition, financing, or disposition of a Fund Investment.

(b) The Company and subsidiaries may acquire from Manager Related Persons assets acquired by them for the purpose of transfer to the Company, contracts to acquire such assets, and interests in entities owning such assets or contracts. Any such transfers shall be at a price and otherwise on terms and conditions deemed appropriate by the Manager.

(c) The Company or subsidiaries may enter into one or more agreements with the Manager or other Manager Related Person providing for the payment of the fees authorized in this Agreement, and otherwise on terms and conditions deemed appropriate by the Manager.

(d) In addition to arrangements specifically permitted in this **Section 6.7** and elsewhere in this Agreement, the Company and subsidiaries may enter into any other transaction with a Manager Related Person if directed by the Manager.

(e) Manager Related Persons may advance funds to the Company and its subsidiaries on market terms to the extent the Manager deems such advances are necessary or convenient to allow the Company or a subsidiary to comply with any tax or regulatory requirement applicable to it.

6.8. FORMATION OF SUCCESSOR FUND.

Each Member's interest in the business endeavors of the other Members is limited to its interest in the Company and no Member's future business activities are restricted, and Members acknowledge that the Manager and each Principal may commence the operation of a new investment fund with objectives, strategy. structure, membership and target portfolio allocations substantially similar to those of the Company (a "**Successor Fund**").

ARTICLE 7. EXPENSES AND FEES

7.1. COMPANY EXPENSES

7.1.1. Organization and Offering Expenses.

The Company and each Parallel Fund (other than any Parallel Fund that is a Co-Investment Vehicle, which shall bear its own organizational expenses) will bear and be charged its pro rata share of the aggregate Organization and Offering Expenses in the manner provided in **Section 6.6.2(c)**. The Company's share of Organization and Offering Expenses (other than Organization and Offering Expenses consisting of Placement Fees), including any interest expense related to any borrowing for the payment of such Organization and Offering Expenses, will be allocated to the Members in accordance with their Commitment Percentages.

7.1.2. Placement Fees.

The Manager may cause the Company or a Feeder Vehicle to pay any Organization and Offering Expenses consisting of commissions, costs, fees, expenses and other amounts to be paid to a placement agent or finder ("**Placement Fees**") to the extent such Placement Fees are not borne directly by a Member or similar equityholder of a Feeder Vehicle or the Manager or its Affiliates out of

their own assets, in which case such Placement Fees shall be specially allocated to those Members or similar equityholders of a Feeder Vehicle whose participation in the Company or Feeder Vehicle, as applicable gave rise to such Placement Fees (such special allocation to be in proportion to the relative Commitment Percentage of such Members or similar equityholders). The reduction of the Management Fee resulting from the payment by the Company or a Feeder Vehicle of Organization and Offering Expenses consisting of Placement Fees (pursuant to Section 6.2(d) will be credited to the Members or similar equityholders of a Feeder Vehicle in the same manner as the special allocations set forth in the preceding sentence.

7.1.3. Company Expenses.

The Company will bear and be charged with Company Expenses to the extent such expenses are not paid or reimbursed by other Persons. Any Company Expenses attributable to a Fund Investment shall be allocated to such Fund Investment and any Company Expenses that are not attributable to any Fund Investment shall be allocated among all Fund Investments in proportion to the Company's invested capital in each such Fund Investment, as may be adjusted by the Manager from time to time. The Company Expenses allocated to a Fund Investment shall be allocated to the Members in proportion to their respective Sharing Percentages for such Fund Investment.

7.1.4. Payment of Feeder Vehicle Expenses.

The Manager may cause the Company to pay, in the name and on behalf of a Feeder Vehicle, any Organization and Offering Expenses or Company Expenses of such Feeder Vehicle. In connection with any such payment of Feeder Vehicle expenses, the Manager may cause the amount of such expenses to be charged against the Feeder Vehicle's Capital Account.

7.1.5. Allocation of Fees, Costs, and Expenses.

(a) Organization and Offering Expenses, Company Expenses, and the repayment of any indebtedness of the Company may be allocated against and satisfied from items of, or amounts that would otherwise constitute, Investment Proceeds, in a manner reasonably determined by the Manager. Members may be required to make capital contributions to the Company in accordance with this Agreement for the payment of such Organization and Offering Expenses, Company Expenses, and indebtedness to the extent the Company does not have sufficient funds to pay such expenses and indebtedness.

(b) The Manager may withhold on a pro rata basis from any Distributions amounts necessary to create, in its sole discretion, appropriate reserves for expenses and liabilities, contingent or otherwise, of the Company, including any liabilities which the Manager reasonably believes may arise.

(c) The Manager and/or its Affiliates may, in their discretion, consult with or refer to legal counsel, tax advisors, accountants, investment bankers, and other similar advisors engaged by the Company, the Manager, or any other Affiliate of the Manager regarding any determinations with respect to the allocation of fees, costs, and expenses or contractual interpretation or ambiguities relating to fees, costs, and expenses, and the Manager may rely on such advice. Such determinations, if made in good faith reliance on such consultation, will be binding on all Members, the Company, and the Manager.

7.2. MANAGER AND AFFILIATE FEES AND COMPENSATION.

7.2.1. Management Fee.

The Company shall pay to the Manager throughout the term of the Company an annual

management fee equal to 1% of the aggregate Capital Contributions of the Members (the "**Management Fee**"). The Management Fee shall be paid in arrears in monthly installments on the first day of each month. The Management Fee payable in respect of each Member shall be calculated from the Initial Closing and the first payment of the Management Fee shall be made on the Initial Closing or at the earliest subsequent date upon which the Company has received sufficient Capital Contributions or income to fund such payment.

7.2.2. Acquisition and Development Fee.

The Manager and its Affiliates shall receive an acquisition and development fee of up to 4% of the actual costs of the Company related to completing the Company's "distressed opportunities and value add" business plan on any Fund Investment, including but not limited to the asset purchase price and related cost of purchasing the Fund Investment and any related Property, all budgeted hard and soft construction costs, including budgeted contingency line items, for the renovation of the Fund Investment and carrying costs of the Fund Investment; professional, travel, and other expenses related to the potential acquisition and development of Fund Investments; and original fees and expenses of up to 4% of the transaction amount related to the acquisition of preferred equity and/or debt investment in third-party transactions.

7.2.3. Financing Fee.

The Manager and its Affiliates shall receive a financing fee of up to 1% of the amount of any loan made to, assumed by or refinanced by the Company or an entity holding a Fund Investment, whether for acquisition of the Fund Investment or a refinance of an existing loan.

7.2.4. Property Disposition Fee.

The Manager and its Affiliates shall receive a fee equal to 1% of the gross sales price of each Fund Investment on the disposition of each such Fund Investment by the Company.

7.2.5. Property-Level Asset Management Fee.

The Manager and its Affiliates shall receive a property-level asset management fee equivalent to 2% of the effective gross income received from each Fund Investment that is owned by the Fund, which may be paid monthly or quarterly.

7.2.6. Construction Management Fee.

To the extent the Manager or its Affiliates perform any construction management services for the Company with respect to a Fund Investment, the Manager and its Affiliates may receive a fee of up to 7.5% of the construction costs accrued on such Fund Investment.

7.2.7. Guaranty Fee.

The Company will pay a guaranty fee of up to 0.5% of the acquisition or construction loan amount or any refinancing of such indebtedness to the Person(s) required by the lender to sign as guarantor ("Guarantor") on the "bad boy" carve outs or other lender-required guaranties on the loan documents, which Person(s) may be an Affiliate of the Manager. When more than oner person signs as the Guarantor, such Persons will share in the guaranty fee equally.

ARTICLE 8. CAPITAL OF THE COMPANY

8.1. Capital Contributions.

8.1.1. In General.

Persons admitted as Members in connection with the acquisition of Units directly from the Company after the date of this Agreement shall make the Capital Contributions specified in such Person's Subscription Agreement.

8.1.2. Purchase of Units.

(a) The purchase price of each Unit shall be $1,000. The purchase price of each Unit shall be paid in full in cash at the time of execution of the Subscription Agreement. Payment of the purchase price for a Unit shall constitute the Member's initial Capital Contribution.

(b) All Capital Contributions made to the Company under this Agreement shall be made to the Company by wire transfer or other transfer of federal or other immediately available U.S. funds acceptable to the Manager.

8.2. No Interest.

No interest shall accrue on and be payable to any Member on their Capital Contribution

8.3. No Withdrawals.

Except as specifically provided in this Agreement, no Member shall have the right to withdraw or to be repaid its Capital Contributions without the written consent of the Manager.

8.4. Class D Member's Capital Contributions.

The Class D Member shall not be required to make a Capital Contribution.

8.5. Return of Contributions.

The Manager, in its sole discretion, may cause the Company to return to the Members all or any portion of Capital Contributions that have not been invested in one or more Fund Investments or applied to, or reserved for, the payment or reimbursement of Company Expenses or Organization and Offering Expenses or other purposes within 60 Business Days after such capital contributions were due. Such contributions shall be returned pro rata to the Members who made them and no Preferred Return shall be payable with respect to such amounts returned.

8.6. Excluded and Excused Contributions.

8.6.1. Exclusion.

The Manager may exclude a Member from participating in a Fund Investment at any time prior to the making of such Fund Investment if the Manager notifies such Member in writing that the Manager has reasonably determined that the participation of such Member would have a Material Adverse Effect. A Member's participation in a Fund Investment will be deemed to have a "**Material Adverse Effect**" if the Manager reasonably determines that such participation, when taken by itself or together with the participation by any other Member, is (a) reasonably likely, based upon advice of

counsel, to (i) result in a violation of a statute, rule, regulation or order of a U.S. federal, state or local or foreign governmental authority which may jeopardize the ability of the Company to consummate a Fund Investment or to have a material adverse effect on a Fund Investment, the Manager, the Company or any Affiliate of the Company, or the Manager, (ii) subject the Company, the Manager, or any Affiliate of the foregoing to any material filing or material regulatory requirement (including the registration or other requirements of the Investment Company Act or the Investment Advisers Act), or make such filing or regulatory requirement substantially more burdensome, (iii) result in any assets of the Company being deemed to be "plan assets" (within the meaning of the Plan Assets Regulation) of any existing or proposed ERISA Member, and that such result would not be advisable in light of the circumstances, as determined by the Manager, (iv) result in the Manager becoming a fiduciary with respect to any existing or proposed ERISA Member, or (v) result in a material adverse tax consequence to the Company or any of its Members; or (b) reasonably likely to jeopardize the ability of the Company to consummate a Fund Investment or to have a material adverse effect on the Company, the Manager, or any Affiliate of the Company or the Manager.

8.6.2. Excuse.

(a) No ERISA Member will be required to make a capital contribution to the extent such capital contribution would be used for the purpose of making an ERISA Excused Investment and no portion of an ERISA Member's Contribution shall be used for the purpose of making an ERISA Excused Investment.

(b) No Member will be required to make a Capital Contribution, in whole or in part, and no portion of such Member's Contribution shall be used, to the extent such Capital Contribution would be used for the purpose of making a Fund Investment or funding Company Expenses which, with respect to such Member, constitutes a General Excused Investment and no portion of such Member's Capital Contribution shall be used for the purpose of making any such General Excused Investment.

(c) The expense of any opinion of counsel delivered to the Manager by a Member seeking to be excused from making all or any portion of a Capital Contribution pursuant to this **Section 8.6.2** will be borne by such Member.

ARTICLE 9. CAPITAL ACCOUNTS; ALLOCATIONS.

9.1. CAPITAL ACCOUNTS.

The Company shall maintain a separate capital account for each Member (each, a "**Capital Account**") according to the rules of Treasury Regulations §1.704-1(b)(2)(iv). For this purpose, the Company may, upon the occurrence of any of the events specified in Treasury Regulations §1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulations §1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

9.2. ALLOCATIONS.

9.2.1. Allocations of Net Profit and Net Loss.

(a) Except as otherwise provided in this Agreement, for each fiscal year (or portion thereof), Net Profits and Net Loss (and, to the extent necessary, individual items of income, gain, loss or deduction) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in **Section 9.2.2**, the Capital Account balance of each Member, immediately after making such allocations, is, as nearly as possible, equal to (i) the

distributions that would be made to such Member pursuant to **Sections 10.1.3** and **12.2**, as applicable, if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, all Company liabilities were satisfied (limited with respect to each Nonrecourse Debt to the Gross Asset Value of the assets securing such liability), and the net assets of the Company were distributed, in accordance with **Sections 10.1.3** and **12.2**, as applicable, to the Members immediately after making such allocations, minus (ii) such Member's share of Company Minimum Gain and Member Minimum Gain, computed immediately prior to the hypothetical sale of assets, minus (iii) in the case of the Manager, any obligation of the Manager to make a Capital Contribution to the Company pursuant to **Section 8.4** if the Company were liquidated at such time, plus (iv) in the case of each Member, such Member's share of the amount of the Capital Contribution of the Manager referred to in clause (iii) hereof (if it were made at such time). Notwithstanding the foregoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

(b) In the event that the allocation of Net Losses pursuant to **Section 9.2.1(a)** above would result in a Member having an Adjusted Capital Account Deficit at the end of any fiscal year and at such time there are other Members who will not, as a result of such allocation, have an Adjusted Capital Account Deficit, then all Net Losses in excess of the amount which can be allocated until the foregoing circumstance occurs shall be allocated among the Members who do not have Adjusted Capital Account Deficits on a proportionate basis according to their Commitments until each such Member would similarly be caused to have an Adjusted Capital Account Deficit. At such time as a further allocation of Net Losses cannot be made without causing some Members to have an Adjusted Capital Account Deficit, then all remaining Net Losses for such fiscal year shall be allocated in accordance with the ratio described in **Section 9.2.1(a)** above.

9.2.2. Regulatory Allocations.

(a) Minimum Gain Chargeback.

Notwithstanding any other provision of this **ARTICLE 9**, if there is a net decrease in Company Minimum Gain during any fiscal year, then except as otherwise provided in Regulations Section 1.704-2(f), each Member shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain during such fiscal year determined in accordance with Regulations Section 1.704-2(g)(2). 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 Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 9.03(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b) Member Nonrecourse Debt Minimum Gain Chargeback.

Except as otherwise provided in Regulations Sections 1.704-2(i)(4), notwithstanding any other provision of this **ARTICLE 9**, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company 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 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 the portion of such Person's share of the net decrease in Member Minimum Gain attributable to such

Member Nonrecourse Debt determined in accordance with 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 Person pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This **Section 9.2.2(b)** is intended to comply with the minimum gain chargeback requirement Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset.

In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2)(ii)(*d*)(*4*), 1.704-1(b)(2)(ii)(*d*)(*5*), or 1.704-1(b)(2)(ii)(*d*)(*6*), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this **Section 9.2.2(c)** shall only be made if, and only to the extent that, such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this **ARTICLE 9** have been tentatively made as if this **Section 9.2.2(c)** were not in the Agreement.

(d) 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 9.2.2(d)** shall be made if and only to the extent that such Person would have a deficit Capital Account in excess of such sum after all other allocations provided for in this **ARTICLE 9** have been tentatively made as if **Section 9.2.2(c)** hereof and this **Section 9.2.2(d)** were not in the Agreement.

(e) Nonrecourse Deductions.

Nonrecourse Deductions for any fiscal year or other period shall be specially allocated to the Members in proportion to their Sharing Percentages.

(f) Member Nonrecourse Deductions.

Any Member Nonrecourse Deductions for any fiscal year or other period shall be 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. Such allocations shall be made in accordance with, and in the manner set forth in, Regulations Section 1.704-2(i)(1).

(g) Code Section 754 Adjustments.

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

9.2.3. Curative Allocations.

The allocations set forth in **Sections 9.2.1(b)** and **9.2.2** hereof (the "**Regulatory**

Allocations") are intended to comply with certain requirements of the 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 9.2.3**. Therefore, notwithstanding any other provision of this **ARTICLE 9** (other than the Regulatory Allocations), the Company shall make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner determined by the Managers to be 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 the Sections of this Agreement other than the Regulatory Allocations and this Section. In exercising their discretion under this Section, the Managers shall take into account future Regulatory Allocations under **Sections 9.2.2(a)** and **(b)** that, although not yet made, are likely to offset other Regulatory Allocations previously made under **Sections 9.2.2(e)** and **(f)**.

9.2.4. Tax Allocations: Code Section 704(c).

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value).

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of 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 Code Section 704(c) and the Regulations thereunder.

(c) Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this **Section 9.2.4** 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 Net Profits, Net Losses, other items, or distributions pursuant to any provisions of this Agreement.

9.2.5. Allocation of Recapture.

For purposes of determining the character (as ordinary income or capital gain) of any taxable income or gain of the Company allocated to the Members pursuant to this **ARTICLE 9,** such portion of the taxable income or gain of the Company allocated pursuant to this **ARTICLE 9** which is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (a) the amount of depreciation previously allocated to each Member bears to (b) the total of such depreciation allocated to all Members. This Section shall not alter the amount of allocations among the Members pursuant to **ARTICLE 9** but merely the character of the income so allocated.

9.2.6. Allocation Between Assignor and Assignee.

The portion of the income, gain, losses, credits, and deductions of the Company for any fiscal year during which Units are assigned by a Member (or by an assignee or successor in interest to a Member), that is allocable with respect to such Units will be apportioned between the assignor and the

assignee of the Units on whatever reasonable, consistently applied basis is selected by the Manager and permitted by the applicable Treasury Regulations under Section 706 of the Code.

9.3. POWER OF MANAGER TO VARY ALLOCATIONS.

It is the intent of the Members that each Member's share of Net Profits and Net Loss be determined and allocated in accordance with Section 704(b) of the Code and the provisions of this Agreement shall be so interpreted. Therefore, if the Company is advised by the Company's legal counsel that the allocations provided in this **ARTICLE 9** are unlikely to be respected for federal income tax purposes, the Manager is hereby granted the power to amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) of the Code and effect the plan of allocations and Distributions provided for in this Agreement.

9.4. TAX REPORTING.

The Members are aware of the income tax consequences of the allocations made by this **ARTICLE 9** and hereby agree to be bound by this **ARTICLE 9** in reporting their shares of Company income and loss for income tax purposes.

ARTICLE 10. DISTRIBUTIONS.

10.1. AMOUNT, TIMING, AND FORM.

10.1.1. General.

Except as otherwise provided in this Agreement, the Manager shall determine the amount, timing, and form (whether cash or in kind) of all distributions made by the Company.

10.1.2. Distribution of Investment Proceeds.

(a) The Company shall distribute, in the manner described in this **ARTICLE 10** and **Section 12.2**, as the case may be, Net Cash from Operations, Capital Transaction Proceeds, and any other amounts available for distribution (collectively, "**Investment Proceeds**"), promptly after the Company's receipt thereof, as determined by the Manager. Notwithstanding the preceding sentence, any Investment Proceeds otherwise distributable to the Members may, in the sole discretion of the Manager, be retained by the Company and used for any purpose permissible under this Agreement, including to defray future Company Expenses or obligations or liabilities of the Company or for reinvestment in accordance with **Section 10.1.2**. The Manager may at any time, in its sole discretion, cause the Company to distribute in accordance with **Section 10.1.3** and **12.2**, as applicable, all or any part of Retained Distributions to the Members with an interest therein. To the extent that Retained Distributions are used by the Company to fund Fund Investments or Company Expenses relating thereto, such amounts will be deemed to have been distributed to the Members with an interest in such Retained Distributions in accordance with **Section 10.1.3** and **12.2**, as applicable, and deemed immediately contributed as new Capital Contributions to the Company by such Members, with effect from the date such Retained Distributions would otherwise have been distributed to such Members, as determined in good faith by the Manager, provided that any such deemed distribution and contribution shall not result in any reduction of such Members' unpaid Capital Contributions or the increase of such Members' Capital Contribution. Nothing in this **Section 10.1.2(a)** shall require the Manager to retain or otherwise reinvest any amounts distributable to the Class D Member that constitute Carried Interest.

(b) During the Investment Period, the Manager may elect to retain Investment Proceeds

received by the Company, in addition to the reserves contemplated by **Section 10.1.2(a)**, as reasonably determined by the Manager for the purpose of making additional investments. At the time the Manager uses any amounts retained pursuant to this **Section 10.1.2(b)** to make a Fund Investment, the Manager shall issue a notice to the Members with respect to such investment.

(c) The amounts to be distributed to a Member pursuant to **Section 10.1.2**, **Section 10.1.4** or **Section 12.2** shall be adjusted by the Manager as necessary or appropriate to reflect any adjustment to a Member's Capital Contribution and Sharing Percentages in accordance with this Agreement.

10.1.3. Distribution of Priorities.

Subject to the provisions of **Section 10.1.2**, **Section 10.1.4**, and **Section 10.1.6**, Investment Proceeds shall be distributed in the following order and priority:

(a) Investment Proceeds that are available for distribution shall initially be apportioned among the Members in proportion to their Sharing Percentages for the Company investment to which such Investment Proceeds relate, with such adjustments as the Manager shall reasonably determine necessary to reflect the amount of the Management Fee borne by each such Member. The amount apportioned to the Manager with respect to its Sharing Percentage shall be distributed to the Manager. The amount apportioned (an "**Apportioned Amount**") to each Member shall be distributed to such Member and the Manager as provided in **Section 10.1.3(b)**:

(b) The Apportioned Amount of each Member shall be distributed in the following order and priority (determined on a cumulative basis over the term of the Company without duplication):

(i) First, 100% *pari passu* to the Class A Members until they have received cumulative distributions under this **Section 10.1.3(b)(i)** equal to the Class A Members' Unreturned Capital Contributions;

(ii) Second, 100% *pari passu* to the Class A Members until they have received cumulative distributions under this **Section 10.1.3(b)(ii)** equal to the Class A Members' Unpaid Preferred Return;

(iii) Third, 100% to the Class D Member, until such Class D Member has received distributions sufficient to provide such Class D Member an amount that bears the same proportion to the total amount under **Section 10.1.3(b)(ii)** paid (A) to the Class A Members to date as 35 bears to 65;

(iv) Fourth, 100% distributed *pari passu* to the Class A Members as follows: (A) 65% to the Class A Members and 35% to the Class D Member, until the Class A Members have received a 12% cumulative, non-compounded annual return on the Class A Members' Unreturned Capital Contributions; and

(v) Thereafter, 50% *pari passu* to the Class A Members on the one hand and 50% to the Class D Member on the other hand.

(c) All calculations of preferred and annual returns on Class A Units in both 10.1.3(b)(ii) and 10.1.3(b)(iv) will be based on the last day of the quarter (based on the calendar year) in which an investor purchases such Class A Units. Distributions to the Class D Member pursuant to this **Section 10.1.3** are referred to, with respect to each Member on a Member-by-Member basis, as the Class D

Member's "**Carried Interest**."

(d) Notwithstanding anything in this Agreement to the contrary, (A) any Carried Interest Distributions (or Tax Distributions) in respect of a Member that the Class D Member would be entitled to receive from the Company shall, to the extent reasonably practicable, as determined in the discretion of the Manager, instead be distributed to the Class D Member or an Affiliate thereof by one or more subsidiaries and (B) the amount of such distributions, if any, that the Class D Member is entitled to receive shall be calculated without taking into account any U.S. federal, state and local income taxes paid or payable by or with respect to any subsidiary, so that such distributions shall be equal to the amount that would result if no such taxes were paid or payable; furthermore, solely for purposes of calculating Carried Interest hereunder, any income taxes paid by any subsidiaries will be treated as having been distributed exclusively to the Members pursuant to **Section 10.1.3(b)**. Any such distributions by a subsidiary to the Class D Member shall, for all purposes of this Agreement, be treated as a Carried Interest Distribution (or Tax Distribution, as applicable) made to the Class D Member by the Company (and shall reduce the Carried Interest Distributions (or Tax Distributions, as applicable) otherwise to be made by the Company). "**Grossed-up Distributions**" shall mean the amount, if any, by which (x) the total distributions in respect of Carried Interest (or Tax Distributions) with respect to a Member made by the Subsidiaries to the Class D Member or an Affiliate thereof exceed (y) the total Carried Interest Distributions (or Tax Distributions) with respect to such Member that the Class D Member would be entitled to receive from the Company pursuant to this Agreement without the application of the first sentence of this **Section 10.1.3(d)**.

10.1.4. Class D Member Tax Distributions.

If the Class D Member's pro forma total tax liability attributable to income allocated to the Class D Member in respect of Carried Interest (current or future) with respect to a Member with respect to all taxable years up to and including the current taxable year exceeds the aggregate amount of Carried Interest Distributions made to the Class D Member with respect to such Member up to and including the current taxable year, then the Manager may cause the Company to make a distribution (a "**Tax Distribution**") to the Class D Member in an amount equal to all or a portion of the shortfall, so long as cash is available for such distribution without the sale of Company assets for the purpose of such distribution. Any Tax Distribution to the Class D Member shall reduce future Carried Interest Distributions to the Class D Member with respect to such Member. The Class D Member's pro forma total tax liability shall be determined assuming the Assumed Tax Rate.

10.1.5. Form of Distributions; Apportionments of Distributions.

Except as authorized by the Manager, all distributions made before the commencement of the liquidation of the Company's assets pursuant to **ARTICLE 12** shall consist of cash.

10.1.6. Distributions to the Manager.

Notwithstanding anything to the contrary in this **ARTICLE 10**, the Class D Member may elect not to receive part or all of any distributions of Carried Interest to which it would otherwise be entitled under this Agreement and instead cause such amount to be distributed to all Members in proportion to their respective Sharing Percentages for the investment to which such amount relates. To the extent that the Class D Member elects not to receive any such distributions, subsequent distributions will be made to the Class D Member on a priority basis to all other distributions (except to the extent the Class D Member makes a further election under this **Section 10.1.6** until the Class D Member has received the amount of distributions the Class D Member would have received without such election. No interest shall accrue on or be paid to the Class D Member with respect to any distributions deferred under this

Section 10.1.6. If due to the foregoing deferral or otherwise, the cumulative amount of Carried Interest distributions with respect to a Member as of the end of any fiscal quarter (the "**Reference Date**") is less than it would have been on such Reference Date with respect to such Member determined on a cumulative basis taking into account all distributions or deemed distributions made on or before such date as if such distributions or deemed distributions were made simultaneously on such date (except for the computation of the Preferred Return), then such Member shall within 10 Business Days of receiving a notice from the Manager of such deficiency return to the Company the amount of such deficiency for distribution to the Class D Member. Such amount will be treated as a return of distributions (and not as a Capital Contribution) with the effect that such amount will, for all purposes under this Agreement, be treated as if it had not been distributed to such Member.

10.2. No Deficit Restoration by Members.

Except as otherwise provided in **Section 1.1**, no Member shall have any obligation to restore a deficit balance in its Capital Account upon liquidation of its interest in the Company or otherwise. The foregoing shall not limit any obligations of the Members to make Capital Contributions to the Company in accordance with **Section 8.1** or to return distributions to the Company in accordance with **Section 12.5.3**.

10.3. Right to Set Off.

No part of any distribution shall be paid pursuant to this **ARTICLE 10** to any Member from which there is due and owing to the Company, at the time of such distribution, any amount required to be paid to the Company pursuant to **ARTICLE 8**, **Section 10.1.6** or **Section 12.5.3**. Any such withheld distribution shall be deemed to have been distributed to such Member, shall be set off against such Member's obligation to the Company and shall reduce such Member's obligation to the Company accordingly.

10.4. Withholding

10.4.1. In General.

(a) The Company shall at all times be entitled to make payments with respect to any Member in amounts required to discharge any obligation of the Company to withhold from a distribution or make payments to any governmental authority with respect to any non-U.S., U.S. federal, state or local tax liability of such Member or with respect to withholdable payments (within the meaning of Section 1473(1) of the Code) to such Member arising as a result of such Member's interest in the Company (a "**Withholding Payment**"). Any Withholding Payment made from funds withheld upon a distribution will be treated as distributed to such Member for all purposes of this Agreement. Each Member shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Company and the other Members against all claims, liabilities and expenses of any nature relating to the Company's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Company or any of its Affiliates with respect to such Member.

(b) In the event (and to the extent) that the distributions or proceeds to the Company from a Fund Investment are reduced on account of taxes withheld at the source or any taxes are otherwise required to be paid by the Company, any subsidiary or any other entity in which the Company invests, and such taxes are imposed on or with respect to one or more of the Members in the Company, the amount of the reduction shall be borne by the relevant Members and treated as if it were paid by the Company as a Withholding Payment with respect to such Members pursuant to **Section 10.4.1(a)**. Taxes imposed on the Company (or any other entity through or in which it invests) where the

rate of tax varies depending on characteristics of the Members shall be treated as taxes imposed on or with respect to the Members for purposes of this **Section 10.4.1(b)**. To the extent that the distributions or proceeds to the Company from a Fund Investment are reduced on account of taxes withheld at the source or any taxes are otherwise required to be paid by the Company, any subsidiary or any other entity in which the Company invests, and such taxes are imposed on the Company (rather than on or with respect to one or more of the Members as described above), the amount of the reduction shall be treated as an expense of the Company. Any taxes imposed by any jurisdiction as a result of a Member's failure to provide any information, documentation or certification requested by the Manager or the Company (including any such information, documentation or certifications regarding the ultimate beneficial owners of such Member) in connection with tax filings or other information requirements in any jurisdiction in which or through which the Company invests shall be treated as taxes imposed on or with respect to such Member for purposes of this **Section 10.4**.

10.5. CERTAIN DISTRIBUTIONS PROHIBITED.

Anything in this **ARTICLE 10** to the contrary notwithstanding, no distribution shall be made to any Member if, and to the extent that, such distribution would not be permitted under Sections 18-607(a) or 18-804(a) of the Act.

ARTICLE 11. LIMITATIONS ON TRANSFERS AND WITHDRAWALS

11.1. NO MEMBER WITHDRAWAL RIGHTS.

Except as otherwise provided in this Agreement, no Member shall have the right to withdraw from the Company, to withdraw its capital and profits from the Company or to demand and receive any Company property in exchange for its interest in the Company.

11.2. TRANSFERS OF UNITS.

11.2.1. In General.

No Transfer of a Member's interest in the Company, in whole or in part, shall be made other than pursuant to this **Section 11.2**. Any attempted Transfer of all or any part of a Member's interest in the Company without compliance with this Agreement shall be void. Each Transfer (i) shall be subject to all of the terms, conditions, restrictions and obligations set forth in this Agreement and (ii) except for Transfers that occur by operation of law, including the laws of descent and distribution (a "**Permitted Transfer**"), shall be evidenced by a written agreement executed by the transferor, the transferee(s) and the Manager, in form and substance satisfactory to the Manager.

11.2.2. Consent of Manager.

The prior written consent of the Manager, which consent may be granted or withheld in its absolute discretion, shall be required for any Transfer (other than a Permitted Transfer) of all or part of a Member's interest in the Company, including a Transfer of solely an Economic Interest in the Company.

11.2.3. No Public Trading in Company Interests.

The Manager shall not cause or permit any offering of interests in the Company to be registered under the Securities Act or to become "traded on an established securities market," and shall withhold its consent to any Transfer that, to the Manager's knowledge after reasonable inquiry,

otherwise would be accomplished by a trade on a "secondary market (or the substantial equivalent thereof)," in each case within the meaning of Sections 7704 or 469(k) of the Code and the applicable Treasury Regulations.

11.2.4. No Recognition of Certain Transfers.

No Transfer of any "partnership interest" (as defined in Treasury Regulations Section 1.7704-1(a)(2)) in the Company or portion thereof or derivative interest therein shall be permitted or "recognized" (within the meaning of Treasury Regulations Section 1.7704-1(d)) by the Company or the Manager unless either (i) the Manager determines that either such Transfer or the Company (immediately after such Transfer) will qualify for a safe harbor set forth in the Treasury Regulations under Section 7704 of the Code or (ii) the Manager otherwise determines, after consulting with the Company's tax advisors, that such Transfer will not cause the Company to be subject to U.S. federal income tax as a publicly traded partnership under Section 7704(b) of the Code.

11.2.5. Required Representations by Parties.

The transferor and transferee(s) shall provide to the Manager, in connection with any proposed Transfer (including a Permitted Transfer), such written representations as the Manager reasonably may require. The Manager and counsel to the Company shall be permitted to rely upon any representations made by the transferor and transferee(s) and on written representations from other Members made prior to or contemporaneously with such proposed Transfer.

11.2.6. Other Prohibited Legal Consequences.

No Transfer shall be permitted, and the Manager shall withhold its consent with respect thereto, if such Transfer or the admission of the transferee to the Company as a substituted Member, would:

(a) result in the Company's assets becoming "plan assets" of any ERISA Member within the meaning of the Plan Assets Regulation;

(b) result in a violation of the registration requirements of the Securities Act or any similar laws of any state or foreign jurisdiction;

(c) require the Company to register as an investment company under the Investment Company Act;

(d) unless waived by the Manager, require the Manager or any Manager Related Person to register as an investment adviser under the Investment Advisers Act or any equivalent law of any U.S. state;

(e) result in the Company being classified for U.S. federal income tax purposes as an association taxable as a corporation;

(f) result in the Company being subject to U.S. federal income tax at the entity level under Section 7704 of the Code or failing to qualify for any safe harbor from taxation as a corporation under Section 7704 of the Code;

(g) result in the termination of the Company's status as a partnership for U.S. federal income tax purposes;

(h) breach the terms of, or reduce the borrowings available to the Company or any subsidiary under, any credit facility secured by the Members' capital contribution obligations; or

(i) subject the Company, a subsidiary, or the Manager to any other additional regulatory requirements.

11.2.7. Opinion of Counsel.

The Manager may, in its sole discretion, condition any Transfer otherwise permitted hereunder to be made only upon receipt by the Company of an opinion of counsel for the Company, or of other counsel reasonably satisfactory to the Manager, as to compliance with **Section 11.2.6** and such other legal matters as the Manager reasonably may request.

11.2.8. Reimbursement of Transfer Expenses.

The transferor of any interest in the Company hereby agrees to reimburse the Company, at the request of the Manager, for any expenses reasonably incurred by the Company in connection with such Transfer, including the costs of seeking and obtaining any opinion of counsel and any other legal, accounting and miscellaneous expenses ("**Transfer Expenses**"), whether or not such Transfer is consummated. At its election, and in any event if the transferor has not reimbursed the Company for any Transfer Expenses incurred by the Company in preparing for or consummating a proposed or completed Transfer within 30 days after the Manager has delivered to such transferor written demand for payment, the Manager may seek reimbursement from the transferee of such interest. If the transferee does not reimburse the Company for such Transfer Expenses within a reasonable time, the Manager may charge the transferee's Capital Account with such Transfer Expenses.

11.3. **ADMISSION OF SUBSTITUTE MEMBERS.**

11.3.1. In General.

Any transferee of a Company Interest Transferred in accordance with the provisions of this **ARTICLE 11** shall be admitted as a substituted Member only with the Manager's written consent, which consent may be granted or withheld in its absolute discretion.

11.3.2. Effect of Admission.

The transferee of an interest in the Company Transferred pursuant to this **ARTICLE 11** that is admitted to the Company as a substituted Member shall succeed to the rights and liabilities of the transferor Member with respect to such interest and, after the effective date of such admission, the Capital Contributions, Sharing Percentages and Capital Account of the transferor shall become the Capital Contributions, Sharing Percentages and Capital Account, respectively, of the transferee, to the extent of the interest Transferred. If a transferee is not admitted to the Company as a Substitute Member, (i) such transferee shall have no right to participate with the Members in any votes, consents or other actions taken by the Members hereunder and (ii) the transferor or, in the case of a Permitted Transfer, the estate, legal representative or other successor of the original owner, shall remain liable to the Company for all contributions and other amounts payable with respect to the Transferred interest to the same extent as if no Transfer had occurred.

11.3.3. Non-Compliant Transfer.

If a Transfer has been proposed or attempted by a Member but the requirements of this

ARTICLE 11 have not been satisfied, the Manager shall not admit the purported transferee as a Substitute Member and shall use its reasonable efforts to cause the Company to (i) continue to treat the transferor as the sole owner of the interest in the Company purportedly Transferred, (ii) make no distributions to the purported transferee and (iii) not furnish to the purported transferee any tax or financial information regarding the Company. The Manager shall also use its reasonable efforts to ensure that the Company does not otherwise treat the purported transferee as an owner of any interest in the Company (either legal or equitable), unless required by law to do so. The Company shall be entitled to seek injunctive relief to prevent any such unauthorized Transfer by a Member, at such Member's expense

11.3.4. Transfer of Class D Units.

The Class D Member shall not Transfer all or any part of its Class D Units except: (a) in connection with the change or technical reconstitution of the form of legal entity of the Class D Member; or (b) such Transfer is of all of its Class D Units to one of its Affiliates so long as, in either case, (i) such reconstitution or Transfer does not have material adverse tax or legal consequences for the Members and (ii) such other Entity assumes in writing the obligations of the Class D Member under this Agreement. Any attempted Transfer of the Class D Units except in compliance with the preceding sentence shall be void. If the Class D Member Transfers its interest pursuant to this **Section 11.3.4**, the transferee shall be admitted to the Company only upon the written consent of the holder of the Class D Units.

ARTICLE 12. DISSOLUTION AND WINDING UP

12.1. DISSOLUTION.

The Company shall be dissolved upon the first to occur of the following:

(a) an election to dissolve the Company is made by the Manager, in its sole discretion;

(b) after the end of the Investment Period, the reduction to cash of all of the Fund Investments of the Company;

(c) the entry of a decree of a judicial dissolution pursuant to the Act; or

(d) any other event causing dissolution of the Company under the Act.

12.2. LIQUIDATION.

12.2.1. General.

Following dissolution, the Company's assets shall be liquidated in an orderly manner. The Manager shall be the liquidator to wind up the affairs of the Company pursuant to this Agreement; provided, however, that if there shall be no remaining Manager at that time, a Majority of the Members may designate one or more other Persons to act as the liquidator (or liquidators) instead of the Manager. Any such liquidator, other than the Manager, shall be a "liquidating trustee" within the meaning of Section 18-101(11) of the Act.

12.2.2. Liquidating Distributions.

The liquidator shall pay or provide for the satisfaction of the Company's liabilities and obligations to creditors. In performing its duties, the liquidator is authorized to sell, exchange, or

otherwise dispose of the assets of the Company in such reasonable manner as the liquidator shall determine to be in the best interest of the Members. After the liabilities of the Company to all creditors have been satisfied, and provision has been made for the expenses of liquidation and reserves for any contingent liabilities, any remaining proceeds from liquidation shall be distributed in accordance with **Section 10.1.3**. During the liquidation of the Company, the liquidator shall furnish to the Members the financial statements and other information specified in **Section 16.3**.

12.3. TAXABLE GAIN OR LOSS.

Taxable income, gain and loss from the sale of the Company's property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in **ARTICLE 9**.

12.4. CERTIFICATE OF CANCELLATION.

When the liquidator has complied with the foregoing liquidation plan, the termination of the Company shall be effective on the filing of, and the Manager or liquidator shall file, a certificate of cancellation of the Certificate (the "**Certificate of Cancellation**") with the Office of the Secretary of State of the State of Delaware in accordance with Section § 18-203 of the Act.

12.5. LIABILITY FOR RETURNS.

12.5.1. In General.

The liquidator, the Manager and their respective partners, members, stockholders, officers, directors, managers, employees, agents and Affiliates shall not be personally liable for the return of the Contribution of any Member.

12.5.2. Member Obligations.

No Member shall be obligated at any time to repay or restore to the Company any amount with respect to a negative Capital Account; provided, however, that this provision shall not affect the obligations of Members to make their agreed-upon Capital Contributions and any other payments to the Company that are required under this Agreement or applicable law.

12.5.3. Return of Certain Distributions.

If (a) the Company or a subsidiary incurs a liability or obligation, including an indemnification obligation under **ARTICLE 14** hereof and (b) the Company or subsidiary does not have sufficient available funds to satisfy such liability or obligation, then the Manager may require that each Member make contributions to the capital of the Company, upon not less than 10 Business Days' notice from the Manager, of its pro rata share, based on the relative Capital Contributions of the Members, of the amount necessary to satisfy such liability or obligation; A Member's obligation to make contributions to the Company under this **Section 12.5.3** shall survive the dissolution and liquidation of the Company, and the Company may pursue and enforce all rights and remedies it may have against each Member under this **Section 12.5.3**. The provisions of this **Section 12.5.3** shall not be construed or interpreted as inuring to the benefit of any creditor of the Company or any other Person.

ARTICLE 13. REPRESENTATIONS AND WARRANTIES OF THE MANAGER

13.1. GENERAL.

The Manager represents, warrants, and covenants to each Member that as of the date of the Initial Closing:

13.1.1. Company Duly Formed.

The Company has been duly formed and is a validly existing limited liability company under the laws of the State of Delaware with full power and authority to conduct its business as described in this Agreement.

13.1.2. Manager Duly Formed.

The Manager has been duly formed and is a validly existing limited liability company under the laws of the State of Delaware, with full power and authority to perform its obligations herein.

13.1.3. Action Complete.

All action required to be taken by the Manager and the Company, as a condition to the issuance and sale of the Interests being purchased by the Members, has been taken.

13.1.4. Units Duly Issued.

The Membership Interest of each Member represents a duly and validly issued membership interest in the Company and each Member is entitled to all the benefits of a Member under this Agreement and the Act.

13.1.5. Duly Authorized Agreement.

This Agreement has been duly authorized, executed and delivered by the Manager and, assuming due authorization, execution and delivery by each Member, constitutes a valid and binding agreement of the Manager enforceable in accordance with its terms against the Manager, except as may be limited by bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general applicability relating to or affecting creditors' rights or general equity principles (regardless of whether considered at law or in equity).

13.1.6. Validity of PPM.

The PPM did not contain any untrue statement of a material fact and did not omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that the description therein of this Agreement and the provisions hereof is superseded in its entirety by this Agreement.

13.1.7. Company not an Investment Company.

Assuming the accuracy of the representations and warranties made by each Member pursuant to the relevant Subscription Agreement, the Company take commercially reasonable steps to conduct its business so that it is not required to register as an investment company under the Investment Company Act.

13.1.8. Units not Required to Be Registered.

Assuming the accuracy of the representations and warranties made by each Member pursuant to the relevant Subscription Agreement, the offer and sale of the Units in accordance with the terms of

the relevant Subscription Agreement does not require registration of the Interests under the Securities Act.

13.1.9. Regarding Fees.

The only fees payable to the Manager by the Company or the Members are those contemplated or specified by this Agreement.

ARTICLE 14. EXCULPATION AND INDEMNIFICATION

14.1. EXCULPATION.

No Covered Person shall have any liability to the Company or any Member for any loss suffered by the Company or any Member that arises out of any action or inaction of a Covered Person, unless such action or inaction (i) is undertaken or omitted in connection with providing services to the Company or any subsidiary or the performance of the Covered Person's duties under this Agreement and (ii) is finally adjudicated by a court of competent jurisdiction to constitute fraud, gross negligence, or willful misconduct. Notwithstanding any other provision of this Agreement, in no event will the Manager or any other Covered Person be liable for any lost profits, or other indirect, special, incidental, punitive or consequential damages (regardless of whether such damages or other losses were reasonably foreseeable) incurred by the Company, the Members or any other Person as a result of any action or inaction of such Person relating to or in connection with the Company. To the maximum extent permitted by law, each Covered Person's duties (including fiduciary duties) to the Company, any Member or any other Person shall be limited to those set forth in this Agreement.

14.2. INDEMNIFICATION

14.2.1. In General.

Subject to the limitations contained in this **Section 14.2**, the Company shall indemnify, protect, defend and hold harmless each Covered Person (each, an "**Indemnified Person**") against all losses, liabilities, damages and expenses incurred by such Indemnified Person as a result of any actions or omissions taken or omitted in connection with providing services to the Company or any subsidiary or the performance of the Indemnified Person's duties under this Agreement or by reason of any action or omission taken or omitted on behalf of the Company or any subsidiary. Such indemnity shall cover, without implied limitation, judgments, settlements, fines, penalties and counsel and expert fees incurred in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, before or threatened to be brought before any court or administrative body, in which an Indemnified Person may be or may have been involved as a party or otherwise, or with which it may have been threatened, by reason of being or having been an Indemnified Person, or by reason of any act or omission on behalf of the Company or any subsidiary or otherwise taken or omitted in connection with providing services to the Company or any subsidiary or the performance of the Indemnified Person's duties under this Agreement. No Indemnified Person shall be entitled to indemnification pursuant to this **Section 14.2** with respect to any matter as to which such Indemnified Person shall have been finally adjudicated by a court of competent jurisdiction in any such action, suit or other proceeding to have committed an act or omission that (i) was undertaken or omitted in connection with providing services to the Company or any subsidiary or the performance of the Manager's or the liquidator's duties under this Agreement and (ii) constituted fraud, gross negligence, or willful misconduct. Notwithstanding any other provision of this Agreement, in no event will the Manager or any other Indemnified Person be liable for any lost profits, or other indirect, special, incidental, punitive or consequential damages (regardless of whether such damages or other losses were reasonably foreseeable) incurred by the Company, the Members or any other Person as a result of any

action or omission of such Person relating to or in connection with the Company.

14.2.2. Limitations.

No Covered Person or principal, heir, executor, administrator, partner, member, stockholder, trustee, employee, employer, officer, director, manager, agent, advisor, successor or assign of any Covered Person shall be entitled to indemnification pursuant to this **Section 14.2** with respect to any action, suit or proceeding that relates solely to a dispute between or among the Manager or any Covered Person providing services to the Company or any subsidiary and any of its members, managers or employees.

14.2.3. Contribution.

If for any reason the indemnification called for by this **Section 14.2** is unavailable or insufficient to hold harmless an Indemnified Person in accordance with the terms hereof (other than as a result of a failure to satisfy the conditions to such indemnification as set forth in the preceding paragraph), then the Company shall contribute or cause one or more of its Subsidiaries to contribute to the amount paid or payable by such Indemnified Person (which contribution may equal up to 100% of such amount) as a result of any losses, judgments, liabilities, fines, penalties, expenses and amounts paid in settlement referred to in this **Section 14.2**, such that the Indemnified Person would be in the same financial position it would have been in if the indemnification called for by this **Section 14.2** were available and sufficient.

14.2.4. Advance Payment of Expenses.

Prior to the final disposition of any claim or proceeding with respect to which any Indemnified Person may be entitled to indemnification hereunder, the Company will pay to the Indemnified Person, in advance of such final disposition, an amount equal to all expenses of such Indemnified Person reasonably incurred in the defense of such claim or proceeding, including but not limited to any legal retainer fees, so long as the Company has received a written undertaking of such Indemnified Person to repay to the Company the amount so advanced if it shall be finally determined that such Indemnified Person was not entitled to indemnification hereunder.

14.2.5. Insurance.

At its election, the Manager may cause the Company to purchase and maintain insurance, at the expense of the Company (or pay its allocated share, as determined in good faith by the Manager, of insurance obtained by the Manager) and to the extent available, for the protection of any Indemnified Person or potential Indemnified Person against any liability incurred by reason of being an Indemnified Person, whether or not the Company has the power to indemnify such Person against such liability.

14.2.6. Successors.

The rights of indemnification and contribution shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such Indemnified Person.

14.2.7. Rights to Indemnification from Other Sources.

The rights to indemnification and advancement of expenses conferred in this **Section 14.2** shall not be exclusive and shall be in addition to any rights to which any Indemnified Person may otherwise be entitled or hereafter acquire under any law, statute, rule, regulation, charter document,

by-law, contract or agreement.

14.2.8. Sharing of Expenses with Related Entities.

With regard to any claim for indemnification pursuant to this **Section 14.2** which relates to a common activity of the Company and any Other Fund, it is intended that the Company shall be required to pay only its proportionate share of the total amounts actually paid with respect to such claim by any or all of such entities in connection with such activity. For this purpose, (i) the Company's proportionate share of any such claim attributable to a Fund Investment shall be equal to its proportionate share of the total amounts invested by the Company and such other entities in such Fund Investment and (ii) its proportionate share of any other claim shall be determined based on the Company's aggregate Capital Contributions relative to the aggregate commitments to the capital of such other entities. If any claim for indemnification relates only to, or is caused solely by, the activities or existence of only one of the Company or such other entities, any liability to make payments in satisfaction of such claim shall be borne fully by the Company or such other entity, as the case may be. The Manager shall use its reasonable best efforts to cause any Other Fund to adhere to the principles of shared indemnification set forth in this **Section 14.2.8**.

14.2.9. Agreements with Third Parties.

The Manager, in its sole discretion, may cause the Company to enter into agreements with an agent of the Company and/or any of its Affiliates (including, for example, any administrator, custodian or other service provider) pursuant to which the Company agrees to limit the liability of or provide indemnification to any such agent in connection with such agents provision of services to or for the benefit of the Company. The terms of any such limit on liability or indemnification may be on substantially the same terms as those set forth in this Agreement or on such other terms as the Manager may determine.

14.2.10. Discretionary Limitation by Manager.

Notwithstanding **Section 14.2.1**, the Manager, in its sole discretion, may limit or eliminate indemnification payments that otherwise would be made by the Company to any Indemnified Person other than a liquidator or a Member that nominated such member or liquidator.

14.3. LIMITATION BY LAW.

If any Indemnified Person or the Company itself is subject to any federal or state law, rule or regulation which restricts the extent to which any Person may be exonerated or indemnified by the Company, the exculpation provisions set forth in **Section 14.1** and the indemnification provisions set forth in **Section 14.2** shall be deemed to be amended, automatically and without further action by the Members, to the minimum extent necessary to conform to such restrictions.

ARTICLE 15. AMENDMENTS, VOTING, AND CONSENTS

15.1. AMENDMENTS.

15.1.1. Consent of Members.

Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived, modified, amended or deleted, during or after the term of the Company, with (i) the prior written consent of the Manager and a Majority of the Members, *provided* that any such waiver, modification, amendment or deletion pursuant to this clause (ii) is concurrent with a substantially

identical amendment to the governing agreement of any other Parallel Fund; *provided further* that any provision of this Agreement requiring the written vote or consent of a greater percentage in interest of the Members may be waived, modified, amended or deleted only with the vote or written consent of the Manager and such greater percentage in interest of the Members, as the case may be, as is required by such provision. The preceding sentence is intended to apply solely with respect to express provisions of this Agreement and not to any voting, approval or similar rules set forth in the Act or other applicable law, without regard to whether such rules are incorporated into this Agreement by reference, operation of law or otherwise.

15.1.2. Amendments Affecting Members' Rights.

Except with regard to amendments expressly authorized under this Agreement, there shall be no amendment to this Agreement that would materially reduce the rights, or materially increase the obligations, of a Member under this Agreement unless the amendment (i) is consented to by such Member or (ii) by its terms applies to all Members and is approved in accordance with **Section 15.1**. The foregoing notwithstanding, no Member's Capital Contribution shall be increased without the consent of such Member. This **Section 15.1.2** shall not be amended without the unanimous consent of all Members.

15.1.3. Notice of Amendments.

The Manager shall furnish copies of any amendments to this Agreement to all Members. The Manager shall not be required to notify the Members of any changes to any schedule of Members that are made in accordance with this Agreement.

15.1.4. Corrective Amendments.

Notwithstanding the other provisions of this **ARTICLE 15**, the Manager, without (a) the consent of or (b) notice to any other Member, may amend any provisions of this Agreement: (i) to add to the duties or obligations of the Manager or surrender any right granted to the Manager herein; (ii) to cure any ambiguity or correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct any printing, stenographic or clerical errors or omissions in order that this Agreement shall accurately reflect the agreement among the Members; (iii) to provide or change any necessary information regarding the Manager; and (iv) to the extent otherwise expressly provided in this Agreement; provided, however, that no amendment shall be made pursuant to this **Section 15.1.4** unless the Manager reasonably shall have determined that such amendment will not (c) subject any Member to any material adverse economic consequences or (d) alter or waive in any material adverse respect the duties and obligations of the Manager to the Company or the Members.

15.1.5. Amendments Relating to Changes in Tax Laws.

Notwithstanding the other provisions of this **ARTICLE 15**, if, after the date of this Agreement, there are any changes to tax laws, rules or regulations applicable to the Company, the Manager may, without the consent of any other Member, amend any provisions of this Agreement to the extent necessary to comply with any such changes. The Manager shall provide prompt notice to the Members of any amendment to this Agreement pursuant to this **Section 15.1.5**.

15.2. VOTING AND CONSENTS.

Whenever action is required by this Agreement to be taken by a specified percentage in interest of the Members, such action shall be deemed to be valid if taken upon the written vote or written consent of those Members whose Capital Contributions represent the specified percentage of the

aggregate Capital Contributions of all Members (other than any defaulting partners or similar of a Parallel Fund) at that time. Similarly, whenever action is required by this Agreement to be taken by a specified percentage in interest of a specified class or group of Members, such action shall be deemed to be valid if taken upon the written vote or written consent of those Members (other than any defaulting partners or similar of a Parallel Fund) of such class or group whose Capital Contributions represent the specified percentage of the aggregate Capital Contributions of all Members (other than any defaulting partners or similar of a Parallel Fund) of such class or group at the time. Any membership interest or similar non-manager interest in the Company or any Parallel Fund held by the Manager, the Principals, any other Manager Related Person or by any defaulting partner or similar of a Parallel Fund shall be excluded (and shall not be deemed outstanding) for purposes of determining whether the required vote or written consent of Members has been obtained hereunder. Except as otherwise expressly provided or the context requires, any reference in this Agreement to the vote or consent of a specified percentage in interest of Members, or a specified percentage in interest of a specified class or group of Members, shall be deemed to mean the vote or consent of the limited partners (or members or other owners), or specified class or group of limited partners (or members or other owners), of the Company and any Parallel Fund acting together as a single group, and this Agreement and the limited liability company agreement or other governing documents of such Parallel Fund(s) shall be construed accordingly. All Members shall be deemed to constitute a single class or group and, except as may be specifically otherwise provided herein, shall vote or grant written consents as a single class with respect to any matters on which Members have the right to vote or act by written consent hereunder or under the Act. With respect to any amendment or other matter for which the vote or consent of the Members is sought, a Member will be deemed to have affirmatively consented to such amendment or other matter if the Member does not provide written notice to the Company of its objection thereto within a period of time specified by the Manager (which shall not be less than 20 Business Days of the date on which the Member was given notice of such proposed amendment or other matter).

ARTICLE 16. ADMINISTRATIVE PROVISIONS.

16.1. KEEPING OF ACCOUNTS AND RECORDS; CERTIFICATE OF FORMATION.

16.1.1. Accounts and Records.

At all times the Manager shall cause to be kept proper and complete books of account in which shall be entered fully and accurately the transactions of the Company. Such books of account shall be kept on the accrual method of accounting. The Manager shall also maintain: (a) an executed copy of this Agreement (and any amendments hereto); (b) the Certificate (and any amendments thereto); (c) executed copies of any powers of attorney pursuant to which any document described in clause (a) or (b) has been executed by the Company; (d) a current list of the full name and last known address of each Member; (e) copies of all tax returns filed by the Company for each of the prior five years; and (f) all financial statements of the Company for each of the prior five years. These books and records shall at all times be maintained at the principal office of the Company.

16.1.2. Certificate of Formation.

The Manager shall file for record with the appropriate public authorities and, if required, publish the Certificate and any amendments thereto.

16.2. INFORMATION RIGHTS.

At any time before the Company's complete liquidation, each Member, or a designee thereof, at its own expense and for any purpose reasonably related to such Member's interest as a Member may (a)

fully examine and audit the Company's books, records, accounts and assets, including bank account balances and (b) examine, or request that the Manager furnish, such additional information as is reasonably necessary to enable the requesting Member to review the state of the investment activities of the Company, provided that the Manager can obtain such additional information without unreasonable effort or expense. Any such examination or audit shall be made (1) only upon five Business Days' prior written notice to the Manager, (2) at the Company's principal office, (3) during normal business hours and (4) without undue disruption to the activities of the Manager. Notwithstanding the foregoing, the Manager shall have the benefit of the confidential information provisions of Section 18-305(c) of the Act and **Section 17.7** hereof.

16.3. FINANCIAL REPORTS.

16.3.1. Investor Reporting.

The Manager shall use its reasonable efforts to transmit to each Member: (i) within 120 days after the close of each fiscal year, unaudited financial statements of the Company for such fiscal year; and (ii) within 90 days after the end of each of the first three fiscal quarters of each fiscal year of the Company, a Company shareholder report for the quarter then ended. The Manager shall be entitled, in its sole discretion, to transmit the reports described in this **Section 16.3.1** and any other information regarding the Company's activities and Fund Investments to the Members solely by means of granting such Members access to a website designated by the Manager.

16.3.2. Annual Tax Information.

The Manager shall use its reasonable efforts to transmit to each Member, as soon as reasonably practicable after the close of each fiscal year, such Member's Schedule K-1 (Internal Revenue Service Form 1065) or an equivalent report indicating such Member's share of all items of income or gain, expense, loss or other deduction and tax credit of the Company for such year, as well as the status of its Capital Account as of the end of such year, and such additional information as such Member reasonably may request to enable it to complete its tax returns or to fulfill any other reporting requirements, provided that the Manager can obtain such additional information without unreasonable effort or expense. The Members acknowledge that they may be required to obtain extensions of the filing dates of their federal, state and local income tax returns due to the Company's inability to provide them with the information on or before such dates necessary to file such returns without such extensions.

16.3.3. Information from Third Parties.

The Members acknowledge that the Manager and the Company's accountants will require information from third parties in order to comply with the requirements of this **Section 16.3** and agree that neither shall have liability to the Company or the Members in connection therewith so long as they exercise commercially reasonable efforts in seeking to obtain such information on a timely basis, and that the Manager and the Company's accountants are not responsible for (and may reasonably rely on) the accuracy of any such information from third parties.

16.4. VALUATION.

16.4.1. Valuation by Manager.

Whenever valuation of Company assets or net assets is required by this Agreement, the Manager shall determine the fair market value thereof in good faith in accordance with GAAP

(including Financial Accounting Standards Board Statement No. 157, as applicable). The value of each asset of the Company as of a particular date determined by the Manager or its designee pursuant to this **Section 16.4.1** are conclusive and binding on the Members and all parties claiming through or under the Members.

16.4.2. Valuation Factors.

The Manager's determination of the fair market value the assets of the Company shall be based upon all relevant factors, which may include: the current financial position and current and historical operating results of the Fund Investment; sales prices of recent public or private transactions of comparable assets; general level of interest rates; significant recent events affecting the Fund Investment, including any purchase offers; the price paid by the Company to acquire the asset; and the percentage of the Fund Investment that is owned by the Company.

16.4.3. Goodwill and Intangible Assets.

In determining the fair market value of the assets of the Company, no allowance of any kind shall be made for goodwill or the name of the Company or of the Manager, the Company's office records, files and statistical data or any intangible assets of the Company in the nature of or similar to goodwill. The Company's name and goodwill shall, as among the Members, be deemed to have no value and shall belong to the Manager, and no Member shall have any right or claim individually to the use thereof.

16.5. ANNUAL MEETINGS.

The Manager may, in its sole discretion, cause the Company to hold an annual meeting offering Members the opportunity to review and discuss the Company's investment activity and portfolio. At the Manager's discretion, individual meetings may be held in lieu of, or in addition to, an annual meeting.

16.6. NOTICES.

All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered by hand, mailed (by registered or certified mail return receipt requested and postage prepaid), sent by nationally recognized overnight courier for next Business Day delivery or sent by electronic mail. Notices will be effective immediately if delivered in person, or upon the date acknowledged to have been received in return receipt if sent by mail, or upon the actual receipt thereof if sent by overnight courier service, or on the date transmitted by electronic mail, if sent before 5:00 p.m. local time of the recipient, otherwise on the following day. If any notice is given on a date that is not a Business Day, such notice will be deemed to have been given on the next Business Day. Notices shall be given to (i) a Member at such Member's address, electronic mail or facsimile number on file with the Company and (ii) the Company care of the Manager at the Manager's address or electronic mail address set forth on Schedule A, or in either case, to such other address or electronic mail address that the addressee previously may have specified by written notice given in the manner specified in this **Section 14.6** to the Company, in the case of the Members, or to the Members, in the case of the Company or the Manager.

16.7. FISCAL YEAR.

The fiscal year of the Company shall be the calendar year or, if the Company is required to use a different year as its taxable year for U.S. federal income tax purposes, the Company's fiscal year shall be the same as its taxable year.

16.8. TAX PROVISIONS.

16.8.1. Classification as Partnership.

The Manager: (i) shall not cause or permit the Company to elect (A) to be excluded from the provisions of Subchapter K of Chapter 1 of the Code or (B) to be treated as a corporation for U.S. federal income tax purposes or (C) to be treated as an "electing large partnership" as defined in Section 775 of the Code; (ii) shall cause the Company to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Company as a partnership for U.S. federal income tax purposes; (iii) shall cause the Company to file any required tax returns in a manner consistent with its treatment as a partnership for U.S. federal income tax purposes; and (iv) has not taken and shall not take any action that would be inconsistent with the treatment of the Company as a partnership for such purposes. No Member shall take any action or position inconsistent with the foregoing. The Manager may cause or permit any subsidiary to be classified for U.S. federal income tax purposes in such manner as the Manager may deem appropriate.

16.8.2. Partnership Representative.

The Manager (or its designee) shall be designated as the Company's partnership representative within the meaning of Section 6223 of the Code, as amended by the Centralized Company Audit Regime (the "**Partnership Representative**") and the Manager shall designate the "designated individual," as defined in the Centralized Company Audit Regime, and, as such, shall have sole authority to act on behalf of the Company thereunder; (ii) each Member shall furnish such information as is reasonably requested by the Partnership Representative in connection with the Centralized Company Audit Regime; and (iii) in the case of any adjustment to an item of Company income, gain, loss, deduction or credit, (A) each Person who was a Member during any reviewed year of the Company as defined in Section 6225 of the Code, as amended by the Centralized Company Audit Regime (a "**Reviewed Year**"), whether or not such Person is a Member during the adjustment year of the Company as defined in Section 6225 of the Code, as amended by the Centralized Company Audit Regime (the "**Adjustment Year**") (each such Person, a "**Reviewed Year Member**") shall report its allocable share of such adjustment on its U.S. federal income tax return pursuant to either the procedures described in Section 6225(c)(2) of the Code, as amended by the Centralized Company Audit Regime (the "**Amended Return Procedures**") or the procedures described in section 6226 of the Code, as amended by the Centralized Company Audit Regime (the "**Alternative Payment Procedures**"), as determined by the Manager in its sole discretion, and (B) if the Manager determines not to elect the Alternative Payment Procedures, each Reviewed Year Member who fails to (x) file a timely amended U.S. federal income tax return to report his, her or its allocable share of any adjustment, (y) pay any associated tax, penalties, additions to tax, or interest, and (z) provide the Partnership Representative with timely proof of such filing and payment as provided in the Centralized Company Audit Regime shall indemnify the Company and the Subsidiaries from and against any and all loss attributable to such Reviewed Year Member's allocable share of any "Imputed Underpayment" (interpreted as such term is used in the Centralized Company Audit Regime) required to be paid by the Company or any subsidiary, including any interest, penalty, other additions to tax, and all other costs and expenses (including professional fees for such accountants, attorneys and agents as the Partnership Representative in its discretion determines are necessary to or useful in the performance of its duties in that capacity) of any kind or nature that may be sustained or suffered by the Company or any subsidiary. The Company shall allocate any deemed expense or distribution attributable to such loss to such Reviewed Year Member (or its successor or assignee) and the Company shall be entitled to recover such loss by any lawful means, including by offsetting such loss against amounts otherwise distributable to the Reviewed Year Member. The provisions of this **Section 16.8.2** shall survive the termination of the Company and any Member's or assignee's interest in the Company and shall remain binding on the

Member or assignee until all matters regarding the taxation of the Company or the Members and assignees with respect to the Company are finally resolved. Each Member shall ensure that the Company has its correct mailing address at all times and shall provide to the Company upon request such information or forms that the Manager may reasonably request with respect to the Company's compliance with applicable tax laws. All expenses incurred by the Partnership Representative and the "designated individual" (including professional fees for such accountants, attorneys and agents as the Partnership Representative in its discretion determines are necessary to or useful in the performance of its duties in that capacity) shall be borne by the Company. Without limiting the foregoing and notwithstanding **ARTICLE 15**, the Partnership Representative may amend this Agreement as necessary or desirable in the event of any changes in applicable law (including any Treasury Regulations or IRS notices, revenue procedures, revenue rulings, or other administrative guidance) interpreting or applying the Centralized Company Audit Regime.

16.8.3. Electing Investment Company.

If the Manager elects to have the Company treated as an "electing investment partnership" for purposes of Section 743 of the Code, the Members shall cooperate with the Manager to maintain that status and shall not take any action that would be inconsistent with such election. Upon request, the Members shall provide the Manager with any information necessary to allow the Company to comply with (i) its obligations to make tax basis adjustments under Sections 734 or 743 of the Code or (ii) its obligations as an electing investment partnership. The transferee of an interest in the Company in a transfer resulting in an adjustment to the basis of Company property under Code Section 743 shall bear the Company's reasonable costs of complying with Section 743 of the Code. Transferees required to bear the Company's reasonable costs of complying with Section 743 of the Code shall bear such cost pro rata in proportion to their relative Contributions.

16.8.4. No Section 732(d) Election.

Each Member agrees not to make the election provided for in Section 732(d) of the Code relating to the Member's adjusted tax basis in property distributed by the Company.

16.8.5. Safe Harbor Election.

The Manager is hereby authorized to cause the Company to make an election to value the Membership Interest of the Manager as compensation for services to the Company (the "**Compensatory Interest**") at liquidation value (the "**Safe Harbor Election**"), as the same may be permitted pursuant to or in accordance with the finally promulgated successor rules to Proposed Treasury Regulations Section 1.83-3(l) and IRS Notice 2005-43 whether promulgated in the form of Treasury Regulations, revenue rulings, revenue procedures, notices and/or other IRS guidance (collectively, the "Proposed Rules"). Any such Safe Harbor Election shall be binding on the Company and on all of the Members with respect to all transfers of the Compensatory Interest thereafter made while a Safe Harbor Election is in effect. Each Member, by signing this Agreement or by accepting a transfer of an interest in the Company, agrees to comply with all requirements of the Safe Harbor Election with respect to the Manager's Compensatory Interest while the Safe Harbor Election remains effective. The Manager is authorized, without further vote or action of the Members, to amend the Agreement as necessary to comply with the Proposed Rules or any rule, including the allocation provisions of the Agreement, in order to provide for a Safe Harbor Election and the ability to maintain or revoke the same, and shall have the authority to execute any such amendment by and on behalf of each Member; provided, however, that the Manager shall not make any such amendments which could have a material adverse effect on any Member without the prior written consent of such Member. Each Member agrees to cooperate with the Manager to perfect and maintain any Safe Harbor Election, and

to timely execute and deliver any documentation with respect thereto reasonably requested by the Manager.

16.8.6. Tax Reporting Consistency.

For U.S. federal, state and local income tax purposes, each Member shall report the tax items attributable to its participation in the Company on its income tax returns in a manner consistent with the tax treatment of such items as reported to it by the Company.

16.8.7. Required Notifications to Manager.

A Member shall immediately provide written notice to the Manager if that Member (a) has filed a voluntary petition under the bankruptcy laws or a petition for the appointment of a receiver or makes any assignment for the benefit of creditors, (b) is subject involuntarily to such a petition or assignment or to an attachment or lien with respect to all or a portion of its Units and such involuntary petition, assignment, attachment, or lien is not discharged within sixty (60) days after its effective date, or (c) is subject to a Transfer of any of its Units by court order or decree or by operation of law (including divorce, but excluding a Transfer as a result of the death of a Member).

16.9. LIMITED POWER OF ATTORNEY.

(a) Each of the undersigned by execution of this Agreement (including by execution of a counterpart signature page hereto) constitutes and appoints the Manager as its true and lawful representative and attorney-in-fact, in its name, place and stead, to make, execute, sign, acknowledge and deliver or file (i) the Certificate and any other instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Company or any Subsidiary, (ii) all instruments, documents and certificates that may be required to effectuate the dissolution and termination of the Company in accordance with the provisions hereof and the Act, (iii) all other amendments of this Agreement or the Certificate contemplated by this Agreement including amendments reflecting the addition or substitution of any Member, or any action of the Members duly taken pursuant to this Agreement whether or not such Member voted in favor of or otherwise approved such action, (iv) any other instrument, certificate or document required from time to time to admit a Member, to effect its substitution as a Member, to effect the substitution of the Member's assignee as a Member, or to reflect any action of the Members provided for in this Agreement and (v) any and all instruments and agreements necessary or advisable to consummate any Fund Investment pursuant to the terms hereof, including the execution of organizational documents for an Alternative Investment Vehicle formed pursuant to **Section 6.6.3**; *provided* that no actions shall be taken by the Manager under the power of attorney granted pursuant to this **Section 16.9** that would, to the Manager's knowledge, have any adverse effect on the limited liability of any Member. The foregoing grant of authority (1) is a special power of attorney coupled with an interest in favor of the Manager and as such shall be irrevocable and shall survive the death or disability of a Member that is a natural person or the merger, dissolution or other termination of the existence of a Member that is a corporation, association, partnership, limited liability company or trust and (2) shall survive the assignment by the Member of the whole or any portion of its interest, except that where the assignee of the whole interest thereof has furnished a power of attorney, this power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument necessary to effect any permitted substitution of the assignee for the assignor as a Member and shall thereafter terminate.

(b) Each Member agrees to execute such other documents as the Manager may reasonably request in order to effect the intention and purposes of the agency and power of attorney contemplated

by this **Section 16.9(a)**.

ARTICLE 17. MISCELLANEOUS PROVISIONS

17.1. OTHER TRANSACTIONS.

Any Manager, Member, or any Affiliate thereof, or any shareholder, officer, director, employee, Member, member, manager or any person owning an interest therein, may engage in or possess an interest in any other business or venture of any nature or description, whether or not competitive with the Company, including, but not limited to, the acquisition, syndication, ownership, financing, leasing, operation, maintenance, management, brokerage, construction and development of property similar to the Fund Investment, and no Manager, Member, Member or any Affiliate, other person or entity shall have any interest in such other business or venture by reason of their interest in the Company.

17.2. ADDITIONAL DOCUMENTS AND ACTS.

Each Member will sign and deliver any additional documents and instruments and perform any additional acts that are commercially reasonable and desirable to perform or evidence its obligations in this Agreement.

17.3. PARTIES IN INTEREST.

Nothing in this Agreement relieves or discharges any obligation or liability of any third Person to any Member or Manager. No provision of this Agreement gives any third Person any right of subrogation or action over or against any Member or Manager.

17.4. COMPLETE AGREEMENT.

This Agreement is the complete and exclusive statement of the Members' agreement on matters covered by this Agreement. It replaces and supersedes the Members' prior written or oral agreements or statements on those matters.

17.5. GOVERNING LAW.

All claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall be governed by the laws of the State of Delaware, excluding that State's choice-of-law principles.

17.6. BINDING ARBITRATION.

17.6.1. Arbitration; No Jury Trial; No Class Action; Expenses.

(a) The parties hereto do FULLY AND FOREVER WAIVE ALL OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY PROCEEDING ARISING OUT OF THIS AGREEMENT OR RELATED TO THE SALE OF PREFERRED UNITS. The parties hereto further agree that any and all claims, disputes or controversies arising from or related to this Agreement, existing at or arising after the effective date of this Agreement, will be submitted to binding arbitration under the Delaware Rapid Arbitration Act, as amended from time to time (the "**DRAA**"), and the rules for DRAA arbitrations adopted by the DRAA and the Delaware courts (the "**Arbitration Rules**") shall govern all aspects of the arbitration. In no event shall class arbitration be permitted, and the arbitrator shall have no authority to conduct any class arbitration. The parties knowingly and voluntarily consent to the waiver of any rights resulting from this Arbitration Provision or application

of the DRAA or the Arbitration Rules.

(b) To the extent permitted under the DRAA, all hearings relating to the arbitration, along with the arbitration itself, will take place in San Diego, California. Notwithstanding anything herein to the contrary, the non-prevailing party to the arbitration shall pay the reasonable expenses of attorneys' fees and other costs and expenses (including expert witness fees) of the prevailing party in such amount as they may be determined. In addition, such non-prevailing Party shall pay reasonable attorneys' fees incurred by the prevailing Party in enforcing, or on appeal from, a judgment in favor of the prevailing party. If the binding arbitration provision above is not enforceable, the parties hereby subject themselves to the jurisdiction of the federal and state courts located within the State of California and agree that the exclusive venue and place of jurisdiction for any lawsuit arising under or related to the sale of the Units shall be in the federal or state courts located within San Diego County, California.

17.6.2. Waiver of Consequential and Punitive Damages

The parties hereto waive to the fullest extent permitted by applicable law all claims to consequential and punitive damages in any arbitration or other legal action brought by any of them against any other of them in respect of (a) any claim among or between any of them arising under this Agreement, the related PPM, or any other agreement or agreements between or among any of them at any time, including any such agreements, whether written or oral, made or alleged to have been made at any time, and (b) any and all claims arising under common law or under any statute of any state or the United States of America.

17.7. VENUE.

Any action relating to or arising out of this Agreement that cannot be heard in arbitration, shall be brought only in a court of competent jurisdiction located in San Diego County, California.

17.8. CONFIDENTIALITY

17.8.1. In General.

(a) A Member's rights to access or receive any information about the Company or its activities including (i) information to which a Member is provided access pursuant to **Section 16.2**, (ii) financial statements, reports and other information provided pursuant to **Section 16.3**, (iii) the offering documents for the Company, this Agreement, any Subscription Agreement and any other related agreements, and (iv) any such information or documents relating to a Subsidiary, Feeder Vehicle, Parallel Fund or Alternative Investment Vehicle (the "**Company Information**"), are conditioned on such Member's willingness and ability to assure that the Company Information will be used solely by such Member for purposes reasonably related to such Member's interest as a Member, and that such Company Information will not become publicly available as a result of such Member's rights to access or receive such Company Information.

(b) Each Member acknowledges and agrees that the Company Information constitutes a valuable trade secret of the Company and agrees to maintain any Company Information provided to it in the strictest confidence and not to disclose the Company Information to any Person other than to its officers, fiduciaries, employees, agents or consultants who have a business need to know such Company Information, who have been informed of the confidential nature of such Company Information, and who are, either by the nature of their positions or duties or pursuant to written agreement, subject to substantially equivalent restrictions with respect to the use and disclosure of the Company Information as are set forth in this Agreement. With respect to any Member, the obligation to maintain the

Company Information in confidence shall not apply to any Company Information (i) that becomes publicly available (other than by reason of a disclosure by a Member), (ii) the disclosure of which has been consented to by the Manager in writing or (iii) the disclosure of which is required by a court of competent jurisdiction or other governmental authority or otherwise as required by law. Before any Member discloses Company Information pursuant to clause (iii), such Member shall promptly, and in any event prior to making any such disclosure, notify the Manager of the court order, subpoena, interrogatories, government order or other reason that requires disclosure of the Company Information so that the Manager may seek a protective order or other remedy to protect the confidentiality of the Company Information or waive compliance with this Agreement. Such Member shall also consult with the Manager on the advisability of taking steps to eliminate or narrow the requirement to disclose the Company Information and shall otherwise cooperate with the efforts of the Manager to obtain a protective order or other remedy to protect the Company Information. If a protective order or other remedy cannot be obtained, such Member shall disclose only that Company Information that its counsel advises in writing (which writing shall also be addressed and delivered to the Company) that it is legally required to disclose.

(c) Each Member shall promptly inform the Manager if it becomes aware of any reason, whether under law, regulation, policy or otherwise, that it will, or might become compelled to, use the Company Information other than as contemplated by **Section 17.8.1(a)** or disclose Company Information in violation of the confidentiality restrictions in **Section 17.8.1(b)**.

(d) Notwithstanding any other provision of this Agreement, with the exception of the Schedule K-1 or equivalent report to be provided to each Member pursuant to **Section 16.3**, the Manager shall have the right not to provide any Member, for such period of time as the Manager in good faith determines to be advisable, with any Company Information that such Member would otherwise be entitled to receive or to have access to pursuant to this Agreement or the Act if: (i) the Company or the Manager is required by law or by agreement with a third party to keep such Company Information confidential; (ii) the Manager in good faith believes that the disclosure of such Company Information to such Member is not in the best interest of the Company or could damage the Company or its activities (which may include a determination by the Manager that such Member is disclosing or may disclose such Company Information and that the potential of such disclosure by such Member is not in the best interest of the Company or could damage the Company or its activities) or (iii) such Member has notified the Manager of its election not to have access to, or to receive such Company Information. Without limiting the foregoing, in order to preserve the confidentiality of certain information disseminated by the Manager or the Company under this Agreement that a Member is entitled to receive pursuant to the provisions of this Agreement, including quarterly, annual and other reports (but excluding the Schedule K-1 or equivalent report to be provided to each Member pursuant to **Section 16.3.2**, the Manager may (iii) provide to such Member access to such information only through a secure website in password-protected, non-downloadable, nonprintable format and (iv) require such Member to return any copies of information provided to it by the Manager or the Company. The Manager may also, in its sole discretion, waive compliance with any provision of this **Section 17.8.1** or agree with any Member on alternative means to protect the confidentiality of Company Information.

(e) In order to protect the confidentiality of Members, the Manager may elect to withhold from the Members the name and contact information of certain Members who have requested such confidential treatment, provided that if the Manager does withhold such information pursuant to this **Section 17.8.1(e)**, it will establish reasonable procedures pursuant to which the Members may communicate with one another for purposes of this Agreement (e.g., by sending communications to the Manager for immediate forwarding to the intended recipient Member(s)).

(f) The Members acknowledge and agree that: (i) the Company or the Manager or Manager Related Persons may acquire confidential information related to third parties (e.g., Fund Investments and prospective Fund Investments) that pursuant to fiduciary, contractual, legal or similar obligations cannot be disclosed to the Members; and (ii) neither the Company nor the Manager (nor any Manager Related Person) shall be in breach of any duty under this Agreement, or the Act or otherwise at law or in equity in consequence of acquiring, holding or failing to disclose such information to the Members so long as such obligations were undertaken in good faith.

(g) The Members hereby acknowledge that pursuant to Section 18-305(g) of the Act, the rights of a Member to obtain information from the Company shall be limited to only those rights provided for in this Agreement and that any other rights provided under Section 18-305(a) of the Act shall not be available to the Members or applicable to the Company.

(h) In addition to any other remedies available at law, the Members agree that the Company shall be entitled to equitable relief, including the right to an injunction or restraining order, as a remedy for any failure by a Member to comply with its obligations with respect to the use and disclosure of Company Information, as set forth in **Sections 17.8.1(a)** and **(b)**. Furthermore, each Member agrees to indemnify the Company and each Covered Person against any claim, demand, controversy, dispute, cost, loss, damage, expense (including attorneys' fees), judgment or liability incurred by or imposed upon the Company or any such Covered Person in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which the Company or any such Covered Person may be made a party or otherwise involved or with which the Company or any such Covered Person shall be threatened, by reason of the Member's obligations (or breach thereof) set forth in **Sections 17.8.1(a)** or **(b)**.

(i) A Member's obligations under this **Section 17.8** shall survive the dissolution and liquidation of the Company, and the Company may pursue and enforce all rights and remedies it may have against each Member under this **Section 17.8**.

17.9. NOTICES.

All communications under this Agreement (including notices, consents, approvals and waivers) must be in writing and will be considered given (a) when delivered by hand; (b) when sent by facsimile transmission or by electronic mail (with confirmation of delivery); (c) when received after being mailed by registered or certified mail, postage prepaid, return receipt requested; and (d) when received if sent via nationally recognized commercial courier, in each case to the street addresses, facsimile numbers or electronic mail addresses indicated on **Exhibit B** (except as otherwise specified in writing by any Member to the others).

17.10. COUNTERPARTS.

This Agreement may be executed in one or more counterparts, including those sent by facsimile transmission or electronic PDF file. Each counterpart will be deemed an original, but all counterparts taken together will constitute one agreement.

17.11. SEVERABILITY.

If a court or arbitration panel holds any provision of this Agreement to be illegal, invalid or unenforceable, that provision will be reformed, construed and enforced as if it had been drafted so as not to be illegal, invalid or unenforceable, and the illegality, invalidity or unenforceability will have no effect upon, and will not impair the enforceability of, any other provision of this Agreement, so long as

the economic or legal substance of the arrangements and transactions contemplated by this Agreement are not affected by the reformation, construction or enforcement in any manner materially adverse to any Party.

17.12. Compliance with Applicable Laws.

No provision of this Agreement will be interpreted in a way that would cause a violation of applicable Laws.

17.13. No Third-Party Beneficiaries.

This Agreement is for the exclusive benefit of the Members, the Managers and the Company and, for purposes of **ARTICLE 14**, their respective Indemnified Persons, and each of their successors and permitted assigns. Except for the foregoing, this Agreement is not intended to benefit or create rights in any other Person, including (a) any Person to which any debts, liabilities or obligations are owed by the Company, any Member, or any Manager; or (b) any liquidator, trustee or creditor acting on the Company's behalf, and no such creditor or any other Person will have any rights under this Agreement.

17.14. Certain Rules of Construction.

17.14.1. Ambiguities.

Any ambiguities in this Agreement will be resolved without reference to which Party took the lead in drafting it, notwithstanding any statute or rule of law to the contrary.

17.14.2. Interpretation.

Unless the context otherwise requires: (a) "or" is not exclusive; (b) words in the singular include the plural, and vice versa; (c) each reference to a law, statute, rule or regulation, is deemed followed by "as amended from time to time"; (d) "desirable" includes "necessary," "convenient" and "incidental"; (e) "including" and "includes" imply no limitation; and (f) pronouns of either gender or neuter include the other pronoun forms. References to sections or exhibits are to the sections and exhibits of this Agreement, unless otherwise indicated.

17.14.3. Headings; Exhibits.

The headings in this Agreement are only for convenience and are not to be considered in interpreting this Agreement. All exhibits attached to this Agreement are incorporated in it.

17.15. Partition.

The Members agree that the assets of the Company, including any Fund Investments, are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that he may have, or may obtain, to maintain any action for partition of any of the assets of the Company, including any Fund Investments.

[**Signature pages follow**]

IN WITNESS WHEREOF, this Agreement is effective as of the date first set forth in the preamble.

MANAGER:

DF Manager, LLC
a Delaware limited liability company

By: DiversyFund, Inc.
a Delaware corporation,
Its Manager

By: _____
Name: _____
Title: _____

CLASS D MEMBER:

DiversyFund, Inc
a Delaware corporation

By: _____
Name: _____
Title: _____

Form of
Joinder Signature Page for Class A Members

[To be inserted]

JOINDER AGREEMENT

Reference is hereby made to that certain Amended and Restated Operating Agreement dated Deceember 16, 2024, as amended from time to time (the "**Operating Agreement**"), by and among **DF Distressed Opportunities Fund, LLC**, a Delaware limited liability company (the "**Company**"), and the Members and the Managers party thereto from time to time. Pursuant to, and in accordance with, the provisions of the Operating Agreement, the undersigned hereby acknowledges that the undersigned has received and reviewed a complete copy of the Operating Agreement and agrees that upon execution of this Joinder Agreement, such Person shall become a party to the Operating Agreement and shall be fully bound by, and subject to, all of the covenants, terms and conditions of the Operating Agreement applicable to Members as though an original party thereto, and shall be deemed, and is hereby admitted as, a Member for all purposes thereof and entitled to all the rights incidental thereto.

Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Operating Agreement.

IN WITNESS WHEREOF, the party hereto has executed this Joinder Agreement as of _____ ___, 20__.

NEW MEMBER:

_____
_____
_____

ACCEPTED BY MANAGER

DF Manager, LLC
a Delaware limited liability company

DiversyFund, Inc.
a Delaware corporation. its Manager

By: _____
Name: _____
Title: _____

EXHIBIT A

DEFINITIONS

"**Act**" shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

"**Adjusted Capital Account Deficit**" shall mean, 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:

(i) Credit to such Capital Account any amounts which the Member is obligated to restore and the Member's share of Member Minimum Gain and Company Minimum Gain; and

(ii) Debit to such Capital Account the items described in Treasury Regulations Sections 1.7041(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

"**Adjustment Year**" is defined in **Section 16.8.2**.

"**Affiliate**" shall mean (i) any Person directly or indirectly controlling, controlled by or under common control with another Person; (ii) a Person owning or controlling 10% or more of the outstanding voting securities of such other Person; (iii) any officer, director or Member of such other Person; and (iv) if such other Person is an officer, director or Member, any company for which such Person acts in any capacity.

"**After-Tax Amount**" means an amount equal to (a) the amount of Carried Interest Distributions to the Manager with respect to a Member *minus* (b) the amount of income tax imposed on the Manager and its direct and indirect members with respect to (i) allocations of taxable income related to such Carried Interest or (ii) Carried Interest Distributions, in each case based on the Assumed Tax Rate. In calculating the After-Tax Amount, (a) the Assumed Tax Rate shall be the Assumed Tax Rate in effect in the fiscal year of any such allocation, distribution or sale of securities and (b) the determination of the amount of income tax imposed shall include the aggregate allocations of losses, deductions and credits received directly or indirectly from the Company (over the life of the Company) that would be available to offset the taxable income or reduce the tax liability of the Manager, or its direct or indirect members, after all applicable restrictions on such tax items have been taken into account and assuming the only items of income, gain, loss, deduction or credit of the Manager, or its direct or indirect members, are attributable to the Manager's investment in the Company.

"**Agreement**" shall mean this Limited Liability Company Agreement, as amended from time to time.

"**Alternative Investment Vehicle**" is defined in **Section 6.6.3**.

"**Alternative Payment Procedures**" is defined in **Section 16.8.2**.

"**Amended Return Procedures**" is defined in **Section 16.8.2**.

"**Arbitration Rules**" is defined in **Section 17.6.1(a)**.

"**Assumed Tax Rate**" means the highest effective marginal combined federal, state, and local income tax rate for a fiscal year prescribed for an individual residing in San Diego, California, taking

into account the character (for example, long-term or short-term capital gain, ordinary or exempt) of the applicable income.

"**BBA Procedures**" means the partnership audit procedures enacted under Section 1101 of the Bipartisan Budget Act of 2015.

"**Book Gain**" shall mean the excess, if any, of the fair market value of the Property over its adjusted basis for federal income tax purposes at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

"**Book Loss**" shall mean the excess, if any, of the adjusted basis of Property for federal income tax purposes over its fair market value at the time a valuation of the Property is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of California are authorized or required to close.

"**Capital Account**" with respect to any Member (or such Member's assignee) shall mean such Member's initial Capital Contribution adjusted as follows:

(i) A Member's Capital Account shall be increased by:

(a) such Member's share of Net Profits;

(b) any item of income or gain specially allocated to a Member and not included in Net Profits or Net Loss;

(c) any additional cash Capital Contribution made by such Member to the Company; and

(d) the fair market value of any additional Capital Contribution, as determined by the Manager, consisting of property contributed by such Member to the capital of the Company reduced by any liabilities assumed by the Company in connection with such contribution or to which the Property is subject.

(ii) A Member's Capital Account shall be reduced by:

(a) such Member's share of Net Loss;

(b) any deduction specially allocated to a Member and not included in Net Profits or Net Loss;

(c) any cash Distribution made to such Member; and

(d) the fair market value, as determined by the Manager, of any Property (reduced by any liabilities assumed by the Member in connection with the Distribution or to which the distributed Property is subject) distributed to such Member; provided that, upon liquidation and winding up of the Company, unsold Property will be valued for Distribution at its fair market value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Company then sold the Property for its

fair market value. Such fair market value shall not be less than the amount of any nonrecourse indebtedness that is secured by the Property.

Property other than money may not be contributed to the Company except as specifically provided in this Agreement. Property of the Company may not be revalued for purposes of calculating Capital Accounts unless the fair market value of the Property and Company complies with the requirements of Treasury Regulations Section 1.7041(b)(2)(iv)(f) and (g); provided, however, for purposes of calculating Book Gain or Book Loss (but not for purposes of adjusting Capital Accounts to reflect the contribution and distribution of such Property), the fair market value of Property shall be deemed to be no less than the outstanding balance of any nonrecourse indebtedness secured by such Property.

The Capital Account of a Substituted Member shall include the Capital Account of his transferor. Notwithstanding anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b). For purposes of this Agreement, any references to the Treasury Regulations shall include corresponding subsequent provisions.

"**Capital Contribution**" shall mean the gross amount invested in the Company by a Member and shall be equal in amount to the cash purchase price paid by such Member for the Units sold to him by the Company and any other actual contributions of capital to the Company.

"**Capital Transaction Proceeds**" means all cash in any one transaction received by the Company from the sale, financing, refinancing or other disposition or pledge of any of its assets, as such cash is reduced by the following to the extent made from such cash receipts: (a) all cash expenditures of the Company to consummate such a sale, financing, refinancing or other disposition or pledge of its assets; (b) all principal, interest or other payments on indebtedness of the Company to lenders including, without limitation, all payments to repay in whole or in part member loans or other Company indebtedness being refinanced; (c) all contributions by the Company to Persons in which it holds or will hold an equity interest; (d) all amounts to conduct or expand the business as determined by the Manager in its business judgment; and (e) such deposits to cash reserves as determined by the Manager in its business judgment.

"**Carried Interest**" is defined in **Section 10.1.3(c)**.

"**Carried Interest Distributions**" means all amounts distributed to the Manager pursuant to **Section 10.1.3(b)(b)(iii)** and **Section 10.1.3(b)(iv)** and **Section 12.2.2** (to the extent made in accordance with the priorities of **Section 10.1.3(b)(iii)** and Error! Reference source not found.**10.1.3(b)(iv)**) and advances to the Manager pursuant to **Section 10.1.4** to the extent not repaid from subsequent distributions, less any payments made by the Manager pursuant to **Section 1.1(a).**

"**Cause**" means a good faith determination that the Manager or a Member, as applicable (i) has committed any action relating to the performance of his, her, or its duties under this Agreement that constitutes gross negligence, fraud, or willful misconduct, and that has had a material adverse effect on the Company or (ii) has been convicted of or pled guilty or no contest to (a) any criminal offense which is classified as a felony (or its equivalent under the laws or regulations of any country or political subdivision thereof), or (b) any other criminal offense that involves a violation of federal or state securities laws or regulations (or equivalent laws or regulations of any country or political subdivision thereof), embezzlement, fraud, material wrongful taking or material misappropriation of property or theft (*provided* that the Member may suspend such Member's services with the Company with or without pay upon any indictment or charge relating to any of the foregoing crimes until the

dismissal thereof), *provided* that Cause shall not in any case include any action or omission that consists of, or results solely from, simple negligence.

"**Class A Member**" means a Member of the Company holding Class A Units.

"**Class A Units**" means the Class A Units granted to the Members, as reflected on the books and records of the Company, with the rights and obligations described in this Agreement.

"**Class D Member**" means a Member of the Company holding Class D Units.

"**Class D Units**" means the Class D Units granted to an affiliate of the Manager, as reflected on the books and records of the Company, with the rights and obligations described in this Agreement.

"

"**Certificate**" shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Delaware as the same may be amended or restated from time to time.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

"**Company**" is defined in the header of this Agreement.

"Company Expenses" means all fees, costs, and expenses fairly allocable to the Company related to the activities, business, operations, or actual or potential investments of the Company, including: (i) all Organization and Offering Expenses; (ii) all costs of personnel employed by the Company and directly involved in the Company's business and its potential and actual Fund Investments; (iii) costs of personnel employed by the Manager (and its managers) or its Affiliates and directly involved in the business of the Company and its potential and actual Fund Investments; (iv) advertising and public notice costs; (v) all costs of borrowed money including principal, interest on and fees, costs and expenses relating to or arising out of all borrowings made by the Company, including fees, costs and expenses incurred in connection with the negotiation and establishment of an applicable credit facility, credit support or other relevant arrangements with respect to such borrowings or related to securing the same by mortgage, pledge or other encumbrance, if applicable; (vi) any taxes, fees or other governmental charges (including imputed underpayments resulting from an adjustment under the BBA Procedures) levied against the Company or on its income or assets or in connection with its business or operations including the business or operations of any entities through which the Company invests and preparation expenses in connection with such governmental charges, but excluding any such amounts to the extent such amounts have been repaid to the Company and have been treated as distributed by the Company, or an election has been made under the BBA Procedures for the Company to not take an adjustment into account; (vii) fees, costs and expenses (including legal and accounting fees) incurred in connection with any audit, examination, investigation or other proceeding by any taxing authority or incurred in connection with any governmental or regulatory inquiry, investigation or proceeding, in each case, involving or otherwise applicable to the Company including the amount of any judgments, settlements, remediation or fines paid in connection therewith, excluding for the avoidance of doubt, any expenses with respect to which an Indemnified Person would not be entitled to indemnification; (viii) legal, accounting, audit, brokerage, and other fees including but not limited to fees, costs and expenses of outside counsel, accountants, auditors, appraisers, valuation experts, consultants, administrators, custodians, depositaries, trustees, property managers, architects, engineers, guarantors, and other similar outside advisors and service providers (including servicing companies such as loan servicers) with respect to the Company and its potential and actual Fund Investments; (ix)

fees and expenses paid to the Manager as described in **Section 7.2** above, independent contractors, mortgage bankers, real estate brokers, and other agents; (x) fees, costs and expenses of identifying, investigating (and conducting diligence with respect to), evaluating, structuring, consummating, owning, developing, improving, operating, constructing, holding, maintaining, repairing, remodeling, refurbishing, leasing, monitoring or disposing potential and actual Fund Investments, including (a) brokerage commissions, clearing and settlement charges, custodial fees, investment banking fees, bank charges, placement, syndication and solicitation fees, arranger fees, sales commissions, and other Fund Investment execution, closing and administrative fees, costs and expenses, (b) any travel-related costs and expenses incurred in connection therewith (including costs and expenses of accommodations and meals, and costs and expenses related to attending trade association meetings, conferences or similar meetings for purposes of evaluating actual or potential investment opportunities), (c) expenses associated with portfolio and risk management and (d) fees, costs and expenses incurred in the organization, operation administration, restructuring or winding-up, dissolution and liquidation of any subsidiaries or other entities through with the Company makes Fund Investments; (xi) all expenses incurred in connection with the maintenance of Company books and records, the preparation and dissemination of reports, tax returns or other information to the Members; (xii) expenses incurred in preparing and filing reports or other information with appropriate regulatory agencies and the portion fairly allocable to the Company of fees, costs and expenses incurred in connection with legal and regulatory compliance with U.S. federal, state, local, non-U.S. or other law and regulation relating to the Company's activities; (xiii) expenses, premiums and fees for insurance for the benefit of, or allocated to, the Company (including directors' and officers' liability, errors and omissions or other similar insurance policies, and any other insurance for coverage of liabilities incurred in connection with the activities of, or on behalf of, the Company and its Fund Investments, including an allocable portion of the premiums and fees for one or more "umbrella" policies that covers the Company and Other Funds), other than any insurance insuring the Manager against losses for which it is not entitled to be indemnified under **ARTICLE 14**; (xiv) costs incurred in connection with any actual or potential litigation in which the Company may become involved, or other dispute related to the Company or any actual or potential Fund Investment (including expenses incurred in connection with the investigation, prosecution, defense, judgment or settlement of litigation and the appointment of any agents for service of process on behalf of the Company or the Members) and other extraordinary expenses related to the Company or such actual or potential Fund Investments (including fees, costs and expenses that are classified as extraordinary expenses under generally accepted accounting principles in the U.S.), excluding for the avoidance of doubt, any expenses with respect to which an Indemnified Person would not be entitled to indemnification by reason of applicable limitations set forth in this Agreement; (xv) the actual costs of goods and materials used by or for the Company; (xvi) the costs of services that could be performed directly for the Company by independent parties such as legal, accounting, fund administration, asset management, construction management, property management, secretarial or clerical, reporting, transfer agent, data processing and duplicating services but which are in fact performed by the Manager or its Affiliates, but not in excess of the amounts which the Company would otherwise be required to pay to qualified independent parties for comparable services in the same geographic locale, such amount to be determined in the Manager's sole discretion; (xvii) expenses of Company accounting, legal, documentation reporting and administration, including in relation to calling capital from and making distributions to the Members, the administration of assets, financial planning and treasury activities, the representation of the Company or the Members by the Partnership Representative, the preparation and delivery of all Company financial statements, tax returns and Schedule K-1s or comparable tax reports (including any successors thereto), capital calls, distribution notices, other reports and notices and other required or requested information provided to a sub-set of Members or to all Members, as applicable (including the cost of any third-party administrator that provides accounting and administrative services to the Company), fees, costs and expenses incurred to audit such reports, provide access to such reports or information (including through a website or other portal) and any other operational, secretarial or postage expenses relating thereto or arising in connection with the distribution thereof (and including, in each case, technology and other

administrative support therefor and allocable compensation and overhead of Sponsor personnel); (xviii) expenses of revising, amending, modifying, or terminating this Agreement, the Management Agreement, side letters with Members (including "most favored nations" provisions) or any other constituent or related documents of the Company, and the Manager (and their managers or general partners), including the solicitation of any consent, waiver or similar acknowledgement from the Members or preparation of other materials in connection with compliance (or monitoring compliance) with such documents; (xix) fees, costs and expenses related to procuring, developing, implementing or maintaining information technology, data subscription and license-based services, research publications, materials, equipment and services, computer software or hardware and electronic equipment in connection with providing services to the Company (including reporting as described herein), in connection with identifying, investigating (and conducting diligence with respect to) or evaluating, structuring, consummating, holding, monitoring, or disposing potential and actual Fund Investments, or in connection with obtaining or performing research related to potential or actual Fund Investments, industries, sectors, geographies or other relevant market, economic, geopolitical or similar data or trends, including risk analysis software; (xx) fees, costs and expenses of holding any annual or other information meetings of the Members (including (a) meal, event, entertainment and other similar fees, costs and expenses and (b) travel and accommodation costs of partners, members, managing directors, directors, officers, or employees of or advisors to the Manager or its Affiliates attending such annual or other information meetings); (xxi) intentionally omitted; (xxii) fees, costs and expenses relating to Transfers of interest in the Company (and admission of a Substitute Member) or a permitted withdrawal of a Member (but only to the extent not paid or otherwise borne by the relevant Transferring Member and/or the transferee or the withdrawing Member, as applicable); (xxiii) fees, costs and expenses required under or otherwise related to the Company's indemnification obligations, including advancement of any such fees, costs or expenses to persons entitled to such indemnification, or other matters that are the subject of indemnification or contribution pursuant to **ARTICLE 14**; (xxiv) fees, costs and expenses incurred in connection with terminating, winding-up, liquidating and dissolving of the Company;(xxv) the portion of the Manager's payroll expenses allocable to work performed for the Company; (xxvi) the Management Fee; (xxvii) all other costs and expenses incurred in connection with the business of the Company; and (xxviii) in the case of each of the foregoing items in this definition, all similar items in connection with any other Alternative Investment Vehicles or Subsidiaries or other entities through which the Company makes any Fund Investment, to the extent not otherwise paid or borne by such other Alternative Investment Vehicles, Subsidiaries or other entities, but not including Organization and Offering Expenses.

"**Company Group**" is defined in **Section 6.6.3(e)**.

"**Company Minimum Gain**" shall have the same meaning as "Company minimum gain" as set forth in Treasury Regulations Section 1.704-2(d).

"**Compensatory Interest**" is defined in **Section 16.8.5**

"**Covered Person**" means the Manager, the Sponsor, each Principal, any liquidator, and any of their Affiliates, and any principal, heir, executor, administrator, partner, member, stockholder, trustee, employee, employer, officer, director, manager, agent, advisor, successor, or assign of any such Person (including any Person who services at the request of the Manager, or the Company as a director, officers, manager, partner, employee or agent of another entity in which the Company has an interest as an equity holder, creditor, or otherwise or who otherwise provides services to the Company with respect to a Fund Investment.

"**Depreciation**" means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period, except that if the Gross Asset Value of any asset

differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation will be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis, provided, however, that if the federal income tax depreciation, amortization, or other cost recovery deduction for such year is zero, Depreciation will be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

"**Distribution**" shall refer to any money or other property transferred without consideration (other than repurchased Units) to Members or Owners with respect to their interests or Units in the Company.

"**DRAA**" is defined in **Section 17.6.1(a)**.

"**Economic Interest**" shall mean an interest in the Net Profits, Net Loss and Distributions of the Company but shall not include any right to vote or to participate in the management of the Company.

"**Employee Benefit Plan**" shall have the meaning set forth in Section 3(3) of ERISA.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Excused Investment**" shall mean, with respect to any ERISA Member, any proposed Fund Investment in which, based on an opinion of counsel, participation by such ERISA Member (assuming such ERISA Member is subject to ERISA) would result or be materially likely to result in (i) a material violation of any provision of ERISA by such ERISA Member, any Employee Benefit Plan subject to ERISA any of the assets of which are held by such ERISA Member, the trustee or other fiduciary of such ERISA Member or of such plan, or the Company, or (ii) all or any portion of the assets of the Company constituting or being deemed to constitute "plan assets" (within the meaning of the Plan Assets Regulation) of such ERISA Member or such plan for the purposes of ERISA, and as to which such ERISA Member has given written notice, accompanied by a copy of such opinion of counsel, to the Manager within five Business Days of the date of delivery of the relevant capital call with respect to such proposed Fund Investment.

"**Entity**" means any corporation, limited partnership, general partnership, joint stock company, joint venture, association, limited liability company, trust, bank and trust company, land trust, business trust, statutory trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

"**Feeder Vehicle**" is defined in **Section 6.6.1**.

"**Final Closing Date**" means the date of the last Subsequent Closing.

"**Fund**" means, collectively, the Company and any Parallel Vehicles, Alternative Investment Vehicles, and Feeder Vehicles

"**Fund Investments**" means any direct or indirect, current, or contingent interest in, option or commitment to acquire, or other contract right relating to assets or potential assets of the Fund.

"**General Excused Investment**" means, with respect to any Member, any actual or proposed Fund Investment (i) in which, based on an opinion of counsel (which opinion may be waived by the Manager in its sole discretion), participation by such Member would result or be reasonably likely to

result in a violation of (a) a statute, rule, regulation, order or decree of any U.S. federal, state or local or foreign governmental authority or (b) any written investment policy or restriction applicable to such Member (provided that, unless otherwise agreed by the Manager in its sole discretion, such Member has notified the Manager thereof in writing prior to the date of its admission to the Company, the Manager has expressly agreed in writing that such policy or restriction is covered hereby and such policy or restriction continues in effect as of the date such excuse is sought) and such Member has reasonably determined and certifies to the Manager that such violation is reasonably likely to have a material adverse effect on such Member or (ii) with respect to which the Manager determines in its sole discretion to treat as a General Excused Investment and as agreed by such Member in writing, provided that, in the case of clause (i) above, the Member has delivered to the Manager within five Business Days of first being notified in writing of such Fund Investment (which notice may be in the form of a capital call or other written communication and shall be delivered not less than 10 Business Days prior to when a capital contribution is due from the Member for the Fund Investment or, if no capital contribution is due, no less than 10 Business Days of the closing of such Fund Investment) (x) a written election to treat the Fund Investment as a General Excused Investment and (y) a copy of any certification and any opinion of counsel required hereunder. Upon request, the Manager shall provide to a Member any additional information reasonably requested to permit the Member and its counsel to determine whether the Member should deliver the written election and any certification or opinion of counsel required for a Fund Investment to be treated as a General Excused Investment with respect to the Member. Any election to treat a Fund Investment as a General Excused Investment will be irrevocable and any failure on the part of a Member to provide timely written notice of such election will be deemed to constitute a determination by the Member not to make such an election.

"**Gross Asset Value**" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company will be the gross fair market value of such asset, as determined by the contributing Member and the Manager; and

(ii) the Gross Asset Value of all Company assets will be adjusted to equal their respective gross fair market values (taking Section 7701(g) of the Code into account), as of the following times: (a) 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; (b) the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an interest in the Company; or (c) the issuance of an interest in the Company in consideration for the provision of services to the Company; *provided*, that in the case of either (a), (b) or (c) such adjustment will occur only if the Manager reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company consistent with the requirements of Section 1.704-1(b)(2) of the Treasury Regulations; and (d) the liquidation of a Member's interest in the Company or of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations;

(iii) the Gross Asset Value of any Company asset distributed to any Member will be the gross fair market value (taking Section 7701(g) of the Code into account) of such asset on the date of distribution;

(iv) the Gross Asset Values of Company assets will be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 732(d), Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), *provided, however*, that Gross Asset Values will not be adjusted pursuant to this subparagraph (iv) to the extent

that the Members determine that an adjustment pursuant to subparagraph (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv); and

(v) if the Gross Asset Value of any asset has been determined or adjusted pursuant to subparagraphs (i), (ii) or (iv) hereof, such Gross Asset Value will thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing gains or losses from the disposition of such asset.

"**Grossed-up Distributions**" is defined in **Section 10.1.3(d)**.

"**Indemnified Person**" is defined in **Section 14.2.1**.

"**Initial Closing**" is defined in **Section 4.1.1**.

"**Interest**" shall mean a Unit or an Economic Interest.

"**Investment Advisers Act**" means the U.S. Investment Advisers Act of 1940, as amended.

"**Investment Company Act**" means the U.S. Investment Company Act of 1940, as amended.

"**Investment Period**" is defined in **Section 6.1**.

"**Investment Proceeds**" is defined in **Section 10.1.2**.

"**Majority of the Members**" shall mean the (i) vote of more than 75% of the Units entitled to vote, or (ii) a written consent by Members holding more than 75% of the Units entitled to vote. Members shall be entitled to cast one vote for each Unit they own, and a fractional vote for each fractional Unit they own.

"**Management Fee**" is defined in **Section 7.2.1**.

"**Manager**" shall refer to DF Manager, LLC, a Delaware limited liability company. The term "**Manager**" shall also refer to any successor or additional Manager who is admitted to the Company as the Manager.

"**Manager Related Person**" means (i) the Manager and the manager of a Parallel Fund, the Sponsor, each Principal and any other employee, manager, constituent partner, stockholder, member, officer, or director of the Manager; and (ii) any Affiliate of the foregoing.

"**Material Adverse Effect**" is defined in **Section 8.6.1**.

"**Member**" shall mean any holder of a Unit who is admitted to the Company as a Member, including the Manager to the extent it has acquired Units.

"**Member Minimum Gain**" shall mean "partner nonrecourse debt minimum gain" as determined under Treasury Regulations Section 1.704-2(i)(3).

"**Member Nonrecourse Debt**" shall mean "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"**Member Nonrecourse Deductions**" shall mean "Member nonrecourse deductions" and the amount thereof shall be as set forth in Treasury Regulations Section 1.704-2(i).

"**Membership Interest**" shall mean a Member's entire interest in the Company including such Member's Economic Interest and such voting and other rights and privileges that the Member may enjoy by being a Member.

"**Net Cash from Operations**" means all cash received by the Company from any source other than cash that constitutes member loans, Capital Transaction Proceeds or Capital Contributions to the Company by Members, as such cash is reduced by the following to the extent made from such cash receipts: (A) All cash expenditures of the Company incurred in the ordinary course of business; (B) All principal, interest or other payments on indebtedness of the Company to lenders including, without limitation, all payments in respect of member loans; (C) All contributions by the Company to Persons in which it holds or will hold an equity interest and payments by the Company in redemption of Interests; (D) All amounts to conduct or expand the Company's business as determined by the Managing Member in its business judgment; and (E) Such deposits to cash reserves as determined by the Managing Member in its business judgment.

"**Net Profits**" or "**Net Losses**" mean, for each fiscal year or other period, an amount equal to the Company's taxable income or loss, as the case may be for such year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss and deduction required to be stated separately pursuant to Section 703(a)(1) of the Code will be included in taxable income or loss), with the following adjustments: (i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this paragraph will be added to such taxable income or loss; (ii) 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 Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this paragraph will be included in the determination of Net Profits or Net Losses; (iii) in the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) or (iii) of the definition thereof, the amount of such adjustment will be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses; (iv) gain or loss resulting from the disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value; (v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there will be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition thereof; and (vi) notwithstanding any other provision of this paragraph, any items which are specially allocated pursuant to **Section 9.2.2** hereof will not be taken into account in computing Net Profits and Net Losses.

"**Nonrecourse Debt**" shall have the meaning set forth in Treasury Regulations Section 1.7042(b)(3).

"**Nonrecourse Deductions**" shall have the meaning, and the amount thereof shall be, as set forth in Treasury Regulations Section 1.704-2(c).

"**Offering**" shall mean the offering and sale of the Units made in accordance with the provisions of this Agreement, the PPM, and the Subscription Agreement.

"**Organization and Offering Expenses**" means all out-of-pocket expenses incurred by or on behalf of the Company, the Manager, any Parallel Funds (other than any Co-Investment Vehicles, which

shall bear their own "organizational expenses") and any Feeder Vehicles, in connection with the organization of the Company, the Manager, any Parallel Fund (other than any Co-Investment Vehicle) and any Feeder Vehicle (and any feeder vehicle of any Parallel Fund) and the offering of interests therein (including commissions, costs, fees and expenses of placement agents and finders, legal and compliance expenses, accounting, filing, capital raising, travel, meals and accommodations, marketing expenses, payroll expenses of marketing employees, software costs, banking and ACH vendor costs, printing expenses, fees paid to vendors, contractors and consultants relating to the Sponsor's online fintech platform and smartphone applications used to market and operate the Fund, and payroll expenses and software costs of product development and software engineering employees working on the fintech platform and smartphone applications, and other similar costs, fees and expenses); *provided* that Organization and Offering Expenses may not exceed the greater of $100,000 and 10% of the total amount of capital raised in this Offering; and *provided further* that the Manager may, in its sole discretion, allocate any such expenses attributable to a Feeder Vehicle, to such Feeder Vehicle that would otherwise be borne by the Company and its Parallel Funds.

"**Other Fund**" means any other investment funds, vehicles, or accounts (whether currently existing or established in the future without violation of this Agreement) in which the Manager or any of its members or Affiliates plays a principal investment management role, and except as otherwise provided in this Agreement, shall include any Parallel Fund, Feeder Vehicle, and any Alternative Investment Vehicle.

"**Owner**" shall mean a Member or the holder of an Economic Interest.

"**Partnership Representative**" is defined in **Section 16.8.2**.

"**Permitted Transfer**" is defined in **Section 11.2.1**.

"**Placement Fees**" is defined in **Section 7.1.2**.

"**Plan Assets Regulation**" shall mean the regulation concerning the definition of "plan assets" under ERISA adopted by the U.S. Department of Labor and codified in 29 C.F.R. §2510.3-101, as modified by Section 3(42) of ERISA, and as it may be further amended or superseded.

"**Person**" shall mean a natural person or any Entity.

"**Preferred Return**" means: with respect to each Class A Member, a 7% cumulative, non-compounded annual return on such Class A Member's Unreturned Capital Contributions.

"**Principal**" means each of Craig Cecilio and Alan Lewis, but only so long as such Person is an active full-time employee of Sponsor, or an Affiliate thereof and is involved in the business of the Company.

"**PPM**" means the Amended Confidential Private Placement Memorandum dated December 16, 2024, pertaining to the Offering distributed to potential purchasers of Units, as may be amended or supplemented from time to time.

"**Property**" shall refer to any or all of such real and tangible or intangible personal property as may be acquired by the Company, including the Fund Investment.

"**Regulatory Allocations**" is defined in **Section 9.2.3**.

"**Retained Distributions**" means any Investment Proceeds otherwise distributable to the Members that are retained by the Company for reinvestment, to pay Company Expenses or liabilities of the Company or for any other permitted purpose under this Agreement.

"**Reviewed Year**" is defined in **Section 16.8.2.**

"**Reviewed Year Member**" is defined in **Section 16.8.2**.

"**Safe Harbor Election**" is defined in **Section 16.8.5**

"**Sharing Percentage**" means as of any time, with respect to any Member for any Fund Investment at the time the Company first invests in such investment (or, if such investment is held as a result of one or more exchanges, at the time the Company first invested in the original investment giving rise to such exchanges), that percentage which corresponds with the ratio that the Capital Contribution of such Member bears to the aggregate Capital Contributions of all Members, in each case immediately before such first investment, provided that if a Member is excused or excluded from participating in or contributing capital in respect of an investment (or such Member's participation in respect of such investment has been reduced), pursuant to **Section 8.6**, or any other provision hereof , such Member's Sharing Percentage in respect of such investment shall be reduced to the extent of such excuse, exclusion or reduction, and the other Members' respective Sharing Percentages in respect of such investment shall be increased proportionately.

"**Sponsor**" means DiversyFund, Inc., a Delaware corporation.

"**Subscription Agreement**" means the agreement, in the form attached to the PPM, by which each person desiring to become a Member shall evidence (i) the dollar amount of Units which such person wishes to acquire, (ii) such person's agreement to become a party to, and be bound by the provisions of, this Agreement and (iii) certain representations regarding the person's finances and investment intent.

"**Subsequent Closing**" means any closing held after the Initial Closing at which (i) the Company admits a Member or accepts additional Capital Contributions from an existing Member; or (ii) a Parallel Fund admits any additional member (or similar equityholder) or accepts an increased capital commitment from an existing member (or similar equityholder).

"**Substitute Member**" shall mean any Person admitted as a substituted Member pursuant to **Section 11.3**.

"**Successor Fund**" is defined in **Section 6.8**.

"**Tax Distribution**" is defined in **Section 10.1.4**.

"**Transfer**" means any, direct or indirect, sale, exchange, transfer, gift, encumbrance, assignment, pledge, mortgage, hypothecation, or other disposition, whether voluntary or involuntary.

"**Transfer Expenses**" is defined in **Section 11.2.8**.

"**Unit**" shall represent an interest in the Company entitling the owner of the Unit if admitted as a Member to the respective voting and other rights afforded to a Member and affording to such Member a share in Net Profits, Net Loss and Distributions as provided for in this Agreement.

"**Unpaid Preferred Return**" means, as to each Member, as of any date, an amount equal to (i) the total Preferred Return accrued on such Member's Unreturned Capital Contributions through such date, *less* (ii) the aggregate distributions made to such Member prior to such date pursuant to **Section 10.1.3(b)(ii).**

"**Unreturned Capital Contribution**" means, with respect to each Member as of a given day, an amount equal to the excess, if any, of : (i) the cumulative amount of Capital Contributions made by such Member, *less* (b) the cumulative distributions, as of such day, made to such Member pursuant to **Section 10.1.3(b)(i)**.

"**Withholding Payment**" is defined in **Section 10.4.1(a)**.

EXHIBIT B

CAPITALIZATION TABLE

(See Attached)