
DIVERSYFUND

DISTRESSED INCOME FUND, LLC

a Delaware Limited Liability Company

LIMITED LIABILITY COMPANY AGREEMENT

Effective as of July 6, 2026

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 HEREIN.

LIMITED LIABILITY COMPANY AGREEMENT OF DISTRESSED INCOME FUND, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this “**Agreement**”) of Distressed Income Fund, LLC, a Delaware limited liability company (the “**Company**”), is made and entered into as of July 6, 2026, by and among the Company, DiversyFund, Inc. (the “**Manager**”) and those Persons that have executed or will execute this Agreement as Members (as defined below).

RECITALS:

WHEREAS, the Members own all of the Units in the Company and wish to set forth their understandings concerning the ownership and operation of the Company in this Agreement, which they intend to be the “limited liability company agreement” of the Company within the meaning of 6 Del. C. §18-101(9).

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the adequacy, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Organization.

1.1 Formation. On a certain date prior to the date of this Agreement (the “**Formation Date**”), the Certificate of Formation was filed in the office of the Secretary of State of the State of Delaware in accordance with and pursuant to the Act.

1.2 Name and Place of Business. The name of the Company shall be Distressed Income Fund, LLC, and its principal place of business shall be Symphony Tower 750 B Street, Suite 1930, San Diego, California 92101. The Manager may change such name, change such place of business or establish additional places of business of the Company as the Manager may determine to be necessary or desirable.

1.3 Business and Purpose of the Company. The primary purpose of the Company is to (i) make preferred equity investments (each, a “**Fund Investment**”) in special purpose entities wholly owned or controlled by the Manager or an Affiliate of the Manager (each, an “**SPV Borrower**”), formed to acquire multifamily and other real estate assets at a discount to market value; (ii) engage in any other activities relating to or incidental as are necessary to accomplish such purpose; and (iii) engage in any other activities as determined by the Manager which are allowed under Delaware law.

1.4 Term. The term of the Company commenced on the Formation Date and shall continue until the Company is dissolved in accordance with Section 13. The expiration of the Commitment Period described in Section 1.4.1 does not, by itself, cause or require the dissolution of the Company.

1.4.1 Commitment Period. The Company shall have an initial period of two (2) years from the Offering Termination Date during which the Manager may cause the Company to fund new Fund Investments (the “Initial Commitment Period”). The Initial Commitment Period is measured from a single, Company-wide Offering Termination Date and applies uniformly to all Members; it does not run separately, or on a rolling basis, for any individual Member based on the date such Member subscribed, was admitted to the Company, or made its Capital Contribution. The Manager may, in its sole discretion, extend the Initial Commitment Period for up to two (2) additional periods of one (1)

year each (each, an "Extension Period," and together with the Initial Commitment Period, the "Commitment Period"), by written notice to the Members given before the expiration of the then-current Commitment Period. Following the expiration of the Commitment Period (including any Extension Period), the Manager shall not cause the Company to fund any new Fund Investment in a new SPV Borrower; provided that the Company may continue to (a) fund additional capital into Fund Investments existing as of the expiration of the Commitment Period, and (b) honor funding commitments to SPV Borrowers made prior to the expiration of the Commitment Period. The expiration of the Commitment Period is not an event of dissolution and does not otherwise affect the Company's continued existence under Section 1.4; the Company shall continue to hold, service, and collect on its existing Fund Investments and to distribute Investment Proceeds in accordance with Section 5 until such Fund Investments have been repaid, sold, or otherwise resolved.

1.5 Registered Office and Registered Agent. The Company's initial registered office and initial registered agent shall be as provided in the Certificate of Formation. The registered office and registered agent may be changed from time to time by the Manager by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.6 Other Transactions. Any Manager, Member, or any Affiliate thereof, or any shareholder, officer, director, employee, partner, 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 investments similar to the Fund Investments, 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.

2. Definitions. To the extent terms are not defined in this Agreement, definitions for this Agreement are set forth on Exhibit A and are incorporated herein.

3. Capitalization and Financing.

3.1 Capitalization Table. From time to time, the Manager will update the Company's capitalization table to reflect current ownership of all Units as Exhibit B.

3.2 Capital Contributions.

3.2.1 Units. The Company shall have three classes of Units: Class A-1 Units, Class A-2 Units, and Class A-3 Units (collectively, the "**Units**"). No Manager, Member, or Affiliate of either holds, or is entitled to acquire, any Units or other equity interest in the Company by virtue of its role as Manager; the Manager's sole entitlement in respect of its services is the reimbursement of Company Expenses described in Section 6.2, and neither the Manager nor any Affiliate receives any management fee, origination fee, disposition fee, or carried interest of any kind from the Company. The Company is hereby authorized to sell and issue up to \$35,000,000.00 of Units on an as-needed basis across the three Classes, and to admit the persons who acquire such Units as Members. The minimum purchase is \$1,000,000.00 for Class A-1 Units, \$250,000.00 for Class A-2 Units, or \$100,000.00 for Class A-3 Units, unless a lesser amount is accepted in the Manager's sole and absolute discretion. The price of each Unit, regardless of Class, shall be \$1,000.00. Each Class A-1, Class A-2, and Class A-3 Unit has a target rate of return (the "**Target Rate**") applicable to its Class, described in Section 5. No Class ranks senior or subordinate to any other Class with respect to Unreturned Capital Contributions or Preferred Return; all three Classes share pro rata, by Sharing Percentage, in the Investment Proceeds of each Fund Investment, as described in Section 5.

3.2.3 Payment of Purchase Price. The purchase price of each Unit shall be \$1,000.00 per Unit. 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.

3.2.4 Manager or its Affiliates as Member. The Manager and/or its Affiliates may acquire any number of Units of any Class for any reason deemed appropriate by the Manager for the same price and upon the same terms and conditions, subject to Section 3.2.3, as all other purchasers thereof. Certain Affiliates of the Manager and their officers and directors may acquire additional Units. In such event, the Manager or its Affiliates will be admitted to the Company as Members with respect to such Units and will be entitled to all rights as Members appurtenant thereto, including but not limited to the right to vote on certain Company matters as provided for in this Agreement and to receive Distributions and allocations attributable to the Units so purchased.

3.2.5 Admission of a Member. To the extent required by law, the Manager shall amend this Agreement and take such other action as the Manager deems necessary or appropriate promptly after receipt of the Members' Capital Contributions to the Company to reflect the admission of those persons to the Company as Members.

3.2.10 Liabilities of Members. Except as specifically provided in this Agreement, neither the Manager nor any Members shall be required to make any additional contributions to the Company and no Manager or Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company, by reason of being a Member or Manager of the Company, nor shall the Manager or the Members be required to lend any funds to the Company or to repay to the Company, the Manager or any Member, or any creditor of the Company any portion or all of any deficit balance in a Member's Capital Account.

3.3 Manager Loans. The Manager and its Affiliates may, but will have no obligation to, make loans to the Company. Any such loan shall bear interest at an annual rate not to exceed twelve percent (12%) and provide for the payment of principal and any accrued but unpaid interest in accordance with the terms of the promissory note evidencing such loan, but in no event later than the dissolution of the Company.

3.4 No Portfolio-Level Financing. The Company does not obtain or assume loans secured by, or otherwise encumber, its Fund Investments.

4. Allocation of Tax Items.

4.1 Allocation of Net Income and Net Loss. For each fiscal year, the Net Income and Net Loss of the Company shall be allocated as follows:

4.1.1 Net Income. After giving effect to the special allocations set forth in Sections 4.2 and 4.3, Net Income for any fiscal year shall be allocated as follows:

- (a) First, to the Members until the Net Income allocated to the Members pursuant to this Section 4.1.1(a) for such fiscal year and all previous fiscal years is equal to the aggregate Net Loss allocated to the Members pursuant to Section 4.1.2(a) for all previous fiscal years;
- (b) Second, to the Members in proportion to their Units.

4.1.2 Net Loss. After giving effect to the special allocations set forth in Sections 4.2 and 4.3, Net Loss for any fiscal year shall be allocated as follows:

- (a) First, to the Members in proportion to and to the extent of Net Income previously allocated to the Members pursuant to Section 4.1.1 until the aggregate Net Loss allocated to the Members pursuant to this Section 4.1.2(a) for such fiscal year and all previous fiscal years is equal to the aggregate Net Income allocated to the Members pursuant to Section 4.1.1 for all previous fiscal years; and
- (b) Second, to the Members in proportion to their Units; provided that Net Loss shall not be allocated to any Member to the extent such allocation would cause such Member to have an Adjusted Capital Account Deficit at the end of a fiscal year.

4.2 Special Allocations.

4.2.1 Qualified Income Offset. Except as provided in Section 4.2.3, in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.7041(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 such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit created by such adjustment, allocation or distribution as quickly as possible.

4.2.2 Gross Income Allocation. Net Loss shall not be allocated to any Member to the extent such allocation would cause such Member to have an Adjusted Capital Account Deficit at the end of a fiscal year. 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 gross income and gain in the amount of such Adjusted Capital Account Deficit as quickly as possible.

4.2.3 Minimum Gain Chargeback. Notwithstanding any other provision of this Section 4, if there is a net decrease in Company Minimum Gain during any fiscal year, each Member shall be specially allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section 4.2.3 is intended to comply with the partnership minimum gain chargeback requirement in the Treasury Regulations and shall be interpreted consistently therewith. This provision shall not apply to the extent the Member's share of net decrease in Company Minimum Gain is caused by a guaranty, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Member Nonrecourse Debt, and such Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced or otherwise changed debt or to the extent the Member contributes cash to the capital of the Company that is used to repay the Nonrecourse Debt, and the Member's share of the net decrease in Company Minimum Gain results from the repayment.

4.2.4 Member Minimum Gain Chargeback. Notwithstanding any other provision of this Section 4, except Section 4.2.3, if there is a net decrease in Member Minimum Gain, any Member with a share of that Member Minimum Gain (as determined under Treasury Regulations Section 704-2(i)(5)) as of the beginning of the year shall be allocated items of income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-2(g)(2). This Section shall not apply to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to conversion, refinancing or other change in a debt instrument that causes it to become partially or wholly a Nonrecourse Debt. This Section is intended to comply with the partner minimum gain chargeback requirements in the Treasury Regulations and shall be interpreted consistently therewith and applied with the restrictions attributable thereto.

4.2.5 Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Members in proportion to their Units and each Member's share of excess Nonrecourse Debt shall be in the same proportion.

4.2.6 Member Nonrecourse Deductions. Member Nonrecourse Deductions for any fiscal year shall be allocated to the Member who bears the economic risk of loss as set forth in Treasury Regulations Section 1.752-2 with respect to the Member Nonrecourse Debt. If more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, any Member Nonrecourse Deductions attributable to that Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss.

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

4.3 Curative Allocations. Notwithstanding any other provision of this Agreement, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

4.4 Contributed Property. Notwithstanding any other provision of this Agreement, the Manager shall cause depreciation and/or cost recovery deductions and gain or loss attributable to property contributed by a Member or revalued by the Company to be allocated among the Members for income tax purposes in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder.

4.5 Recapture Income. The portion of each Member's distributive share of Net Income that is characterized as ordinary income pursuant to Section 1245 or 1250 of the Code shall be proportionate to the amount of Net Income or Net Loss which included the corresponding depreciation deductions that were allocated to such Member as compared with the amount of depreciation deductions allocated to all Members.

4.6 Allocation Among Units. The Net Income and Net Losses of the Company shall be determined and allocated to each Member with respect to each fiscal year of the Company. The determination shall be as of the end of each fiscal year and shall be made within ninety (90) days after the close of each fiscal year. Except as provided in Section 4.2 herein, Net Income and Net Losses for any fiscal year shall be allocated among the Members in accordance with the following order or priority:

4.6.1 First, Profits shall be allocated to those Members having deficit balances in their Capital Accounts (computed after taking into account all distributions with respect to such taxable period and after adding back each Members' share of Company Minimum Gain and Member Minimum Gain) in proportion to such deficit balances until such deficit balances have been eliminated; and

4.6.2 Second, any remaining Profits and Losses shall be allocated among the Members such that each Member's Capital Account balance (computed after taking into account all distributions with respect to such taxable period and increased by such Members' share of Company Minimum Gain and Member Minimum Gain), would, as nearly as possible, be equal to

the amount that each Member would receive if all of the remaining assets of the Company were sold for their Book Value, all liabilities of the Company were satisfied (limited, with respect to nonrecourse liabilities, to the Book Value of the assets securing such liabilities) and the remaining assets were distributed pursuant to the Agreement, all as of the last day of the period for which the allocations are being made.

4.7 Allocation of Company Items. Except as otherwise provided herein, whenever a proportionate part of Net Income or Net Loss is allocated to a Member, every item of income, gain, loss or deduction entering into the computation of such Net Income or Net Loss, and every item of credit or tax preference related to such allocation and applicable to the period during which such Net Income or Net Loss was realized shall be allocated to the Member in the same proportion.

4.8 Assignment. In the event of the assignment of a Unit, the Net Income and Net Loss shall be allocated as between the Member and his assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the Units as of the date of the Distribution. An assignee who receives Units during the first 15 days of a month will receive any allocations relative to such month. An assignee who acquires Units on or after the sixteenth day of a month will be treated as acquiring his Units on the first day of the following month.

4.9 Power of Manager to Vary Allocations. It is the intent of the Members that each Member's share of Net Income 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 Section 4 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.

4.10 Consent of Members. The allocation methods of Net Income and Net Loss are hereby expressly consented to by each Member as a condition of becoming a Member.

4.11 Withholding Obligations.

4.11.1 If the Company is required (as determined by the Manager) to make a payment ("**Tax Payment**") with respect to any Member to discharge any legal obligation of the Company or the Manager to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising as a result of such Member's interest in the Company, then, notwithstanding any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Company to such Member, which loan shall bear interest at the Prime Rate and be payable upon demand or by offset to any Distribution which otherwise would be made to such Member.

4.11.2 If and to the extent the Company is required to make any Tax Payment with respect to any Member, or elects to make payment on any loan described in Section 4.11.1 by offset to a Distribution to a Member, either (i) such Member's proportionate share of such Distribution shall be reduced by the amount of such Tax Payment, or (ii) such Member shall pay to the Company prior to such Distribution an amount of cash equal to such Tax Payment. In the event a portion of a Distribution in kind is retained by the Company pursuant to clause (i) above, such retained Property may, in the discretion of the Manager, either (A) be distributed to the other Members, or (B) be sold by the Company to generate the cash necessary to satisfy such Tax Payment. If the Property is sold, then for purposes of income tax allocations only under this Agreement, any gain or loss from such sale or exchange shall be allocated to the Member to whom the Tax Payment relates. If the Property

is sold at a gain, and the Company is required to make any Tax Payment on such gain, the Member to whom the gain is allocated shall pay the Company prior to the due date of Tax Payment an amount of cash equal to such Tax Payment.

4.11.3 The Manager shall be entitled to hold back any Distribution to any Member to the extent the Manager believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Manager believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

4.12 Special Allocation. Notwithstanding the other provisions in this Section 4 (but subject to Section 4.9), in the year in which the Company disposes of all or substantially all of its Fund Investments, Net Income and Net Loss from all sources (or gross income or gross expense) shall be allocated, to the greatest extent possible, so that the positive capital account balance of each Member shall be equal to the distributions to be made upon liquidation to such Member.

5. Distributions.

5.1 Investment Proceeds. “Investment Proceeds” means, collectively, all preferred return, principal repayment, and other proceeds received by the Company in respect of any Fund Investment, together with all interest or other income earned on capital held in Permitted Investments (net of the fees and charges assessed directly by the applicable depository institution or money market fund against that Permitted Investments account or instrument), in each case net of Company Expenses reimbursed pursuant to Section 6.2 and any reserves the Manager reasonably establishes. Fees and charges on any Company account that does not hold Permitted Investments, including a non-interest-bearing operating account, are Company Expenses reimbursed pursuant to Section 6.2 and are not netted against Permitted Investments income under this Section 5.1.

5.2 Distribution of Investment Proceeds. Subject to the Manager’s right under Section 5.5 to redeploy principal repayment proceeds from a matured or repaid Fund Investment into a new Fund Investment rather than distributing them, Investment Proceeds attributable to a given Fund Investment, or to Permitted Investments for a given period, are distributed as follows: (a) first, Investment Proceeds are apportioned among the Members whose capital the Manager allocated to that Fund Investment (or, for Permitted Investments, among all Members with capital then held in Permitted Investments), pro rata in accordance with each such Member’s Sharing Percentage for that Fund Investment (or, for Permitted Investments, each Member’s pro rata share of the capital so held); (b) each Member’s apportioned amount under clause (a) is distributed to such Member as current Preferred Return, up to the amount of that Member’s accrued Preferred Return for the applicable period, with any remainder applied first to reduce that Member’s Unpaid Preferred Return, if any, in the order of priority described in Section 5.3, and thereafter to reduce that Member’s Unreturned Capital Contribution. Because the Manager sets the Blended Rate for each Fund Investment using each participating Class’s then-current Sharing Percentage and Target Rate, this pro rata distribution is intended, when a Fund Investment performs in accordance with its terms, to deliver each participating Class exactly its Target Rate for the applicable period, without further sequencing or priority among Classes. No Class is senior or subordinate to any other Class with respect to current distributions or return of capital.

5.3 Shortfalls; Unpaid Preferred Return. If, for any period, the Investment Proceeds apportioned to a Member under Section 5.2(a) are less than that Member’s accrued Preferred Return for such period (a “Shortfall”), the amount of the Shortfall is added to that Member’s Unpaid Preferred Return and carried forward, without interest or compounding, until paid. The Manager will target curing each Shortfall out of Investment Proceeds from Fund Investments the Company makes within approximately twelve (12) months following the date the Shortfall arose; provided that this twelve-month period is a target and not a covenant, obligation, or deadline of the Company, the Manager, or any Affiliate, since the timing of a Shortfall’s cure necessarily depends on when a subsequent Fund

Investment actually generates Investment Proceeds, which the Manager cannot control or guarantee. No breach of this Agreement, and no claim against the Company, the Manager, or any Affiliate thereof, arises solely because a Shortfall remains uncured at or after the twelve-month mark, if the Company has not yet generated sufficient Investment Proceeds to cure it. Unpaid Preferred Return is payable solely out of future Investment Proceeds of the Company generally, including Investment Proceeds from Fund Investments other than the one that produced the Shortfall, and only after current-period Preferred Return for all Members has been satisfied in full for the period in which the payment is made. Unpaid Preferred Return is never paid using the return of principal of any Fund Investment, whether the Fund Investment that produced the Shortfall or any other Fund Investment; it is payable solely out of Cure Proceeds, being the amount, if any, by which the Investment Proceeds of a future Fund Investment exceed the current-period Preferred Return owed to the Members whose capital the Manager allocated to that future Fund Investment, as described in Section 5.3.1. As among Members with outstanding Unpaid Preferred Return, amounts available to cure Shortfalls are applied pro rata based on the relative dollar amounts of Unpaid Preferred Return outstanding, without regard to Class or to which Fund Investment originally produced the Shortfall. Neither the Company, the Manager, nor any Affiliate of the foregoing has any obligation to pay, fund, guarantee, or otherwise make up any Unpaid Preferred Return from any source other than future Investment Proceeds of the Company, and no Member has any claim against the Manager or any Affiliate thereof on account of Unpaid Preferred Return that is never paid because the Company does not generate sufficient future Investment Proceeds. Unpaid Preferred Return does not affect, reduce, or defer a Member's right to the return of its Unreturned Capital Contribution, which is distributed pro rata as described in Section 5.2 without regard to whether Unpaid Preferred Return has been paid in full.

5.3.1 Source of Cure. The Manager, in its sole discretion, may structure the terms of one or more future Fund Investments so that the preferred return payable by the applicable SPV Borrower exceeds the Blended Rate that would otherwise apply under the definition of that term, in order to generate Investment Proceeds in excess of the amount needed to pay the participating Classes' current-period Preferred Return on that Fund Investment (any such excess, "Cure Proceeds"). Cure Proceeds consist solely of the portion of a future Fund Investment's Investment Proceeds that exceeds the current-period Preferred Return owed on that Fund Investment, and never include, and are never generated by withholding or diverting, any return of principal on that or any other Fund Investment. Cure Proceeds are applied to reduce outstanding Unpaid Preferred Return in the priority described in Section 5.3 before being treated as Investment Proceeds available for ordinary distribution. The Manager is not required to generate Cure Proceeds sufficient to cure all outstanding Unpaid Preferred Return from any single future Fund Investment, and may, in its sole discretion, spread the cure of a Shortfall across multiple future Fund Investments over time, in such amounts and over such period as the Manager determines appropriate, including in light of the size of the Shortfall, prevailing market terms available from prospective SPV Borrowers, and the Manager's assessment of the Company's overall investment strategy. Nothing in this Section 5.3.1 requires the Manager to generate any Cure Proceeds at all, and the absence of Cure Proceeds from any particular Fund Investment is not a breach of this Agreement.

5.4 Principal Losses. If a Fund Investment is repaid, sold, or otherwise resolved for an amount less than the sum of (a) the Unreturned Capital Contributions allocated to that Fund Investment and (b) any accrued and unpaid Preferred Return thereon (a "Principal Loss"), the resulting Net Loss is allocated among, and the shortfall in return of capital is borne by, the Members whose capital the Manager allocated to that Fund Investment, pro rata in accordance with their Sharing Percentages for that Fund Investment, without regard to Class. No Class bears Principal Losses on a Fund Investment before or after any other Class. A Principal Loss on one Fund Investment does not, by itself, entitle the affected Members to any priority or make-whole allocation of Investment Proceeds from other, unrelated Fund Investments; it is addressed solely through the Unpaid Preferred Return mechanic in Section 5.3 to the extent it also produces a Shortfall, and otherwise represents a permanent reduction of the affected Members' Unreturned Capital Contributions.

5.5 Redeployment. At any time during the Commitment Period, the Manager may, in its sole discretion, cause the Company to redeploy Investment Proceeds representing the repayment of principal from a matured or repaid Fund Investment into a new Fund Investment, rather than distributing such proceeds to Members pursuant to Section 5.2(b), subject to the Manager's discretion to retain reserves and to distribute amounts it does not intend to redeploy. The Company anticipates that capital may be redeployed multiple times during the Commitment Period as Fund Investments mature and are repaid, consistent with the Company's investment strategy, and no Member has any right to receive a distribution of principal proceeds the Manager elects to redeploy under this Section 5.5. The Manager's right to redeploy principal proceeds under this Section 5.5 is not conditioned on, and may be exercised without regard to, whether any Member has an outstanding Unpaid Preferred Return balance at the time of redeployment; the Manager may redeploy principal proceeds under this Section 5.5 notwithstanding that one or more Members then have an outstanding Unpaid Preferred Return with respect to the Fund Investment that generated those proceeds or otherwise. Following the expiration of the Commitment Period, this Section 5.5 no longer applies to new SPV Borrowers, consistent with Section 1.4.1; as each Fund Investment then outstanding matures, is repaid, or is otherwise resolved, the resulting Investment Proceeds are distributed pursuant to Section 5.2 on a rolling basis as and when received, rather than redeployed into new Fund Investments, although additional funding of existing Fund Investments and prior commitments remains permitted.

5.6 Restrictions. Any elections or other decisions relating to allocations under this Section 5 shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any other provisions of this Agreement.

5.7 Escrowed Amounts. If the Manager causes the Company to wire capital to an escrow agent, title company, or similar third party in anticipation of the closing of a Fund Investment (an "Escrowed Amount"), then, for the period beginning when such capital leaves an account of the Company and ending on the earlier of (a) the date the corresponding Fund Investment is actually funded to the applicable SPV Borrower, or (b) the date the capital is returned to an account of the Company because the anticipated Fund Investment does not close, such Escrowed Amount does not earn any return under this Agreement. Specifically, an Escrowed Amount is not held in Permitted Investments during that period and does not earn the return described in Section 5.1, and no Preferred Return accrues on an Escrowed Amount during that period because it is not yet deployed in a Fund Investment as described in the definition of Preferred Return. If the anticipated Fund Investment does not close and the Escrowed Amount is returned to an account of the Company, it is thereafter treated as held in Permitted Investments until the Manager deploys it in a Fund Investment or distributes it.

6. Compensation to the Manager and its Affiliates.

6.1 No Fees. The Company shall not pay, and neither the Manager nor any Affiliate of the Manager shall be entitled to receive, any management fee, acquisition fee, origination fee, financing fee, disposition fee, property management fee, construction management fee, guaranty fee, or carried interest of any kind. The Manager's sole entitlement in respect of its services is reimbursement of the Company's actual operating expenses as described in Section 6.2. The Manager's (or its Affiliate's) economic interest in the transactions the Company finances arises entirely at the SPV Borrower level: the Manager or its Affiliate is the owner of each SPV Borrower and retains any residual profit the SPV Borrower realizes after repaying the Company in full under the applicable Fund Investment. That residual profit is not paid by, or an obligation of, the Company, and Members have no interest in it.

6.2 Company Expenses.

6.2.1 Operating Expenses. Subject to the limitations set forth in Section 6.2.2, the Company shall pay directly, or reimburse the Manager or its Affiliates for, as the case may be, upon receipt by the Company of an appropriate invoice, the actual, documented costs and expenses of the Company's operations, including, without limitation, the following costs and expenses: (i) all Organization and Offering Expenses advanced or otherwise paid by the Manager; (ii) all costs of personnel employed by the Company and directly involved in the Company's business; (iii) advertising and public notice costs; (iv) costs of personnel employed by the Manager or its Affiliates and directly involved in the business of the Company; (v) taxes and assessments applicable to the Company; (vi) fees and charges on Company bank accounts other than fees netted directly against Permitted Investments income as described in Section 5.1, including fees on any non-interest-bearing operating account; (vii) legal, accounting, audit, brokerage, and other fees; (viii) fees and expenses paid to independent contractors, loan servicers, and other agents in connection with the Company's Fund Investments; (ix) costs of making, holding, monitoring, and disposing of Fund Investments; (x) 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 and the making of Distributions to the Members; (xi) expenses incurred in preparing and filing reports or other information with appropriate regulatory agencies; (xii) expenses of insurance as required in connection with the business of the Company, other than any insurance insuring the Manager against losses for which it is not entitled to be indemnified under Section 7; (xiii) costs incurred in connection with any litigation in which the Company may become involved, or any examination, investigation, or other proceedings conducted by any regulatory agency, including legal and accounting fees; (xiv) the costs of services that could be performed directly for the Company by independent parties such as legal, accounting, fund administration, asset management, loan servicing, 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; (xv) expenses of Company administration, accounting, legal, documentation and reporting; (xvi) expenses of revising, amending, modifying, or terminating this Agreement; (xvii) the portion of the Manager's payroll expenses allocable to work performed for the Company; and (xviii) all other costs and expenses incurred in connection with the business of the Company exclusive of those set forth in Section 6.2.2. The Company does not engage a third-party auditor.

6.2.2 Manager Overhead. Except as set forth in this Section 6, the Manager and its Affiliates shall not be reimbursed for overhead expenses incurred in connection with the Company, including but not limited to rent, depreciation, utilities, capital equipment and other administrative items.

7. Authority, and Responsibilities of the Manager.

7.1 Management. The business and affairs of the Company shall be managed by its Manager. Except as otherwise set forth in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. The Company shall have one Manager which shall be DiversyFund, Inc. The Manager shall hold office until such Manager is removed or withdraws or resigns as set forth in this Agreement.

7.2 Manager Authority. The Manager shall have all authority, rights and powers conferred by law (subject to Section 7.3 and Section 8.2, if required) and those required or appropriate to the management of the Company's business, which, by way of illustration but not by way of limitation, shall include the right, authority and power to cause the Company to:

7.2.1 Take all actions to cause the Company to make, hold, and dispose of Fund Investments in SPV Borrowers;

7.2.2 Enter into any limited liability company agreement, partnership agreement or other operating agreement with a joint venture partner;

7.2.3 Acquire, hold, restructure, and otherwise dispose of Fund Investments and other Property of the Company;

7.2.4 Borrow money, and, if security is required therefor, to pledge or mortgage or subject assets of the Company to any security device, to obtain replacements of any mortgage or other security device and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device. All of the foregoing shall be on such terms and in such amounts as the Manager, in its sole discretion, deems to be in the best interest of the Company;

7.2.6 Enter into such contracts and agreements as the Manager determines to be reasonably necessary or appropriate in connection with the Company's business and purpose (including contracts with Affiliates of the Manager), and any contract of insurance that the Manager deems necessary or appropriate for the protection of the Company and the Manager, including errors and omissions insurance, for the conservation of Company assets, or for any purpose convenient or beneficial to the Company;

7.2.7 Employ persons, who may be Affiliates of the Manager, in the operation and management of the business of the Company;

7.2.8 Prepare or cause to be prepared reports, statements and other relevant information for distribution to the Members;

7.2.9 Open accounts and deposit and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments as the Manager may deem in its discretion to be necessary or desirable;

7.2.10 Cause the Company to make or revoke any of the elections referred to in the Code (the Manager shall have no obligation to make any such elections);

7.2.11 Select as the Company's accounting year a calendar or fiscal year as may be approved by the Internal Revenue Service (the Company initially intends to adopt the calendar year);

7.2.12 Determine the appropriate accounting method or methods to be used by the Company;

7.2.13 In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of the Members by special or general power of attorney or otherwise:

(a) To add to the representations, duties, services or obligations of the Manager or its Affiliates, for the benefit of the Members;

(b) To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

(c) To amend this Agreement to reflect the addition or substitution of the Members or the reduction of the Capital Accounts upon the return of capital to the Members;

(d) To minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, defining “plan assets” for ERISA purposes;

(e) To reconstitute the Company under the laws of another state if beneficial;

(f) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, including the execution, acknowledgment and delivery of any such instrument by the attorney-in-fact for the Manager under a special or limited power of attorney, and to take all such actions in connection therewith as the Manager shall deem necessary or appropriate with the signature of the Manager acting alone; and

(g) To make any changes to this Agreement as requested or required by any lender or potential lender which may be required to obtain financing including, but not limited to, complying with any special purpose entity requirements.

7.2.14 Require in any Company contract that the Manager shall not have any personal liability, but that the Person contracting with the Company is to look solely to the Company and its assets for satisfaction;

7.2.15 Lease personal property for use by the Company;

7.2.16 Establish reserves from income in such amounts as the Manager may deem appropriate;

7.2.17 Temporarily invest the proceeds from sale of Units in short-term, highly-liquid cash equivalents;

7.2.18 Make secured or unsecured loans to the Company and receive interest at the rates set forth herein;

7.2.19 Represent the Company and the Members as “partnership representative” within the meaning of the Code in discussions with the Internal Revenue Service regarding the tax treatment of items of Company income, loss, deduction or credit, or any other matter reflected in the Company's returns, and, if deemed in the best interest of the Members, to agree to final Company administrative adjustments or file a petition for a readjustment of the Company items in question with the applicable court;

7.2.20 Offer and sell Units through any licensed Affiliate of the Manager, or licensed nonaffiliate, and to employ licensed personnel, agents and dealers for such purpose;

7.2.21 Redeem or repurchase Units on behalf of the Company;

7.2.22 Hold an election for a successor Manager before the resignation, removal or dissolution of the Manager;

7.2.23 Initiate legal actions, settle legal actions and defend legal actions on behalf of the Company;

7.2.24 Admit itself as a Member;

7.2.25 Enter into any transaction with any partnership or venture;

7.2.26 Merge or combine the Company or “roll-up” the Company into a partnership, limited liability company or other entity with a Majority Vote;

7.2.27 Structure or restructure a Fund Investment, including through a single purpose or bankruptcy remote SPV Borrower, as the Manager determines appropriate;

7.2.28 Appoint officers of the Company as set forth in Section 7.10;

7.2.29 Establish a loss reserve of up to 10% of the aggregate capital invested in Fund Investments made by the Company;

7.2.30 Perform any and all other acts which the Manager is obligated to perform hereunder; and

7.2.31 Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and all transactions and actions described in, or contemplated by, the Memorandum, and take all such actions in connection therewith as the Manager may deem necessary or appropriate. Any and all documents or instruments may be executed on behalf of and in the name of the Company by the Manager.

7.3 Restrictions on Manager’s Authority. Neither the Manager nor any of its Affiliates shall have authority, without a Majority Vote, to:

7.3.1 Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of the Company; or

7.3.2 Alter the primary purpose of the Company.

7.4 Administration of Company. So long as it is the Manager and the provisions of this Agreement for compensation and reimbursement of expenses of the Manager are observed, the Manager shall have the responsibility of providing continuing administrative and executive support, advice, consultation, analysis and supervision with respect to the functions of the Company, including decisions regarding the restructuring, workout, or other disposition of Fund Investments, and compliance with federal, state and local regulatory requirements and procedures. In this regard, the Manager may retain the services of its Affiliates or unaffiliated parties as the Manager may deem appropriate to provide management and financial consultation and advice, and may enter into agreements for the management and operation of Company assets.

7.5 Partnership Representative. The Manager shall serve as the Company's “partnership representative” of the Company for purposes of the Bipartisan Budget Act of 2015 and any Sections of the Code or Treasury Regulations promulgated thereunder. Except as otherwise provided herein, the partnership representative shall determine whether to make any and all elections for federal, state, local and foreign tax purposes including, without limitation, making the election under Section 754 of the Code in accordance with applicable regulations thereunder. The partnership representative shall have the right to seek or revoke any such election (including, without limitation, the election under Section 754 of the Code) upon the partnership representative's determination that such revocation is in the best interests of the Members. Notwithstanding any contrary provision hereof, the partnership representative shall have no right to make an election under Section 301.7701-3 of the Treasury Regulations to classify the Company for federal income tax purposes as anything other than a partnership.

The Members agree that, upon the partnership representative's request, they shall provide it with any information regarding their individual tax returns and liabilities that may be relevant under Code Section 6225(c), as amended by the Bipartisan Budget Act of 2015 (the “BBA”), or other

state or local rule and file amended tax returns as provided in Code Section 6225(c)(2), as amended by the BBA, or applicable state or local laws, with timely payment of any tax due. All obligations of Members under this Section shall continue until released in writing by the Company from such obligation, even if a Member withdraws from or disposes of Units in the Company. The Company shall reimburse the partnership representative for all expenses reasonably incurred in connection with all examinations of the Company's affairs by any taxing authority, including any resulting tax proceedings, and is authorized to expend Company funds for professional services and costs associated therewith. The partnership representative shall not be liable for any action taken or omitted to be taken by it in good faith. Each Member hereby waives, releases and agrees not to sue the partnership representative or any of the partnership representative's affiliates, officers, directors, employees, attorneys, partners or agents for damages in respect of any claim in connection with, arising out of, or in any way related to, the partnership representative's duties under this Agreement. The Company shall indemnify, hold harmless and advance expenses to the partnership representative in respect of any and all claims, damages, liabilities, costs (including, without limitation, the costs of litigation and reasonable attorney's fees and expenses) and causes of action arising out of, resulting from or attributable in whole or in part to, the partnership representative's actions and decisions in his conduct as partnership representative for the Company, to the fullest extent allowed by applicable law.

7.6 Indemnification of the Manager.

7.6.1 The Manager, its shareholders, Affiliates, officers, directors, partners, manager, members, employees, agents and assigns and any officers of the Company, shall not be liable for, and shall be indemnified and held harmless (to the extent of the Company's assets) from, any loss or damage incurred by them, the Company or the Members in connection with the business of the Company, including costs and reasonable attorneys' fees and any amounts expended in the settlement of any claims of loss or damage resulting from any act or omission performed or omitted in good faith, which shall not constitute fraud, gross negligence or willful misconduct, pursuant to the authority granted, to promote the interests of the Company. Moreover, neither the Manager nor any officer of the Company shall be liable to the Company or the Members because any taxing authorities disallow or adjust any deductions or credits in the Company income tax returns.

7.7 No Personal Liability for Return of Capital. The Manager shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contribution of any Member or any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from any Member) of the Company.

7.8 Authority as to Third Persons.

7.8.1 No third party dealing with the Company shall be required to investigate the authority of the Manager or officers of the Company or secure the approval or confirmation by any Member of any act of the Manager in connection with the Company's business. No purchaser of any Property owned by the Company shall be required to determine the right to sell or the authority of the Manager to sign and deliver any instrument of transfer on behalf of the Company, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith.

7.8.2 The Manager shall have full authority to execute on behalf of the Company any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by the Manager, executing on behalf of the Company shall be the only execution necessary to bind the Company thereto. Any officer appointed by resolution of the Manager pursuant to Section 7.9 shall have full authority to execute on behalf of the Company any agreements, contract, conveyances, deeds, mortgages and other instruments, to the extent such authority is delegated by the

Manager to such officer, and the execution thereof by such officer, executing on behalf of the Company shall be the only execution necessary to bind the Company thereto. No signature of any Member shall be required.

7.8.3 The Manager shall have the right by separate instrument or document to authorize one or more individuals or entities to execute leases and lease-related documents on behalf of the Company and any leases and documents executed by such agent shall be binding upon the Company as if executed by the Manager.

7.9 Officers of the Company.

7.9.1 The Manager, in its sole discretion, may appoint officers of the Company at any time. The officers of the Company, if appointed by resolution of the Manager, may include a president, vice president, secretary, and treasurer. The officers shall serve at the pleasure of the Manager. Any individual may hold any number of offices. The Manager's officers may serve as officers of the Company if appointed by resolution of the Manager. The officers shall exercise such powers and perform such duties as determined and authorized by the Manager.

7.9.2 Any officer may be removed, either with or without cause, by the Manager at any time. Any officer may resign at any time by giving written notice to the Manager. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

8. Rights, Authority, Voting and Obligations of the Members.

8.1 Members Are Not Agents. Pursuant to Section 7, the management of the Company is vested in the Manager. 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.

8.2 Voting by the Members. Members shall be entitled to cast one vote for each Unit they own. Except as otherwise specifically provided in this Agreement, Members (but not Economic Interest Owners) shall have the right to vote only upon the following matters:

8.2.1 Removal of a Manager as provided in Section 9;

8.2.2 Admission of the Manager or election to continue the business of the Company after the Manager ceases to be the Manager when there is no remaining Manager;

8.2.3 Amendment of this Agreement (unless otherwise provided for herein);

8.2.4 Any merger or combination of the Company or roll-up of the Company;

8.2.5 Dissolution and winding up of the Company as set forth in Section 13.1;

and 8.2.6 Election to continue the business of the Company as set forth in Section 13.1.2.

8.3 Member Vote; Consent of Manager. Except for the Majority Votes of the Units required pursuant to Sections 7.2.26, 7.3, 8.4.3, 9, 13.3 and 16.2 or as specifically provided in this

Agreement which provisions shall only require a Majority Vote, matters upon which the Members may vote shall require a Majority Vote and the consent of the Manager to pass and become effective.

8.4 Meetings of the Members. The Manager may at any time call for a meeting of the Members, or for a vote without a meeting, on matters on which the Members are entitled to vote. Members do not have the right to call, or to require the Manager to call, a meeting of the Members.

8.4.1 Notice. Written notice of each meeting shall be given to each Member entitled to vote, either personally or by mail or other means of written communication, charges prepaid, addressed to such Member at its address appearing on the books of the Company or given by it to the Company for the purpose of notice or, if no such address appears or is given, at the principal executive office of the Company, or by publication of notice at least once in a newspaper of general circulation in the county in which such office is located. All such notices shall be sent not less than 10, nor more than 60, days before such meeting. The notice shall specify the place, date and hour of the meeting and the general nature of business to be transacted, and no other business shall be transacted at the meeting.

8.4.2 Adjourned Meeting and Notice Thereof. When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

8.4.3 Quorum. The presence in person or by proxy of the persons entitled to vote a majority of the Units shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a Majority Vote or such greater vote as may be required by this Agreement or by law. In the absence of a quorum, any meeting of Members may be adjourned from time to time by the vote of a majority of the Units represented either in person or by proxy, but no other business may be transacted, except as provided above.

8.4.4 Consent of Absentees. The transactions of any meeting of Members, however called and noticed and wherever held, are as valid as though they occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting or an approval of the minutes thereof. All waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

8.4.5 Action Without Meeting. Except as otherwise provided in this Agreement, any action which may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all entitled to vote thereon were present and voted. In the event the Members are requested to consent on a matter without a meeting, each Member shall be given not less than 10, nor more than 60, days' notice. In the event the Manager requests a meeting for the purpose of discussing or voting on the matter, the notice of a meeting shall be given in the same manner as required by Section 8.4.1 and no action shall be taken until the meeting is held. Unless delayed as a result of the preceding sentence, any action taken without a meeting will be effective 5 days after

the required minimum number of voters have signed the consent; however, the action will be effective immediately if the Manager and Members representing at least 80% of the Units have signed the consent.

8.4.6 Record Dates. For purposes of determining the Members entitled to notice of any meeting or to vote or entitled to receive any Distributions or to exercise any rights in respect of any other lawful matter, the Manager may fix in advance a record date, which is not more than 60 nor less than 10 days prior to the date of the meeting nor more than 60 days prior to any other action. If no record date is fixed:

(a) The record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held;

(b) The record date for determining Members entitled to give consent to Company action in writing without a meeting shall be the day on which the first written consent is given;

(c) The record date for determining Members for any other purpose shall be at the close of business on the day on which the Manager adopts it, or the 60th day prior to the date of the other action, whichever is later; and

(d) A determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting unless the Manager fixes a new record date for the adjourned meeting, but the Manager shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

8.4.7 Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Manager. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked as specified or unless it states that it is irrevocable. A proxy which states that it is irrevocable is irrevocable for the period specified therein.

8.4.8 Chairman of Meeting. The Manager may select any person to preside as chairman of any meeting of the Members, and if such person shall be absent from the meeting, or fail or be unable to preside, the Manager may name any other person in substitution therefor as chairman. The chairman of the meeting shall designate a secretary for such meeting, who shall take and keep or cause to be taken and kept minutes of the proceedings thereof.

The conduct of all Members' meetings shall at all times be within the discretion of the chairman of the meeting and shall be conducted under such rules as he may prescribe. The chairman shall have the right and power to adjourn any meeting at any time, without a vote of the Units present in person or represented by proxy, if the chairman shall determine such action to be in the best interests of the Company.

8.4.9 Inspectors of Election. In advance of any meeting of Members, the Manager may appoint any persons other than nominees for the Manager or other office as the inspector of election to act at the meeting and any adjournment thereof. If an inspector of election is not so appointed, or if any such person fails to appear or refuses to act, the Chairman of any such meeting may, and on the request of any Member or his proxy shall, make such appointment at the meeting. The inspector of election shall determine the number of Units outstanding and the voting power of each, the Units represented at the meeting, the existence of a quorum, the authenticity, validity and

effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all Members.

8.4.10 Record Date and Closing Company Books. When a record date is fixed, only Members of record on that date are entitled to notice of and to vote at the meeting or to receive a Distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any Units on the books of the Company after the record date.

8.5 Rights of Members. No Owner shall have the right or power to: (i) withdraw or reduce his contribution to the capital of the Company, except as a result of the dissolution and termination of the Company or as otherwise provided in this Agreement or by law; (ii) bring an action for partition against the Company; or (iii) demand or receive property other than cash in return for his Capital Contribution. Except as provided in this Agreement, no Owner shall have priority over any other Owner either as to the return of Capital Contributions or as to allocations of the Net Income, Net Loss or Distributions of the Company. Other than upon the termination and dissolution of the Company as provided by this Agreement, there has been no time agreed upon when the contribution of each Owner is to be returned.

8.6 Restrictions on the Owners. No Owner shall:

8.6.1 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;

8.6.2 Do any other act or deed with the intention of harming the business operations of the Company;

8.6.3 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

8.6.4 Do any act contrary to this Agreement.

8.7 Return of Capital of Member. In accordance with the Act, an Owner may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Owner. If any court of competent jurisdiction holds that any Owner is obligated to make any such payment, such obligation shall be the obligation of such Owner and not of the Company, the Manager or any other Owner.

8.8 Indemnification of Members. The Company shall indemnify, protect, defend and hold harmless the Members, in their capacity as Members (as opposed to the Manager which is indemnified pursuant to Section 7.6 in its capacity as a Manager), and their agents, employees, general partners and Affiliates and its and their respective successors and assigns, from and against any loss, liability, damage, cost or expense (including legal fees and expenses incurred in defense of any demands, claims or lawsuits) arising from actions or omissions concerning business or activities undertaken by or on behalf of the Company from any source. The Company shall advance to any Person entitled to indemnification pursuant to this Section such funds as shall be required to pay legal fees and expenses incurred in defense of any demands, claims or lawsuits as they become due. Notwithstanding the foregoing, if the claim for indemnification is in connection

with an action against the Company, or against another Indemnified Party by the person requesting the indemnification, the Company shall have no such obligation to advance any funds for the payment of legal fees and expenses. The obligations contained herein shall survive the termination or expiration of the Agreement until such time as an action against the Members is absolutely barred by the statute of limitations.

9. Resignation, Withdrawal or Removal of the Manager. The Manager has been appointed by the Members and may be removed only by a Super Majority Vote, excluding the Manager. A Manager may resign at any time by delivering written notice of such resignation to the Members. The acceptance of such resignation shall not be necessary to make it effective.

10. [Omitted].

11. Assignment of Units.

Permitted Assignments. A Member may only sell, assign, hypothecate, encumber or otherwise transfer any part (but not less than the lesser of (i) one Unit or (ii) the Member's entire interest in the Company) or all of his or her Units if the following requirements are satisfied:

11.1.1 The Manager consents in writing to the transfer;

11.1.2 No Member shall sell, transfer, assign or convey or offer to transfer, assign or convey all or any portion of a Unit to any Person who does not possess the financial qualifications required of all persons who become Members, as described in the Memorandum;

11.1.3 No Member shall have the right to transfer any Unit to any minor or to any Person who, for any reason, lacks the capacity to contract for himself under applicable law. Such limitations shall not, however, restrict the right of any Member to transfer any one or more Units to a custodian or a trustee for a minor or other person who lacks such contractual capacity;

11.1.4 The Manager, with advice of counsel, must determine that such transfer will not jeopardize the applicability of the exemptions from the registration requirements under the Securities Act of 1933, as amended, and registration or qualification under state securities laws relied upon by the Company and Manager in offering and selling the Units or otherwise violate any federal or state securities laws;

11.1.5 The Manager, with advice of counsel, must determine that, despite such transfer, Units will qualify for one of the safe harbors described in the Treasury Regulations related to the publicly traded partnership rules and will not cause the Company's Units to be deemed to be "traded on an established securities market" or "readily tradable on a secondary market (or the substantial equivalent thereof)" under the provisions applicable to publicly traded partnership status. In making this determination, the Manager shall be entitled to limit any transfers so that the transfers comply with one of the safe harbors in the Treasury Regulations; provided, however that the Manager may, in its sole discretion and upon receipt of an opinion from counsel that the Company will not be treated as a publicly traded partnership for federal income tax purposes, permit transfers that do not qualify for one of the safe harbors;

11.1.6 Any such transfer shall be by a written instrument of assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the assignor of such Units and accepted by the Manager in writing. Upon such acceptance by the Manager, such an assignee shall take subject to all terms of this Agreement and shall become an Economic Interest Owner;

11.1.7 A transfer fee shall be paid by the transferring Member in such amount as may be required by the Manager to cover all reasonable expenses, including attorneys' fees and lender's fees, connected with such assignment;

11.1.8 The transfer will not result in Employee Benefit Plans owning 25% or more of the Units;

11.1.9 The transfer will not result in more than 480 Owners;

11.1.10 The transfer will not cause a default with respect to any financing obtained by the Company; and

11.1.11 The buyer and the seller shall comply with and use the terms described in the FINRA Uniform Practice Code, if applicable.

11.2 Substituted Member.

11.2.1 Conditions to be Satisfied. No Economic Interest Owner shall have the right to become a Substituted Member unless the Manager shall consent thereto in accordance with Section 11.2.2 and all of the following conditions are satisfied:

(a) A duly executed and acknowledged written instrument of assignment shall have been filed with the Company, which instrument shall specify the number of Units being assigned and set forth the intention of the assignor that the assignee succeed to the assignor's interest as a Substituted Member in his place;

(b) The assignor and assignee shall have executed, acknowledged and delivered such other instruments as the Manager may deem necessary or desirable to effect such substitution, which may include an opinion of counsel regarding the effect and legality of any such proposed transfer, and which shall include: (i) the written acceptance and adoption by the assignee of the provisions of this Agreement and (ii) the execution, acknowledgment and delivery to the Manager of a special power of attorney, the form and content of which are more fully described herein; and

(c) A transfer fee sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

11.2.2 Consent of Manager. The consent of the Manager shall be required to admit an Economic Interest Owner as a Substituted Member. The granting or withholding of such consent shall be within the sole discretion of the Manager.

11.2.3 Consent of Members. By executing or adopting this Agreement, each Member hereby consents to the admission of additional or Substituted Members, and to any Economic Interest Owner becoming a Substituted Member upon consent of the Manager and in compliance with this Agreement.

11.3 Rights of Economic Interest Owner. An Economic Interest Owner shall be entitled to receive Distributions from the Company attributable to the Units acquired by reason of such assignment from and after the effective date of the assignment; provided, however, that notwithstanding anything herein to the contrary, the Company shall be entitled to treat the assignor of such Units as the absolute owner thereof in all respects, and shall incur no liability for allocations of Net Income and Net Loss or Distributions, or for the transmittal of reports or other information until the written instrument of assignment has been received by the Company and recorded on its

books. The effective date of such assignment shall be the date on which all of the requirements of this Section have been complied with, subject to Section 4.9.

11.4 Right to Inspect Books. Economic Interest Owners shall have no right to inspect the Company's books or records, to vote on Company matters, or to exercise any other right or privilege as Members, until they are admitted to the Company as Substituted Members except as required by the Act.

11.5 Assignment of 50% or More of Units. Without the consent of the Manager in its sole discretion, no assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units and Manager Interests assigned within the 13 immediately preceding months, would, in the opinion of counsel for the Company, result in the termination of the Company under the Code.

11.6 Transfer Subject to Law. No assignment, sale, transfer, exchange or other disposition of any Units may be made except in compliance with the applicable governmental laws and regulations, including state and federal securities laws.

11.7 Transfer in Violation Not Recognized. Any assignment, sale, transfer, exchange or other disposition in contravention of the provisions of this Section 11 shall be void and ineffectual and shall not bind or be recognized by the Company.

11.8 Conversion to Economic Interest. Upon the transfer of a Unit in violation of this Agreement, the Membership Interest of a Member shall be converted into an Economic Interest.

11.9 Right of First Refusal. If any Owner desires to transfer their Units, such Owner shall give the Company written notice of such proposed transfer (the "**Transfer Notice**") and offer to sell such Units to the Company and, at the election of the Company, to the other Members, pro-rata based on their Units, at the price at which such Units are intended to be transferred by the Owner to a third party in a bona fide transaction. The Transfer Notice shall set forth the intended terms, conditions, price and the name and address of such third party. The Company (and the other Members if the Company so elects) shall have the option for a period of ten business days from the date of receipt of such written offer (the "**Offer Period**") to accept such offer, and two months from the date of the receipt of such written offer to purchase the Units (the "**Option Period**") on the terms and conditions set forth therein. If the offer has not been accepted in writing prior to the expiration of the Offer Period, or, if so accepted in writing, the closing of the purchase of the Units by the Company or Members delivering such written acceptance has not occurred within the Option Period, the transferring Owner shall have the right for a period of 180 days following the end of the Offer Period (where no acceptance has been delivered by the Company or the Members) or the Option Period (where acceptance of the offer has been delivered but the applicable Units has not been purchased on or prior to the expiration of the Option Period), as applicable, to dispose of all (but not less than all) of such Units in accordance with the terms set forth in the Transfer Notice.

12. Books, Records, Accounting and Reports.

12.1 Records. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

12.1.1 A current list of the name and last known business, residence or mailing address of the Manager;

12.1.2 A copy of the Certificate of Formation and all amendments thereto, together with any powers of attorney pursuant to which the Certificate of Formation or any amendments thereto were executed;

12.1.3 Copies of the Company's federal, state and local income tax or information returns and reports, if any, for the 3 most recent fiscal years;

12.1.4 Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed;

12.1.5 Copies of any financial statements of the Company, if any, for the six most recent years; and

12.1.6 The Company's books and records as they relate to the internal affairs of the Company for at least the current and past 4 fiscal years.

12.2 Annual Report. The Manager will cause the Company, at the Company's expense, to prepare an annual report containing a year-end balance sheet, income statement and a statement of changes in financial position. Copies of such statements shall be distributed to each Member within 120 days after the close of each fiscal year of the Company.

12.3 Tax Information. The Manager shall cause the Company, at the Company's expense, to prepare and timely file income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Owners' individual income tax returns to be distributed to the Owners not later than 75 days after the end of the Company's fiscal year.

12.4 Confidentiality. The Manager shall have the right to keep confidential from the Owners, for such period of time as the Manager deems reasonable, any information which the Manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Manager in good faith believes is not in the best interest of the Company or could damage the Company or its business or which the Company is required by law or by agreement with a third party to keep confidential.

13. Termination and Dissolution of the Company.

13.1 Termination of the Company. The Company shall be dissolved, shall terminate and its assets shall be disposed of, and its affairs wound up upon the earliest to occur of the following:

13.1.1 Upon the happening of any event of dissolution specified in the Certificate of Formation;

13.1.2 The occurrence of a Dissolution Event unless the business of the Company is continued by the consent of the remaining Members within 90 days following the occurrence of the event; or

13.1.3 A determination by the Manager to terminate the Company; or 13.1.4 Upon the entry of a decree of judicial dissolution.

13.2 Certificate of Cancellation. As soon as possible following the occurrence of any of the events specified in Section 13.1, the Manager who has not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Cancellation in such form as shall be required by the Act.

13.3 Liquidation of Assets. The affairs of the Company shall be wound up and the Company shall be dissolved. The Manager shall serve as the liquidator (or in case there is no Manager, the Members or Person designated by a Majority Vote) and shall take full account of the Company assets and liabilities. The manager (or other liquidator) shall in its sole discretion determine the most advantageous time for the Company to resolve its Fund Investments or to make distributions in kind. The Manager shall liquidate the Company's Fund Investments as promptly as is consistent with obtaining fair value for them, and shall apply and distribute the proceeds therefrom in the following order:

13.3.1 To the payment of creditors of the Company but excluding secured creditors whose obligations will be assumed or otherwise transferred on liquidation of Company assets;

13.3.2 To the setting up of any reserves as required by law for any liabilities or obligations of the Company; provided, however, that said reserves shall be deposited with a bank or trust company in escrow at interest for the purpose of disbursing such reserves for the payment of any of the aforementioned contingencies and, at the expiration of a reasonable period, for the purpose of distributing the balance remaining in accordance with the remaining provisions of this Section 13.3; and

13.3.3 To the Members, pro rata in accordance with their respective Sharing Percentages, until each Member's Unreturned Capital Contribution is reduced to zero, and then to the Members, pro rata in accordance with the relative dollar amounts of their outstanding Unpaid Preferred Return, if any, until each Member's Unpaid Preferred Return is reduced to zero, consistent with the priorities described in Section 5.2 and Section 5.3. No Class is senior or subordinate to any other Class in this liquidating distribution.

13.3.4 All calculations under this Section 13.3 will be determined using the XIRR function in Microsoft Excel.

13.4 Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions and its Capital Contributions, and shall have no recourse therefor (upon dissolution or otherwise) against any Manager or any Member. No Member shall be required to restore any deficit in the Member's Capital Account.

13.5 Liquidation of Member's Interest. If there is a Liquidation of a Member's or Manager's interest in the Company, any liquidating Distribution pursuant to such Liquidation shall be made only to the extent of the positive Capital Account balance, if any, of such Member or Manager for the taxable year during which such Liquidation occurs after proper adjustments for allocations and Distributions for such taxable year up to the time of Liquidation. Such Distributions shall be made by the end of the taxable year of the Company during which such Liquidation occurs, or if later, within 90 days after such Liquidation.

14. Special and Limited Power of Attorney.

14.1 Power of Attorney. The Manager shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such Member to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

14.1.1 This Agreement, as well as any amendments to the foregoing which, under the laws of the State of Delaware or the laws of any other state, are required to be filed or which the Manager shall deem it advisable to file;

14.1.2 Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Manager shall deem it advisable to file;

14.1.3 Any instrument or document that may be required to effect the continuation of the Company, the admission of Substituted Members, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement);

14.1.4 Any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage or other instrument of conveyance or encumbrance, with respect to Property; and

14.1.5 Any and all other instruments as the Manager may deem necessary or desirable to effect the purposes of this Agreement and carry out fully its provisions, including, but not limited to, those in Section 16.

14.2 Provision of Power of Attorney. The special and limited power of attorney of the Manager:

14.2.1 Is a special power of attorney is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

14.2.2 May be exercised by the Manager by and through one or more of the officers of the Manager for each of the Members by the signature of the Manager acting as attorney-in-fact for all of the Members, together with a list of all Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and

14.2.3 Shall survive an assignment by a Member of all or any portion of his Units except that, where the assignee of the Units owned by the Member has been approved by the Manager for admission to the Company as a Substituted Member, the special power of attorney shall survive such assignment for the sole purpose of enabling the Manager to execute, acknowledge and file any instrument or document necessary to effect such substitution.

14.3 Notice to Members. The Manager shall promptly furnish to a Member a copy of any amendment to this Agreement executed by the Manager pursuant to a power of attorney from the Member.

15. Relationship of this Agreement to the Act. Many of the terms of this Agreement are intended to alter or extend provisions of the Act as they may apply to the Company or the Members. Any failure of this Agreement to mention or specify the relationship of such terms to provisions of the Act that may affect the scope or application of such terms shall not be construed to mean that any of such terms is not intended to be a limited liability company agreement provision authorized or permitted by the Act or which in whole or in part alters, extends or supplants provisions of the Act as may be allowed thereby.

16. Amendment of Agreement.

16.1 Admission of Member. Amendments to this Agreement for the admission of any Member or Substituted Member shall not, if in accordance with the terms of this Agreement, require the consent of any Member.

16.2 Amendments with Consent of Member. In addition to any amendments otherwise authorized herein, this Agreement may be amended by the Manager with a Majority Vote of the Units.

16.3 Amendments Without Consent of the Members. In addition to the Amendments authorized pursuant to Section 4.10 and Section 7.2.13 or otherwise authorized herein, the Manager may amend this Agreement, without the consent of any of the Members, to (i) change the name and/or principal place of business of the Company, (ii) decrease the rights and powers of the Manager (so long as such decrease does not impair the ability of the Manager to manage the Company and conduct its business and affairs); provided, however, that no amendment shall be adopted pursuant to this Section 16.3 unless the adoption thereof (A) is for the benefit of or not adverse to the interests of the Members, and (B) does not affect the limited liability of the Members or the status of the Company as a partnership for federal income tax purposes, or (iii) to share or delegate management responsibilities of the Company to any Affiliate that is indirectly or directly controlled by the Manager.

16.4 Execution and Recording of Amendments. Any amendment to this Agreement shall be executed by the Manager, and by the Manager as attorney-in-fact for the Members pursuant to the power of attorney contained in Section 14. After the execution of such amendment, the Manager shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company holds any Property or otherwise does business.

17. Miscellaneous.

17.1 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart.

17.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Members.

17.3 Severability. In the event any sentence or Section of this Agreement is declared by a court of competent jurisdiction to be void, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

17.4 Notices. All notices under this Agreement shall be in writing and shall be given to the Member or Economic Interest Owner entitled thereto, by personal service or by mail, posted to the address maintained by the Company for such person or at such other address as he may specify in writing

Manager's Address. The address of the Manager is as follows:

Symphony Tower 750 B Street, Suite 1930, San Diego, California 92101

17.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its choice of law principles.

17.7 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provisions hereof.

17.8 Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, and vice versa.

17.9 Time. Time is of the essence with respect to this Agreement.

17.10 Additional Documents. Each Member, upon the request of the Manager, shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry

out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a notary public of any signature made by a Member.

17.11 Descriptions. All descriptions referred to in this Agreement are expressly incorporated herein by reference as if set forth in full, whether or not attached hereto.

17.12 Binding Arbitration. This Agreement is entered into under and shall be governed by and construed in accordance with the laws of the State of Delaware, excluding that State's choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Delaware, excluding that State's choice-of-law principles. Furthermore, 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.

The parties agree that arbitration shall be the sole and exclusive forum for resolving disputes subject to this Arbitration Provision. In the event a party initiates litigation in violation of this Arbitration Provision, such action shall be subject to dismissal, with the reasonable fees and expenses of the non-initiating party or parties paid by the party or parties that initiated the action. Nothing in this Arbitration Provision shall limit the right of a party to seek an order from a court of competent jurisdiction (a) dismissing litigation brought in violation of this Arbitration Provision or (b) compelling a party to arbitrate in accordance with this Arbitration Provision. In the event such an order is sought and obtained, the non-prevailing party shall pay all reasonable fees and expenses of the prevailing party. The parties stipulate and agree that a violation of this Arbitration Provision shall constitute irreparable harm and that, on proof of a breach, the party seeking relief from such violation shall be entitled to equitable relief including, but not limited to, an injunction or specific performance.

To the extent permitted under the DRAA, all hearings relating to the arbitration, along with the arbitration itself, will take place in either San Diego, California or the State of Delaware, per the sole election of the Manager. Notwithstanding anything herein to the contrary, each party to the arbitration will bear its own attorneys' fees relating to the arbitration, regardless of which party prevails in such arbitration. In the event that 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 Preferred Units shall be in the federal or state courts located within San Diego County, California.

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 (i) any claim among or between any of them arising under this Agreement, the related Private Placement Memorandum, 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 (ii) any and all claims arising under common law or under any statute of any state or the United States of America.

17.12.1 Costs of Unsuccessful Member Litigation. If any Member or former Member (a “Litigating Member”) initiates or brings any claim, counterclaim, action, suit, or proceeding against the Company, the Manager, or any Affiliate of the Manager (a “Member Action”), and the Litigating Member does not prevail on every claim or count asserted in the complaint, petition, or other pleading that initiates the Member Action, then the reasonable costs and expenses, including reasonable attorneys’ fees, incurred by the Company, the Manager, or such Affiliate in defending the Member Action shall be charged against, and deducted from, the Litigating Member’s Capital Account and Unreturned Capital Contribution, rather than treated as a Company Expense borne by the Company or its other Members generally, so that the cost of the Member Action is borne by the Litigating Member and does not reduce the return of any other Member. The Manager may effect the charge described in this Section 17.12.1 by reducing the Litigating Member’s Unreturned Capital Contribution, by offsetting any Distribution otherwise payable to the Litigating Member, or by any other method the Manager determines appropriate, and the Litigating Member shall, upon demand, promptly pay to the Company any amount of such costs and expenses not fully recovered through such reduction or offset. This Section 17.12.1 does not apply to the extent a claim in the Member Action arises under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated under either such act, to the extent applying this Section 17.12.1 to that claim would constitute an impermissible waiver of compliance with such laws.

17.12.2 Waiver of Class and Collective Actions. Each Member agrees that any claim, dispute, or controversy it may have against the Company, the Manager, or any Affiliate of the Manager must be brought and pursued solely in an individual capacity, and not as a plaintiff, class representative, or class member in any purported class, collective, consolidated, or representative action, whether in arbitration, in any court, or otherwise. This waiver applies regardless of whether the underlying claim is subject to arbitration under Section 17.12 or is instead brought in court because the arbitration provisions of Section 17.12 are held unenforceable as to that claim. No arbitrator or court has authority to combine or consolidate the claims of more than one Person, or to otherwise preside over any class, collective, or representative proceeding involving the Company, the Manager, or any Affiliate, and this Agreement shall not be construed to authorize any such proceeding. If any portion of this Section 17.12.2 is held unenforceable with respect to a particular claim, that claim shall proceed on an individual basis only, to the fullest extent individual adjudication remains available, and the remainder of this Section 17.12.2 shall continue to apply to all other claims. This Section 17.12.2 does not apply to the extent it would constitute an impermissible waiver of compliance with the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated under either such act.

17.13 Venue. Any Action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in San Diego County, California.

17.14 Partition. The Members agree that the assets of the Company 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.

17.15 Integrated and Binding Agreement. This Agreement contains the entire understanding and agreement among the Members with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the Members other than those set forth herein except the Subscription Agreement. This Agreement may be amended only as provided in this Agreement.

17.16 Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company, the Manager and its Affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of

the Members in any respect. In addition, each Member consents to the Manager hiring counsel for the Company which is also counsel to one or more of the Manager.

17.17 Title to Company Property. The Fund Investments and all other property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member's membership interest shall be personal property for all purposes.

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

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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

MANAGER:

DIVERSYFUND, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

MEMBERS:

Member Name: _____
[If an entity: state of organization and

entity type]

Signed: _____
Name: _____
Title: _____ (if

applicable)

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).

“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 partner of such other Person; and (iv) if such other Person is an officer, director or partner, any company for which such Person acts in any capacity.

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

“Blended Rate” means, with respect to any Fund Investment, the rate per annum equal to the sum, across all Classes, of (a) each Class's Sharing Percentage for that Fund Investment, multiplied by (b) that Class's Target Rate. The Manager shall structure the preferred return payable by the applicable SPV Borrower under each Fund Investment, and the return on any capital held in Permitted Investments, so that Investment Proceeds are intended to deliver each participating Class its Target Rate on the capital allocated to that Fund Investment for the applicable period, subject to Section 5.3 (Shortfalls; Unpaid Preferred Return) and Section 5.4 (Principal Losses); provided that the Manager may structure a Fund Investment to generate Cure Proceeds in excess of the Blended Rate as described in Section 5.3.1.

“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.

“Book Value” shall mean the adjusted basis of Property for federal income tax purposes increased or decreased by Book Gain, Book Loss, Built-In Gain and Built-In Loss as reduced by depreciation, amortization or other cost recovery deductions, or otherwise, based on such Book Value.

“Built-In Gain (or Loss)” shall mean the amount, if any, by which the agreed value of contributed Property exceeds (or is lower than) the adjusted basis of Property contributed to the Company by a Member immediately after its contribution by the Member to the capital of the Company.

“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 Income;
- (b) any item of income or gain specially allocated to a Member and not included in Net Income 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 Income 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. In the plural, “Capital Contributions” shall mean the aggregate amount

invested by all of the Members in the Company and shall equal, in total, the sum of the amount attributable to the purchase of Units and the contributions of the Manager.

“Certificate of Formation” 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 Minimum Gain” shall have the same meaning as “partnership minimum gain” as set forth in Treasury Regulations Section 1.704-2(d).

“Cure Proceeds” is defined in Section 5.3.1.

“Deployment Period” means, with respect to any Fund Investment, the period commencing on the date the Company funds such Fund Investment and ending on the date the Company receives payment in full of all amounts due to the Company in respect of such Fund Investment.

“Dissolution Event” shall mean with respect to the Manager one or more of the following: the death, insanity, withdrawal, retirement, resignation, expulsion, Event of Insolvency or dissolution (unless reconstituted by the Manager) of the Manager unless the Members consent to continue the business of the Company pursuant to Section 8.2.6.

“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.

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

“Economic Interest Owner” shall mean the owner of an Economic Interest who is not a Member.

“Employee Benefit Plan” shall have the meaning set forth in Section 3(3) of the Employee Retirement Income Security Act of 1974.

“Escrowed Amount” is defined in Section 5.7.

“Event of Insolvency” shall occur when an order for relief against the Manager is entered under Chapter 7 of the federal bankruptcy law, or (A) the Manager: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that Manager a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Manager in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Manager or of all or a substantial part of that Manager's properties, or (B) the expiration of 60 days after either (1) the commencement of any proceeding against the Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (2) the appointment without the Manager's consent or acquiescence of a trustee, receiver, or liquidator of the Manager or of all or any substantial part of the Manager's properties, if the appointment has not been vacated or stayed (or if within 60 days after the expiration of any such stay, the appointment is not vacated).

“Fund Investment” is defined in Section 1.3.

“Interest” shall mean a Membership Interest or an Economic Interest.

“Investment Proceeds” is defined in Section 5.1.

“Liquidation” shall mean in respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may exist for purposes of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and in respect to a Member where the Company is not in Liquidation shall mean the date upon which occurs the termination of the Member's entire interest in the Company by means of a distribution or the making of the last of a series of Distributions (whether or not made in more than one year) to the Member by the Company.

“Litigating Member” is defined in Section 17.12.1.

“Majority Vote” shall mean the vote of more than 50% 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.

“Manager” shall refer to DiversyFund, Inc., a Delaware corporation. The term “Manager” shall also refer to any successor or additional Manager who is admitted to the Company as the Manager.

“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 Action” is defined in Section 17.12.1.

“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 “partner 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.

“Memorandum” shall mean the Confidential Private Placement Memorandum pertaining to the Offering distributed to potential purchasers of Units, as may be amended or supplemented from time to time.

“Net Income” or “Net Loss” shall mean, respectively, for each taxable year of the Company the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Company as determined for federal income tax purposes in accordance with Section 703(a) of the Code (including all items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703(a)(1) of the Code) (other than any specific item of income, gain (exclusive of Built-In Gain), loss (exclusive of Built-In Loss), deduction or credit subject to special allocation under this Agreement), with the following modifications:

(a) The amount determined above shall be increased by any income exempt from federal income tax;

(b) The amount determined above shall be reduced by any expenditures described in Section 705(a)(2)(B) of the Code or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i);

(c) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner; and

(d) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of Property attributable to unrealized gain or loss in such Property shall be treated as Net Income and Net Loss.

“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).

“Offer Period” shall have the meaning set forth in Section 11.9.

“Offering” shall mean the offering and sale of the Units made in accordance with the provisions of Section 3.1.

“Offering Termination Date” means the earlier of (a) the date the Offering is fully subscribed as to its \$35,000,000 target, or (b) the date the Manager elects to terminate the Offering, in its sole discretion. The Offering Termination Date is a single date applicable to the Company and all Members, regardless of the date any particular Member subscribed for Units or was admitted to the Company.

“Option Period” shall have the meaning set forth in Section 11.9.

“Organization and Offering Expenses” shall mean all expenses incurred in connection with the organization and formation of the Company, the preparation of the offering materials, and the marketing and sale of the Units, including but not limited to legal, accounting, tax planning fees, promotional fees or expenses, filing and recording fees, market research and surveys, property inspections and research, engineering services, printing costs, securities sales commissions, travel expenses and other costs or expenses incurred in connection therewith.

“Owner” shall mean a Member or the holder of an Economic Interest.

“Permitted Investments” means demand deposits, money market funds, and similar cash-equivalent instruments invested solely in direct obligations of the United States Treasury or fully collateralized by such obligations, in which the Manager holds Company capital not currently deployed in a Fund Investment.

“Person” shall mean a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank 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.

“Preferred Return” means, with respect to each Member and each Class, an amount that accrues, non-compounded, at the Target Rate applicable to such Member’s Class, calculated on the basis of a 365-day year for the actual number of days elapsed, on the portion of such Member’s Unreturned Capital Contribution that is, as of the applicable day, actually deployed in a Fund Investment, beginning on the date such portion is funded to the applicable SPV Borrower. No Preferred Return accrues on any portion of a Member’s Unreturned Capital Contribution for any period during which that portion is held in Permitted Investments (which instead earns the return described in Section 5.1) or is an Escrowed Amount as described in Section 5.7.

“Prime Rate” shall mean the reference rate announced from time-to-time by the bank at which the Company’s bank accounts are maintained, and changes in the Prime Rate shall be deemed to occur on the date that changes in such rate are announced.

“Principal Loss” is defined in Section 5.4.

“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 Company’s Fund Investments.

“Regulatory Allocations” shall mean the allocations set forth in Sections 4.2.1 through 4.2.7.

“Sharing Percentage” means, with respect to any Member and any specific Fund Investment, the percentage obtained by dividing (a) the portion of such Member’s Capital Contribution that the Manager allocates to fund that specific Fund Investment, by (b) the aggregate Capital Contributions of all Members allocated to fund that specific Fund Investment, determined as of the date the Company funds such Fund Investment. A Member’s Sharing Percentage for a given Fund Investment is fixed at the time that Fund Investment is funded and does not change over its Deployment Period, because capital raised after a Fund Investment is funded is held in Permitted Investments rather than added to an already-funded Fund Investment.

“Shortfall” is defined in Section 5.3.

“SPV Borrower” is defined in Section 1.3.

“Subscription Agreement” means the agreement, in the form attached to the Memorandum, 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.

“Subscription Payment” shall mean the cash payment that must accompany each subscription for Units sold through the Offering.

“Substituted Member” shall mean any Person admitted as a substituted Member pursuant to this Agreement.

“Super-Majority Vote” shall mean the vote of 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.

“Target Rate” means, with respect to Class A-1 Units, 18% per annum; with respect to Class A-2 Units, 15% per annum; and with respect to Class A-3 Units, 12% per annum; in each case non-compounded.

“Tax Payment” shall have the meaning set forth in Section 4.12.

“Transfer Notice” shall have the meaning set forth in Section 11.9.

“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 Income, 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 Contribution through such date, less (ii) the aggregate distributions made to such Member prior to such date pursuant to Section 5.2(b). There is no obligation of the Manager or any Affiliate to fund or contribute the amount of any Unpaid Preferred Return; it is payable solely from future Investment Proceeds of the Company as, if, and when available, as described in Section 5.3.

“Unreturned Capital Contribution” shall mean, 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 (ii) the cumulative distributions, as of such day, made to such Member pursuant to Section 5.2(b) or Section 13.3.3, in each case as reduced by any Principal Loss allocated to such Member pursuant to Section 5.4.

EXHIBIT B
Capitalization Table
(See Attached)