
LONG TERM INSURED CREDIT FUND, LLC

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT**

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**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
LONG TERM INSURED CREDIT FUND, LLC**

This Amended and Restated Limited Liability Company Agreement (as amended or restated from time to time, this “**Agreement**”) is made on September 26, 2018 by and among ESM Management LLC, a Delaware limited liability company, as the Manager (as defined below), and such other Person (as defined below) or Persons as may become parties to this Agreement by executing a counterpart hereof, as members (each a “**Member**” and, collectively, the “**Members**”).

Recitals

A. Long Term Insured Credit Fund, LLC (the “**Fund**”) is a Cayman Islands limited liability company that was formed pursuant to the filing of the Registration Statement (as defined below) with the Registrar (as defined below) on September 10, 2018, and has been operating pursuant to that certain Initial Limited Liability Company Agreement dated as of September 10, 2018 (the “**Prior Agreement**”).

B. The Manager and the Members have determined to amend and restate the Prior Agreement to govern the management and operation of the Fund and the relationship of the parties from and after the date hereof in accordance with the terms and subject to the conditions set forth in this Agreement.

Agreement

In consideration of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. GENERAL PROVISIONS

1.1 Continuation. The parties hereby ratify the execution, delivery and filing of the Registration Statement with the Registrar. The parties hereby agree to continue the Fund pursuant to the terms and conditions of this Agreement. The rights and liabilities of the Manager and the Members shall be as provided in this Agreement and, to the extent not inconsistent with the provisions contained herein, in the Limited Liability Companies Law (as amended) of the Cayman Islands, as amended from time to time (the “**LLC Law**”). The Manager shall cause to be executed and filed additional certificates, notices, statements or other instruments required by law for the operation of a limited liability company in all jurisdictions where the Fund is required to qualify or be authorized to do business as a foreign limited liability company, or as otherwise necessary to carry out the purpose of this Agreement and the business of the Fund.

1.2 Name. The name of the Fund shall be Long Term Insured Credit Fund, LLC. The Manager may, without the approval of, or prior notice to, the Members, change the name of the Fund or cause the Fund to transact business under another name.

1.3 Purpose.

1.3.1 The purposes of the Fund shall be to (i) invest in the Bonds (as defined below) and (ii) engage in any and all activities and transactions that the Manager reasonably determines to be necessary or incidental in connection with the foregoing.

1.3.2 All purchases and sales of the Bonds and/or other financial instruments shall be for the account and at the risk of the Fund.

1.3.3 In connection with the Fund's investments, the Manager shall have the right to effect any investment through, or to transfer all or a portion of such investment to, one or more investment vehicles owned by the Fund and other Person(s) ("**Investment Vehicles**") that are established solely for purposes of enabling the Fund to overcome or minimize legal and regulatory constraints, enhance tax efficiencies or address other tax considerations, or otherwise facilitate the Fund's participation in such investments; provided that the Manager shall not have the right to establish any parallel fund that would invest alongside the Fund.

1.4 Principal Place of Business and Registered Offices. The principal place of business of the Fund is 262 West 38th Street, Suite 507, New York, NY 10018, United States. The Fund may from time to time change its principal place of business and may establish additional places of business when and where required by the business of the Fund. The name and initial address of the Fund's registered agent shall be as set forth in the Registration Statement, until such time as it is changed in accordance with the LLC Law. The registered office of the Fund initially shall be located at c/o Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands. The Manager may change the location of the registered office of the Fund to such other location within the Cayman Islands as the Manager may determine at any time, upon written notice to the Members indicating the new location of such registered office.

1.5 Term. The term of the Fund commenced on September 10, 2018 and shall continue in existence in perpetuity until the Fund is wound up and subsequently dissolved pursuant to Section 11.1.

2. CERTAIN DEFINITIONS

2.1 "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant taxable year or other period, after giving effect to the following adjustments:

(a) credit such Capital Account by any amounts that such Member is obligated to restore pursuant to this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentence of each of Treasury Regulations Sections 1.704-2(i)(5) and 1.704-2(g); and

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

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

2.2 "Adjusted Capital Contribution" means, with respect to any Member and as of any date of determination, an amount equal to (i) the aggregate amount of Capital Contributions made by such Member on or prior to such date, reduced (but not below zero) by (ii) the cumulative amount of (x) all distributions made to such Member on or prior to such date pursuant to Section 4.2.1, (y) all unused capital returned to such Member on or prior to such date pursuant to Section 3.3.3, and (z) any Capital Contribution by such Member that is held in Capital Reserves.

2.3 "AEOI" means one or more of the following, as the context requires: (a) FATCA, the Common Reporting Standard issued by the Organization for Economic Cooperation and Development, or

similar legislation, regulations or guidance enacted in any other jurisdiction which seeks to implement equivalent tax reporting and/or withholding tax regimes; (b) any intergovernmental agreement, treaty or any other arrangement between the Cayman Islands and the US or any other jurisdiction (including between any government bodies in each relevant jurisdiction), entered into to facilitate, implement, comply with or supplement the legislation, regulations or guidance described in paragraph (a); and (c) any legislation, regulations or guidance implemented in the Cayman Islands to give effect to the matters outlined in the preceding paragraphs.

2.4 “**Affiliate**” of any Person means any other Person controlling, controlled by or under common control with the subject Person; and “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

2.5 “**Affiliated Members**” has the meaning set forth in Section 3.1.2.

2.6 “**Agreement**” has the meaning set forth in the Preamble.

2.7 “**Auction Rate Bonds**” means various series of Class A3 notes issued by the Issuer pursuant to the Indenture.

2.8 “**Bankruptcy**” means, with respect to any Key Person, the happening of any of the following: (i) the filing of an application by such Key Person for, or a consent to, the appointment of a trustee of all or a portion of such Key Person’s assets for the benefit of creditors generally, (ii) the filing by such Key Person of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Key Person’s inability to pay its debts generally as they come due, (iii) the making by such Key Person of a general assignment for the benefit of creditors, or (iv) the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Key Person as bankrupt or appointing a trustee of all or a portion of such Key Person’s assets for the benefit of creditors generally, and such order, judgment or decree continuing unstayed and in effect for a period of ninety (90) days.

2.9 “**BBA Audit Rules**” means Subchapter C of Chapter 63 of the Code (Sections 6221 et seq.), as enacted by the U.S. Bipartisan Budget Act of 2015, as amended from time to time, any similar state and local provisions, and any Treasury Regulations and other guidance promulgated thereunder.

2.10 “**BHC Act**” means the U.S. Bank Holding Company Act of 1956, as amended.

2.11 “**BHC Limit**” has the meaning set forth in Section 15.2.

2.12 “**BHC Member**” has the meaning set forth in Section 15.1.

2.13 “**Bonds**” means the Auction Rate Bonds and the Related Bonds.

2.14 “**Brokers**” has the meaning set forth in Section 7.2.2(x).

2.15 “**Business Day**” means a day (other than a Saturday or Sunday) on which banks and relevant financial markets are open for business in New York, New York and the Cayman Islands.

2.16 “**Capital Account**” means, with respect to each Member, the account established and maintained for such Member on the books of the Fund in compliance with Treasury Regulations Section

1.704-1(b)(2)(iv). For this purpose, the Manager may, in its reasonable discretion, upon the occurrence of any of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with rules of such regulation and Treasury Regulations Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Fund property.

2.17 “Capital Commitment” means, with respect to any Member, the amount of cash that such Member agreed to contribute to the Fund as set forth in such Member’s Subscription Agreement, as it may be adjusted in accordance with the terms of this Agreement.

2.18 “Capital Contribution” means the total amount of cash contributed to the Fund by each Member, from time to time, in accordance with the terms of this Agreement.

2.19 “Capital Reserve” has the meaning set forth in Section 3.3.3.

2.20 “Carried Interest” has the meaning set forth in Section 4.2.1.

2.21 “Cause” means, with respect to the Manager, that the Manager is found by a court of competent jurisdiction to have committed gross negligence (as such term is construed under the laws of the State of Delaware), willful misconduct, fraud or material breach of this Agreement in the conduct of its duties to the Fund hereunder.

2.22 “Closing Date” means October 11, 2018, subject to extension by the Manager in its sole discretion, provided that in no event shall the Manager extend the Closing Date past December 31, 2018.

2.23 “Code” means the U.S. Internal Revenue Code of 1986, as amended.

2.24 “Complete Disposition Event” means the complete settlement, sale, redemption or other disposition of all of the Fund’s investments as reasonably determined by the Manager, and receipt by the Fund of the proceeds in consideration thereof.

2.25 “Confidential Information” has the meaning set forth in Section 16.2.

2.26 “Confidential Offering Memorandum” means the document used to offer Interests in the Fund, as such document is amended and supplemented from time to time.

2.27 “Damages” has the meaning set forth in Section 7.6.2.

2.28 “Disposition Event,” “Disposition” or “Disposed” means, with respect to any investment of the Fund, a sale, settlement or other disposition of any portion such investment (including, with respect to any Bonds, a redemption of such Bonds) as reasonably determined by the Manager, and receipt by the Fund of the proceeds in consideration thereof.

2.29 “Distributable Proceeds” means, with respect to any period, (i) all proceeds (or, in the Manager’s reasonable discretion, securities or other non-cash consideration) received by the Fund during such period in respect of any investment held by the Fund, including as the result of the Disposition of any such investment, together with settlement proceeds, dividends, interest income and other similar items received by the Fund on account of such investment, less (ii) all expenses, liabilities and Reserves of the Fund, as determined by the Manager in its reasonable discretion.

2.30 “ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended.

2.31 “Fair Market Value” means the fair market value of an investment, asset, security or Interest as determined by the Manager in accordance with its valuation policy.

2.32 “FATCA” means Sections 1471 through 1474 of the Code, as amended from time to time, and any regulations thereunder or official interpretations thereof, including any successor regulations or interpretations, and any intergovernmental agreement implementing the foregoing.

2.33 “Fiscal Year” has the meaning set forth in Section 9.2.

2.34 “Fund” has the meaning set forth in the Recitals.

2.35 “Hurdle Amount” means, with respect to any Member and for any period, (x) the amount equal to an annual return of eight percent (8%) computed on the basis of the actual number of days in such period over a year, compounded annually, on the amount of such Member’s Adjusted Capital Contribution outstanding from time to time during such period, less (y) the amount of such Member’s Preferred Return determined for the same period.

2.36 “Indenture” means that certain Indenture dated as of May 2, 2006 by and among the Issuer, Ambac Assurance UK Limited and Assured Guaranty (UK) Ltd. as financial guarantors, The Bank of New York (acting through its London Branch) as trustee, The Bank of New York as auction agent and The Bank of New York as securities intermediary.

2.37 “Initial Member” means WNL Limited.

2.38 “Interest” means an interest in the Fund entitling a Member to a share of the profits, losses, distributions, capital and assets of Fund as provided herein. Interests need not be evidenced by certificates. There are no voting rights associated with any Interests issued by the Fund.

2.39 “Issuer” means Ballantyne Re, plc, a public limited company incorporated under the laws of Ireland.

2.40 “IRS” means the U.S. Internal Revenue Service.

2.41 “Key Person Event” means, with respect to Eric Meyer or William Van de Water (each, a “**Key Person**”): (i) such Key Person ceases to be actively involved in the management activities of the Fund for a period of sixty (60) consecutive days, (ii) the Manager becoming aware that it is reasonably likely that such Key Person will cease to be actively involved in the management activities of the Fund for a period of sixty (60) consecutive days, (iii) any resignation, termination of employment, death, or permanent disability which interferes with such Key Person’s ability to perform its responsibilities related to the Fund, or (iv) the Bankruptcy of such Key Person.

2.42 “Majority-in-Interest of the Members” means, with respect to a particular amendment to this Agreement or other action that requires the consent or approval of the Members, Members whose aggregate Capital Commitment at such time exceeds 50% of the aggregate Capital Commitment of all Members (in each case not counting for purposes of this calculation any Defaulting Members or any Members who are Affiliated Members).

2.43 “Manager” has the meaning set forth in Section 7.1.

2.44 “Manager Parties” has the meaning set forth in Section 7.6.1.

- 2.45 “**Member**” has the meaning set forth in the Preamble to this Agreement
- 2.46 “**Percentage Interest**” means, with respect to any Member, the percentage calculated by dividing such Member’s Capital Commitment by the aggregate Capital Commitments of all Members.
- 2.47 “**Permitted Interests**” has the meaning set forth in Section 15.2.
- 2.48 “**Person**” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, government (or any agency or political subdivision thereof) or other entity, whether or not having legal personality.
- 2.49 “**Plan Asset Regulations**” means the regulations concerning the definition of “Plan Assets” under ERISA adopted by the United States Department of Labor and codified in 29 C.F.R. 2510.3-101, as modified by Section 3(42) of ERISA.
- 2.50 “**Preferred Return**” means, with respect to any Member and for any period, the amount equal to an annual return of four percent (4%) computed on the basis of the actual number of days in such period over a year, compounded annually, on the amount of such Member’s Adjusted Capital Contribution outstanding from time to time during such period.
- 2.51 “**Representatives**” has the meaning set forth in Section 16.1.
- 2.52 “**Reserve**” means an amount of funds deemed sufficient by the Manager in its reasonable discretion, as of the date of determination, for working capital, capital expenditures, other future uses of capital, and to pay taxes (specifically including the Manager’s authority to retain reserves for purposes of paying tax obligations of the Fund), insurance and/or other costs and expenses incident to the operation of the Fund.
- 2.53 “**Related Bonds**” means Class A2 notes issued by the Issuer pursuant to the Indenture.
- 2.54 “**Register**” means the Register of Limited Liability Companies maintained by the Registrar, as required by the LLC Law.
- 2.55 “**Registrar**” means the Limited Liability Companies of the Cayman Islands.
- 2.56 “**Registration Statement**” means the registration statement referred to in section 5(2) of the LLC Law, and as amended pursuant to the LLC Law.
- 2.57 “**Special Member**” has the meaning set forth in Section 3.1.2.
- 2.58 “**Subscription Agreement**” means a subscription agreement, in a form approved by the Manager, executed in connection with the acquisition of an Interest from the Fund.
- 2.59 “**Substituted Member**” has the meaning set forth in Section 10.3.1.
- 2.60 “**Tender Offer**” means the tender offer process which the Fund intends to utilize to acquire the Bonds.
- 2.61 “**Transfer**” has the meaning set forth in Section 10.1.1.
- 2.62 “**Transferee**” has the meaning set forth in Section 10.2.1.

2.63 “**Transferor**” has the meaning set forth in Section 10.2.1.

2.64 “**Treasury Regulations**” means the income tax regulations promulgated under the Code, as such regulations may be amended from time to time.

2.65 “**Unpaid Preferred Return**” means, with respect to any Member and as of any date of determination, (i) such Member’s Preferred Return accrued for all periods prior to such date, reduced (but not below zero) by (ii) the cumulative amount of all distributions made to such Member on or prior to such date pursuant to Section 4.2.1(ii)(b).

2.66 “**USD**” or “**\$**” means the lawful currency of the United States of America.

3. INTERESTS, MEMBERS, CAPITAL COMMITMENTS AND CAPITAL CONTRIBUTIONS

3.1 Interests and Members.

3.1.1 The names, addresses, Capital Commitments and Capital Contributions of the Members and such other information as may be required by the LLC Law shall be maintained by the Manager on the books and records of the Fund.

3.1.2 The Manager shall have the authority, in its sole discretion, to designate certain Members (including investors who are affiliated with the Manager (“**Affiliated Members**”)) as Special Members and, when deemed appropriate by the Manager in its sole discretion, to enter into separate agreements and/or side letters with such Special Members setting forth the terms of their investment in the Fund. A “**Special Member**” shall have the same rights and obligations as a Member, except that the Interest held by a Special Member (i) may have preferential terms, including, but not limited to, more favorable reporting or information rights (i.e., greater transparency); and/or (ii) may not be (x) subject to the same Carried Interest; (y) subject to the same restrictions as to transfers as the Interests held by other Members; and/or (z) subject to such other provisions as the Manager may specify and/or as set forth in any applicable separate agreement or side letter. Each Special Member shall be designated as a Special Member in the books and records of the Fund. Except as otherwise agreed with a particular Special Member, any Special Member may lose its designation as a Special Member in the sole discretion of the Manager. Neither the Manager nor the Fund shall be required to obtain the consent or approval of, or give notice to, any other Member in connection with the designation of any Member as a Special Member. Except as otherwise agreed with a particular Member, the designation of one or more Special Members will not entitle any other Member to similar terms or designation, and neither the Manager nor the Fund will be required to obtain the consent or approval of, or provide notice to, any Member in connection therewith.

3.2 Admission of Members; Capital Commitments.

3.2.1 The Manager may, in its sole discretion, admit one or more Persons to the Fund as Members as of the Closing Date. A Person shall be admitted to the Fund as a Member (and shall be shown as such in the books and records of the Fund) upon execution and delivery by such Person of this Agreement (or a counterpart hereof) and a Subscription Agreement and the acceptance by the Manager of such subscription in accordance with the terms and conditions of this Agreement. It is understood and agreed that the Manager may execute this Agreement on behalf of the Members pursuant to the power-of-attorney granted by each of the Members in their respective Subscription Agreement. Notwithstanding anything to the contrary contained herein,

the Manager may decline to accept a subscription by any Person, in whole or in part, and for any reason or no reason, in its sole discretion. Immediately following the admission of one or more Members on the Closing Date, the Initial Member, by its execution and delivery of a counterpart of this Agreement, shall resign from the Fund and shall have no further rights or claims against, or obligations as the Initial Member of, the Fund.

3.2.2 Each Member shall commit to contribute to the capital of the Fund an amount equal to its Capital Commitment. The minimum Capital Commitment for any Member shall be \$1,000,000, subject to waiver, reduction or increase by the Manager in its sole discretion and any adjustment in accordance with Section 3.2.4 and/or Section 3.2.5. Subject to certain specific limitations contained in other provisions of this Agreement, such obligation to contribute capital to the Fund shall be irrevocable, unconditional and not subject to any defense, counterclaim or offset of any kind.

3.2.3 The Manager and/or its principals shall make aggregate Capital Commitments to the Fund of at least \$2,000,000. In addition, ESM Fund I LP (the “**ESM Fund**”), a private investment fund managed by the Manager, shall make a Capital Commitment of \$3,000,000 to the Fund.

3.2.4 Notwithstanding anything to the contrary contained herein, the Manager will allocate the Bonds to be acquired by the Fund first to the Affiliated Members and call capital from the Affiliated Members on a pro rata basis based on their respective Capital Commitments (as set forth in Section 3.2.3) to fund the acquisition cost until each Affiliated Member’s unfunded Capital Commitment is reduced to zero, unless otherwise determined by the Manager, and then allocate the remaining portion of the Bonds to be acquired by the Fund to the other Members (the “**Unaffiliated Members**”) and call capital from the Unaffiliated Members on a pro rata basis based on their respective Capital Commitments in accordance with the provisions of Section 3.3 to fund the remaining portion of the acquisition cost. In the event that any Unaffiliated Member’s level of participation in the acquired Bonds is less than the level of participation that such Unaffiliated Member would have had in the acquired Bonds had the Manager allocated the investment opportunity to (and called capital from) all Members pro rata based on their respective Capital Commitments without giving any priority to the Affiliated Members, then such Unaffiliated Member’s Capital Commitment and unfunded Capital Commitment shall be deemed to have been reduced by the same proportion as the reduction of its level of participation in the acquired Bonds resulting from the priority allocation of acquired Bonds to the Affiliated Members.

3.2.5 Unless otherwise agreed with a particular Member, after thirty (30) calendar days following the completion of the Tender Offer, each Member shall be released from further obligations with respect to its unfunded Capital Commitment except to the extent as reasonably determined by the Manager to be necessary to: (i) pay amounts owing or which may become due under any indebtedness or to satisfy obligations under existing guarantees, indemnities, covenants or other undertakings; (ii) pay Fund expenses when due; and (iii) establish Reserves for the purpose of funding the matters described in clauses (i) and (ii). Notwithstanding anything to the contrary in the foregoing, if, within the thirty (30) calendar period following the completion of the Tender Offer, there remain unfunded Capital Commitments available for drawdown, and any holders of the Bonds who did not accept the Tender Offer contact the Manager, then the Manager may in its sole discretion acquire additional Bonds from these holders in one or more privately negotiated transactions on behalf of the Fund and call capital from the Members to fund such transaction(s), in which event the Members will not be released from their unfunded Capital Commitments until such transactions have been completed.

3.3 Capital Contributions.

3.3.1 Each Member shall make Capital Contributions when and as called by the Manager upon at least five (5) Business Days' prior written notice to the Members (a "**Capital Call Notice**"). The amount of cash required to be contributed by each Member shall be equal to the total amount of capital called for by the Manager, multiplied by a fraction, the numerator of which shall be the amount of such Member's Capital Commitment and the denominator of which shall be the aggregate amount of all Members' Capital Commitments.

3.3.2 All Capital Contributions shall be made in immediately available funds in US dollars by 12:00 noon (Eastern Standard time) on the date specified in the applicable Capital Call Notice. Notwithstanding the foregoing, if the actual Capital Contribution amount of a Member changes after the delivery of a Capital Call Notice for any reason, the Manager shall issue a revised Capital Call Notice to the Members, and in such event the Capital Contributions required by such revised Capital Call Notice shall be made by 12:00 noon (Eastern Standard time) on the date specified in such revised Capital Call Notice.

3.3.3 Any capital called from the Members that is not used to acquire investments or pay Fund expenses shall be promptly returned to the Members, provided that the Manager may, in its sole discretion, hold back up to 5% of any such unused capital for up to ninety (90) days to fund investments, pay expenses of the Fund and/or for other use of capital incident to the operation of the Fund (any such amount held back, a "**Capital Reserve**").

3.3.4 Except as otherwise specifically provided herein, nothing in this Agreement shall operate to increase any Member's Capital Commitment and no Member shall have any obligation to contribute any amounts in excess of such Member's Capital Commitment to the Fund.

3.3.5 The Manager shall not be personally liable for the return or repayment of all or any portion of the capital (or appreciation thereof) of any Member, it being expressly agreed that any such return of capital or appreciation made pursuant to this Agreement shall be made solely from the assets of the Fund, without any right of contribution from the Manager.

3.4 Default by Members.

3.4.1 Upon the failure of a Member (a "**Defaulting Member**") to make all or any portion of its required Capital Contribution in accordance with Section 3.3 (the "**Default Amount**"), which failure is not cured within five (5) Business Days following notice from the Manager to the Defaulting Member of such failure (such occurrence, a "**Default**"), the Manager may in its sole discretion take one or more of the following actions:

- (i) cause any non-defaulting Member (each, a "**Non-Defaulting Member**") to advance the Default Amount on behalf of the Defaulting Member (provided that in no event shall the Manager cause any Non-Defaulting Member to make any such advance to a Defaulting Member if such advance would cause such Non-Defaulting Member to contribute capital to the Fund in excess of such Non-Defaulting Member's Capital Commitment), in which event (x) the amount so advanced shall be treated as a loan from such Non-Defaulting Member to the Defaulting Member, payable on demand and bearing interest at a rate equal to the lesser of (A) 12% per annum and (B) the highest rate allowable under applicable law, from the date the Default Amount was due, plus expenses of collection (including attorneys' fees), (y) any such loan shall be secured by the Capital Commitment of the Defaulting Member and the Defaulting Member's

Interest, and (z) the Fund shall withhold all distributions that would otherwise be made to the Defaulting Member under this Agreement and pay such withheld amounts to such Non-Defaulting Member to offset the amount owed by the Defaulting Member to such Non-Defaulting Member under this clause (i);

(ii) withhold all distributions (or portions thereof) that would otherwise be made to the Defaulting Member under this Agreement and apply such withheld distributions to offset the Defaulted Amount or other amounts owed by the Defaulting Member to the Fund;

(iii) offer all or any portion of the Defaulting Member's Interest to the Non-Defaulting Members or any other Person (including the Manager and its Affiliates), at such price and on such terms as the Manager deems appropriate, in its sole discretion, in which event the proceeds of the sale shall first be applied to the payment of the expenses of the sale, next to the payment of the amounts owed by such Defaulting Member to the Fund and/or any Non-Defaulting Member (including, but not limited to, amounts owed to any Non-Defaulting Member pursuant to clause (i) above), and the balance, if any, shall be remitted to the Defaulting Member; provided, however, that if a shortfall exists between (x) the amount of the proceeds from any such sale and (y) an amount equal to the difference between (A) such Defaulting Member's Capital Commitment and (B) such Defaulting Member's Adjusted Capital Contribution, the Defaulting Member shall remain liable for such shortfall;

(iv) declare the Defaulting Member's entire unfunded Capital Commitment to be immediately due and payable;

(v) suspend all investment participation and other rights of the Defaulting Member;

(vi) cause a complete or partial forfeiture of the Defaulting Member's Interest; and/or

(vii) pursue and enforce all other rights and remedies which the Fund may have against the Defaulting Member at law or in equity.

3.4.2 Any Non-Defaulting Member or other Person acquiring a portion of the Defaulting Member's Interest shall assume the portion of the Defaulting Member's obligation to make both defaulted and future Capital Contributions pursuant to such Defaulting Member's Capital Commitment applicable to that portion of the Defaulting Member's Interest being acquired.

3.4.3 No right, power or remedy available to the Manager in this Section 3.4 shall be exclusive, and each such right, power or remedy shall be cumulative and in addition to any other right, power or remedy available at law or in equity. No course of dealing between the Manager or the Fund and any Defaulting Member, and no delay in exercising any right, power or remedy, shall operate as a waiver or otherwise prejudice the exercise of such right, power or remedy.

3.4.4 Each Member hereby consents to the application of the remedies provided in this Section 3.4 in recognition, in addition to actual damages suffered by the Fund or the other Members as the result of a Default by such Member, that the Fund may have no adequate remedy

at law for a Default by a Member and that damages resulting from such Default may be impossible to ascertain at the time of such Default.

3.4.5 Notwithstanding anything to the contrary in this Agreement, the Manager may, but shall not be obligated to, waive any Default, permit a Default to be cured by a Defaulting Member or advance funds on behalf of a Defaulting Member without interest, on such terms and conditions as the Manager deems appropriate in its sole discretion.

3.5 Capital Accounts. A separate Capital Account shall be maintained for each Member on the books of the Fund and shall be adjusted from time to time pursuant to the terms of this Agreement.

3.6 Return of Capital Contributions. No Member shall be entitled to receive any interest on its Capital Contributions except as specifically provided herein. The Members shall not have the right to demand return of their Capital Contributions, nor shall the Members have the right to demand and receive property other than cash in return for their Capital Contributions.

4. DISTRIBUTIONS

4.1 Distributions Generally. Subject to the other provisions of this **Article IV**, the Manager shall cause the Fund to distribute to the Members any Distributable Proceeds received by the Fund within five (5) Business Days after the Fund's receipt thereof.

4.2 Distributions of Distributable Proceeds.

4.2.1 Any distribution of Distributable Proceeds pursuant to Section 4.1 shall be made as follows:

(i) first, Distributable Proceeds shall be divided among all Members pro rata based on their respective Percentage Interests;

(ii) second, the Distributable Proceeds apportioned to the Affiliated Members pursuant to clause (i) above shall be distributed to such Persons, and the Distributable Proceeds apportioned to each Unaffiliated Member pursuant to clause (i) above (the "**Reapportionable Proceeds**") shall be distributed between such Unaffiliated Member and the Manager as follows:

(a) first, 100% to such Unaffiliated Member, until such Unaffiliated Member's Adjusted Capital Contribution is reduced to zero (0) by distributions made to such Unaffiliated Member pursuant to this clause (a) on or prior to such distribution date and unused capital returned to such Unaffiliated Member pursuant to Section 3.3.3 on or prior to such distribution date;

(b) second, 100% to such Unaffiliated Member, until such Unaffiliated Member's Unpaid Preferred Return is reduced to zero (0);

(c) third:

(I) until the sum of the remaining Reapportionable Proceeds and the cumulative amount of all distributions made to such Unaffiliated Member pursuant to this clause (c)(I) is equal to the Hurdle Amount

applicable to such Member determined as of such distribution date, 100% to the Unaffiliated Member;

(II) next, 100% to the Manager until the Manager has been distributed pursuant to this clause (c)(II) an amount equal to 25% of the aggregate amounts distributed pursuant to clause (c)(I) above and this clause (c)(II); and

(III) thereafter, 75% to such Unaffiliated Member and 25% to the Manager (the aggregate amount distributable to the Manager pursuant to clause c(II) above and this clause (c)(III), the “**Carried Interest**”).

4.2.2 For the avoidance of doubt, with respect to any distribution made by the Fund prior to the one (1) year anniversary of the Closing Date, the Carried Interest calculation shall be made (in accordance with Section 4.2.1) as a percentage of the total dollar amount of the portion of Reapportionable Proceeds for such period that represents net investment profits (and not as a percentage of annualized net investment return for such period).

4.2.3 Notwithstanding anything to the contrary in this Agreement, the Manager may, in its sole discretion, reduce, waive or rebate the Carried Interest with respect to any Member, including, without limitation, Affiliated Members, in each case without entitling any other Member to the same or similar reduction, waiver or rebate, and shall not be required to obtain the consent or approval of, or give notice to, any Member in connection therewith.

4.3 Tax Distributions. Notwithstanding the provisions of Section 4.2.1, prior to any distribution being made pursuant to Section 4.2.1, the Manager may cause the Fund to distribute to the Manager an amount equal to the sum of any taxable income of the Fund allocable to the Manager with respect to the applicable Fiscal Year on account of its entitlement to the Carried Interest, after taking into account all tax losses allocable to the Manager with respect to any Fiscal Year (to the extent that such tax losses have not previously been applied against taxable income allocable to the Manager with respect to such Fiscal Year or any prior Fiscal Year), multiplied by an assumed tax rate equal to (i) the highest combined marginal federal, state and local tax rate applicable to individuals residing in New York, New York, and (ii) to the extent applicable, the highest rates of tax imposed in respect of any self-employment and Medicare contribution tax, taking into account (A) taxable income classified for tax purposes as ordinary income and (B) taxable income classified for tax purposes as net long term capital gains (calculated in accordance with the Code). Distributions to the Manager pursuant to this Section 4.3 shall only be made to the extent that the Manager would not receive, for the applicable Fiscal Year, distributions pursuant to Section 4.2.1(c) in an amount equal to the amount described in this Section 4.3. Any amount distributed to the Manager pursuant to this Section 4.3 shall be treated as an advance against future Carried Interest distributions.

4.4 Limitations on Distributions. Notwithstanding anything to the contrary contained herein, no distribution pursuant to this Agreement shall be made if the Manager determines, based on the opinion of reputable outside legal counsel, that such distribution would violate the LLC Law or any applicable law. The Manager’s good faith determination of the restrictions and limitations set forth in the preceding sentence shall be final and conclusive as to all Members. If a distribution is suspended or delayed pursuant to this Section 4.4, then all amounts so retained by the Fund shall continue to be subject to all the liabilities of the Fund and such distribution shall be made promptly after the Manager reasonably determines that such payment restrictions and limitations are no longer in effect.

4.5 Withholding Taxes. The Fund shall comply with withholding requirements under any applicable law (including under FATCA) and shall remit amounts withheld to and file required forms with the applicable jurisdictions. If requested by the Manager, each Member shall deliver to the Manager: (i) an affidavit in form satisfactory to the Manager that the applicable Member is not subject to withholding under the provisions of any U.S. federal (including under FATCA), state, local, foreign or other law; (ii) any certificate that the Manager may reasonably request with respect to any such laws; and/or (iii) any other form or instrument reasonably requested by the Manager relating to any Member's status under AEOL. In the event that a Member fails or is unable to deliver to the Manager an affidavit described in clause (i) of this Section 4.5, the Manager will withhold amounts from such Member in accordance with the remainder of this provision. To the extent the Fund is required to withhold and pay over any amounts (including under FATCA) to any authority with respect to distributions or allocations to any Member, the amount withheld shall be treated as a distribution in the amount of the withholding to that Member. In the event of any claimed over-withholding, Members shall be limited to an action against the applicable jurisdiction. If the amount withheld was not withheld from actual distributions, the Fund may, at its option, (A) require the Member to reimburse the Fund for such withholding or (B) reduce any subsequent distributions by the amount of such withholding. Each Member shall indemnify the Manager and the Fund against any losses and liabilities (including interest and penalties) related to any withholding obligations with respect to allocations or distributions made to it by the Fund (unless such loss or liability resulted from the bad faith of the Manager) and any taxes imposed on the Fund due to such Member's non-compliance with AEOL. The provisions contained in this Section 4.5 shall survive the dissolution of the Fund, the withdrawal of any Member or the transfer or assignment of any Member's Interest.

4.6 Liability for Certain Taxes. If the Fund is subject to any tax, interest and penalties under Section 6225 of the BBA Audit Rules ("**Tax Liabilities**"), the Manager shall allocate among the Members any such Tax Liability in a manner it determines to be fair and equitable by deducting amounts from Capital Accounts or reducing amounts otherwise distributable to the Members, taking into account any modifications attributable to a Member pursuant to Section 6225(c) of the BBA Audit Rules (if applicable). To the extent that the Manager cannot allocate such Tax Liabilities through adjustments to Capital Accounts or distributions to the Members and to the extent that a portion of the Tax Liabilities imposed under Section 6225 of the BBA Audit Rules for a prior year relates to a former Member, the Members and former Members shall indemnify and hold harmless the Fund for their respective share of such amounts as determined by the Manager in accordance with the foregoing. Each Member acknowledges that, notwithstanding the transfer or withdrawal of all or any portion of its Interest, it may remain liable for Tax Liabilities with respect to its allocable share of income and gain of the Fund for the taxable years (or portions thereof) prior to such transfer or withdrawal, as applicable, under Section 6225 of the BBA Audit Rules.

5. ALLOCATIONS OF PROFITS AND LOSSES

5.1 Allocation of Profits and Losses. After giving effect to the allocations set forth in Section 5.2, items of Fund income, gain, loss, expense or deduction for any Fiscal Year or other allocation period shall be allocated to the Capital Accounts of the Members in such a manner that, as of the end of such Fiscal Year or other allocation period, the sum of (a) the Capital Account of each Member, (b) such Member's share of minimum gain (as determined according to Treasury Regulations Section 1.704-2(g)) and (c) such Member's partner nonrecourse debt minimum gain (as defined in Treasury Regulations Section 1.704-2(i)(3)) shall be equal to the respective net amount, positive or negative, which would be distributed to such Member or for which such Member would be liable to the Fund under this Agreement, determined as if the Fund were to (x) liquidate its assets for an amount equal to their book values determined according to the rules of Treasury Regulations Section 1.704-1(b)(2)(iv)) and (y) distribute the proceeds of liquidation pursuant to Section 11.3(iv) as of the end of such Fiscal Year or other allocation period. Any decision regarding allocations to the Capital Accounts of the Members shall be

made by the Manager in its reasonable discretion, taking into account such facts and circumstances as the Manager deems relevant for such allocation.

V: 5.2 Regulatory Allocation Provisions. Notwithstanding any other provision of this **Article**

5.2.1 If there is a net decrease in “partnership minimum gain” or “partner nonrecourse debt minimum gain” (determined in accordance with the principles of Treasury Regulations Sections 1.704-2(d) and 1.704-2(i)) during any Fiscal Year, each Member shall be specially allocated items of Fund income and gain for such Fiscal Year (and, if necessary, subsequent years) in an amount equal to its respective share of such net decrease during such year, determined pursuant to Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f). This Section 5.2.1 is intended to comply with the minimum gain chargeback requirement in such Treasury Regulations Section and shall be interpreted consistently therewith, including that no chargeback shall be required to the extent of the exceptions provided in Treasury Regulations Sections 1.704-2(f) and 1.704-2(i)(4).

5.2.2 If any Member has an Adjusted Capital Account Deficit at the end of any Fiscal Year, items of Fund income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account deficit of such Member as promptly as possible; provided that an allocation pursuant to this Section 5.2.2 shall be made only if and to the extent that a Member would have an Adjusted Capital Account Deficit in excess of such sum after all other allocations provided for in this Article V have been tentatively made as if this Section 5.2.2 were not in this Agreement. This Section 5.2.2 is intended to comply with the “qualified income offset” requirement of Section 704(b) of the Code.

5.2.3 Nonrecourse deductions for any Fiscal Year shall be allocated to the applicable Member by the Manager in its reasonable discretion.

5.2.4 Any partner nonrecourse deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the partner nonrecourse debt to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

5.2.5 Any special allocations pursuant to this Section 5.2 shall be taken into account in computing subsequent allocations pursuant to Section 5.1 and this Section 5.2 so that the net amount of any items so allocated and all other items allocated to each Member shall, to the extent possible, be equal to the net amount that would have been allocated to each Member if such allocations had not occurred.

5.2.6 Except to the extent otherwise required by the Code and Treasury Regulations, if an Interest in the Fund or part thereof is transferred in any Fiscal Year, the items of income, gain, loss, deduction and credit allocable to such Interest for such Fiscal Year shall be allocated to the Person who held such Interest on the date such items were realized or incurred by the Fund, using any method selected by the Manager. The Manager may, in its reasonable discretion, make the election provided for in Section 754 of the Code upon the request of the transferor, provided that such transferor timely furnishes the Manager with all required information necessary to make and/or properly reflect said election.

6. FEES AND EXPENSES

6.1 Expenses.

6.1.1 The Fund shall pay all expenses incurred in connection with the organization of the Fund (and any Investment Vehicle) and the offering of the Interests, up to an aggregate amount of \$125,000, provided that such limit may be increased or waived with the consent of a Majority-in-Interest of the Members. Any organization and offering expenses in excess of such cap shall be borne by the Manager. These organizational and offering expenses include, without limitation, formation costs, offering expenses, expenses associated with preparation of this Agreement, the Confidential Offering Memorandum and other Fund-related documents (but excluding all expenses associated with the negotiation of any Fund-related documents or side letters with investors), legal, accounting, filing, printing, travel, capital raising, government filing, regulatory compliance and other organizational expenses ordinarily associated with the organization of an investment vehicle such as the Fund.

6.1.2 The Fund shall pay all of its (and any Investment Vehicle's) ordinary and extraordinary operating expenses, including (i) any interest, fees, and costs of Fund-related borrowings; (ii) operational costs ordinarily associated with the operation of an investment vehicle such as the Fund, such as legal, accounting, bookkeeping, auditing, consulting and other professional expenses, administration and tax preparation expenses, all taxes (if any), costs and expenses related to regulatory compliance matters, and fees payable to governments or agencies (including, without limitation, annual Cayman Islands registration and registered office fees); (iii) its pro rata portion of any insurance costs, including directors and officers insurance and errors and omissions insurance; (iv) expenses incurred in connection with the collection of monies owed to the Fund; (v) the costs of any reporting to investors and meetings with investors; (vi) the cost of maintaining the Fund's books and records; (vii) expenses incurred in connection with the dissolution, liquidation, and termination of the Fund; (viii) expenses of any administrative proceedings undertaken by the Manager in its capacity as the Fund's "partnership representative"; (ix) the Fund's pro rata portion of any regulatory and compliance costs incurred by the Manager related to the Fund, including, but not limited to, preparation and filing of the SEC Form ADV and the preparation and/or submission of other required regulatory filings; and (x) extraordinary expenses, such as litigation and indemnification expenses (including any judgments or settlements paid in connection therewith) involving the Fund or any of its investments, if any.

6.1.3 The Fund shall pay all of its (and any Investment Vehicle's) investment-related expenses, meaning all costs and expenses incurred in connection with the execution of the Fund's investment strategy and the acquisition, holding and Disposition of the Fund's investments, including, but not limited to, legal expenses (including costs associated with the preparation and conduct of litigation proceedings related to the implementation of the Fund's investment strategy), tender fees, custodian fees, and investment-related travel expenses (e.g., meeting with representatives of the financial guarantors of the Bonds in person to negotiate a settlement).

6.1.4 All expenses of the Fund noted above incurred by the Manager in connection with the exercise of its duties to the Fund shall be paid or reimbursed by the Fund, subject to the cap set forth in Section 6.1.1. Such expenses may be advanced by the Manager, in which event the Fund shall reimburse or otherwise compensate the Manager for these expenses over such period as the Manager shall determine in its sole discretion.

7. MANAGEMENT

7.1 Management of Fund Business. The Fund shall be managed, and the conduct of the Fund's business shall be controlled and conducted solely by, a manager (the "**Manager**") appointed in accordance with this Agreement. The initial Manager shall be ESM Management LLC. The Manager may admit additional Managers of the Fund or successor Manager(s) of the Fund, which additional or successor Manager(s) may be Affiliates of ESM Management LLC or, with the consent of a Majority-in-Interest of the Members, may be unaffiliated third parties. The Manager shall be required to devote to the conduct of the business of the Fund such time and attention as it determines in its reasonable discretion to be necessary to accomplish the purposes and to conduct the business of the Fund. Notwithstanding the foregoing, the Manager shall not be precluded from engaging in other activities or business ventures of any kind. Except to the extent required by nonwaivable provisions of any applicable laws, the Members acknowledge and agree that (i) the Manager shall have no duties (including, but not limited to, any fiduciary duties) to the Fund and/or any Members other than those duties expressly described herein and the Manager's implied contractual covenant of good faith and fair dealing, and (ii) so long as the Manager acts in a manner consistent with the implied contractual covenant of good faith and fair dealing and with the express provisions of this Agreement, the Manager shall not be in breach of any duties (including fiduciary duties) in respect of the Fund and/or any Member otherwise applicable at law or in equity. The provisions of this Agreement, to the extent that they expand, restrict or eliminate the duties and liabilities of the Manager otherwise existing at law or in equity, are agreed by the Members to replace fully and completely such other duties and liabilities of the Manager. Subject to the foregoing but notwithstanding any other provision of this Agreement to the contrary or other applicable provision at law or in equity, whenever in this Agreement the Manager is permitted or required to make a decision or take an action (i) in its discretion or under a similar grant of authority or latitude, in making such decision or taking such action, the Manager shall be entitled to take into account its own interests and the interests of its Affiliates, as well as the interests of the Members as a whole, or (ii) in "good faith" or under another expressed standard, the Manager shall act under such express standard and shall not be subject to any other or different standard.

7.2 Removal of Manager. The Manager may only be removed from such position due to the Manager's withdrawal or resignation, or by a Majority-in-Interest of the Members in accordance with the provisions of this Section 7.2. The Manager shall have the authority to withdraw or otherwise resign from the Fund at any time upon providing ninety (90) days' prior written notice to the Fund, and any such resignation by the Manager shall not result in the dissolution of the Fund. A Majority-in-Interest of the Members may remove the Manager as manager of the Fund and appoint a new manager to the Fund (the "**Substitute Manager**") (i) if the Manager engages in any conduct that constitutes Cause or (ii) if a Key Person Event has occurred and is continuing with respect to both Key Persons. In the event that the Manager is so removed, or withdraws or resigns, the Manager shall no longer be entitled to receive any Carried Interest.

7.3 Powers of the Manager.

7.3.1 The Manager shall have all rights and powers of a manager under the LLC Law and shall have and may exercise on behalf of the Fund all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes, business and objectives of the Fund and as permitted under the LLC Law; provided, however, that the Manager may, subject to Section 7.3.2, delegate its administrative, investment or other responsibilities, and the costs and expenses related thereto, to one or more appropriate designees.

7.3.2 Subject to any and all limitations expressly set forth in this Agreement, the Manager shall perform or cause to be performed all administrative, management and operational

functions relating to the business of the Fund that are necessary or advisable to carry out the purposes of this Agreement. Without limiting the generality of the foregoing, the Manager or such other Person as the Manager may employ or retain, subject to such limitations, is expressly authorized on behalf of the Fund to:

(i) expend the capital and revenues of the Fund in furtherance of the purpose of the Fund as set forth in Section 1.3;

(ii) open, maintain, conduct and close, in the name of the Fund, investment and trading accounts, bank accounts, and to draw checks or other orders for the payment of money;

(iii) make, execute, acknowledge and deliver such agreements, contracts and documents as may be necessary or appropriate to carry out the investment program of the Fund;

(iv) borrow money to acquire investments, and pledge assets of the Fund in support of any financing;

(v) make, or designate and appoint other Persons to make, directly or indirectly, all or any portion of the trading and investment decisions of the Fund, including Affiliates of the Manager, for the purposes set forth in this Agreement; provided that any delegation of investment authority shall require the consent of a Majority-in-Interest of the Members;

(vi) enter into agreements and contracts with third parties, terminate such agreements, and institute, defend and settle litigation arising therefrom, and give receipts, releases and discharges with respect to all of the foregoing and any matters incidental thereto;

(vii) purchase and maintain insurance, at the cost and expense of the Fund, on behalf of any one or more Person(s) against any liability that may be asserted against or expenses that may be incurred by such Person(s) in connection with the activities of the Fund, regardless of whether the Fund would have the power to indemnify any such Person(s) against such liability under the provisions of this Agreement;

(viii) maintain adequate records and accounts of all operations and expenditures and furnish the Members with the reports required hereunder;

(ix) take and hold all property of the Fund, real, personal and mixed, in the name of the Fund, or in the name of a nominee authorized by the Manager;

(x) enter into one or more customer agreements with one or more U.S. or non-U.S. dealers or brokers (including dealers or brokers that are Affiliates of the Manager) ("**Brokers**");

(xi) execute for and on behalf of the Fund any filing, notice, form or other document under any applicable securities law and take any additional action as it shall deem necessary or desirable to effectuate the offering of Interests;

(xii) sell, lease, exchange or otherwise dispose all or any portion of the property of the Fund;

(xiii) employ or engage advisors, consultants, experts, professionals, accountants, administrators, valuation agents, auditors, attorneys, Brokers, banks and other financial institutions, engineers, custodians, escrow agents, selling and placement agents and/or any other third parties, including Affiliates of the Manager, deemed necessary by the Manager, and terminate such employment or engagement;

(xiv) pay, extend, renew, modify, adjust, submit to arbitration, prosecute, defend or compromise, upon such terms as it may determine and upon such evidence as it may deem sufficient, any obligation, suit, liability, cause of action or claim, including taxes, either in favor of or against the Fund;

(xv) pay any and all fees and make any and all expenditures that it, in its reasonable discretion, deems necessary or appropriate in connection with the organization of the Fund, the offering and sale of the Interests, the management of the affairs of the Fund or, the investment and maintenance of the assets of the Fund and the carrying out of its obligations and responsibilities under this Agreement;

(xvi) pay any and all reasonable fees and make any and all reasonable expenditures to an affiliated entity that it, in its reasonable discretion, deems necessary or appropriate in connection with the administration of the Fund;

(xvii) admit a Transferee or other recipient of a Member's Interest to be a Substituted Member pursuant to and subject to the terms of Article X, without the consent of any Member;

(xviii) determine the accounting methods and conventions to be used in the preparation of the Fund's tax returns, and make such elections under the tax laws of the United States, the several states and other relevant jurisdictions as to the treatment of items of income, gain, loss, deduction and credit of the Fund, or any other method or procedure related to the preparation of such returns;

(xix) be designated and act as the "tax matters partner" or "partnership representative," as applicable, of the Fund under the Code, to which designation each Member hereby consents as an express condition of being admitted to the Fund, and, in such capacity, participate in an audit of the Fund's return of income and consent to assessments by the auditing agent that may be adverse to the Members or the Fund, and, in connection therewith, negotiate, settle and make agreements and adjustments with respect to the tax returns of the Fund binding upon the Members;

(xx) make (and if made, revoke) such elections as it may deem appropriate under any provision of the Code, including without limitation an election under Section 6226 of the BBA Audit Rules. Each of the Members shall, upon request, supply the information necessary to properly give effect to such election or necessary for any other tax purpose;

(xxi) subject to Section 7.5, prior to the termination of the Fund, form a new limited partnership, limited liability company or other entity the investment policies of which are substantially the same as those of the Fund;

(xxii) pay or authorize the payment of distributions to the Members;

(xxiii) prosecute, defend, settle or compromise actions or claims at law or in equity at the expense of the Fund as may be necessary or proper to enforce or protect the interests of the Fund, and satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, and then, out of the Fund's; and

(xxiv) make, execute, sign, acknowledge, swear to, record and file (i) this Agreement and any amendment to this Agreement, (ii) the Registration Statement and all amendments thereto required or permitted by law or the provisions of this Agreement, (iii) all certificates and other instruments deemed advisable by the Manager to carry out the provisions of this Agreement and applicable law or to permit the Fund to become or to continue as a limited liability company wherein the Members have limited liability in a jurisdiction where the Fund may be doing business, (iv) all instruments that the Manager deems appropriate to reflect a change or modification of this Agreement or the Fund in accordance with this Agreement, including, without limitation, the substitution of Transferees as Substituted Members pursuant to Section 10.3 and amendments to this Agreement, (v) all conveyances and other instruments or papers deemed advisable by the Manager to effect the winding up and dissolution of the Fund, (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Fund, and (vii) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Fund.

The fact that the Manager or one or more of the Members has a direct or indirect interest in or is connected, directly or indirectly, with any Person with which the Fund may have dealings, including, but not limited to, any Person that renders investment advisory, brokerage, custodial, share transfer or related services, shall not preclude such dealings or make them void or voidable, and neither the Fund nor any of the Members shall have any rights in or to such dealings or any profits derived therefrom.

7.4 Other Businesses. Subject to Section 7.5, the Manager and any Member, or any stockholder, officer, director, member, manager, partner, Affiliate or agent of the Manager or any Member, may engage in or possess any interest in other business ventures of any kind, nature or description, independently or with others, including but not limited to investments in, and financing, acquiring and disposing of, financial instruments, providing investment advisory or asset management services, investments and management counseling, brokerage services, or serving as officers, directors, advisors or agents of other companies, whether such ventures are competitive with the Fund or otherwise, and neither the Fund nor the Members shall have any rights or obligations by virtue of this Agreement or the relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom. The Manager and its Affiliates may also give advice or take action with respect to its own account or any other third party that may differ from or be opposite from advice given or the timing or nature of action taken with respect the Fund.

7.5 Exclusivity. Notwithstanding anything to the contrary contained herein, until such time when the Manager determines to dissolve the Fund, any investment opportunity to acquire the Bonds that is presented to or originated by the Manager and its Affiliates shall be offered solely to the Fund, except for any Bonds currently held by the ESM Fund and any follow-on investment related to such holdings (i.e., any additional investment by the ESM Fund in the same class and series of the Bonds currently held by the ESM Fund).

7.6 Liability and Indemnification.

7.6.1 Neither the Manager nor any of its Affiliates, nor any of its or their respective principals, managers, members, partners, officers, directors, employees, equity holders, agents or other applicable representatives (collectively, the “**Manager Parties**”) shall be liable, responsible or accountable in damages or otherwise (including for any loss due to the action or inaction of any Person retained by the Fund) to the Fund or any Member, or any of their respective Affiliates, principals, managers, members, officers, directors, employees, equity holders, agents or other applicable representatives or any of their respective successors, assignees or transferees, or to third parties for any act or omission performed or omitted by them on behalf of the Fund and in a manner reasonably believed by them to be within the scope of the authority granted to them by this Agreement except when such action or failure to act is found by a court of competent jurisdiction to have been the result of such Manager Party’s fraud, gross negligence (as such term is construed under the laws of the State of Delaware), willful misconduct or material breach of this Agreement in the performance or non-performance of its duties to the Fund. The Manager Parties may consult with counsel and accountants in respect of the Fund’s affairs and be fully protected and justified in any action or inaction which is taken in good faith and in accordance with the information, reports, statements, advice or opinion provided by such Persons. Notwithstanding the foregoing, nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which the Members may have under any applicable securities laws, ERISA or the LLC Law.

7.6.2 Subject to Section 7.6.3, the Fund shall indemnify, defend and hold harmless each Manager Party from and against any and all losses, damages, obligations, penalties, claims, actions, suits, judgments, settlements, liabilities, costs, and expenses (including, without limitation, reasonable attorneys’ and accountants’ fees, as well as other costs and expenses incurred in connection with the defense of any actual or threatened action or proceeding) and amounts paid in settlement of any claims (collectively, “**Damages**”) suffered or sustained by such Manager Party as a result of or in connection with any act or omission by such Manager Party under this Agreement or otherwise on behalf of the Fund; provided, however, that such indemnity shall be payable only if such Manager Party in good faith acted or failed to act in a manner it reasonably believed to be in, or not opposed to, the best interests of the Fund (as determined by the Manager), and such Damages were not found by a court of competent jurisdiction to have been the result of such Manager Party’s fraud, gross negligence (as such term is construed under the laws of the State of Delaware), willful misconduct or material breach of this Agreement in the performance or non-performance of its duties to the Fund, and in the case of criminal proceedings, that such Manager Party had no reasonable cause to believe was unlawful. The Manager may, in its sole discretion, cause the Fund to advance to any Person entitled to indemnification hereunder reasonable attorney’s fees and other costs and expenses incurred in connection with the defense of any action or proceeding which arises out of such conduct, provided that all such advances will be promptly repaid if it is subsequently determined that the Person receiving such advance was not entitled to indemnification hereunder. Any indemnity under this Section 7.6.2 shall be paid from, and only to the extent of, the Fund’s assets, and no Member shall have any personal liability on account thereof.

7.6.3 Notwithstanding anything to the contrary contained herein, (i) no Manager Party shall be entitled to any indemnification or advance from the Fund in connection with any dispute between such Manager Party and another Manager Party, and (ii) if a Manager Party is insured by an insurer under any insurance policy obtained by the Fund pursuant to Section 7.3.2(vii) of this Agreement for any liabilities, expenses or other losses as to which such Manager Party also would be entitled to be indemnified by the Fund pursuant to the foregoing provisions of this

Section 7.6, such Manager Party shall first use commercially reasonable efforts to pursue its rights or remedies with respect to indemnification, advancement or insurance provided by such insurer before the Fund is required to make any indemnification payment or advance to such Manager Party, and the amount of any indemnification to which such Manager Party is entitled under Section 7.6.2 shall be reduced by the amount of any such insurance proceeds actually received and entitled to be retained by such Manager Party, to the extent that such proceeds or payment are on account of the same matter, transaction or state of affairs in respect of which such indemnification relates.

7.6.4 All rights to indemnification permitted in this Agreement and payment of associated expenses shall not be affected by the termination and dissolution of the Fund or the removal, resignation, withdrawal, insolvency, bankruptcy, termination, or dissolution of the Manager.

7.7 Determination by the Manager of Certain Matters. Notwithstanding any provisions to the contrary in this Agreement, all matters concerning the valuation of the Fund's investments, the allocation of profits and losses among the Members (including the taxes thereon) and accounting procedures shall be determined by the Manager or its designee, in its reasonable discretion, the determination of which shall be final and conclusive as to all the Members. In addition to the foregoing, the Manager shall be authorized, without the need to obtain the consent of the Members, to make such allocations of tax items of the Fund, and such adjustments to the Members' Capital Accounts, as the Manager deems necessary or desirable to enable the Fund's allocations and maintenance of capital accounts for the Members pursuant to this Agreement to comply with the provisions of Section 704(b) and Section 704(c) of the Code and any Treasury Regulations promulgated thereunder. The Manager shall be entitled to consult with, and rely upon the advice of, the Fund's accountants, administrators (if any), agents or attorneys with respect to the matters referred to in this Section 7.7 and shall incur no liability in connection with any such allocations or adjustments made in reliance thereon. In addition, no such allocations or adjustments shall give rise to any claim or cause of action by any Member. In the event of any inconsistency between the provisions of this Section 7.7 and any other provision hereof, the provisions of this Section 7.7 shall control.

7.8 Conflicts Derived by Dual Status of the Manager. In the event of any inconsistency or conflict between the rights and obligations of the Manager as a manager and as a Member under this Agreement, the rights and obligations of the Manager as a manager shall control.

8. RIGHTS AND OBLIGATIONS OF THE MEMBERS

8.1 Limitations on the Members. No Member shall: (i) be permitted to take part in the management or control of the business or affairs of the Fund, (ii) have any voice in the management or operation of any property, (iii) except as provided in Section 7.2, have the power to remove the Manager, (iv) except as provided in Section 11.1, have the power to influence the management of the Fund, whether by voting or approval rights or by changing or altering any Section of this Agreement, including this Section 8.1 or Section 12.1, by vote, consent or otherwise, or (v) have the authority or power in its capacity as a Member to act as agent for or on behalf of the Fund, or any other Member, to do any act which would be binding on the Fund, or any other Member, or to incur any expenditures on behalf of or with respect to the Fund.

8.2 Liability of the Members. The liability of each Member for the losses, debts and obligations of the Fund shall be limited to such Member's Capital Contributions to, any unfunded Capital Commitment with respect to, and share of any undistributed assets of, the Fund, except to the extent

required by this Agreement or applicable law. The foregoing notwithstanding, the Members shall each be liable for the return to the Fund of any amounts that were distributed to such Member in error.

8.3 Consents. If the consent of any Member to any action of the Fund, the Manager or any Member, as contemplated by this Agreement (including, but not limited to, any consent contemplated by Section 12.1), is solicited by the Manager, the consent of each Member so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation, unless such Member deliver to the Fund its express written objection to the consent within twenty (20) calendar days after such Member's receipt of the notice of solicitation. The Manager and all Persons dealing with the Fund shall be entitled to act in reliance on any consent which is deemed granted pursuant to this Section 8.3 and shall be fully indemnified by the Fund in so doing.

9. BOOKS, RECORDS AND REPORTS

9.1 Books and Records. The Manager shall cause the Fund to keep complete and accurate books of the accounts with respect to the Fund's operations. The Manager shall permit each Member to inspect the books and records of the Fund for any purpose reasonably related to such Member's interest as a Member at any reasonable time during normal business hours and upon reasonable advanced written notice; provided, however, that the Manager shall have the right to keep confidential from the Members any information that the Fund or the Manager is required by law or agreement with a third party to keep confidential.

9.2 Accounting Basis. The Fiscal Year of the Fund shall begin on the 1st day of January and end on the 31st day of December of each year (the "**Fiscal Year**"); provided, however, that the first Fiscal Year of the Fund shall commence on September ____, 2018 and shall end on December 31, 2018. The Fiscal Year in which the Fund shall dissolve shall begin on January 1 and end on the date of dissolution of the Fund. Fund books shall be kept in accordance with the accounting methods selected by the Manager. Financial reports shall be on an accrual basis and shall be prepared in accordance with U.S. generally accepted accounting principles ("**U.S. GAAP**") with such adjustments deemed necessary or advisable by the Manager. In the sole discretion of the Manager, the books of account and records of the Fund shall be audited as of the end of each Fiscal Year by an independent certified public accountant selected by the Manager.

9.3 Reports.

9.3.1 The Manager shall cause to be provided to each Member each year an annual report containing financial statements prepared by an independent certified public accountant selected by the Manager with respect to the prior Fiscal Year as soon as practicable following the end of the Fiscal Year to which it relates.

9.3.2 In addition, the Manager may cause the Fund to provide to the Members such other information and/or reports as determined by the Manager in its sole discretion.

9.4 Tax Information. As soon as practicable after the close of each Fiscal Year, the Manager shall cause to be delivered to each Member and each other Member who was a Member during such Fiscal Year such information as shall be necessary for preparation of the Member's income tax returns. Each Member agrees to provide the Manager with any information reasonably requested by the Manager in connection with the preparation of the Fund's tax returns.

10. TRANSFERS AND WITHDRAWALS

10.1 Restrictions on Transfers of Interest.

10.1.1 No sale, transfer, pledge, charge, hypothecation, exchange, assignment or other disposal of, and no creation of a derivative or security interest with respect to, any portion of a Member's Interest, whether directly or indirectly (each, a "**Transfer**"), may be made without the prior written consent of the Manager, which consent may be granted or withheld in the sole discretion of the Manager; provided, however, that a Transfer between a Member and its Affiliates shall be permitted without requiring the prior consent of the Manager (but with notice to the Manager). Any act by a Member in violation of this Section 10.1 shall be void ab initio and not be binding upon or recognized by the Fund (regardless of whether the Manager has knowledge thereof), unless approved or consented to in writing by the Manager.

10.1.2 Notwithstanding anything to the contrary contained herein, no Transfer of a Member's Interest shall be made unless the Manager has been satisfied that:

- (i) when added to the total of all other Transfers of Interests within the preceding twelve months, it would not result in the Fund being considered to have terminated for U.S. federal income tax purposes;
- (ii) it would not violate any applicable securities laws including any investor suitability standards applicable to the Fund or the Interest that is the subject of the Transfer;
- (iii) it would not cause the Fund to lose its status as a partnership for U.S. federal income tax purposes; and
- (iv) it would not otherwise adversely affect the status of the Fund under any applicable law.

10.1.3 Each Member Transferring its Interest shall pay all reasonable expenses, including attorneys' fees, incurred by the Fund in connection with such Transfer, if approved as provided herein.

10.1.4 The Transfer of a Member's Interest and the admission of a Substituted Member shall not be cause for dissolution of the Fund.

10.2 Assignees.

10.2.1 The Fund shall not recognize for any purpose any purported Transfer of an Interest of a Member unless all the provisions of this Agreement shall have been complied with and there shall have been filed with the Fund a notification of such Transfer, in form satisfactory to the Manager, executed and acknowledged by both the Member requesting the Transfer (the "**Transferor**") and the other party to the proposed Transfer (the "**Transferee**"), and such notification (i) contains the acceptance by the Transferee of all of the terms and provisions of this Agreement and of the Fund's Subscription Agreement and related documents approved by the Manager, if applicable, and (ii) represents that such Transfer was made in accordance with all applicable laws and regulations. Any Transfer shall be recognized by the Fund as effective only as of such date as shall be designated by the Fund as reasonably convenient for it.

10.2.2 The Transferee of a Member's Interest, unless and until admitted as a Substituted Member in such Member's stead in the sole discretion of the Manager, shall not have any

statutory or other rights of the Transferor under any applicable law or this Agreement, other than the right to receive distributions with respect to the Interest that is the subject of the Transfer. Anything herein to the contrary notwithstanding, both the Fund and the Manager shall be entitled to treat the Transferor as the absolute owner of such Interest in all respects, and shall incur no liability for distributions made in good faith to it, until such time as the requirements of this Article X have been fulfilled.

10.3 Substituted Members.

10.3.1 No Member shall have the right to substitute a Transferee, donee, heir, legatee, distributee or other recipient of such Member's Interest as a Member in its place. Any such Transferee, donee, heir, legatee, distributee or other recipient of an Interest (whether pursuant to a voluntary or involuntary transfer) shall be admitted to the Fund as a "**Substituted Member**" only (i) with the prior written consent of the Manager, which consent may be granted or withheld in the sole discretion of the Manager, (ii) by satisfying the other requirements of this Article X and (iii) upon an amendment to this Agreement recorded in the proper records of each jurisdiction in which such recordation is necessary to qualify the Fund to conduct business or to preserve the limited liability of the Members. Any such consent by the Manager may be evidenced by the execution by the Manager of an amendment to this Agreement evidencing the admission of such Person as a Substituted Member or such other document as may be determined by the Manager. The Members hereby consent and agree to such admission of a Substituted Member by the Manager, and agree that the Manager may, on behalf of each Member and on behalf of the Fund, cause the books and records of the Fund to be updated to appropriately reflect such admission, in the event of such admission.

10.3.2 Each Substituted Member, as a condition to its admission as a Substituted Member, shall execute and acknowledge such instruments, in form and substance satisfactory to the Manager, as the Manager deems necessary or desirable to effectuate such admission and to confirm the agreement of the Substituted Member to be bound by all the terms and provisions of this Agreement. Further, each Member agrees, upon the request of the Manager, to execute such certificates or other documents and perform such acts as the Manager deems appropriate to preserve the limited liability status of the Fund under the laws of any jurisdiction in which the Fund is doing business after the completion of any Transfer of Interest.

10.3.3 Each Member hereby agrees to indemnify the Fund and each other Member against any loss, damage, cost or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any Transfer or proposed Transfer by such Member in violation of this Article X.

10.4 Transfer of Interests by the Manager. To the extent permissible under applicable law, nothing in this Agreement shall be deemed to prevent the merger of the Manager with another corporation, limited liability company, limited partnership or other entity, the reorganization of the Manager into or with any other corporation, limited liability company, limited partnership or other entity, the transfer of all equity interests in, or all or substantially all of the assets of, the Manager, the transfer of the Manager's Interest or the assumption of the rights, duties (including status as the general partner of the Fund) and liabilities of the Manager by, in the case of a merger, reorganization or consolidation, the surviving entity by operation of law or, in the case of a transfer of equity interests in or assets of the Manager or the Manager's Interest, the transferee of such equity interests or assets or Interest. The Manager shall make all filings with the Registrar as may be required in order to effect any Transfer of its Interest in accordance with the provisions of this Agreement.

10.5 Withdrawals.

10.5.1 A Member does not have the right to voluntarily withdraw from the Fund, withdraw any portion of its Capital Account or terminate its Capital Commitment.

10.5.2 At any time, the Manager may require any Member to terminate or reduce its Capital Commitment and withdraw all or a portion of its Interest from the Fund if (i) the Manager reasonably believes that such Member acquired an Interest as a result of a misrepresentation, (ii) such Member is a “benefit plan investor” (within the meaning of the Plan Asset Regulations) and such withdrawal is necessary for the assets of the Fund not to be treated as “plan assets” under ERISA, or (iii) if the Manager reasonably believes that such Member’s ownership of an Interest would cause the Fund, the Manager, such Member or any other Member to be in violation of any applicable laws or regulations. The Member thus designated shall withdraw from the Fund or withdraw that portion of such Member’s Interest specified by the Manager, as the case may be, as of the close of business on such date as is determined by the Manager.

10.5.3 In the event a Member withdraws all or a portion of its Interest from the Fund pursuant to Section 10.5.2, the Fund shall pay such withdrawing Member an amount equal to the Fair Market Value of such Member’s Interest as of the date of such withdrawal with respect to the Interest (or portions thereof being withdrawn). Such amount shall be paid without interest within 120 days after the Manager’s determination to cause such Member to withdraw; provided, however, such payment shall not be made during any time that such payment would cause hardship to the Fund. The Manager shall have sole discretion to make the distribution in respect of the Interest of a withdrawing Member in cash or in kind. The Manager may withhold or delay from distribution (but in no event for longer than one year) any assets the distribution of which would, in the Manager’s reasonable discretion, cause hardship to the Fund or to the issuer of any securities to be distributed in kind. The Fund’s books and records shall be revised to reflect such withdrawal and in the case of a complete withdrawal from the Fund the withdrawing Member shall no longer be considered a Member for purposes of this Agreement.

10.5.4 The Manager may, in its sole discretion, waive or modify any of the requirements and restrictions regarding withdrawals contained in this Agreement with respect to any Member, including, without limitation, Affiliated Members, without having to give any other Member notice of, and without entitling any other Member to, such a waiver or modification.

11. WINDING UP, DISSOLUTION AND LIQUIDATION OF THE FUND

11.1 Winding UP. The Fund shall be wound up upon the happening of any of the following events: (i) the insolvency or bankruptcy of the Fund; (ii) an election by the Manager to terminate the Fund that has been approved by a Majority-in-Interest of the Members; (iii) a termination required by operation of law, (iv) an election by a Majority-in-Interest of the Members to wind up the Fund that is delivered in writing to the Manager within ninety (90) days following the two (2) year anniversary of the date on which the Tender Offer for the Bonds was completed, in the event a Complete Disposition Event has not occurred by such anniversary date; and (v) an election by a Majority-in-Interest of the Members to wind up the Fund that is delivered in writing to the Manager within ninety (90) days following the three month anniversary of the Closing Date, in the event the Fund fails to acquire Bonds with aggregate face value of at least \$50,000,000 during the Tender Offer and in any event by such date.

11.2 Procedure for Dissolution.

11.2.1 In the event of the winding up of the Fund for any reason, the Manager or a liquidator appointed by the Manager (the Manager or such liquidator hereinafter referred to as the “**Liquidator**”) shall commence to wind up the affairs of the Fund and to liquidate the Fund’s assets. The Members shall continue to share all income, losses and distributions of the Fund during the period of liquidation in accordance with Articles IV and V. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of any sale or sales of Fund property pursuant to such liquidation, giving due regard to the activity and condition of the relevant market and general financial and economic conditions.

11.2.2 The Liquidator shall have all of the rights and powers with respect to the assets and liabilities of the Fund in connection with the liquidation and termination of the Fund that the Manager would have with respect to the assets and liabilities of the Fund during the term of the Fund, and the Liquidator is hereby expressly authorized and empowered to execute any and all documents necessary or desirable to effectuate the liquidation and termination of the Fund and the transfer of any of the Fund’s assets.

11.2.3 Notwithstanding the foregoing, a Liquidator which is not the Manager shall not be deemed a Member in this Fund and shall not have any of the economic interests in the Fund of a Member; and such Liquidator shall be compensated for its services to the Fund at normal, customary and competitive rates for its services to the Fund.

11.3 Distributions at Liquidation. The Liquidator shall, as soon as practicable following the event giving rise to the winding up, dissolution and termination of the Fund, wind up the affairs of the Fund and sell and/or distribute the assets of the Fund. The assets of the Fund shall be applied in the following order of priority:

- (i) first, to pay the costs and expenses of the winding up, liquidation and termination of the Fund;
- (ii) second, to creditors of the Fund in the order of priority provided by law;
- (iii) third, to establish Reserves adequate to meet any and all contingent or unforeseen liabilities or obligations of the Fund; provided that at the expiration of such period of time as the Liquidator may deem advisable, the balance of such Reserves remaining after the payment of such contingencies or liabilities shall be distributed as hereinafter provided; and
- (iv) fourth, to the Members and the Manager in the order of priority set forth in Section 4.2; provided, however, that the Liquidator shall have the right to offset against any distribution due to a Member pursuant to this Section 11.3(iv) any outstanding advance distribution under Section 4.3 or Section 4.5.

11.4 Termination. The Fund shall terminate when all property owned by the Fund shall have been disposed of and the assets shall have been distributed as provided in Section 11.3. The Liquidator shall then execute and cause to be filed a notice of dissolution with the Registrar.

12. AMENDMENTS

12.1 Amendments.

12.1.1 Except as provided in Section 12.1.2, amendments to this Agreement may be made only if embodied in an instrument signed by the Manager and Majority-in-Interest of the Members; provided that no amendment to this Agreement that would increase any Member's Capital Commitment, or reduce any Member's share of the Fund's distributions, income, gains or losses, shall be adopted without the prior written consent of such Member.

12.1.2 Notwithstanding anything in this Agreement to the contrary, amendments to this Agreement may be made by the Manager without the consent of any Member if those amendments are (i) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions with respect to matters or questions arising under this Agreement which is not inconsistent with the provisions of this Agreement, (ii) necessary to maintain the Fund's status as a partnership for U.S. federal income tax purposes, (iii) to make a change that does not adversely affect the Members in any material respect, or (iv) as otherwise permitted under this Agreement.

12.2 Amendment of Registration Statement. Upon amendment of this Agreement, the Manager shall amend the Registration Statement to reflect such change if it deems such amendment of the Registration Statement to be necessary or appropriate.

13. FURTHER INSTRUMENTS

Each Member shall execute and deliver to the Manager within five (5) days after receipt of the Manager's request therefor such additional instruments as the Manager deems necessary or appropriate to carry out the terms of this Agreement.

14. REPRESENTATIONS, WARRANTIES, COVENANTS AND UNDERSTANDINGS OF THE MEMBERS

The representations, warranties, covenants, and understandings of each Member, as set forth in a Subscription Agreement and related documents, if any, completed and signed by each Member prior to its admission to the Fund or the making of an additional Capital Contribution, if any, are incorporated herein by reference and made a part hereof as if originally contained herein.

15. BANK HOLDING COMPANY REGULATORY COMPLIANCE

15.1 Non-Voting Interests. The Members acknowledge and agree that the Interests held by the Members do not have voting rights. Notwithstanding the foregoing, to the extent that the Interests held by the Members are deemed to be voting securities for purposes of the BHC Act, that portion of the Interest held by a Member that is, or is an Affiliate of, a bank holding company, as defined in the BHC Act, or is a non-bank subsidiary of such bank holding company, or is otherwise subject to the BHC Act (each, a "**BHC Member**"), or by a group of BHC Members whose Interests are aggregated for BHC Act purposes, in excess of 4.9% of the aggregate Interests held by all Members shall be disregarded for all such voting purposes.

15.2 Withdrawals of Non-Permitted Interests. To the extent that the Interests held by the Members are deemed to be voting securities for purposes of the BHC Act, in the event that a BHC Member (or a group of BHC Members whose Interests are aggregated for BHC Act purposes) acquires an

Interest (or Interests) which would result in such BHC Member (or group of BHC Members) owning an Interest (or Interests) in excess of 24.9% (the “**BHC Limit**”) of all Interests in the aggregate or of any individual class of Interests (those Interests up to the BHC Limit, the “**Permitted Interests**”), then, notwithstanding any other provision of this Agreement to the contrary, the portion of such BHC Member’s (or group of BHC Members’) Interest(s) in excess of the Permitted Interests will be deemed to have been compulsorily withdrawn, effective as of immediately prior to the time the Permitted Interests are exceeded. The Manager shall promptly notify each BHC Member upon becoming aware of any anticipated event which could cause such BHC Member to exceed the BHC Limit.

16. CONFIDENTIALITY

16.1 Confidentiality. Each Member shall, and shall cause its respective directors, officers, partners, members, employees, attorneys, accountants, trustees, consultants, Affiliates and advisors (the “**Representatives**”) who have access to Confidential Information to, keep confidential and not disclose any Confidential Information without the express consent of the Manager unless:

- (i) such disclosure shall be required by applicable law, governmental rule or regulation, court order, administrative or arbitral proceeding or by any regulatory authority having jurisdiction;
- (ii) such disclosure is reasonably required in connection with any tax audit involving the Fund or any Member; or
- (iii) such disclosure is required under the limited liability company agreement or other organizational documents of a Member and the Member takes reasonable steps to cause recipients of the information to abide by the provisions hereof.

Notwithstanding the foregoing, Members and/or Representatives may disclose to any and all Persons, without limitation of any kind, the structure and tax aspects of the transactions described herein and all materials of any kind that are provided to them relating to such structure and tax aspects. Confidential Information may be used by a Member and its Representatives only in connection with Fund matters and in connection with the maintenance of its Interest in the Fund.

16.2 Confidential Information. For purposes of this Agreement, “**Confidential Information**” means this Agreement, any reports or other information sent or otherwise made available by the Fund or the Manager to the Members, and the Confidential Private Placement Memorandum, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Member or its Representatives in violation of Section 16.1), (ii) was available to a Member on a non-confidential basis prior to its disclosure to such Member, or (iii) becomes available to a Member on a non-confidential basis from a third party, provided such third party is not known by such Member to be bound by this Agreement or another confidentiality agreement with the Fund. Nothing in this Article XVI shall be construed to prevent the disclosure of this Agreement, information contained in the books and records of the Fund, or other correspondence or materials by a Member on a confidential basis to professional advisors for the purpose of obtaining professional legal or accounting advice with respect thereto, provided that such Representatives have agreed to be bound by the confidentiality obligations set forth in this Article XVI.

16.3 Disclosure of Confidential Information. In the event that any Member or any Representative of such Member is required to disclose any of the Confidential Information for any of the reasons described in Section 16.1(i), (ii) or (iii), such Member will use commercially reasonable efforts to the extent practicable to provide, in the case of Confidential Information relating to the Fund, to the Fund

or, in the case of Confidential Information relating to another Member, such other Member, with prompt written notice so that the Fund or Member, as the case may be, may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Member will use commercially reasonable efforts, at the request of the Fund and at the Fund's expense, to cooperate with the Fund or Member, as the case may be, in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not sought or obtained, or that the Fund or Member, as the case may be, waives compliance with the provisions of this Article XVI, such Member and its Representatives will furnish only that portion of the Confidential Information which is required and will exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information will be accorded confidential treatment.

17. MISCELLANEOUS

17.1 Notice. Notice to any Member shall be sent to such Member at its address, as such Member shall designate in writing to the Manager. Any notice to the Fund or the Manager shall be sent to the address of the Fund's principal place of business as set forth in Section 1.4 hereto or to such other address as the Manager shall designate in writing to the Members. Each consent, notice, order and other communication required or permitted to be given under this Agreement shall be in writing, shall be effective upon receipt (whether or not such receipt is acknowledged or confirmed by the Member) and shall be delivered personally, by recognized overnight delivery service, by registered or certified mail, return receipt requested, or by e-mail or facsimile transmission with electronic or other confirmation of receipt.

17.2 Governing Law. It is the intention of the Manager and the Members that the laws of the Cayman Islands (excluding the conflicts of law provisions thereof), as the same may be amended from time to time, shall govern the validity of this Agreement, the construction of its terms, interpretation of the rights and duties of the Manager and the Members, and all disputes arising from any of the foregoing.

17.3 Venue; Waiver of Jury Trial.

17.3.1 Each Member and the Manager, on behalf of itself and/or the Fund, hereby (i) agrees that any and all litigation arising out of this Agreement shall be conducted only in courts located in New York, New York, (ii) agrees that such courts shall have the exclusive jurisdiction to hear and decide such matters, (iii) expressly waives any right to a trial by jury in any action or proceeding to enforce or defend any right, power or remedy under or in connection with this Agreement or arising from any relationship existing in connection with this Agreement, and (iv) agrees that any such action shall be tried before a court and not before a jury.

17.3.2 Each Member hereby submits to the personal jurisdiction of such courts described in Sections 17.3.1 and waives any objection such Member may now or hereafter have to venue or that such courts are inconvenient forums.

17.4 Entire Agreement. This Agreement, together with any other agreement referred to herein, shall constitute the entire agreement between the Members, the Manager and the Fund with respect to the subject matter hereof, and shall supersede any prior agreement or understanding, oral or written, relating to the Fund.

17.5 Headings. The headings in this Agreement are inserted for convenience of reference only and shall not be considered part of or affect the interpretation of this Agreement.

17.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators and, subject to Article X, the successors and permitted Transferees of the Members hereto. For purposes of determining the rights of any Member or Transferee or other recipient of an Interest hereunder, the Fund and the Manager may rely on the Fund records as to the identity of the Members and the permitted Transferees and other recipients of Interests, and all Members, Transferees and other recipients of Interests agree that the Fund and the Manager, in determining such rights, shall rely on such records and that Members, Transferees and other recipients of Interests shall be bound by such determinations.

17.7 Legends. If certificates are issued evidencing a Member's Interest, each such certificate shall bear such legends as may be required by applicable laws, or as may be deemed necessary or appropriate by the Manager to reflect restrictions upon transfer contemplated herein.

17.8 Third Party Rights. Any Manager Parties specified in Section 7.6.1 that is not a party to this Agreement may enforce any rights granted to it pursuant to this Agreement in its own right as if it was a party to this Agreement. Except as expressly provided in the immediately preceding sentence, a Person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Law, 2014 (as amended) of the Cayman Islands to enforce any term of this Agreement. Notwithstanding any term of this Agreement, the consent of or notice to any person who is not a party to this Agreement shall not be required for any termination, rescission or agreement to any variation, waiver, assignment, novation, release or settlement under this Agreement at any time.

17.9 AEOI. Each Member agrees to provide to the Fund or its agents, upon request, any documentation or other information regarding the Member and its beneficial owners that the Fund or its agents may require from time to time in connection with the Fund's obligations under, and compliance with, applicable laws and regulations, including, but not limited to AEOI. By executing this Agreement, each Member waives any provision under the laws and regulations of any jurisdiction that would, in the absence of such waiver, prevent or inhibit the Fund's compliance with applicable law as described in this Section 17.9, including, but not limited to, preventing (i) the Member from providing any requested information or documentation, or (ii) the disclosure by the Fund or its agents of the provided information or documentation to applicable governmental or regulatory authorities. Each Member further acknowledges that the Fund and the Manager may take such action as each of them considers necessary in relation to such Member's holding and/or distribution proceeds to ensure that any withholding tax payable by the Fund, and any related costs, interest, penalties and other losses and liabilities suffered by the Fund or the Manager, any other investor, or any agent, delegate, employee, director, officer, member, manager or affiliate of any of the foregoing persons, arising from such Member's failure to provide any requested documentation or other information to the Fund or the Manager, is economically borne by such Member.

17.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

17.11 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Fund.

17.12 Severability. In the event that any provision of this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions of this Agreement, it being hereby agreed that such provisions are severable and that this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

17.13 Context. In this Agreement, unless there is something in the subject or context inconsistent with such construction, (i) words importing the singular only shall include the plural, words importing the masculine gender only shall include the feminine gender and the neuter, words importing individuals only shall include entities, whether companies or associations or bodies of persons, whether corporate or not, and words importing entities only shall include individuals, and (ii) all references to Sections are to Sections of this Agreement.

**[Remainder of Page Intentionally Left Blank.
Signature Page Follows.]**

IN WITNESS WHEREOF, the Manager and the Members have executed this Amended and Restated Limited Liability Company Agreement on the date first written above.

THE MANAGER:

ESM MANAGEMENT LLC

By: Eric S. Meyer
Name: Eric Meyer
Title: Managing Member

INITIAL MEMBER (solely to reflect resignation from the Fund as set forth in Section 3.2)

WNL LIMITED

By: _____
Name:
Title:

MEMBERS:

[Executed Pursuant to Separate Counterparts]