

## **SERIES OPERATING AGREEMENT**

### **OPERATING AGREEMENT OF SERIES II OF DIVERSIFIED MANAGEMENT SERVICES, LLC AN OKLAHOMA LIMITED LIABILITY COMPANY**

**THIS OPERATING AGREEMENT** (the "Agreement") is entered into this 1st day of October, 2014 (the "Effective Date"), by and among the members named on the signature pages hereto (the "Members") of Series II (the "Series") of Diversified Management Services, LLC, an Oklahoma limited liability company (the "Company"). It is intended that property may be contributed to the Series in general, and that assets of the Series shall be kept separate from the assets of the Company, in general, and any other Series and that the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to this Series of the Company will be enforceable against the assets of this Series only, and not against the assets of the Company in general or any other series thereof. Further, none of the debts, liabilities, obligations or expenses incurred, contracted for or otherwise existing with respect to the Company generally or any other series shall be enforceable against assets of this Series. The initial property contributed to the Series, shall be reflected in Exhibit A attached to this agreement.

In consideration of the mutual covenants and conditions hereinafter set forth, the Members hereby agree that the terms of the Agreement governing the Company shall be as follows:

#### **ARTICLE I** **THE SERIES**

Section 1.01. **Formation of the Series.** The Series was formed per the terms of the Company's Operating Agreement and pursuant to the provisions of the Act (as hereinafter defined). The rights and obligations of the Members, and the affairs of the Series, shall be governed first by the Mandatory Provisions of the Act (as hereinafter defined), second by the Company's Articles of Organization, third by this Agreement, forth by the Company's Operating Agreement and fifth by the optional provisions of the Act. In the event of any conflict among the foregoing, the conflict shall be resolved in the order of priority set forth in the preceding sentence.

Section 1.02. **Name.** The formal name of the Series shall be Series II of Diversified Management Services, LLC. The Series may also be referred to as Green Shields Capital Fund I (the "Fund"), the unregistered private investment fund that is the primary business of the Series.

Section 1.03. **Principal Office.** The principal office of the Company and the Series in the State of Oklahoma shall be located at 2924 Boulder Court, Edmond, OK 73003. The Series may also maintain offices at such other place or places as the Members deem advisable.

Section 1.04. **Registered Office and Registered Agent.** The Company's current registered office in the State of Oklahoma shall be 2924 Boulder Court, Edmond, OK 73003 and its registered agent is Gary Gallagher.

Section 1.05. **Term.** The Series shall commence upon the Effective Date, and shall have perpetual duration, unless the Series is dissolved pursuant to the provisions of this Agreement and at the sole discretion of the Manager or as provided in the Act.

## **ARTICLE II** **DEFINITIONS**

Section 2.01. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

A. **"Act"** means the Oklahoma Limited Liability Company Act, 18 O.S. 2000 et seq., as it may be amended from time to time, and any successor to such act.

B. **"Affiliate"** means with respect to any specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such specified Person. As used in this definition of "Affiliate", the term "control" means either: (i) the possession, directly or indirectly, of the power to direct or cause the direction of the business affairs, management or policies of a Person, whether through ownership of voting securities, by contract or otherwise; or (ii) a direct or indirect equity or ownership interest of ten percent (10%) or more in the entity.

C. **"Agreed Value"** means the fair market value of the interest belonging to a deceased Member, a selling Member, an insolvent Member, or a withdrawing Member, as agreed by the remaining Members and the withdrawing Member, the insolvent Member, the selling Member or the deceased Member's representative. If the withdrawing Member, the selling Member, the insolvent Member or the deceased Member's representatives and the remaining Members cannot agree on the fair market value of the withdrawing Member's interest in the Series within thirty (30) days of the notice of the withdrawal, the Series shall hire an independent professional appraiser to value the interest, and the withdrawing Member shall hire an independent professional appraiser to value the interest. If the lower value is within five percent (5%) of the higher value, the fair market value of the interest shall be the average of the two (2) values (the "Original Values"). Otherwise, the two (2) appraisers shall appoint a third professional appraiser to value the interest (the "Third Value") and the fair market value shall be: (1) the Third Value if the Third Value is between the Original Values or the Original Value closest to the Third Value, if the Third Value is not between the Original Values.

D. **"Agreement"** means this Operating Agreement, as it may be amended or supplemented from time to time.

E. **"Articles of Organization"** means the articles of organization, as amended from time to time, filed by the Company under the Act.

F. **"Assignee"** means a Person to whom one or more Units have been transferred, by transfer or assignment or otherwise, in a manner permitted under this Agreement but who has not become a Substitute Member.

G. **"Bankruptcy"** means the filing by or against any Member of a petition seeking or invoking relief under any state or federal bankruptcy, insolvency or readjustment of debt, law, rule or regulation.

H. **"Business Day"** means Monday through Friday of each week, except legal holidays recognized as such by the Government of the United States or the State of Oklahoma.

I. **"Capital Account"** means each capital account maintained for a Member pursuant to Section 4.03.

J. **"Capital Contributions"** means with respect to any Member, any contribution to the Series in cash or other property (at such other property's initial Gross Asset Value) by such Member whenever made.

K. **“Capital Investment”** means a Member’s original capital investment less any return of capital plus any additions to capital.

L. **“Capital Gain”** means the Series’ allocable share of gain from the disposition by the Series of a capital asset as defined in the Code (including any portion of such gain treated as ordinary income).

M. **“Cash Available for Distribution”** means, with respect to any period, all cash receipts and funds received by the Series (except for Capital Contributions and proceeds of loans) minus: (i) all cash expenditures; and (ii) the Series’ cash management fund representing working capital or other reserves as determined by the Series’ certified public accountant or Manager.

N. **“Certificate of Formation”** means the Certificate of Incorporation of the Company and any Amendments thereto and restatements thereof filed on behalf of the Company with the Secretary of State of the State of Oklahoma pursuant to the Act.

O. **“Change in Control”** means, with respect to any Member, any change in the ownership composition of any Member or any Affiliate of a Member as the same exists upon the Effective Date, whether voluntary or involuntary, including, without limitation, the sale, transfer or assignment of any shares of stock or ownership interest of any Member or its Affiliates by any means, including, without limitation, purchase, inheritance, devise, transfer by joint tenancy, Involuntary Sale (as hereinafter defined), Liquidation (as hereinafter defined), receipt of a stock dividend or stock split, exercise of stock option, stock warrant purchase or other rights, conversion of preferred stock, debentures or other convertible securities or by means of any type of merger or consolidation.

P. **“Code”** means the Internal Revenue Code of 1986, as amended, as in effect from time to time.

Q. **“Company”** means the limited liability company formed by the filing of the Company's Articles of Organization with the Oklahoma Secretary of State.

R. **“Series Property”** means all property owned, leased or acquired by the Series from time to time.

S. **“Deceased Member”** means the Member who may die at any time while this Agreement is in force and effect.

T. **“Defaulting Member”** has the meaning specified in Section 12.01.

U. **“Dissociation”** means a complete termination of a Member’s membership in the Series due to an event prescribed under this Agreement.

V. **“Dissolution”** means the filing of any articles, certificate, petition or other document which results in the commencement of any action or proceeding, voluntary or involuntary, by which a Person is to be dissolved or in any manner terminated.

W. **“Dissolved Member”** means the Member involved in a Dissolution.

X. **“Distribution”** means the Series’ direct or indirect transfer of money or other property to a Member with respect to any membership interest.

Y. **“Distributable Cash”** means with respect to the Series, all cash, revenues and funds received by the Series from the operation of the Series, less the sum of the following to the extent paid or set aside by the Series: (i) all principal and interest payments on indebtedness of the Series and all other sums paid to lenders with respect to the Series, (ii) all cash expenditures incurred by the Series in the normal operation of business; and (iii) such Reserves as the Manager(s) associated with the Series deem reasonably necessary for the proper operation of the business of the Series.

Z. **"Effective Date"** means the date set forth on the first page of this Agreement, which shall be date upon which this Agreement has been executed by the last party to execute the same.

AA. **"Entity"** means any general partnership, limited partnership, limited liability company, series, corporation, joint venture, trust, association, foreign trust or foreign business organization or other organization that is not a natural person.

BB. **"Event of Default"** has the meaning specified in Section 12.01.

CC. **"Family"** with respect to any Member, means individuals who are related to the Member by blood, marriage or adoption. For the purposes of this definition, an individual is related to the Member by marriage if the person is related by blood or adoption to the Member's current spouse.

DD. **"Fiscal Year"** means a calendar year, with respect to the Series.

EE. **"GAAP"** means generally accepted accounting principles consistently applied.

FF. **"Income" and "Loss"** mean an amount equal to the Series' taxable income or loss for each taxable year, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or reduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(1) Any income of the Series that is exempt from federal income tax and not otherwise taken into account in computing Income or Loss shall be added to such Income or Loss;

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

(3) Upon the distribution of property by the Series to a Member, gain or loss attributable to the difference between the fair market value of the property and its basis shall be treated as recognized.

GG. **"Initial Member"** means the initial purchaser of Membership Units.

HH. **"Insolvent Member"** means a Member with respect to whom Bankruptcy has occurred and/or for whom a receiver, trustee or conservator is appointed and/or with respect to whom an Involuntary Sale Order has been sought or obtained.

II. **"Involuntary Sale"** means the sale, transfer or assignment of the Units, or any interest therein, of any Member pursuant to an Involuntary Sale Order.

JJ. **"Involuntary Sale Order"** means any type of order, judgment, decree (including, without limitation, a divorce decree), writ, execution, attachment, garnishment or other similar procedure pursuant to which the Units of any Member are ordered or directed to be sold.

KK. **"Liquidation"** means the process of liquidating the Series or a Member, whether voluntarily or involuntarily.

LL. **"Majority Interest"** means with respect to the Series at any time, more than fifty percent (50%) of the Voting Interests held by voting Members associated with the Series as applicable. For this purpose, any interest in the Series held by a non-Member shall be deemed to be non-voting and not outstanding for determining a majority interest.

MM. **"Majority Vote of the Members"** means, if there are more than two (2) Members, the affirmative vote of the holders of more than fifty percent (50%) of the Outstanding Units held by the Members entitled to vote; if there are two (2) or less Members, "Majority Vote of the Members" shall be deemed to mean the affirmative vote of one hundred percent (100%) of the Outstanding Units held by Members entitled to vote.

NN. **"Mandatory Provisions of the Act"** means those provisions of the Act which may not be waived by the Members acting unanimously or otherwise.

OO. **"Manager" or "Managers" or "Series Manager" or "Series Managers"** means that Person or those Persons appointed as managers of the Series pursuant to Section 6.01.

PP. **"Manager Default"** has the meaning specified in Section 6.10.

QQ. **"Member" or "Members"** means, individually or collectively, those Persons set forth on the attached Exhibit "A" and their respective Member Representatives, successors and permitted assigns.

RR. **"Membership Interest"** means with respect to the Series, a Member's entire limited liability company interest in the Series.

SS. **"Membership Unit"** means a Member's percentage interest in the Series, which consists of the Member's right to share in profits, receive Distributions, participate in the Series' governance, approve the Series' acts, participate in the designation and removal of the Manager and receive information pertaining to the Series' affairs. The Membership Units of the Initial Members are set forth in Article 4. Changes in Membership Units after the Effective Date, including those necessitated by the admission and Dissociation of Members, will be reflected in the Series' records. The allocation of Membership Units as reflected in the Series' records from time to time is presumed to be correct for the purposes of this Agreement and the Act.

TT. **"Member Representative"** means the legal representative, conservators, guardians, receivers, trustees or other Person exercising control, in any manner, over the Units owned by the Member.

UU. **"Minimum Gain"** means minimum gain as defined in Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

VV. **"Net Profits"** means the Series' monthly gross income less the payment of the Series' monthly operating expenses (such as advertising, brokerage commissions, overhead, rent, insurance, interest on credit lines, capital expenses, telephone, internet and other normal operating expenses, but not the wages of the Manager or its personnel) and an allocation of income for a loan loss reserve. All distributions will be made on an annual basis and in arrears.

WW. **"Non-Defaulting Member"** has the meaning specified in Section 12.01.

XX. **"Offer"** means a bona fide written offer of a Third Party Purchaser offering to purchase all of the Units owned by a Member, which shall specifically set forth the terms and conditions of such Offer.

YY. **"Opinion of Counsel"** means a written opinion of counsel (who shall be regular counsel to the Company).

ZZ. **"Opportunity" or "Opportunities"** has the meaning specified in Section 6.05.

a. **"Outstanding"** means the number of Units issued by the Series as shown on the Series' books and records and in Exhibit "A," less any Units held by the Series.

b. **"Person"** means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, government or department or agency thereof or other entity.

c. **"Permitted Transferee"** with respect to a Member, means another Member, a member of the Member's Family or a trust for the benefit of the Member or a member of a Member's Family.

d. **"Profit"**, as to a positive amount, and **"Loss"**, as to a negative amount, mean, for a Taxable Year, the Series' income or loss for the Taxable Year, as determined in accordance with accounting principles appropriate to the Series' method of accounting and consistently applied.

e. **"Purchase Offer"** means a bona fide written offer from a Third Party Purchaser to purchase all of the Units of the Series or all or substantially all of the assets of the Series, which Purchase Offer shall specifically set forth the terms and conditions of such Purchase Offer.

f. **"Record Holder"** means the Person in whose name such Unit is registered on the books and records of the Series as of the close of business on a particular Business Day.

g. **"Regulations"** or **"Treasury Regulations"** means proposed, temporary or final regulations promulgated under the Code by the U.S. Department of the Treasury.

h. **"Remaining Member"** means the Member not being the recipient of an Offer, the Member who is not a Deceased Member, an Insolvent Member or a Withdrawing Member, or the Member who does not desire to accept a Purchase Offer.

i. **"Reserves"** means with respect to the Series, funds set aside or amounts allocated to reserves that shall be maintained in amounts deemed sufficient by the Manager(s) associated with the Series for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the liquidation of the Series.

j. **"Secretary"** means the Oklahoma Secretary of State.

k. **"Selling Member"** means a Member who desires to sell the Units owned by such Member pursuant to an Offer or a Member who desires to accept a Purchase Offer, a Member who has suffered a Change in Control, a Dissolved Member or an Insolvent Member and shall include, where applicable, such Member's Member Representative(s).

l. **"Separate Property"** means the respective properties specified in the respective Separate Series Agreement.

m. **"Separate Series Agreement"** has the meaning set forth in Paragraph 1.0.6.

n. **"Series"** means a branch or division of the Company that holds a separate and distinct collection of assets. Members may own units in one or more specific Series. This Agreement specifically refers to **"Series"** as Series II of the Company and **"series"** as any branch or division of the Company that holds a separate and distinct collection of assets.

o. **"Substitute Member"** means a transferee of a Unit who is admitted as a Member to the Series pursuant to Section 11.01 in place of and with all the rights of a Member.

p. **"Taxable Year"** means the Series' taxable year as determined in Article 8 or any subsequent amendment or Series determination.

q. **"Tax Item"** means each item of income, gain, loss, deduction or credit of the Series for federal tax purposes, as separately stated and calculated pursuant to the Code.

r. **"Tax Matters Partner"** means the party designated pursuant to Section 9.02.

s. **"Third Party Purchaser"** means a Person who makes an Offer or a Purchase Offer and who is legally competent and who is not an Affiliate of a Member.

t. **“Transfer”** as a noun, means a transaction or event by which ownership of any Membership Unit is changed or unencumbered, including, without limitation, a sale, exchange, abandonment, gift, pledge or foreclosure. “transfer” as a verb, means to affect a transfer.

u. **“Transferee”** means a Person who acquires any Membership Unit by Transfer for Member or another Transferee not admitted as a Member in accordance with Article 3.

v. **“Unit”** means a Unit representing an interest in the Series.

w. **“Voting Interests”** means with respect to a Member the Series, the percentage of such Member’s Capital Account balance in the Series relative to the aggregate Capital Account balances of all Members of the Series. If any non-voting interests in the Series are later authorized by unanimous consent of the Members of the Series, the non-voting interest holders, although Members, shall be passive, and shall not have any power to vote, and shall only obtain a purely economic interest in the Series.

x. **“Withdrawing Member”** means a Member who wishes to withdraw from the Series pursuant to the terms of Sections 4.05 and 10.04.

y. **“ERISA”** means the Employee Retirement Income Security Act of 1974, and amended.

### **ARTICLE III** **PURPOSES**

Section 3.01. **Purpose of the Series.** The purpose of the Series shall be for the transaction of any and all lawful business for which limited liability companies may be organized under the Act. The Series shall through its Manager(s) have the power to do any or all of the acts necessary, appropriate, advisable, incidental or convenient to or for the furtherance of the purposes described herein and for the protection and benefit of the Series. The primary business of the Series will be the development, management and operation of the unregistered private investment fund, referred to as Green Shields Capital Fund I (the “Fund”).

### **ARTICLE IV** **CAPITAL CONTRIBUTIONS AND MEMBER LOANS**

Section 4.01. **Units.** There shall be an aggregate of 2,000 Common Units and 2,000 Preferred Units in the initial Series. The principal terms and rights of the preferred units shall be set forth on Exhibit “B” hereto. Units issued through any Series shall be determined at the time of formation as to quantity and preference and variety of units.

Section 4.02. **Capital Contributions.** Diversified Management Services, LLC (the “Initial Member”) shall contribute One Dollar for each Unit (“Initial Capital Contribution”) set forth opposite such Member's name on Exhibit "A" hereto. The Initial Member shall make all of the contribution in 2014.

Section 4.03. **Capital Accounts.**

A. **Capital Accounts.** The Series shall maintain for each Member, a separate Capital Account. The term "Capital Account" shall mean as to any Member and as to any Units held by that Member the amount of the initial Capital Contribution attributable to the Units held by that Member, which amount shall be: (i) increased by subsequent Capital Contributions by such Member, and Income allocated to such Member pursuant to Section 5.02; and (ii) decreased by distributions to such Member pursuant to Section 5.01 and Losses allocated to such Member pursuant to Section 5.02. Distributions shall be debited to Capital Accounts in the year containing the record date for such distribution. Further guidance regarding Capital Accounts is referenced in Section 8.06 below.

B. **Capital Contributions.** It is not currently anticipated that the Series will receive any future Capital Contributions in any form other than cash, securities and/or debt instruments. In the event any in-kind

contributions or contributions in the form of services are ever made, and the same and the fair market value thereof are approved in writing by the Manager, the Capital Account of the Member shall be increased by the fair market value of the property or services contributed by such Member.

C. **Compliance with Treasury Regulations.** The foregoing definition of Capital Account and certain other provisions of this Agreement are intended to comply with Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with that regulation and all rules and interpretations promulgated thereunder. Such regulation contains additional rules governing maintenance of capital accounts that have not been addressed in this Agreement.

D. **Termination.** An Assignee of a Unit will succeed to the Capital Account relating to the Unit transferred. However, if the transfer causes a termination of the Series under Section 708(b)(1)(B) of the Code, the Series Property shall be deemed to have been distributed in liquidation of the Series to the Members (including the transferee of a Unit) pursuant to Section 12.02 and recontributed by such Members and transferees in reconstitution of the Series. The Capital Accounts of such reconstituted Series shall be maintained in accordance with the principles of this Section 4.03.

E. **Capital Account Adjustments.** At such times as may be permitted or required by Treasury Regulations issued pursuant to Section 704 of the Code, the Capital Accounts shall be revalued and adjusted to reflect the then fair market value of Series Property and the Capital Accounts shall be maintained to comply with Treasury Regulations Section 1.704-1(b)(2)(iv)(f). All allocations of gain resulting from such revaluation shall be made consistently with that regulation; and to the extent not inconsistent therewith, the Income allocation provisions of Section 5.02 hereof.

Section 4.04. **Interest.** No interest shall be paid by the Series on Capital Contributions, on balances in a Member's Capital Account or on any other funds distributed or distributable under this Agreement.

Section 4.05. **No Withdrawal.** Except as otherwise required under any Mandatory Provisions of the Act, or under other provisions specifically identified by this Agreement no Member shall have: (i) any right to resign voluntarily or otherwise withdraw from the Series; or (ii) any right to the withdrawal or reduction of any part of his Capital Contribution, without the written consent of all remaining Members of the Series.

Section 4.06. **New Capital.** Upon raising the Minimum Offering Amount as defined in the Series Offering materials, including but not limited to the respective Private Placement Memorandum, subscription funds will be released to the benefit of the Fund and Membership Units will be issued to such investors. Additional capital in excess of the Minimum Offering Amount may be invested after the Initial Closing and Members and new investors may continue to invest in the Series until the Offering is terminated.

The Members acknowledge that the income produced by the Fund may be insufficient to pay all of the costs of operating the Series (including within the meaning of the term "Cost of Operating" and without limiting the generality of said term) all taxes, assessments, and other governmental charges, insurance premiums, costs of repair and maintenance, costs of improvement and the principal and interest payments required to be made on the Series loans. The Series Manager may make additional funds available to the Series to cover required short-term operational costs and/or cash flow. Any short-term funds advanced by the Series Manager shall be treated as either additional capital contributions within the Common Units or loans. If, as determined by the vote of all those who hold an interest in the Series, additional funds are required to pay the costs of operating, such additional funds shall be advanced to the Series by the Members of the Series without burden or demand to the Series, to the Company or to any series of the Company. Such additional funds advanced to the Series shall be treated as additional capital contribution or loans, as determined by the Majority Vote of all Members.

Section 4.07. **Additional Capital Contributions Subsequent to Initial Capital Contributions and Loans.** The Series may authorize additional Contributions such as reinvestment of Distributions at such times and on such terms and conditions as it determines to be in the best interest of the Series. Absent the Series' authorization, no Member is permitted to make additional Contributions after the termination of the Offering.



**ARTICLE V**  
**ALLOCATIONS AND DISTRIBUTIONS**

Section 5.01. **Distribution of Cash Available for Distribution.** Distributions of all Cash Available for Distribution shall be made not less frequently than annually nor more frequently than monthly. Any distributions of property shall be treated as a distribution of cash in the amount of the fair market value of such property. None of the Members shall be entitled to any distribution of money or property from the Series, until the Members who have, from time to time, made Capital Contributions, in excess of their Initial Capital Contribution (“Additional Capital Contribution”) are fully repaid by the Series for such Additional Capital Contributions. Thereafter, distribution shall be made to the Members by the Series pro rata, according to the number of Units held by each, with all Outstanding Units being treated alike unless the Series has defined and ratified alternate preferential terms within subclasses of the Units, e.g. preferred units. No monetary disbursements shall be made until any and all monies of Members being utilized by the Series are reimbursed to the Members.

Section 5.02. **Allocation of Income and Loss.**

A. **Allocation of Tax Items.** All Tax Items shall be allocated to all Members and Assignees in accordance with their respective Units in the Series. All Outstanding Units shall be treated equally unless the Series has defined and ratified alternate terms within subclasses of the Units, e.g. preferred units.

B. **Minimum Gain.** Notwithstanding anything to the contrary in this Section 5.02, if there is a net decrease in "minimum gain" (within the meaning of Treasury Regulations Section 1.704-2(d)(1)) during a fiscal year, all Members with a deficit balance in their Capital Accounts at the end of that year (excluding items described in Treasury Regulations Section 1.704-2(f)(2) and (3) shall be allocated, before any other allocations of Series items for such fiscal year, items of Income and gain for such year (and if necessary, subsequent years), in an amount and in the proportions necessary to eliminate such deficits as quickly as possible. The foregoing sentence is intended to be a "minimum gain charge back" provision as described in Treasury Regulations Section 1.704-2(f)(1) and shall be interpreted and applied in all respects in accordance with that regulation.

C. **Capital Account Deficit.** If during any fiscal year of the Series, any Member unexpectedly receives an adjustment, allocation or distribution of the type described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5) or (6), that Member shall be allocated items of Income in an amount and manner sufficient to eliminate that Member's deficit Capital Account balance as quickly as possible.

D. **Contributed Property.** Under regulations prescribed by the Secretary of the Treasury pursuant to Section 704(c) of the Code, items of Capital Gain, Income and Loss with respect to property contributed to the Series by a Member shall be shared among Members so as to take account of the variation between the basis of the property to the Series and its fair market value at the time of contribution. The Members shall have the power to make such elections, adopt such conventions and allocate Capital Gain, Income and Loss as each of them deems appropriate to comply with Section 704(c) of the Code and any Treasury Regulations promulgated thereunder and to preserve, to the extent possible, uniformity of the Units. Any items allocated under this Section 5.02.D shall not be debited or credited to Capital Accounts to the extent that item is already taken into account (upon formation or otherwise) in determining a Member's Capital Account.

E. **Transfer of Unit.** Upon the transfer of a Unit, Income, Capital Gain and Loss attributable to the transferred Unit shall, for federal income tax purposes, be allocated to the owners of such Unit on the basis of the Income or Loss for each month that such Person was the owner of such Units. The Members may revise, alter or otherwise modify the method of allocation as they determine necessary to comply with Section 706 of the Code and regulations or rulings promulgated thereunder.

F. **Section 482, Etc.** If, and to the extent that, any Member is deemed to recognize Income as a result of any transaction between the Member and the Series pursuant to Sections 482, 483, 1272-1274 or

7872 of the Code, or any similar provision now or hereafter in effect, any corresponding resulting Loss or deduction of the Series shall be allocated to the Member who was charged with that Income.

G. **Tax Credits.** All tax credits for federal or state income tax purposes shall be allocated in the same manner as Income.

## **ARTICLE VI**

### **MANAGEMENT AND OPERATION OF BUSINESS**

Section 6.01. **Management by Manager.** The management of the Series is hereby vested in its Manager, Diversified Management Services, LLC. In the case of a vacancy, a Manager shall be elected at the annual meeting of Members or at a special meeting called for the purpose of electing the Manager, or the Manager may be designated at any time by unanimous written action of the Members. A Manager shall hold the office until such Manager's resignation, removal from office or death. Any Manager may resign at any time by submitting in writing such resignation to the Members. Such resignation shall take effect immediately or at such other time as such Manager may specify. All of the business and affairs of the Series shall be conducted by the Manager. Any person may rely absolutely upon the act, deed and/or signature of the Manager as being the act of the Series and no third person shall be obligated or privileged to inquire into or to otherwise ascertain whether the act of the Manager has been duly authorized under the terms of this Agreement.

Section 6.02. **Representative Management.** The Series will be managed by one Manager. By execution of this Agreement, and without prejudice to the right of the Members to remove the Manager as set forth in Article VI, the Initial Members and each Person hereafter admitted as a Member, other than Transferees, shall be deemed to have elected such Manager..

Section 6.03. **Time Devoted to Business.** The Manager will devote to the Series' activities the amount of time reasonably necessary to discharge the Manager's responsibilities.

Section 6.04. **Powers and Authority.**

A. **General Scope.** Except for matters on which the Members' approval is required by the Act or this Agreement, the Series Manager has full power, authority and discretion to manage and direct the Series' business, affairs and properties, including, without limitation, the specific powers referred to in paragraph (b), below.

B. **Specific Powers.**

- (1) The Manager is authorized on the Series' behalf to make all decisions as to
  - (i) the development, sale, lease or other disposition of the Series' assets;
  - (ii) the purchase or other acquisition of other assets of all kinds;
  - (iii) the management of all or any part of Series' assets and business;
  - (iv) the borrowing of money and the granting of security interests in the Series' assets (including loans from respective Members) as, and only if, provided for in the Offering materials, including the Series Private Placement Memorandum;
  - (v) the prepayment, refinancing or extension of any mortgage affecting the Series' assets;
  - (vi) the compromise or release of any of the Series' claims or debts;
  - (vii) the employment of Persons for the operation and management of the Series business; and
  - (viii) all elections available to the Series under any federal or state tax law or regulation.
- (2) The Series Manager on the Series' behalf may execute and deliver
  - (i) all contracts, conveyances, assignments, leases, subleases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Series assets;
  - (ii) all checks, drafts and other orders for the payment of the Series' funds;
  - (iii) all promissory notes, mortgages, deeds of trust, security agreements and other similar documents;

- (iv) all articles, certificates and reports pertaining to the Series' organization, qualification and dissolution;
- (v) all tax returns and reports; and (vi) all other instruments of any kind or character relating to the Series' affairs.

C. **Limitations on Authority of Manager.** Notwithstanding any other provision hereof, the Manager shall not have the authority to do the following acts without a Majority Vote of the Members:

- (1) Act in Contravention of Business. Do any act which would make it impossible to carry on the ordinary business of the Series;
- (2) Admit Member. Admit a Person as a Member, except as provided in this Agreement; or
- (3) Personal Liability. Knowingly perform any act that would subject a Member to personal liability.

Section 6.05. **Required Member Approval.** Except as specifically provided herein, without the approval of the Members holding a majority of the issued and outstanding Membership Units, the Series may not take any action with respect to: (a) the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Series assets outside the operation of the Fund; (b) the Series' merger with or conversion into another Entity; (c) an undertaking involving a debt or obligation which would exceed the amount provided for in the Offering materials, including the Series' Private Placement Memorandum; or (d) a transaction, not expressly permitted by this Agreement or the Series' Private Placement Memorandum, involving a conflict of interest between the Manager and the Series.

Section 6.06. **Duties of Manager.**

- A. **Fiduciary Duty.** The Manager shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the Series, whether or not in the Manager's possession or control. Except as expressly permitted herein, or by subsequent approval of the Members, the Manager shall not employ, or permit another to employ Series funds or assets in any manner except for the exclusive benefit of the Series.
- B. **Standard of Care.**
  - (1) Exculpation. The Manager will not be liable to the Series or any Member for an act or omission done in good faith to promote the Series' best interests, unless the act or omission constitutes gross negligence, intentional misconduct or a knowing violation of law.
  - (2) Justifiable Reliance. The Manager may rely on the Series' records maintained in good faith and on information, opinions, reports or statements received from any Person pertaining to matters the Manager reasonably believes to be within the Person's expertise or competence.
- C. **Competing Activities.** The Manager may participate in any business or activity without accounting to the Series or the Members. Each Member waives the benefit of the corporate opportunity doctrine, on his or her own behalf and on behalf of the Series, and agrees that the Manager may deal in other transactions for its own account and/or for the accounts of others without any requirement to account to the Series for such dealings.
- D. **Self-Dealing.** In addition to the transactions expressly permitted by this Agreement, the Manager may enter into business transactions with the Series if the terms of the transaction are no less favorable to the Series than those of a similar transaction with an independent third party.
- E. **Specific Transactions.** Without limiting the generality of the foregoing, it is hereby acknowledged and agreed that the Manager shall be permitted to bargain for and accept the transactions connected with the business of the Fund, subject to the terms of any other agreement among the Members.
  - (1) Fees and Expenses of the Fund. The Manager shall serve as portfolio manager for the Series in conjunction with the Fund's Investment Advisor, but all income earned from such activities shall be retained by the Series even if paid to the Manager or its affiliates.
  - (2) Sale of Real Property to Affiliates. In selling or otherwise disposing of real property owned by the Series, the Manager may sell the same to one or more of its Affiliates, or to other organizations

in which Manager or its Affiliates have an interest, provided the price and terms of such sale are at least as advantageous as the Series could otherwise have obtained.

(3) Purchase of Loans. The Manager may cause the Series to purchase existing loans from the Manager and/or its Affiliates, provided such loans meet the underwriting standards applicable to other loans purchased by the Series, and the

(4) Reimbursement of Business Expenses. The Series will bear the cost of the annual tax preparation of the Series' tax returns, any state and federal income tax due, legal fees, accounting fees, filing fees, and any required independent audit reports required by agencies governing the business activities of the Series. In addition, the Series may pay its normal operating expenses, including but not limited to expenses for advertising, brokerage commissions, overhead, rent, insurance, interest on credit lines, capital expenses, telephone, internet and other normal operating expenses and an allocation of income will be made for a loan loss reserve. The cost will be allocated based on number of units unless inequitable at any given time or period.

Section 6.07. **Indemnification of Manager.** Except as limited by law, the Series shall indemnify the Manager for all expenses, losses, liabilities and damages the Manager actually and reasonably incurs in connection with the defense or settlement of any action arising out of or relating to the conduct of the Series' activities, except an action with respect to which the Manager is adjudged to be liable for breach of a fiduciary duty owed to the Series or the Members under the Act or this Agreement. The Series shall advance the costs and expenses of defending actions against the Manager arising out of or relating to the management of the Series, provided it first receives the written undertaking of the Manager to reimburse the Series if ultimately found not to be entitled to indemnification.

Section 6.08. **Series Asset Management Fee.** The Manager, Affiliate, or third party servicer will supervise the assets owned by the Series. Without limiting the generality set forth at any other portion of this Agreement, such Annual Asset Management Fee (not including attorneys' fees, foreclosure fees and court costs, if needed) will equal to Two Percent (2%) per year, paid monthly (0.167%) of the Series net assets. The Asset Management Fee is paid out of and reduces the Series' net assets. Net assets for these purposes means the total value of all assets of the Fund, less an amount equal to all accrued debts, liabilities and obligations of the Fund. The Asset Management Fee is computed based on the Net Asset Valuation of the Fund as of the end of business on the last business day of each month, after adjustment for any subscriptions made at the beginning of that month, and will be due and payable in arrears as soon as reasonably practicable after calculation of the Fund's Net Asset Valuation for the previous month..

Section 6.09. **Performance Fee.** In consideration of the advisory and other services provided by the Series Manager to the Series and its Fund, the Series pays the Series Manager a monthly Performance Fee. The Performance Fee shall be based on the actual positive performance of the Fund and the Series Manager shall be distributed the Performance Fee based on the following:

- A. If the Annualized Return, calculated on a monthly basis, to Unit Holders is 9.99% or below 10%, the Series Manager shall receive 8% of the increase in the Fund's Net Asset Value as a Performance Fee.
- B. If the Annual Return to Unit Holders is between 10% and 14.99%, the Series Manager shall receive 10% of the increase in the Fund's Net Asset Value as a Performance Fee.
- C. If the Annual Return to Unit Holders is between 15% and 19.99%, the Series Manager shall receive 15% of the increase in the Fund's Net Asset Value as a Performance Fee.
- D. If the Annual Return to Unit Holders is 20% or over, the Series Manager shall receive 20% of the increase in the Fund's Net Asset Value as a Performance Fee.

The Performance Fee is paid out of and reduces the Series' net assets. Net assets for these purposes equates to the total value of all assets of the Fund, less an amount equal to all accrued debts, liabilities and obligations of the Fund. The Performance Fee is computed based on the Net Asset Valuation of the Fund as of the end of business on the last business day of each month, after adjustment for any subscriptions made at the beginning of that month, and will be due and payable in arrears as soon as reasonably practicable after calculation of the Fund's Net Asset Valuation for the previous month.

Section 6.10. **Manager's Fees.** The definition of Manager's Fees includes all of the fees described above.

Section 6.11. **Series Funds.** The funds of the Series shall be deposited in an account or accounts maintained with the Investment Advisor, Custodian and/or Escrow Agent as defined in the Offering materials, including the Series' Private Placement Memorandum or such other bank as the Members deem advisable upon the Majority Vote of Members, and shall not be commingled with any other funds.

Section 6.12. **Additional Compensation.** The Manager will also be reimbursed for reasonable administration expenses.

Section 6.13. **Removal of Manager.** The Manager may be removed as Manager on the Majority Vote of all Members. The removal of the Manager without the consent of the Manger or unanimous vote of the Common Unit Holders shall trigger the dissolution of the Series per the terms of Article XI. Furthermore, any amendment of this section and /or any other section relating to the removal of the Series Manager will require a unanimous vote of all Unit Holders of the Series.

## **ARTICLE VII**

### **RIGHTS AND OBLIGATIONS OF THE MEMBERS**

#### Section 7.01. **Identification.**

A. **Series.** A Member may invest in the Series and the Member's investment's performance shall be wholly dependent upon the performance of the assets in the Series in which the Member has invested. No series of the Company shall be liable for the debts and obligations of another series.

B. **Initial Member.** The Manager will be the Initial Member, having made an initial contribution of One Thousand Nine Hundred Dollars (\$1,900). The Initial Member owns One Thousand Nine Hundred Dollars (\$1,900) of the Membership Common Units. Nothing contained herein shall be deemed to prohibit the Manager from increasing its interest in the Series on the same basis as any other person or entity.

C. **Additional and Substitute Members.** The Series may admit additional or such person that has agreed to be bound by all the provisions of this Operating Agreement as amended as of the date of the proposed admission, and the terms of the Offering, and has delivered to the Series, its Investment Advisor and/or other approved Series' agent, a completed Subscription Agreement along with subscription assets in the amount of such investment.

D. **Rights of Additional or Substitute Members.** A Person admitted as an additional or substitute Member has all the rights and powers, and is subject to all the restrictions and obligations of a Member under this Agreement and the Act.

#### Section 7.02. **Withdrawal; Redemption.**

##### A. **Conditions.**

- a. Holders of Preferred Units may withdraw as a member of the Series and may redeem their Preferred Units provided the following conditions have been met: (a) the Preferred Unit holder has owned the units for a period of at least six (6) months (calculated from the date that the Subscription for the Preferred Units was accepted and the investor's assets were transferred to the Fund custodian); and (b) the Preferred Unit Holder provides the Series with a written request to redeem their Preferred Units at least ninety (90) days prior to such withdrawal.
- b. The Series Manager and Fund Administrator(s) will use their best efforts (subject to their sole discretion as discussed herein) to honor redemption requests subject to, among other things, the Series' and Fund's existing cash flow, financial condition, securities portfolio and prospective liabilities.
- c. Each request for a return of capital (redemption) should be limited to twenty five percent (25%) of such Preferred Unit Holder's capital account balance such that it will take at least four (4) quarters for a Preferred Unit Holder to fully redeem their Units.
- d. Expedited redemption schedule requests by a Preferred Unit Holder will be assessed by the Series Manager and Fund Administrator(s) and they will use their best efforts to honor the expedited request provided the aggregate amount of capital requested does not exceed thirty three percent (33%) of the then current net asset value of the Fund.

- B. Substitute Assets for Redemption.** If for any reason cash or cash equivalents are not available to the Series to meet an accepted redemption request, the Series may pay back the Preferred Units through a fully underwritten debt instrument secured by all its assets or other financial assets of similar or better ratings, market value and liquidity. The value of the alternative securities for redemption payment will be based on the then current liquid cash value of the securities as determined by the Investment Advisor which will not necessarily be the face value of the security.
- C. Limitations.**
- a. Redemption requests will be processed on a first-come, first-served basis. The priority of redemptions is intended to mitigate potential restrictions on the Series' ability to execute the Fund's investment objectives while redemption requests are outstanding. Limiting the total amount of capital that can be distributed on an expedited basis and providing other restrictions to redemption as discussed herein, will preserve the continued operation of the Fund and protect the majority of the Preferred Unit Holders from disproportionately bearing the potential risk of losses.
  - b. Notwithstanding, the foregoing, the Series Manager and the Fund Administrator(s) may, in their sole discretion, waive such redemption requirements if a Preferred Unit Holder must meet a pre-existing contractual requirement that was fully disclosed prior to Subscription acceptance and directly related to the assets used for the investment; is experiencing undue hardship; or for any other reasonable cause. The acceptability of the Preferred Unit Holder's hardship or other reasonable cause will be determined by the Series Manager in its sole discretion.
  - c. The Series is responsible to disclose to any current Preferred Unit Holder or potential investor into the Preferred Units if any other Subscription has been or is planning to be accepted from an investor that has a pre-existing contractual requirement that could lead to a waiver of the redemption requirements.
- D. Suspension of Withdrawal.**
- a. The Series Manager may at any time suspend the withdrawal of funds from the Series, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions, or circumstances beyond the control or responsibility of the Series, the Series Manager, Fund Administrator(s) and/or Investment Advisor; (ii) it is not reasonably practical to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Series Manager has determined to dissolve the Series.
  - b. Under no circumstances will the Company, the Series or the Fund be required to sell any assets in order to meet or accommodate any Preferred Unit Holder redemption request. Notice of suspension will be given within ten (10) business days from the time of the decision was made to suspend distributions to any Preferred Unit Holder who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted.
  - c. If a redemption request is not rescinded by a Preferred Unit Holder following notification of a suspension, the redemption will be effected as of the last day of the calendar month in which the suspension is lifted, on the basis of the net asset value of the Fund at that time and in order determined by the Series Manager in its sole discretion.
  - d. Notwithstanding the foregoing, if required pursuant to ERISA fiduciary obligations, the Series Manager and Fund Administrator(s) may allow only certain Preferred Unit Holders the ability to withdraw any or all of their capital at any time and not afford the same right to other Preferred Unit Holders. Any withdrawals permitted or required pursuant to ERISA fiduciary obligations will be effectuated in Series Manager and Fund Administrators' sole discretion as needed to comply with ERISA fiduciary obligations.

Section 7.03. **Transfer.** The term "transfer", when used in this Article 10 with respect to a Unit, shall be deemed to refer to a transaction by which the Member assigns all or a portion of its Units, or any interest therein, to another Person, or by which the holder of a Unit assigns the Unit to another Person or Assignee, and includes a sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, transfer by will or intestate succession, exchange, operation of law or any other disposition.

Section 7.04. **Transfer of Units by a Member.**

A. **Conditions.** In addition to and except as otherwise provided, no Units may be transferred by a Member unless the following conditions are first satisfied:

(1) The consent of the Series Manager has been obtained, which may be granted or withheld in its sole discretion, such consent to be evidenced by a written instrument, dated and signed by the Series Manager;

(2) The transferee and Series Manager execute and file all documents necessary for the transferee to be a Substitute Member and be bound by the terms hereof and such transferee is admitted as a Substitute Member; and

(3) The Series receives an Opinion of Counsel, provided at the expense of the transferring party, that such transfer would not materially adversely affect the classification of the Series as a partnership for federal and state income tax purposes, that the registration of the Membership Interest is not required under the Securities Act of 1933 or any applicable state or foreign securities laws and that transfer will not violate or conflict with any contract to which the Series or any subsidiary is bound or with any governmental license, permit, designation or status, or security clearance applicable to the Series' Members, personnel, business or property.

B. **Certificate Legend.** The transfer restrictions on Units shall be conspicuously noted in an appropriate legend of any Unit certificates issued.

C. **Minors.** In no event shall any Unit be transferred to a minor or an incompetent except by will or intestate succession.

D. **Delivery to Series.** The Series need not recognize, for any purpose, any transfer of all or any fraction of a Unit unless there shall have been filed with the Series and recorded on the Series' books a duly executed and acknowledged counterpart of the instrument of assignment and such instrument evidences the written acceptance by the Assignee of all of the terms and provisions of this Agreement and represents that such assignment was made in accordance with all applicable laws and regulations.

E. **Binding Effect.** Any holder of a Unit (including an assignee thereof) shall be deemed conclusively to have agreed to comply with and be bound by all terms and conditions of this Agreement, with the same effect as if such holder had executed an express acknowledgment thereof, whether or not such holder in fact has executed such an express acknowledgment.

Section 7.05. **Restrictions on Transfer.**

A. **Restrictions on Transfer.** A Member may Transfer his, her or its Membership Unit only in compliance with this Article. An attempted Transfer of all or a portion of a Member's Membership Units that is not in compliance with this Article shall be null and void. Restrictions have been placed upon the ability of Investors to resell or otherwise dispose of any Membership Units purchased hereunder including (without limitation) the following:

(1) No member may resell or otherwise transfer any Membership Units without the satisfaction of certain conditions designed to comply with applicable tax and securities laws, including (without limitation) the requirement that certain legal opinions be provided to the Series Manager with respect to

such matters at the expense of the Member requesting such transfer. The transferee must meet the same Investor qualifications as the Members admitted during the Offering Period.

(2) If the Oklahoma Commissioner imposes a transfer restriction on the Membership Units, they may not be sold or transferred without the prior written consent of the Commissioner, except as permitted in the Commissioner's Rules.

(3) The Membership Units have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon the exemptions provided for under Section 3(a) (11) and Rule 147 thereunder. Membership Units may not be sold or otherwise transferred without registration under the Securities Act or pursuant to an exemption therefrom. In addition, no sales or transfers may be made to non-Oklahoma residents for at least nine (9) months after the last sale of Membership Units offered hereby.

(4) A legend will be placed upon all instruments evidencing ownership of Membership Units in the Series stating that the Membership Units have not been registered under the Securities Act, and set forth the foregoing limitations on resale. Notations regarding these limitations shall be made in the appropriate records of the Series with respect to all Membership Units offered hereby. The foregoing steps will also be taken in connection with the issuance of any new instruments for any Membership Units that are presented for transfer, to the extent the Manager deems appropriate, and specifically in connection with instruments presented for transfer during the nine (9) month period described above.

(5) The Series will charge a minimum transfer fee of Five Hundred Dollars (\$500) per transfer of ownership. If a Member transfers Membership Units to more than one person, except transferees who will hold title together, the transfer to each person will be considered a separate transfer.

**B. Null and Void.** An attempted Transfer of all or a portion of a Membership Unit that is not in compliance with this Article will be null and void. A Transferee may not become a substitute Member without the consent of the Series Manager. Such consent may not unreasonably be withheld if the Transfer and the Transferee comply with all the provisions of this Agreement and applicable law. No Membership Unit may be transferred if, in the judgment of the Series Manager, a transfer would jeopardize the availability of exemptions from the registration requirements of federal securities laws, jeopardize the tax status of the Series as a partnership or, cause a termination of the Series for federal income tax purposes.

**C. Permitted Transfers.** A Member may at any time Transfer one or more Membership Unit to a Permitted Transferee if, as of the date the Transfer takes effect, the Series is reasonably satisfied that all of the following conditions are met:

(1) the Transferee is a person with the same qualifications as the original Member;

(2) the Transfer, alone or in combination with other Transfers, will not result in the Series' termination for federal income tax purposes;

(3) the Transfer is the subject of an effective registration under, or exempt from the registration requirements of, applicable state and federal securities laws;

(4) the Series receives from the Transferee the information and agreements reasonably required to permit it to file federal and state income tax returns and reports; and

(5) the Series receives payment from the Transferee of a minimum transfer fee of Five Hundred Dollars (\$500) for each Transferee. Where Transferees hold title together, as joint tenants, tenants in common, partners or otherwise, a Transfer to them shall only incur one transfer fee.

**D. Prohibited Transfers.** All present and future Members acknowledge that the Series' financial and business operations must be held in the strictest of confidence in order to maintain the value of the Series to all Members. No Units shall be transferred, in whole or in part, in any manner, except in accordance with the terms and conditions set forth in Articles 7. Any transfer or purported transfer of any Units not made in accordance with Articles 7 shall be null and void. If for any reason it is determined by a court of competent jurisdiction that any such transfer is not null and void, then the Assignee shall not be a Substitute Member, and shall have no right to participate in the Series' affairs as a Member thereof, but instead shall be entitled to receive only the share of profits or other compensation by way of income and the return of contributions to which the transferring Member would otherwise be entitled at the time said transferring Member would be entitled to receive the same.

**E. Transferor's Membership Status.** If a Member transfers less than all of his, her, or its Membership Unit, the Member's rights with respect to the transferred portion of the Membership Unit, including the right to vote or otherwise participate in the Series' governance and the right to receive Distributions, will terminate as of the effective date of the Transfer. However, the Member will remain liable for any obligation with respect to the transferred portion that existed prior to the effective date of the Transfer, including any costs or damages



resulting from the Member's breach of this Agreement. If the Member Transfers all of his, her or its Membership Unit, the Transfer will constitute an event of Dissociation.

**F. Transferee's Status.**

(1) Admission as a Member. A Member who Transfers one or more Membership Units has no power to confer on the Transferee the status of a Member. A Transferee may be admitted as a Member only in accordance with the provisions of this Article. A Transferee who wishes to become a Member must make application in writing to the Series and provide evidence, as requested by the Series, of compliance with all conditions to admission, as set forth above. Prior to admission, each proposed member must execute and deliver a counterpart of this Agreement, as amended to date, or a separate written agreement to be bound hereby. The Series shall not without cause refuse the application for membership of a Transferee who has complied with all the provisions of this Agreement.

(2) Rights of Non-Member Transferee. A Transferee who is not admitted as a Member in accordance with the provisions of this Article: (i) has no right to vote or otherwise participate in the Series' governance; (ii) is not entitled to receive information concerning the Series' affairs or inspect the Series' books and records; (iii) with respect to the transferred Membership Units, is entitled to receive the Distributions to which the Member would have been entitled had the Transfer not occurred; and (iv) is subject to the restrictions imposed by this Article to the same extent as a Member. Any provision of the Agreement permitting or requiring the Members to take action by vote or written approval of a specified percentage of the Membership Units shall be deemed to mean only Membership Units then owned by Members.

Section 7.04. **Special Agreements.** In order to provide for the orderly disposition of all Units upon the occurrence of certain events and for the purpose of providing for the orderly and efficient management of the Series, the Members and the Series specially agree as follows:

**A. Sale of Units upon Death.** In the event that one of the Members should die at any time while this Agreement is in force and effect, the Series or the Remaining Members, as determined by the Remaining Members, shall have the option to purchase from the Member Representative of the Deceased Member all Units owned by the Deceased Member for the Agreed Value. The closing of such transaction shall take place within one hundred eighty (180) days after the death of the Deceased Member, which closing shall take place at the offices of the Series. At the closing of any transaction contemplated hereby, the Agreed Value shall be paid by the Remaining Members, as the case may be, in cash or by confirmed wire transfer of immediately available funds, and the Member Representative of the Deceased Member selling its Units shall deliver all certificates evidencing such Units, duly assigned, together with such other assignments and powers of attorney as may be reasonably required by the Remaining Members. In all cases, at the closing of any transaction contemplated by this Section 10.04, the certificate evidencing the Units to be transferred may, at the option of the Remaining Members, be transferred to the Series. The Deceased Member's Representative shall be entitled to receive the Deceased Member's proportionate share of the distribution of the Series for that part of the Series' fiscal year which elapsed prior to the Deceased Member's death, based upon the method normally used to determine the amount of annual distributions.

**B. Sale of Units upon Bankruptcy or Involuntary Sale.** In the event a Member becomes an Insolvent Member, then and in such event, the Insolvent Member shall become a Selling Member and shall be obligated, for a period of one hundred eighty (180) days from the time that the Remaining Members obtain actual knowledge, in writing, that the Member has become an Insolvent Member to sell to the Series or the Remaining Members, as determined by the Remaining Members, all Units owned by the Insolvent Member for a purchase price equal to the Agreed Value of the Units determined in the same manner and within the same time periods as provided in Section 10.04.A, above. At any time during such one hundred eighty (180) day period, the Series or the Remaining Members, as determined by the Remaining Members, shall have the right but not the obligation to purchase the Selling Member's Units by providing written notice of such election to the Selling Member. At the closing, the Agreed Value shall be payable in one installment, with interest thereon at the Applicable Federal Rate, as that term is used in the Code, which purchase price shall be evidenced by a promissory note from the Remaining Members or the Series, if applicable and, as the case may be, payable to the Selling Member. The certificate evidencing the Units owned by the Selling Member shall be transferred to the Series or the Remaining Members, as the case may be, at the time of the consummation of the transaction. In the event that a court of competent jurisdiction determines that the above provisions are

not applicable to the transfer of the Units to the Member Representative of the Insolvent Member or in the event that the Units are sold pursuant to an Involuntary Sale Order without the knowledge of or despite the objections of the Remaining Members, then and in any of such events, the Remaining Members shall have the right, but not the obligation, to purchase the Units of the Insolvent Member from the Member Representative of the Insolvent Member or the purchaser pursuant to an Involuntary Sale Order, in the same manner as described above. In all events, if neither the Series nor the Remaining Members elect to purchase the Units of the Selling Member within the time and in the manner above provided, then prior to any further sale or disposition of the Units of the Selling Member, all other requirements of this Agreement must be complied with, including, without limitation, the provisions of Section 10.04 D. below.

C. **Voluntary Sale of Units by Member.** If while this Agreement is in force and effect, a Member receives an Offer which such Member desires to accept (and with respect to each such Offer), such Member shall first give written notice (the "Sale Notice") to the Series and the Remaining Members of its intention to make a disposition of its Units. The Sale Notice shall include a copy of the Offer and shall fully describe the terms and conditions of such proposed sale. The Sale Notice shall be deemed an offer by the Selling Member to sell all of its Units to the Series or the Remaining Members, as determined by the Majority Vote of the Members remaining in their sole discretion, at the same price and on the same terms and conditions as set forth in the Offer. The Remaining Members shall have ten (10) business days after receipt of the Sale Notice within which to provide written notice to the Selling Member as to whether the Remaining Members accept or reject the offer contained in the Sale Notice. If the Remaining Members accept the offer, then the purchase and sale of the Units from the Selling Member to the Series or the Remaining Members, as the case may be, shall take place in the same manner and upon the same terms as were contained in the Offer, provided that the closing shall not take place any sooner than sixty (60) days from the date of the Selling Members' receipt of the Remaining Members' notice of acceptance. If the Remaining Members do not elect to purchase the Units of the Selling Member within the time and manner above provided, then the Selling Member shall be entitled to sell its Units pursuant to the terms and conditions of the Offer, to the purchaser named in the Offer, provided, however, that if the sale contemplated by the Offer is not consummated within ninety (90) days after the date of the Offer, the Units shall again be fully subject to the provisions of this Section 10.04 C. Agreement and must again be reoffered to the Remaining Members and the Series. Any third party purchaser to whom Units have been sold pursuant to the provisions of this Agreement shall become an Assignee or a Substitute Member at the election of the Remaining Members.

D. **Sale of All Units of the Series.** If the Series or any Member receives a Purchase Offer, the same shall be forwarded in writing to the Series and all Members. Within five (5) days of receipt of the Purchase Offer, a meeting of the Members shall be called by the Series, upon not less than five (5) nor more than ten (10) days written notice, unless such written notice to Members is specifically waived by the unanimous election of the Members, and such meeting shall be held in the registered office of the Series pursuant to such written notice. At such meeting, the Purchase Offer shall be presented to the Members for vote. The Majority Vote of all Members shall control the acceptance or rejection of any and all Purchase Offers. In the event the Members disagree as to the Purchase Offer, any Member shall have the right, but not the obligation, which right must be exercised at the time of such meeting, to require the Remaining Members to purchase the Units of said Member or the assets of the Series, upon the same terms and conditions as contained in the Purchase Offer such that the Selling Member receives the same amount as it would have received had the Purchase Offer been accepted by the Series and if such right is exercised by the Selling Member, the purchase and sale of the Units or the assets, as the case may be, shall be concluded in the same time and manner as contained in the Purchase Offer.

Any Units transferred to a Third Party Purchaser, regardless of whether the Third Party Purchaser is an Assignee or becomes a Substitute Member, shall be subject to the terms of this Agreement, including specifically, but without limitation, the provisions of this Articles VII and X.

Section 7.06. **Issuance of Certificates.** The Series may issue one or more certificates ("Certificates") in the name of the Member evidencing the number of Units issued. Upon the transfer of a Unit in accordance with Article X, the Series shall, if Certificates have been issued, issue replacement Certificates. All Certificates shall contain legends required by this Agreement or otherwise required by law.

Section 7.07. **Lost, Stolen or Destroyed Certificates.** The Series shall issue a new Certificate in place of any Certificate previously issued if the Record Holder of the Certificate: (i) makes proof by affidavit that a previously issued Certificate has been lost, stolen or destroyed; (ii) requests the issuance of a new Certificate before the Series has notice that the Units evidenced by such Certificates have been acquired by a purchaser for value in good faith and without notice of an adverse claim; and (iii) if required by the Series, delivers to the Series a bond with surety or sureties acceptable to the Series and/or an indemnity, to indemnify the Series against any claim that may be made on account of the alleged loss, destruction or theft of the Certificate. The Series shall be entitled to treat each Record Holder as the Member or Assignee in fact of any Units and, accordingly, shall not be required to recognize any equitable or other claim or interest in or with respect to the Units on the part of any other Person, regardless of whether it has actual or other notice thereof.

Section 7.08. **Restrictions on Encumbrance.** Except as otherwise specifically permitted by this Agreement, the Members agree that they will not without the prior written consent of all Members convey, transfer, assign, sell, give, donate, pledge, hypothecate, or otherwise encumber their interest in the Series and any attempt to do so without the prior written consent of the Series Manager shall be null and void and of no effect. Members may assign or pledge the right to receive income from this Series. Even if an assignment, pledge or transfer is effected in compliance with the provisions of this Section 10.07, the Members shall not be deemed to have approved the transferee's admission into the Series as a Member.

Section 7.09. **Expulsion of a Member.** At any time there are more than two (2) Members, the Series may expel a Member, but only for cause. Cause for expulsion exists if the Member has materially breached or is unable to perform the Member's material obligations under this Agreement. A Member's expulsion from the Series will be effective upon the Member's receipt of written notice of the expulsion.

Section 7.10. **Return of Capital.** The Series may return all or a portion of a Member's capital at the Manager's discretion. Any such return of capital would not be considered a distribution and would not be included in the determination of such Member's return on investment.

Section 7.11. **Dissociation.** "Dissociation" from the Series occurs upon a Member's expulsion, transfer of all of the Member's Membership Units, withdrawal or resignation (an "Event of Dissociation"). Upon the occurrence of an Event of Dissociation: (a) the Member's right to participate in the Series' governance, receive information concerning the Series' affairs and inspect the Series' books and records will terminate; and (b) unless the Dissociation resulted from the Transfer of the Member's Membership Units, the Member will be entitled to receive the Distributions to which the Member would have been entitled as of the effective date of the Dissociation had the Dissociation not occurred. The Member will remain liable for any obligation to the Series that existed prior to the effective date of the Dissociation, including any costs or damages resulting from the Member's breach of this Agreement. Under most circumstances, the Member will have no right to any return of his or her capital prior to the termination of the Series unless the Manager elects to return capital to a Member. The effect of such Dissociation on the remaining Members who do not sell will be to increase their percentage share of the remaining assets of the Series, and thus their proportionate share of its future earnings, losses and distributions. The reduction in the outstanding Membership Units will also increase the relative voting power of remaining Members.

Section 7.12. **Verification of Membership Units.** Within thirty (30) days after receipt of a Member's written request, the Series will provide such Member with a statement evidencing his, her, or its Membership Unit in the Series. This verification will serve the sole purpose of verifying the Member's interest in the Series and shall not constitute a certificated security, negotiable instrument or other vehicle by which to affect a transfer of Membership Units.

Section 7.13. **Manner of Action by Members.**

A. Meetings.

(1) Right to Call. The Manager, or any combination of Members holding in the aggregate more than twenty-five percent (25%) of the Membership Unit, may call a meeting of Members by giving written notice to all Members not less than thirty (30), or more than sixty (60) days prior to the date of the meeting. The notice must specify the date, time and place of the meeting and the nature of any business to be

transacted. A Member may waive notice of a meeting of Members orally, in writing, or by attendance at the meeting.

(2) **Time and Place.** Unless otherwise specified in the notice of meeting, all meetings shall be held at 2:00 p.m. on a regular business day of the Series, at the Series' principal place of business. No meeting may be held on a Sunday or legal holiday; at a time that is before 7:30 a.m. or after 9:00 p.m.; or at a place more than sixty (60) miles from the Series' principal place of business.

(3) **Proxy Voting.** A Member may act at a meeting of Members through a Person authorized by signed proxy.

(4) **Quorum.** Members whose aggregate holdings exceed a majority of the outstanding Membership Units will constitute a quorum at a meeting of Members. No action may be taken in the absence of a quorum.

(5) **Required Vote.** Except with respect to matters for which a greater minimum vote is required by the Act or this Agreement, the vote of Members present whose aggregate holdings exceed a majority of the outstanding Membership Units will constitute the act of the Members at a meeting of Members.

B. **Written Consent.** The Members may act without a meeting by written consent describing the action and signed by Members whose aggregate holdings of the Membership Unit equal or exceed the minimum that would be necessary to take the action at a meeting at which all Members were present.

Section 7.14. **Limitation on Individual Authority.** A Member who is not also the Manager has no authority to bind the Series. A Member whose unauthorized act obligates the Series to a third party will indemnify the Series for any costs or damages the Series incurs as a result of the unauthorized act.

Section 7.15. **Negation of Fiduciary Duties.** A Member who is not also the Manager owes no fiduciary duties to the Series or to the other Members solely by reason of being a Member.

Section 7.16. **Resignation of a Member.** A Member may resign from the Series at any time by giving written notice to the Series at least sixty (60) days prior to the effective date of resignation.

Section 7.17. **Limitation of Liability.** Anything herein to the contrary notwithstanding, except as otherwise expressly agreed in writing, a Member shall not be personally liable for any debts, liabilities or obligations of the Series, whether to the Series, to any of the other Members or to the creditors of the Series, beyond the Capital Account of the Member, together with the Member's share of the assets and undistributed profits of the Series.

Section 7.18. **Rights of Member Relating to the Series.**

A. **Amendment.** Subject to the restrictions of Section 6.13 and Section 7.13, this Agreement may be amended only by a Majority Vote of the Members.

B. **Other Rights.** In addition to other rights provided by this Agreement or by applicable law, a Member shall have the right upon demand and at such Member's own expense:

(1) To obtain any and all information regarding the status of the business and financial condition of the Series;

(2) Promptly after becoming available, to obtain a copy of the Series' federal, state and local income tax returns for each year;

(3) To have furnished to it a current list of the name and last known business, residence or mailing address of each Member and the Manager;

(4) To obtain information regarding the Capital Contributions made by each Member;

(5) To have furnished to it a copy of this Agreement and the Company's Articles of Organization and all amendments hereto and thereto, together with copies of any powers of attorney pursuant to which this Agreement, the Company's Articles of Organization and all amendments hereto and thereto have been executed; and

(6) To inspect and copy any of the Series' books and records and obtain such other information regarding the affairs of the Series.

Section 7.19. **Restrictions on Powers.** Except as otherwise provided herein or by the Mandatory Provisions of the Act, and except when a Member is also a Manager and acting in such capacity, a Member shall not have the right, authority or power:

- A. To act on behalf of, or to bind, the Series, or any other Member.
- B. To take any action which would change the Series to a general partnership, change the limited liability of a Member or affect the status of the Series for federal income tax purposes.
- C. To have his capital contribution repaid except to the extent provided in this Agreement.
- D. To require partition of the Series' property or to compel any sale or appraisal of the Series' assets.
- E. To sell or assign his interest in the Series or to constitute the vendee or assignee thereunder except as provided in this Agreement.

Section 7.20. **Indemnification.**

A. **Series Indemnity.** To the maximum extent permitted by law, the Series shall indemnify and hold harmless the Company, any Series Manager or Member, their respective Affiliates and the employees and agents of the Series (each, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, penalties and other expenses actually and reasonably incurred by the Indemnitee in connection with any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that the Indemnitee is or was a Manager or Member of the Series or is or was an employee or agent of the Series, including Affiliates of the foregoing, arising out of or incidental to the business of the Series, provided: (i) the Indemnitee's conduct did not constitute willful misconduct or recklessness; (ii) the action is not based on breach of this Agreement; (iii) the Indemnitee acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Series and within the scope of such Indemnitee's authority; and (iv) with respect to a criminal action or proceeding, the Indemnitee had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere, or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified above.

B. **Indemnification by Members.** Each Member shall indemnify and hold harmless the Company, the Series, the other Members and their respective Affiliates (each individually, a "Member Indemnitee") for any and all liabilities actually and reasonably incurred by such Member Indemnitee solely as a result of the actual fraud, gross negligence or willful misconduct of, such Member or its Affiliates.

C. **Rights after Successful Defense and Other Rights.** To the extent that a Manager or Member has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 7.20.A. or in defense of any claim, issue or matter therein, such Manager or Member shall be indemnified against expenses (including reasonable attorney's fees) actually and reasonably incurred by such Manager or Member in connection therewith. Except in a situation in which a Manager or Member has been successful on the merits or otherwise, any indemnification under Section 7.20.A. (unless ordered by a court) shall be made by the Series only as authorized in a specific case upon a determination that indemnification of the Manager or Member is proper under the circumstances because the Manager or Member has met the applicable standard of conduct set forth in such Section. Such determination shall be made by the Manager or by legal counsel (compensated by the Series) in a written opinion.

D. **Advancement of Expenses.** Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 7.20, may, from time to time, be advanced by the Series prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Series of an undertaking by or on behalf of the Indemnitee to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified as authorized in this Section 7.20.

E. **Non-Exclusivity.** The indemnification provided by this Section 7.20 shall be in addition to any other rights to which the Indemnitee may be entitled under any agreement, vote of the Members, as a matter of law or equity, or otherwise, and shall inure to the benefit of the successors, assignees, heirs, personal representatives and administrators of the Indemnitee.

F. **Insurance.** The Series may purchase and maintain insurance, at the Series' expense, on behalf of any Indemnitee against any liability that may be asserted against or expenses that may be incurred by an Indemnitee in connection with the activities of the Series regardless of whether the Series would have the power to indemnify such Indemnitee against such liability under the provisions of this Agreement.

Section 7.21. **Business Opportunities.** The Members and their Affiliates may engage, directly or indirectly, without the consent of the other Members or the Series, in any other business opportunities, transactions, ventures or other arrangements of any nature or description, independently or with others, including, without limitation, business of a nature which may be competitive with or the same as or similar to the business of the Series, regardless of the geographic location of such business opportunities, transactions, ventures or other arrangements or the proximity of the same to the assets of the Series, and without any duty or obligation to account to the other Members or the Series in connection therewith. Neither the Series nor any Member of the Series shall have any right to any interest in any such other business opportunities, transactions, ventures, other arrangements or entities formed or pursued by other Members.

## **ARTICLE VIII**

### **BOOKS, RECORDS, ACCOUNTING AND REPORTS**

Section 8.01. **Contributions.**

(a) Initial Member. The Initial Member will contribute a total of One Thousand Nine Hundred Dollars (\$1,900) to the capital of the Series, thereby, purchasing One Thousand Nine Hundred Dollars (\$1,900) of Membership Common Units in the Series.

(b) Additional Members. Upon raising the Minimum Offering Amount, as defined in the Offering materials, including the Series' Private Placement Memorandum, investors' subscription funds will be released to the Series, its Investment Advisor and/or its other authorized agents and Membership Units will be issued to such investors. Members may invest in the Series which will hold a separate and distinct collection of assets from the Company and any other of the Company's series.

(c) Additional Contributions. The Series may authorize additional Contributions such as reinvestment of Distributions at such times and on such terms and conditions as it determines to be in its best interest. Absent the Series' authorization, no Member is permitted to make additional Contributions.

(d) Contributions Not Interest Bearing. A Member is not entitled to interest or other compensation with respect to any cash or property the Member contributes to the Series.

Section 8.02. **Allocation of Profit and Loss.** After giving effect to special allocations, if any, the Series' Profit or Loss for a Taxable Year, including the Taxable Year in which the Series is dissolved, will be allocated among the Members in proportion to their ownership interests in the Series during the applicable tax reporting period.

Section 8.03 **Tax Allocations.** For federal income tax purposes, unless the Code otherwise requires, each item of the Series' income, gain, loss or deduction will be allocated to the Members in proportion to their allocations of the Profit or Loss of the Series in which they have invested. The Series Manager shall have the sole discretion to take moneys out of the Series to pay its taxes (if any).

Section 8.04 **Annual Distributions.**

(a) The Series intends to accumulate its profits and cash and to distribute accrued Net Profits annually. However, Manager has the sole discretion to determine whether such annual distributions are beneficial to the Series and may withhold them.

(b) "Net Profits" is defined as Series' gross income less the payments of the Series' Operating Expenses, paid monthly. Distributions will be made on an annual basis, in arrears.

(c) The amount of income reported to each Member on his, her, or its Schedule K-1 may differ somewhat from the actual cash distributions made during the fiscal year covered by the Schedule K-1 due to, among other things the loan loss reserve and factors unique to the tax accounting of the Series', such as the treatment of investment expense.

Section 8.05 **Reinvestment Election.** Members must elect to (i) receive annual cash distributions from the Series in the amount of that Member's share of Net Profits available for distribution, or (ii) allow the annual distributions to be reinvested by purchasing additional Membership Units (if available), or (iii) a combination of (i) or (ii) above. An election to reinvest all or a portion of the annual distributions is revocable at any time, upon a written request to revoke such election. Such election shall become effective on the first (1st) day of the month following receipt of the election. If no election is made, then the annually distribution will be a cash distribution.

Section 8.06 **Capital Accounts.**

(a) General Maintenance. In addition to Capital Account guidance found in Section 4.07 above, the Series will establish and maintain a Capital Account for each Member. A Member's Capital Account balance ("Capital Account Balance") will be:

(1) increased by:

(i) the amount of any money the Member contributes to the Series' capital; and

(ii) the Member's share of the Series' Profits and any separately stated items of income or gain; and

(2) decreased by:

(i) the amount of any money the Series' distributes to the Member; and

(ii) the Member's share of the Series' Losses and any separately stated items of deduction or loss.

(b) Adjustments for Acquisitions and Redemptions. The Series shall adjust a Member's capital account to reflect profit or loss the Series would have realized had the Series liquidated its assets at fair market value on the date of the acquisition or redemption.

(c) Transfer of Capital Account. A Transferee of Membership Units succeeds to the portion of the transferor's Capital Account that corresponds to the portion of the Membership Unit that is the subject of the Transfer.

(d) Compliance with Code. The requirements of this Article are intended and will be construed to ensure that the allocations of the Series' income, gain, losses, deductions and credits have substantial economic effect under the Regulations promulgated under Section 704(b) of the Code.

Section 8.07. **Books and Records.** Appropriate books and records with respect to the Series' business, including, without limitation, all books and records necessary to provide to the Member any information, lists and copies of documents required to be provided pursuant to Section 7.02, shall at all times be kept at the principal office of the Series or at such other places as agreed to by a Majority Vote of the Members. Without limiting the foregoing, the following shall be maintained at the Series' principal office: (i) a current list of the full name and last known business address of each Member; (ii) copies of records that would enable a Member to determine the relative voting rights of the Members; (iii) a copy of the Company's Articles of Organization, and any amendments thereto; (iv) copies of the Series' federal, state and local income tax returns and reports, if any, for the three (3) most recent years; and (v) copies of any financial statements of the Series for the three (3) most recent fiscal years. Any records maintained by the Series in the regular course of its business may be kept on, or be in the form of, magnetic tape, photographs or any other information storage device, provided that the records so kept are convertible into clearly legible written form within a reasonable period of time.

Section 8.08. **Accounting.** The books of the Series for regulatory and financial reporting purposes shall be maintained on the cash basis of accounting. The Series' books for purposes of maintaining and determining Capital

Accounts shall be maintained in accordance with the provisions of this Agreement, Section 704 of the Code and, to the extent not inconsistent therewith, the principles described above for financial reporting and regulatory purposes.

Section 8.09. **Fiscal Year.** The fiscal year of the Series shall be the calendar year, unless otherwise determined by the Series Manager.

## **ARTICLE IX** **TAX MATTERS**

Section 9.01. **Taxable Year.** The taxable year of the Series shall be the calendar year, unless otherwise determined by the Series Manager.

Section 9.02. **Tax Controversies.** Subject to the provisions hereof, Diversified Management Services, LLC is designated the "Tax Matters Partner" (as defined in Section 6231 of the Code) and is authorized and required to represent the Series, at the Series' expense, in connection with all examinations of the Series' affairs by tax authorities, including resulting administrative and judicial proceedings. Each Member agrees to cooperate with the Tax Matters Partner, and to do or refrain from doing any or all things reasonably required by the Tax Matters Partner to conduct such proceedings.

Section 9.03. **Taxation as a Partnership.** No election shall be made by the Series or any Member for the Series to be excluded from the application of any provision of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

## **ARTICLE X** **ADMISSION OF SUBSTITUTE AND ADDITIONAL MEMBERS**

Section 10.01. **Admission of Substitute Members.** Upon a transfer of a Unit by a Member in accordance with Articles 7 and 10 (but not otherwise), the transferor shall have the power to give, and by transfer of any Certificate issued shall be deemed to have given, the transferee the right to apply, in writing, to become a Substitute Member with respect to the Unit acquired, subject to the conditions of and in the manner permitted under this Agreement. A transferee of a Certificate representing a Unit shall be an Assignee with respect to the transferred Unit (whether or not such transferee is a Member or Substitute Member with respect to other previously acquired Units) unless and until all of the following conditions are satisfied:

A. **Intention of Assignor.** The instrument of assignment sets forth the intentions of the assignor that the Assignee succeeds to the assignor's interest as a Substitute Member in his place;

B. **Compliance with Agreement.** The assignor and Assignee shall have fulfilled all other requirements of this Agreement;

C. **Payment of Fees and Costs.** The Assignee shall have paid all reasonable legal fees and filing costs incurred by the Series in connection with his substitution as a Member;

D. **Manager Approval.** The Series Manager shall have approved such substitution in writing, which approval may be granted or withheld by each member in its sole and absolute discretion and may be arbitrarily withheld; and

E. **Books and Records.** The books and records of the Series have been modified to reflect the admission.

The admission of an Assignee as a Substitute Member with respect to a transferred Unit shall become effective on the date the Members give their unanimous written consent to the admission and the books and records of the Series have been modified to reflect such admission. Any Member who transfers all of his Units with respect to which it had been admitted as a Member shall cease to be a Member of the Series upon a transfer of such Units in accordance with Articles 7 and 10 and the execution of a counterpart of this Agreement by the transferee and shall have no further rights



as a Member in or with respect to the Series (whether or not the Assignee of such former Member is admitted to the Series as a Substitute Member).

Section 10.02. **Admission of Additional Members.** Additional Units may be authorized and issued by the Series upon such terms and conditions as may be approved by a Majority Vote of the Members. Upon the proposed issuance of any such additional Units, each existing Member shall have the preemptive right, but not the obligation, to purchase such portion of the newly issued Units as the ratio of the number of Units then held by such Member bears to the total number of Units held by Members and Outstanding before the issuance of the new Units, together with such Member's proportionate share of the other newly issued Units as to which other Members fail to exercise their preemptive rights.

## **ARTICLE XI**

### **DEFAULT; DISSOLUTION AND LIQUIDATION**

Section 11.01. **Events of Default.** If any of the following events occurs (each an "Event of Default"):

- A. **Bankruptcy.** The Bankruptcy of a Member;
- B. **Death; Dissolution.** The death, Dissolution, liquidation, retirement, resignation, termination or expulsion of a Member or the occurrence of any other event under the Act which terminates the continued membership of a Member in the Series;
- C. **Levy; Seizure.** An Involuntary Sale Order is entered with respect to a Member or its Units, including, without limitation, if all or any of the Units of a Member is seized by a creditor of such Member and the same is not released from seizure or bonded within thirty (30) days from the date of notice of seizure;
- D. **Capital Contributions.** A Member fails to provide any Capital Contribution required by this Agreement, fails to indemnify or reimburse the other Members or the Series for the liabilities and obligations set forth in this Agreement or fails to perform or fulfill when due any other material financial or monetary obligation imposed on such Member in this Agreement or in any agreement relating to borrowed money to which the Series is a party and, in each case, such failure continues for ten (10) days or such shorter period as may be specified for a default under any such agreement relating to borrowed money (each of the foregoing, a "Monetary Default");
- E. **Other Defaults.** A Member breaches, defaults or otherwise fails to perform or fulfill any material covenant, provision or obligation (other than financial or monetary obligations) under this Agreement or any agreement relating to borrowed money to which the Series is a party and such failure continues for thirty (30) days or such shorter period as may be specified for a default under any such agreement relating to borrowed money;
- F. **Prohibited Transfers.** A Member transfers or attempts to transfer all or any portion of its Units in the Series other than in accordance with the terms of this Agreement; or
- G. **Termination of Membership.** Any event which terminates the continued Membership of a Member or an act or omission of a Member which results in a dissolution of the Series, then a "Default" hereunder shall be deemed to have occurred and the Member with respect to which one or more Events of Default has occurred shall be referred to as the "Defaulting Member" and the other Members shall be referred to as the "Non-Defaulting Member".

Section 11.02. **Consequences of Default.** Upon the occurrence of a Default, the Members agree as follows:

- A. **Suspension of Voting Rights.** Subsequent to the occurrence of any Event of Default described above, but prior to the expiration of any respective cure period set forth therein, and for so long as such Event of Default is continuing, the Defaulting Member shall not have any vote in matters to be acted

upon by the Members, and such Defaulting Member's Units may be disregarded for the purposes of determining a quorum and for all other purposes in connection with any such matters.

B. **Suspension of Distributions.** Notwithstanding anything in this Agreement to the contrary, no distribution shall be made to any Defaulting Member who is in Monetary Default. So long as any Monetary Default is continuing, the Defaulting Member assigns to the Non-Defaulting Member its right to receive any and all distributions under this Agreement and such distributions shall be paid to the Non-Defaulting Member. The Defaulting Member shall also compensate the Non-Defaulting Member for losses, damages, costs and expenses resulting directly or indirectly from such Monetary Default.

C. **Options of Non-Defaulting Member.** Upon the occurrence of a Default, the Non-Defaulting Members may take one or more of the following actions at its election:

(1) Elect to dissolve the Series in the manner herein provided;

(2) Expel the Defaulting Member from the Series (and if the Member is also the Manager, terminate the Manager) by giving written notice specifying the expulsion date, elect to continue the Series' existence and purchase, cause the Series to purchase, or designate another Person to purchase the Units of the Defaulting Member as of the expulsion date at a price equal to the greater of \$1.00 or the balance of the Defaulting Member's Capital Account as shown on the Series' books as of the end of the calendar month preceding the expulsion date, plus any additional Capital Contributions paid to the Series by the Defaulting Member after such date and less: (i) all costs incurred or reasonably anticipated to be incurred by the Series and the Non-Defaulting Member to remedy the Default; and (ii) all damages to the Series and the Non-Defaulting Member resulting from such Default. In the event the Non-Defaulting Member or the Series suffers additional costs or damages as a result of such Default which are not included in the calculation of the purchase price of the Defaulting Member's Units, the purchase price shall be reduced by an amount equal to such additional costs or damages or such amount may be offset against any other sums owed to the Defaulting Member. It is the intention of the Members that upon the expulsion of a Defaulting Member and the purchase of its Units by any Person, the Series shall continue to exist and operate without interruption, dissolution or termination and without impairing or reducing in any manner the Series' rights and obligations to third parties;

(3) Cure the Default, charge the cost of such cure against the Defaulting Member's Capital Account, credit the cost of such cure to the Non-Defaulting Member's Capital Account and cause the percentage interest of the Members to be adjusted to reflect their respective Capital Accounts after such charges and credits have been made; or

(4) Exercise any other rights and remedies available at law or in equity.

Section 11.03. **Dissolution and Liquidation.** The Series shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following:

- A. Upon the dissolution of the Company;
- B. By the unanimous agreement of all Members associated with such Series.
- C. At the time in which there are no Members associated with such Series; or
- D. Upon the entry of a decree of judicial termination under the Act.
- E. Removal as the Series Manager without the consent of the Company or unanimous vote of the Series' Common Unit Holders.

Other than in connection with transfer of Membership Interests in accordance with this Agreement, a Member associated with the Series shall not take any voluntary action (including, without limitation, resignation) that directly causes such Member cease to be a Member of the Series. Unless otherwise approved by Members associated with the Series, a Member who ceases to be a Member associated with the Series (a "Resigning Member"), regardless of whether such termination was the result of a voluntary act by such member, shall not be entitled to receive any distributions from the Series in excess of those distributions to which such Member would have been entitled had such

Member remained a Member associated with the Series. Except as otherwise expressly provided herein, a Resigning Member shall immediately become an assignee associated with the Series. Damages for breach of this Paragraph shall be monetary damages only (and not specific performance), and such damages may be offset against distributions by such Series to which the Resigning Member would otherwise be entitled.

The termination and winding up of a Series shall not cause dissolution of the Company (even if there are no remaining Series) or the termination of any other series. The termination of a series shall not affect the limitation on liabilities of this Series or any other series provided by this Agreement and the Act.

Section 11.04. **Method of Winding Up.** Upon dissolution of the Series pursuant to Section 11.03, the Series shall immediately commence to liquidate and wind up its affairs. The Members shall continue to share profits and losses during the period of liquidation and winding up in the same proportion as before commencement of winding up and dissolution. The proceeds from the liquidation and winding up shall be applied in the following order of priority:

A. To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Series other than liabilities to Members on account of their Capital Contributions or an account of a Member's withdrawal from the Series or pursuant to a withdrawal of capital; and

B. The balance, to Members in accordance with their Capital Accounts of the Series.

Unless the Members shall unanimously determine otherwise, all distributions will be made in cash, and none of the Series Property will be distributed in kind to the Members.

Section 11.06. **Filing Articles of Dissolution.** Upon the completion of the distribution of the Series, Series Property as provided in Section 11.04, Articles of Dissolution shall be filed as required by the Act, and each Member agrees to take whatever action may be advisable or proper to carry out the provisions of this Section.

Section 11.07. **Return of Capital and No-Recourse to Other Members.** Except as otherwise provided by applicable laws, upon termination of the a Series, each Member associated with the Series shall look solely to the assets of the Series for the return of its Capital Contributions made with respect to the Series remaining after payment of or due provision for the debts and liabilities of the Series are insufficient to return such Capital Contributions, such Members shall have no recourse against any other series, the Company, or any other Member, except as provided by law.

## **ARTICLE XII**

### **AMENDMENT OF AGREEMENT; MEETINGS; RECORD DATE**

Section 12.01. **Amendments.** All Amendments to this Agreement shall require a Majority Vote of the Members.

Section 12.02. **Limitations on Amendments.** Notwithstanding any other provision of this Agreement, no amendment to this Agreement may: (i) enlarge the obligations of any Member under this Agreement; (ii) amend this Section 12.02 or Section 12.01, Section 7.03 or Section 10.02 without the Majority Vote of the Members; or (iii) amend Section 6.13 or Section 7.13 without the consent of the Company or the unanimous vote of the Common Unit Holders and a Majority Vote of the Preferred Unit Holders (if any).

Section 12.03. **Meetings.**

A. An annual meeting of the Members of the Series shall be held at the principal office of the Series or at such other place either within or without the State of Oklahoma as may be designated by the Members and specified in the notice of such meeting. Each such meeting shall be held on the first Monday of each September, if not a legal holiday, and, if a legal holiday, then on the next succeeding business day.

B. Special meetings of the Members of the Series may be held on any day, when called by the Manager or when called by at least fifty percent (25%) of the Members entitled to vote at such meeting. Upon

request in writing delivered either in person or by certified mail, return receipt requested, by any Member entitled to call a meeting of the Members, the Manager shall forthwith cause notice to be given to all Members entitled to notice of the upcoming meeting. The meeting must be held on a date not less than ten (30) nor more than sixty (60) days after the receipt of such request as the Manager or Members may fix. If notice is not given within twenty (20) days after the delivery or mailing of the request, the person or persons calling the meeting may fix the time of the meeting and give notice thereof in the manner provided by law or by this Agreement or may cause such notice to be given by any designated representative. Each special meeting shall be called to convene between 8:00 a.m. and 5:00 p.m. and shall be held at the principal office of the Series.

C. Not less than ten (30) nor more than sixty (60) days before the date fixed for a meeting of Members, written notice stating the time and place of the meeting (and, in the case of a special meeting, the purpose of such meeting) shall be given to each Member entitled to vote at the meeting. Such meeting shall be held within or without the State of Oklahoma at such time and place as specified in the notice thereof.

D. Voting power in the Series shall be in proportion to the percentages in which Member is entitled to vote or entitled to receive distributions under Article V, unless otherwise limited by this Agreement. Any action which may be taken by the Members, as limited by this Agreement, shall only be effective upon a Majority Vote of the Members.

Section 12.04. **Adjournment.** When a 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, unless such adjournment shall be for more than forty five (45) days. At the adjourned meeting, the Series may transact any business which might have been transacted at the original meeting. If the adjournment is for more than forty-five (45) days, a notice of the adjourned meeting shall be given in accordance with Section 14.01.

Section 12.05. **Waiver of Notice; Consent to Meeting; Approval of Minutes.** The transactions of any meeting of the Series, however called and noticed, and whenever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum of Members, acting through their Designees is present either in person or by proxy, and if, either before or after the meeting, each of the Members (through their Designees) entitled to vote, but not present in person or by proxy, approves by signing a written waiver of notice or an approval to the holding of the meeting or an approval of the minutes thereof. All waivers, consents and approvals shall be filed with the Series records or made a part of the minutes of the meeting. Attendance of a Member (through its Designee) at a meeting shall constitute a waiver of notice of the meeting, except when such Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

Section 12.06. **Quorum.** The Members holding more than fifty percent (50%) of the Units entitled to vote represented in person or by proxy, shall constitute a quorum at a meeting of Members. In the absence of a quorum, any meeting of Members may be adjourned from time to time by a Majority Vote of the Members represented either in person or by proxy entitled to vote, but no other matters may be proposed, approved or disapproved, except as provided in Section 13.04.

Section 12.07 **Action without a Meeting.** Any action that may be taken by any vote of the Members may be taken without a meeting if a consent to such action is signed by the Members holding Units representing not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Units entitled to vote thereon were present and voted. Prompt notice of the taking of any action without a meeting shall be given to those Members who have not consented in writing.

### **ARTICLE XIII CONFIDENTIALITY**

Section 13.01. **Confidentiality.** Except as otherwise expressly permitted by this Section, each Member which shall for purposes of this Section each Manager and Member will keep confidential, will not disclose and will otherwise retain in strictest confidence the terms of this Agreement; except that a Member or the Series may make announcements or give notices concerning this Agreement to the employees of the Series or of a Member, or to the

customers or suppliers of the Series or a Member, if that announcement or notice is either (a) approved by a Majority Vote of the Members or (b) expressly permitted by this Section.

Except as otherwise expressly permitted by this Section:

(A) **Obligations of the Members.** Each Member and Manager will keep confidential, will not disclose, will not use, and will otherwise retain in strictest confidence the Series Information. Without limiting the foregoing, each Member and Manager will use no less than the same degree of care, and no less than a reasonable degree of care, to protect the Series Information as it uses to protect its own trade secrets and confidential information.

(B) **Obligations of the Series.** The Series will keep confidential, will not disclose, and will otherwise retain in strictest confidence the Series Information. The foregoing permits the Series to use the Series Information, but the Series will adopt procedures in connection with its use of Series Information that are reasonably expected to prevent that information from becoming publicly available. The foregoing does not limit the Series' obligations otherwise set forth in this Section.

Definitions:

“Series Information” means all information (whether written, oral, electronic, or in another form) (i) that either (A) the Series, a Member, a Manager, or a Representative of any of them provides to a person concerning the Series, (B) is obtained by a person from its examination of the Series' facilities or records or from discussions with the Series' Representatives, or (C) is developed by a person from such information and (ii) that consists of, or includes, Trade Secrets or Confidential Information.

“Trade Secrets” means trade secrets under applicable trade secret or other law, including concepts, ideas, designs, sketches, photographs, graphs, drawings, devices, know how, samples, methods, information, data, processes, formulae, compositions, improvements, inventions, discoveries, product specifications, past, current and planned research and development and manufacturing or distributions methods and processes, lists of actual or potential customers or suppliers, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures, and any other information, however documented, that is a trade secret within the meaning of applicable trade secret law of the United Kingdom or the United States.

“Confidential Information” means written or other information concerning the Series, other than Trade Secrets, not generally known to the public; and, to the extent consistent with the foregoing definition, includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training techniques and materials, and any information that is marked “confidential” or in some comparable manner.

“Representatives” means directors, officers, employees, agents, consultants, advisors or other representatives, including legal counsel, accountants and financial advisors. In the case of a Member, “Representatives” includes the Representatives of that Member's Affiliates.

Certain Exceptions. The prohibitions in this Section will not apply if, but only to the extent, that:

(A) **Previously in Possession.** The disclosing person (i) demonstrates through written records that the same Series Information was in its possession before disclosure to it and (ii) the disclosing person provided the Series and each Member and Manager with written notice of prior possession either (A) before the execution and delivery of this Agreement or (B) if the disclosing person later becomes aware of (through disclosure by the Series or otherwise) some aspect of the Series Information as to which it had prior possession, promptly upon its becoming aware of the Series Information;

(B) **Becomes Public.** The disclosing person demonstrates (i) that the same information is currently publicly available or has become publicly available and (ii) that public availability does not result from (A) the misappropriation or improper disclosure of that Series Information by the disclosing person or (B) the obtaining of that Series Information by improper means of the disclosing person;

(C) Independently Developed. The disclosing person demonstrates that the same information was developed independently by the disclosing person without the use of the Series Information;

(D) Legal Obligation to Disclose. The disclosing person demonstrates that applicable law requires it to disclose the Series Information, but then only (i) to the extent disclosure is required and (ii) after giving the Series and each Member and Manager notice of the obligation so that it may seek a protective order or other similar or appropriate relief. In the absence of an order or relief, the disclosing person must use reasonable efforts to have the disclosed information treated confidentially consistent with this Section.

(E) Enforcement of Agreement. It is reasonably necessary for a Member of the Series to make the disclosure to enforce this Agreement, and then only if the disclosing person undertakes in good faith to limit the manner and extent of that disclosure to the extent practicable including obtaining protective orders from the court or arbitrator from whom enforcement is sought;

(F) Stock Exchange Rules and Securities Laws. Disclosure is, in the written opinion of counsel to the disclosing person, necessary or desirable in order to comply with applicable stock exchange rules or the rules and regulations of the U.S. Securities and Exchange Commission; or

(G) Sale of Member Interest. Disclosure is made by a Member or the Series in connection with the sale, transfer or other disposition, in whole or in part, of a Member Interest or the assets of the Series in accordance with this Agreement (but then only if disclosure is subject to a non-disclosure agreement then customary in such transactions and as to which the Series, the other Members and each of their Affiliates are third party beneficiaries).

Permitted Disclosure to Representative. Notwithstanding the prohibitions of this Section, each Member and the Series may disclose the terms of this Agreement and Series Information to its representatives directly involved with the Series, but:

(A) only to the extent necessary for each Representative to accomplish his tasks and otherwise strictly on a need to know basis; and

(B) only if the Representative (i) is provided a copy of this Section and (ii) is advised in writing by the disclosing party (A) that he is obligated to keep confidential, not disclose and retain in strictest confidence the terms of this Agreement and the Series Information strictly in accordance with terms of the Section and (B) that the Series or any Members may directly enforce the obligation.

A person disclosing Confidential Information to a Representative pursuant to this Subsection will promptly notify the other Members and the Series of the name and title of that Representative and certify that it has advised the Representative of the obligations. Each disclosing person will be responsible for violations of this Section by its Representatives regardless of whether the Series or any Member has rights against the Representative.

Disclosure to Non-Representatives. Any disclosure of the terms of this Agreement or any Series Information may be made to a non-Representative only if the receiving party executes and delivers a confidentiality agreement in form and substance approved by the Members. Any Member or Manager may disclose the terms of this Agreement or Series Information to Representatives of entities reasonably believed to be Affiliates.

Continuing Protection of Trade Secrets. Any Trade Secrets of the Series will also be entitled to all of the protections and benefits under applicable law. If any Trade Secret information of the Series is found by a court of competent jurisdiction not to be a Trade Secret, or ceases to be a Trade Secret under applicable law, that information will nonetheless still be Confidential Information for purposes of this Section.

Remedies. Each Member and Manager recognizes that the activities proscribed this Section will result in irreparable damage and harm to the Series and the Members and that the Series and Members may be without an adequate remedy at law in the event of any such activities. Therefore, each Member agrees that, if any of the foregoing subparagraphs of this Section is breached or is threatened to be breached, the Series and each Member may: (a) obtain specific performance; (b) enjoin any person that has breached or threatens to breach from engaging in any activity

proscribed in this Section; and (c) pursue any one or more of the foregoing or any other remedy available to it under applicable law, including actual and/or punitive damages and set-off rights. A person seeking or obtaining any such relief will not be deemed to be precluded from obtaining any other relief to which that person may be entitled. Each Member and Manager waives any requirement that a person seeking to enforce the provisions of this Section submits proof of the economic value of any Trade Secret or posts any bond or other security in connection therewith.

Continuing Obligations. The obligations in this Section will be effective from the date of this Agreement and will bind (a) the Series indefinitely, and (b) each Member and each Manager (i) with respect to the Series' Confidential Information, for so long as that Member or Manager is bound by any provision of this Agreement and for one (1) year thereafter, and (ii) with respect to the Series' Trade Secrets, for as long as the Series' Trade Secrets remain trade secrets under applicable law.

No Limitations on Other Agreements. The prohibitions in this Section are in addition to, and will be interpreted as separate and independent from, any similar prohibitions in any agreement between the Series and any of its Members, Managers, or employees that limits the use or disclosure of information concerning the Series.

**ARTICLE XIV**  
**GENERAL PROVISIONS**

Section 14.01. Notices and Communications. Any notice, instruction, request or election required or permitted to be given pursuant to the terms of this Agreement shall be in writing and the same shall be deemed given upon delivery thereof in person, or the day after such notice is deposited with an overnight delivery service such as Federal Express, Airborne, etc. or the date after such notice is deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, as follows:

If to the Series:

Series II - Diversified Management Services, LLC  
Green Shields Capital Fund I  
2924 Boulder Court  
Edmond, OK 73003

If to the Members:

Diversified Management Services, LLC 2924 Boulder Court Edmond, OK 73003

Any address or name specified above may be changed by a notice given to the addressee by the other party in accordance with the terms of this Subsection. The inability to deliver because of a changed address of which no notice was given or rejection or other refusal to accept any notice or other communication shall not be deemed to affect the service of such notice. Any notice or other communication to be given by any party hereto may be given by the counsel for such party.

Section 14.02. Captions. All article and section captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" and "Sections" are to Articles and Sections of this Agreement.

Section 14.03. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the correspondence masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 14.04. **Further Action.** The parties to this Agreement shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 14.05. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 14.06. **Integration.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 14.07. **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 14.08. **Counterparts.** This Agreement may be executed in counterparts, all of which together shall constitute an agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto, independently of the signature of any other party.

Section 14.09. **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Oklahoma, without regard to its principles of conflict of laws.

Section 14.10. **Invalidity of Provisions.** If any provision of this Agreement is or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 14.11. **Conveyances and Mortgages.** All of the assets of the Series shall be held in the name of the Series. Any deed, bill of sale, mortgage, lease, contract of sale or other instrument purporting to convey or encumber the interest of the Series of all or any portion of assets of the Series shall be sufficient if signed by the Manager. No person shall be required to inquire into the authority of any individual to sign any instrument which is executed pursuant to the provisions of this Section 14.11.

Section 14.12. **Jurisdiction and Venue.** Each Member and the Series hereby irrevocably submit generally and unconditionally for itself and in respect of its property to the jurisdiction of the District Court of Oklahoma County, Oklahoma, or the United States District Court for the Western District of Oklahoma. Each Member and the Series hereby irrevocably waive, to the fullest extent permitted by law, any objection that the Series or a Member may now or hereafter have to the laying of venue in any such courts and any claims that any such courts are inconvenient forums. Each Member and the Series hereby agree and consent that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in the foregoing courts may be made by registered or certified mail, return receipt requested, and directed to the Series or a Member as the case may be, at its address for notices as provided herein or at a subsequent address of which the Series and the other Member receive actual notice pursuant to the terms of such notice provisions.

Section 14.13. **Notice of Major Event.** Each Member agrees to provide written notice to the other Member and to the Series of the occurrence of any Major Event with respect to such Member, immediately upon becoming informed thereof. For the purposes hereof, the term "Major Event" shall include, without limitation, Bankruptcy, Involuntary Sale, an Involuntary Sale Order and the appointment of a Member Representative.

Section 14.14. **Waiver of Action for Partition.** Each member irrevocably waives during the term of the Series any right that it may have to maintain any action for partition with respect to the property of the Series or any Series.

Section 14.15 **Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.



Section 14.16 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of:

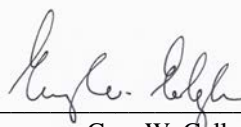
- A. The Series,
- B. The Company,
- C. Any Member, or
- D. Any Manager.

*Remainder of this page left blank intentionally*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective as of the day and year first above written.

**MEMBERS:**

Diversified Management Services, LLC, an Oklahoma Limited Liability Company

By:  \_\_\_\_\_  
Gary W. Gallagher, Manager

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "A"**

<b>NAME &amp; ADDRESS OF MEMBER</b>	<b>AMOUNT OF PLEDGED CAPITAL CONTRIBUTION</b>	<b>NUMBER OF UNITS</b>	<b>CLASS OF UNITS</b>	<b>PERCENTAGE OF UNITS WITHIN THE CLASS</b>	<b>PERCENTAGE OF ALL UNITS ISSUED</b>	<b>DATE OF CONTRIBUTION</b>
Diversified Management Services, LLC 2924 Boulder Court Edmond, OK 73003	\$1,900	1,900	Common	100	100	August 15, 2014

## EXHIBIT "B"

### **TERMS OF THE SERIES II PREFERRED UNITS**

**Dividends:**

The holders of the Series Preferred Units shall be entitled to receive in preference dividend payments and/or distributions as and when declared by the Series Manager out of funds legally available thereof. No dividends and/or distributions shall be paid to holders of Common Units of the Series unless all Series II Preferred Units have been redeemed and/or repurchased by the Series.

**Liquidation Preference:**

In the event of any liquidation, dissolution or winding up of the Series, the holders of Series Preferred Units will be entitled to receive in preference to all other holders of units the release of the smaller of the then current value of the Series Repurchase (Call) Option or the net asset value of the Fund after all fees and expenses per unit plus declared and unpaid dividends, if any (the "Initial Payment"). After the Initial Payment, the remaining assets of the Series will be distributed ratably to the holders of the Series II Common Units and the Series II Preferred Units. A sale, conveyance or other disposition of all or substantially all of the property or business of the Series, or a merger or consolidation with or into any other corporation (collectively, an "Acquisition" of the Series), other than (i) a consolidation with a wholly-owned subsidiary of the Series; (ii) a merger effected exclusively to change the domicile of the Series, or (iii) an equity financing in which the Series is the surviving corporation, will be deemed to be a liquidation for purposes of the liquidation preference.

**Series Call Option:**

The Series may repurchase any or all Series Preferred Units issued through this and any subsequent Offerings beginning no earlier than 90 days after the Subscription (the "Repurchase Option" or "Call Option"). The Call Option value shall be the greater of the current net asset value of the Fund as determined by the Investment Advisor per Unit (the "Asset Valuation") or the Offering Price plus a compounding value rounded to the nearest \$1,000 equal to 6% per month or any portion thereof (the "Premium Valuation").

**Withdrawal and Redemption:**

Holders of Preferred Units may withdraw as a member of the Series and may redeem their Preferred Units provided the following conditions have been met: (a) the Preferred Unit holder has owned the units for a period of at least six (6) months (calculated from the date that the Subscription for the Preferred Units was accepted and the investor's assets were transferred to the Fund custodian); and (b) the Preferred Unit Holder provides the Series with a written request to redeem their Preferred Units at least ninety (90) days prior to such withdrawal. The Series Manager and Fund Administrator(s) will use their best efforts (subject to the Series Manager's sole discretion as discussed herein) to honor redemption requests subject to, among other things, the Series' and Fund's existing cash flow, financial condition, securities portfolio and prospective liabilities. Each request for a return of capital (redemption) should be limited to twenty five percent (25%) of such Preferred Unit Holder's capital account balance such that it will take at least four (4) quarters for a Preferred Unit Holder to fully redeem their Units. Expedited redemption schedule requests by a Preferred Unit Holder will be assessed by the Series Manager and Fund Administrator(s) and they will use their best efforts to honor the expedited request provided the aggregate amount of capital requested does not exceed thirty three percent (33%) of the then current net asset value of the Fund.

If for any reason cash or cash equivalents are not available to the Series to meet an accepted redemption request, the Series may pay back the Preferred Units through a fully underwritten debt instrument secured by all its assets or other financial assets of similar or better ratings, market value and liquidity. The value of the alternative securities for redemption payment will be based on the then current liquid cash value of the securities as determined by the Investment Advisor which will not necessarily be the face value of the security.

Redemption requests will be processed on a first-come, first-served basis. The priority of redemptions is intended to mitigate potential restrictions on the Series' ability to execute the Fund's investment objectives while redemption requests are outstanding. Limiting the total amount of capital that can be distributed on an expedited basis and providing other restrictions to redemption as discussed herein, will preserve the continued operation of the Fund and protect the majority of the Preferred Unit Holders from disproportionately bearing the potential risk of losses. Notwithstanding, the foregoing, the Series Manager may, in its sole discretion, waive such redemption requirements if a Preferred Unit Holder must meet a pre-existing contractual requirement that was fully disclosed prior to Subscription acceptance and directly related to the assets used for the investment; is experiencing undue hardship; or for any other reasonable cause. The acceptability of the Preferred Unit Holder's hardship or other reasonable cause will be determined by the Series Manager in its sole discretion.

The Series is responsible to disclose to any current Preferred Unit Holder or potential investor into the Preferred Units if any other Subscription has been or is planning to be accepted from an investor that has a pre-existing contractual requirement that could lead to a waiver of the redemption requirements.

**Suspension of Redemption Payments:**

The Series Manager may at any time suspend the withdrawal of funds from the Series, upon the occurrence of any of the following circumstances: (i) whenever, as a result of events, conditions, or circumstances beyond the control or responsibility of the Series, the Series Manager, Fund Administrator(s) and/or Investment Advisor; (ii) it is not reasonably practical to determine the net asset value of the Fund on an accurate and timely basis; or (iii) if the Series Manager has determined to dissolve the Series. Under no circumstances will the Company, the Series or the Fund be required to sell any assets in order to meet or accommodate any Preferred Unit Holder redemption request. Notice of suspension will be given within ten (10) business days from the time of the decision was made to suspend distributions to any Preferred Unit Holder who has submitted a withdrawal request and to whom full payment of the redemption proceeds has not yet been remitted. If a redemption request is not rescinded by a Preferred Unit Holder following notification of a suspension, the redemption will be effected as of the last day of the calendar month in which the suspension is lifted, on the basis of the net asset value of the Fund at that time and in order determined by the Series Manager in its sole discretion.

Notwithstanding the foregoing, if required pursuant to ERISA fiduciary obligations, the Series Manager and Fund Administrator(s) may allow only certain Preferred Unit Holders the ability to withdraw any or all of their capital at any time and not afford the same right to other Preferred Unit Holders. Any withdrawals permitted or required pursuant to ERISA fiduciary obligations will be effectuated in Series Manager and Fund Administrators' sole discretion as needed to comply with ERISA fiduciary obligations.

**Conversion:**

The Units are convertible into one share of Common Units (subject to anti-dilution adjustment). After ten years at the option of the holder at the initial conversion rate of 1:1. Automatically converts into Common Units at the applicable conversion rate, upon:

- i. The consummation of a firmly underwritten public offering of shares of common unit by the Series with aggregate proceeds in excess of USD 5 billion and a price per share greater than three times the Original Purchase Price (as adjusted for unit splits, unit dividends, recapitalizations and the like); or
- ii. A vote of a majority of the then outstanding Series II Preferred Units, voting as a single class.

**Anti-dilution Adjustments:**

Conversion ratio adjusted on a weighted-average basis including the outstanding units in the event of an issuance below the Series II Preferred Unit Original Issuance Amount. The issuance of the following will be excluded from the conversion ratio adjustment:

- i. Common Units and options to employees, consultants and directors pursuant to Unit option, unit grant, unit purchase or similar plans or arrangements approved by the Board of Directors, including without limitation upon the exercise of options currently outstanding.
- ii. Persons or entities with which the Series has business relationships including, but not limited to, corporate partner transactions, provided such issuances are for other than primarily equity financing purposes and have been approved by the Board, including approval by the Series I Director (as defined below);
- iii. Issuance of common units pursuant to currently outstanding options, warrants, or other rights to acquire securities;
- iv. Proportional adjustments for unit splits and unit dividends.

**Voting Rights:**

The holders of Series II Preferred Units have class voting rights on the following actions:

- i. The creation of any senior or *pari passu* security; any material alteration of the rights, preferences and privileges of the Series II Preferred Units;
- ii. Any merger or consolidation (unless for reincorporation purposes or unless the Series is the survivor and there is no change in control) or sale or other disposition of all or substantially all of the assets,
- iii. Amendment to the articles of incorporation/operating agreement;
- iv. Any redemption of Common Units (other than pursuant to agreements with employees who have granted the Series the right to repurchase units held by such employees upon the termination of their employment relationship with the Series);
- v. Dividends;
- vi. Dissolution, liquidation or winding up of the Company or Series; and
- vii. Audit of the Accounts

**Special Allocation of Profit and Loss:**

The net profits and/or losses of the Fund shall be allocated solely to the Holders of Preferred Units. The Common Unit Holders shall have no direct allocation of net profits and losses from the direct Fund operations. Any profit and losses from secondary business activities of the Series outside of the Fund shall be allocated per the Agreement and treating all Outstanding Units, Common and Preferred, the same.

**Representations and Warranties:**

Standard representations and warranties by the Series.

## TERMS OF INVESTOR RIGHTS AGREEMENT

### Registration Rights:

- a. The holders of Series II Preferred Units will have two (2) demand registrations upon the initiation by holders of at least 50% of outstanding Series II Preferred Units beginning the earlier of:
  - i. Seventy-two (72) months from the closing of the Series II Preferred Unit Offering; or
  - ii. Six (6) months after an initial public offering (“IPO”)
- b. The holders of Series II Preferred Units will also have unlimited piggyback registration rights subject to pro rata cutback at the underwriter’s discretion.
- c. A full cutback will apply upon the IPO and 30% minimum inclusion thereafter.
- d. Expenses for the registration will be paid by Series.
- e. Registration rights terminate upon the earlier of:
  - iii. Five (5) years after IPO; or
  - iv. As to any holder, when all shares held by such holder can be sold under the rule of the jurisdiction within any 90-day period.
- f. Holders of Series II Preferred Unit will be subject to a 180-day lock-up period required by underwriters in connection with an IPO by the Series

### Financial Information:

So long as the Investor continues to hold not less than 5% of the issued and outstanding units of Series II Preferred Units, the Series will grant to the Investor customary visitation and inspection rights (the “Information Rights”) and will furnish the Investor with quarterly unaudited and audited annual financial statements and with an annual operating plan. All such Information Rights will terminate upon the filing by the Company or the Series of a registration statement (either a Form 10 or an S-1 for an IPO) which causes the Company or the Series to become subject to the reporting requirements of the U.S Securities and Exchange Commission and/or other applicable market governing body. The Investor understands, acknowledges, and agrees that the Information Rights do not include access to confidential information, trade secrets, or classified or other areas of information governed by or outside the direct control of the Series.

### Additional Covenants:

The Series will covenant to promptly remove restrictive legends from the Investor’s shares of Series II Preferred Unit upon request by the Investor as soon as permissible in accordance with the requirements of specific rules of the exchange

*Remainder of this page left blank intentionally*