
MHR INSTITUTIONAL PARTNERS III LP

A Delaware Limited Partnership

Second Amended and Restated Limited Partnership Agreement

May 31, 2007

NOTICE

NEITHER MHR INSTITUTIONAL PARTNERS III LP NOR THE LIMITED PARTNERSHIP INTERESTS THEREIN HAVE BEEN OR WILL BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED, THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES OR THE SECURITIES LAWS OF ANY FOREIGN JURISDICTION. THE OFFERING OF SUCH LIMITED PARTNERSHIP INTERESTS IS BEING MADE IN RELIANCE UPON AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, FOR OFFERS AND SALES OF SECURITIES WHICH DO NOT INVOLVE ANY PUBLIC OFFERING, AND ANALOGOUS EXEMPTIONS UNDER STATE SECURITIES LAWS.

THE DELIVERY OF THIS LIMITED PARTNERSHIP AGREEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY OFFER, SOLICITATION OR SALE OF INTERESTS IN MHR INSTITUTIONAL PARTNERS III LP IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE OR FOREIGN SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS SET FORTH IN THIS LIMITED PARTNERSHIP AGREEMENT.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	Definitions..... 1
Section 1.01	Definitions. 1
ARTICLE II	General Provisions 1
Section 2.01	Partnership Name..... 1
Section 2.02	Office; Registered Agent 1
Section 2.03	Purposes of the Partnership..... 1
Section 2.04	Liability of the Partners Generally..... 1
Section 2.05	Fiscal Year..... 1
ARTICLE III	Management And Operation Of The Partnership..... 1
Section 3.01	Management Generally 1
Section 3.02	Authority of the General Partner..... 1
Section 3.03	Other Authority 1
Section 3.04	Expenses 1
Section 3.05	Management Fee 1
Section 3.06	Borrowings 1
Section 3.07	Transactions with Affiliates 1
Section 3.08	Other Activities of the General Partner and its Affiliates 1
Section 3.09	Annual Meeting..... 1
Section 3.10	Reliance by Third Parties. 1
Section 3.11	Advisory Committee 1
Section 3.12	Confidentiality..... 1
ARTICLE IV	Investments And Investment Opportunities 1
Section 4.01	Investments Generally 1
Section 4.02	Investment Limits..... 1
Section 4.03	Formation of Competing Fund 1
ARTICLE V	Capital Commitments And Contributions..... 1
Section 5.01	Admission of Limited Partners 1
Section 5.02	Minimum Capital Commitment 1
Section 5.03	Capital Contributions 1
Section 5.04	Drawdown Procedures..... 1
Section 5.05	No Liability of General Partner 1
Section 5.06	Default by Limited Partners 1
Section 5.07	Funding the Shortfall Amount 1
Section 5.08	Subsequent Closings 1
Section 5.09	Temporary Investment of Funds..... 1
Section 5.10	Anticipatory Investment Transactions..... 1
ARTICLE VI	Distributions; Capital Accounts; Allocations..... 1
Section 6.01	Distributions Generally 1
Section 6.02	Dispositions of Proceeds from Fund Investments..... 1
Section 6.03	Clawback..... 1
Section 6.04	Other General Principles of Distribution..... 1

Section 6.05	Limitations on Distributions to the General Partner	1
Section 6.06	Withdrawal of Capital	1
Section 6.07	Capital Accounts; Allocations	1
Section 6.08	Tax Allocations	1
ARTICLE VII	Books And Records; Reports; Valuation	1
Section 7.01	Books and Records; Accounting Method.....	1
Section 7.02	Partnership Tax Returns.....	1
Section 7.03	Reports.....	1
Section 7.04	Valuation	1
ARTICLE VIII	Exculpation And Indemnification.....	1
Section 8.01	Exculpation and Indemnification.	1
Section 8.02	Jurisdiction	1
ARTICLE IX	Duration And Dissolution Of The Partnership.....	1
Section 9.01	Duration.....	1
Section 9.02	Dissolution	1
Section 9.03	Liquidation of Partnership Assets.....	1
Section 9.04	Distribution Upon Dissolution of the Partnership.....	1
Section 9.05	Withdrawal of a Limited Partner; Termination of Commitments	1
ARTICLE X	Transferability Of General Partner's Interest	1
Section 10.01	Transferability of General Partner's Interest	1
ARTICLE XI	Transferability Of A Limited Partner's Interest	1
Section 11.01	Restrictions on Transfer.	1
Section 11.02	Expenses of Transfer; Indemnification.....	1
Section 11.03	Recognition of Transfer; Substituted Limited Partners.....	1
Section 11.04	Transfers During a Fiscal Year.	1
Section 11.05	Securities Laws	1
Section 11.06	Legends.....	1
ARTICLE XII	Miscellaneous.....	1
Section 12.01	Amendments to the Partnership Agreement.....	1
Section 12.02	Approvals	1
Section 12.03	Investment Representation.....	1
Section 12.04	Successors; Counterparts	1
Section 12.05	Governing Law; Severability	1
Section 12.06	Filings	1
Section 12.07	Power of Attorney	1
Section 12.08	No Bill for Partnership Accounting	1
Section 12.09	Goodwill.....	1
Section 12.10	Notices.....	1
Section 12.11	Entire Agreement	1

This SECOND AMENDED and RESTATED LIMITED PARTNERSHIP AGREEMENT of MHR INSTITUTIONAL PARTNERS III LP is made as of this 31st day of May 2007 by and among MHR Institutional Advisors III LLC as General Partner, and those persons who are admitted as limited partners in accordance with this Agreement.

WITNESSETH

WHEREAS, the Partnership was formed pursuant to a Certificate of Limited Partnership, dated as of December 23, 2005, which was executed by the General Partner and filed for recordation in the office of the Secretary of State of the State of Delaware on December 23, 2005 and a Limited Partnership Agreement dated as of December 23, 2005 (the "Original Agreement") between the General Partner and Mark H. Rachesky, M.D., as initial limited partner, which agreement was amended and restated by the Amended and Restated Limited Partnership Agreement, dated as of September 22, 2006 (the "Amended Agreement"); and

WHEREAS, the parties hereto desire to make certain modifications to the Amended Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein made and intending to be legally bound hereby, the parties hereto agree to amend and restate the Amended Agreement of the Partnership in its entirety to read as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Capitalized terms used herein have the following meanings:

"Additional Amount" has the meaning set forth in Section 5.08(b).

"Advisers Act" means the Investment Advisers Act of 1940, as amended from time to time.

"Advisory Committee" means the committee described in Section 3.11.

"Affiliate" of any Person means any Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person, and the term "Affiliated" shall have a correlative meaning. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, each Principal and the Manager shall be deemed to be Affiliates of the General Partner.

"Agreement" means this Second Amended and Restated Limited Partnership Agreement, as further amended and/or restated from time to time.

"Allocable Expenses" has the meaning set forth in Section 6.07(b).

"Alternative Vehicle" has the meaning specified in Section 2.06.

"Associated Partners" means, at such time as the General Partner is acting as General Partner of the Partnership, Limited Partners who are Affiliates of the General Partner.

"Authorized Representative" has the meaning set forth in Section 3.12(a).

"Available Capital" means, with respect to the Partnership and each Co-Investment Fund, the aggregate Unfunded Capital Commitments thereof, plus the net asset value thereof, plus, in the case of a Co-Investment Fund, the net asset value thereof multiplied by 50%. For the purpose of this definition of Available Capital, the net asset value of the Fund and any Co-Investment Fund shall be determined monthly pursuant to Section 7.04 and the operative documents thereof, respectively.

"Bridge Investors" has the meaning set forth in Section 5.10.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to close.

"Capital Account" has the meaning set forth in Section 6.07(a).

"Capital Commitment" means, (i) with respect to any Partner at any time, the dollar amount (which may be fixed or set by a formula) specified as such Partner's capital commitment at the time such Partner was admitted to the Partnership or as subsequently increased (as adjusted pursuant to the terms of this Agreement), which amount shall be set forth on the books and records of the Partnership and (ii) when used with respect to any Co-Investment Fund, the capital commitments of the partners of such Co-Investment Fund; provided that if the Capital Commitment or the obligation of any Limited Partner to make Capital Contributions for future Fund Investments has been canceled or terminated pursuant to Section 9.05(a), then for the purposes of determining such Partner's share and allocation of any Partnership Expenses and for purposes of taking any action by the Limited Partners, such Partner's Capital Commitment shall be deemed to be equal to its total Capital Contributions made or called for through the date of such cancellation or termination.

"Capital Commitment Percentage" means, with respect to any Partner at any time, the percentage derived by (i) dividing such Partner's Capital Commitment at such time by the aggregate amount of all Partners' Capital Commitments (except as otherwise provided herein) at such time and (ii) multiplying such quotient by 100.

"Capital Contribution" means, with respect to any Partner, a cash contribution made by such Partner pursuant to Article V.

"Capital Partners" means MHR Capital Partners LP, a Delaware limited partnership of which an Affiliate of the General Partner currently serves as general partner, together with its affiliated co-investment entities, or any successor to any such entity.

"Carried Interest" has the meaning set forth in Section 6.02.

"Cash Equivalents" means (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof), (ii) time deposits and certificates of deposit of any domestic commercial bank (including a domestic branch of a foreign bank) having capital and surplus in excess of \$500,000,000 at time of acquisition, (iii) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (ii) above, (iv) commercial paper rated, at time of acquisition, one of the two highest ratings assigned by Standard & Poor's Corporation or Moody's Investors Service, Inc. and in each case maturing within one year after the date of acquisition, and (v) shares in a money market account which invests primarily in investments of the type described in clauses (i), (ii), (iii) and (iv) above.

"Cause" means (i) a Transfer or attempted Transfer by a Limited Partner of all or any portion of such Limited Partner's Interest in violation of this Agreement, (ii) a determination by the General Partner that continued ownership by a Limited Partner of its Interest will cause the Partnership, the General Partner or any Affiliate thereof to be in violation of the securities laws of the United States or any other relevant jurisdiction or the rules of any self-regulatory organization applicable to the Partnership, the General Partner or any Affiliate thereof, or would require any of the foregoing to register under any such laws with a securities regulatory authority, (iii) a determination by the General Partner, supported by a written opinion of counsel, that continued ownership by a Limited Partner of its Interest is likely to cause the assets of the Partnership to be considered Plan Assets for purposes of ERISA, (iv) a determination by the General Partner that continued ownership by a Limited Partner of its Interest may cause the Partnership to be treated as a "publicly traded partnership" or may subject the Partnership or any of its Partners to any other adverse tax or other fiscal consequences, including, without limitation, adverse consequences under ERISA, (v) a good faith determination by the General Partner that continued ownership by a Limited Partner of its Interest may be harmful or injurious to the business or reputation of the Partnership or the General Partner, (vi) if any of the representations and warranties made by a Limited Partner in connection with its purchase of its Interest was not true when made or has ceased to be true, (vii) if the Interest of a Limited Partner has vested in any other Person by reason of the death, dissolution, bankruptcy, or incompetency of such Limited Partner, or (viii) a good faith determination by the General Partner that continued ownership by a Limited Partner of its Interest would not be in the best interest of the Partnership.

"Certificate" means the certificate of limited partnership of the Partnership.

"Clawback Security Account" means the account maintained by the General Partner pursuant to Section 6.03(b).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Co-Investment" has the meaning set forth in Section 4.01(d).

"Co-Investment Fund" means each of any (i) Parallel Fund, (ii) separate managed accounts managed by the General Partner or any of its Affiliates which accounts utilize an investment strategy similar or identical to that of the Partnership, (iii) MHR Institutional I and its affiliated co-investment entities, (iv) MHR Institutional II and its affiliated co-investment entities, (v) Capital Partners, (vi) any successor to any entity set forth in clauses (i) through (v) and (vii) any Competing Fund approved by the Limited Partners in accordance with Section 4.03 (together with any vehicle similar to the arrangement described in Section 5.10 established in anticipation of such Competing Fund's commencement of investment operations).

"Co-Investment Fund Investor" means any Person that has made a Capital Commitment to invest in any Co-Investment Fund.

"Commitment Period" means the period commencing on the Initial Investment Date and ending on the earlier of (i) the day immediately preceding the sixth anniversary of the Final Closing Date and (ii) the date determined by the General Partner, in its discretion, at any time after the Full Investment Date.

"Competing Fund" means any collective investment vehicle which is not a Co-Investment Fund, with terms and investment strategies substantially similar to that of the Partnership and that is targeted primarily to investors for which the Partnership is designed to be a suitable investment vehicle.

"Competing Fund Date" means the earlier of (i) the Full Investment Date, and (ii) the end of the Commitment Period.

"Default" means the failure of a Limited Partner to make all or a portion of its required Capital Contributions on the applicable Drawdown Date or the failure of a Limited Partner to make payments when due pursuant to this Agreement, in either case, which is not cured by such Limited Partner within three (3) Business Days after receipt of written notice thereof by the General Partner.

"Default Rate" means an annual rate of interest that exceeds by two percent (2%) the prime rate of interest published by a major bank based in New York City selected by the General Partner; provided, however, that such rate shall not exceed the maximum rate permitted under the laws of the State of Delaware.

"Defaulting Partner" means, at any time, each Limited Partner who, at or prior to such time, has committed a Default that has become an Event of Default.

"Delaware Act" means the Delaware Revised Uniform Limited Partnership Act, 6 Del. C. Section 17-101 et seq., as amended from time to time.

"Disability" means (i) the physical inability to perform one's duties for a period of 365 days or (ii) mental incompetence, as determined by a court of law.

"Distressed Investments" means investments in (i) Securities of or with respect to entities or assets which, in the opinion of the General Partner, are suffering or have suffered distress, including, without limitation, entities that are undergoing, are considered likely to undergo, or have undergone reorganization under federal bankruptcy law or similar laws in other countries or jurisdictions or that, in the opinion of the General Partner, are engaged, are considered likely to engage, or have been engaged in other extraordinary transactions, such as debt restructurings, reorganizations, receiverships and liquidations outside of bankruptcy, and (ii) Securities which, in the opinion of the General Partner, relate to special situations tied to specific adverse events outside the distressed arena that allow the Partnership to purchase such investments for less than their value estimated by the General Partner.

"Distribution Date" means, with respect to any distribution pursuant to Article VI or Article IX, the date of such distribution.

"Drawdown" means a drawdown by the Partnership of Capital Contributions from one or more Partners pursuant to a Drawdown Notice.

"Drawdown Amount" means the aggregate Capital Contributions to be made on any date by the Partners pursuant to Article V.

"Drawdown Date" has the meaning set forth in Section 5.04(b).

"Drawdown Notice" has the meaning set forth in Section 5.04(a).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Event of Default" means any Default that shall not have been (i) cured by the Limited Partner who committed such Default within ten Business Days after the occurrence of such Default or (ii) waived by the General Partner on such terms as determined by the General Partner in its discretion.

"Final Closing Date" means the first anniversary of the Initial Investment Date.

"Fiscal Quarter" means each three month period ending on the last day of March, June, September and December; provided that (i) the first Fiscal Quarter shall commence on the Initial Closing Date and continue until the next following last day of March, June, September or December, whichever is earliest, and (ii) upon termination of the Partnership, "Fiscal Quarter"

means the period beginning the day after the most recent of the last day of March, June, September or December and ending on the date of termination.

"Fiscal Year" has the meaning set forth in Section 2.05.

"Follow-up Investments" means further purchases of Securities in or with respect to a Portfolio Company or the assets thereof.

"Full Investment Date" means the time at which an amount equal to at least 75% of the Capital Commitments has been invested in, reserved for or called for contribution for investment in, or contractually committed for investment in, Fund Investments, Proposed Fund Investments or Partnership Expenses.

"Fund Investment" means an investment in any Security acquired by the Partnership or, if the context requires, to be acquired by the Partnership.

"Funded Capital Commitment" means, with respect to a Partner, at any time, the aggregate amount of Capital Contributions made to the Partnership by such Partner which have not been distributed as part of the Proceeds of Realized Fund Investments.

"General Partner" means, at any time, MHR Institutional Advisors III LLC, which is the sole general partner of the Partnership, or any other Person who, at such time, serves as general partner of the Partnership.

"GP Capital Commitment" has the meaning specified in Section 5.02(b).

"Indemnified Party" has the meaning set forth in Section 8.01(a) of this Agreement.

"Initial Closing Date" means the date established by the General Partner for the initial closing of Interests in the Partnership.

"Initial Investment Date" means the first date on which a Drawdown to pay for any Fund Investment is due.

"Interest" means the interest of a Limited Partner in the Partnership.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time.

"Investment Percentage" of any Partner means, with respect to any Fund Investment, the percentage derived by (i) dividing the Capital Contribution made by such Partner in respect of such Fund Investment by the aggregate Capital Contributions made by all Partners (except as otherwise provided herein) in respect of such Fund Investment and (ii) multiplying such quotient by 100. If a Partner is excluded from participating in a Fund Investment pursuant to Section

5.04(e), it shall have no Investment Percentage with respect thereto and it shall be deemed not to have made any Capital Contribution in respect of such Fund Investment.

"Limited Partner" means, at any time, any Person who is at such time a limited partner of the Partnership and shown as such on the books and records of the Partnership.

"Majority in Interest" means a majority of the aggregate Capital Commitment Percentages of the Limited Partners (other than Defaulting Partners and Associated Partners) without regard to the number of Limited Partners holding such Capital Commitment Percentages.

"Management Fee" has the meaning set forth in Section 3.05(a).

"Manager" means, at any time, MHR Fund Management LLC, which is currently the sole Manager of the Partnership, or any other Person who, at such time, serves as investment manager of the Partnership.

"Marketable Securities" shall mean Securities that are (a) part of a class or series that is (i) listed on a national securities exchange or on a "designated offshore securities market" (within the meaning of Regulation S under the Securities Act of 1933) or (ii) otherwise traded on an over-the-counter market and for which independent quotations are readily available and (b) not subject to material legal or contractual restrictions on transferability.

"MHR Institutional I" means MHR Institutional Partners LP, a Delaware limited partnership.

"MHR Institutional II" means MHR Institutional Partners II LP, a Delaware limited partnership and affiliated co-investment entities.

"MRL" means MRL Partners LP, a Delaware limited partnership, and any successors thereto involving an investment by George Soros or an Affiliate thereof.

"Offshore Feeder" means MHR Institutional Associates (Offshore) III LP, a Cayman Islands exempted limited partnership formed by the General Partner for the purpose of holding Interests, or any successor thereto.

"Organizational Expenses" means all costs and expenses incurred in connection with the organization of the Partnership and the offering of Interests, including legal and accounting fees, printing costs, travel costs and all out-of-pocket expenses, less the pro rata portion of such expenses that are allocated to any Co-Investment Fund. Organizational Expenses to be charged to or borne by the Partnership shall not include any placement or solicitation fees.

"Other Investments" means Fund Investments in Securities other than Distressed Investments and Post-Reorganization Investments.

"Parallel Fund" has the meaning specified in Section 2.07.

"Participating Partner" means, with respect to any Fund Investment, any Partner who has made a Capital Contribution in respect of such Fund Investment, but does not include a Partner who has been excluded from participating in a Fund Investment pursuant to Section 5.04(e).

"Partners" means the General Partner and the Limited Partners.

"Partnership" means MHR Institutional Partners III LP, as such partnership may from time to time be constituted.

"Partnership Expenses" has the meaning set forth in Section 3.04(a).

"Person" means any individual, partnership, corporation, trust or other entity.

"Portfolio Company" means any person that is the subject of a Fund Investment (together with each other member of such person's affiliated group that files a consolidated tax return for Federal income tax purposes).

"Post-Reorganization Investment" means any investment in (i) Securities of entities, or with respect to assets which, in the opinion of the General Partner, had previously suffered distress, or (ii) Securities that the Partnership can purchase for less than their value estimated by the General Partner and that in the opinion of the General Partner are (A) not closely followed by the investment community or (B) are related (directly or indirectly) to an investment (including a realized Fund Investment) made by the Partnership or a Co-Investment Fund.

"Preferred Return" means an amount equal to an 8% internal rate of return, compounded annually, calculated as follows: (i) in the case of Funded Capital Commitments relating to Fund Investments, from the date (or dates) of payment by the Partnership for such Fund Investments through the date (or dates) (A) when Proceeds are received by the Partnership with respect to such Fund Investments, (B) of any writedowns with respect thereto (but only to the extent that at the time of the writedown, there are Proceeds from another Fund Investment in excess of the Funded Capital Commitment with respect to such other Fund Investment that would then be available to be applied as an offset against such written down amount if such excess Proceeds were then being distributed) or the next date or dates thereafter when such excess Proceeds are or would be available for application as an offset against such written down amount (or any remaining balance not previously offset) or (C) of any hedging transaction to the extent that the risk of future capital loss with respect thereto has been substantially eliminated, (ii) in the case of Management Fees from the date when payment is due, and (iii) in the case of Organizational Expenses and Partnership Expenses, from the date of payment by the Partnership. For purposes of calculating the Preferred Return, any interest income or Proceeds received by the Partnership during the Commitment Period that are available to be reinvested shall be deemed to be distributed to Limited Partners on the date of receipt by the Partnership and simultaneously recalled by the General Partner.

"Principals" currently means Mark H. Rachesky, M.D., Hal Y. Goldstein and Sai Devabhaktuni, and shall mean, from time to time, those Persons designated as Principals by the General Partner in its discretion.

"Proceeds" means, with respect to any Fund Investment, the sum of (i) the cash and non-cash proceeds received by the Partnership from any sale or distribution of such Fund Investment, exchange of such Fund Investment, receipt of any dividends, interest or other distributions in connection with such Fund Investment, less (ii) any expenses incurred by the Partnership in connection with such Fund Investment, and less (iii) with respect to any Fund Investment and any Participating Partner, any withholding or other tax imposed solely by reason of such Partner's participation in such Fund Investment. The value of any non-cash Proceeds shall be determined in accordance with Section 7.04.

"Proposed Fund Investment" means any Fund Investment that the Partnership has committed to make.

"Realized Fund Investment" means a Fund Investment in respect of which there has been a sale, exchange, transfer or other disposition or extraordinary dividend, or any merger, refinancing or other capital restructuring which results in the receipt by the Partnership of a significant distribution. For purposes of calculating distributions under Article VI, a Fund Investment in respect of which there has been a partial sale or disposition shall be treated as a Realized Fund Investment to the extent of the portion sold or disposed of.

"Securities" means securities, obligations, instruments, claims, evidences of indebtedness, assets or other investments.

"Shortfall Amount" has the meaning set forth in Section 5.07(a).

"Subscription Agreement" means the subscription agreement of the Partnership executed and delivered by each Limited Partner and accepted by the General Partner.

"Subsequent Closing" has the meaning set forth in Section 5.08(b).

"Substituted Limited Partner" has the meaning set forth in Section 11.02.

"Tax Matters Partner" has the meaning set forth in Section 7.02(b).

"Transfer" has the meaning set forth in Section 10.01(a).

"Undistributed Amount" has the meaning set forth in Section 6.05(b).

"Unfunded Capital Commitment" means, (i) with respect to any Partner at any time, the amount by which a Partner's Capital Commitment exceeds such Partner's aggregate Capital Contributions made prior to such time (for Fund Investments or Partnership Expenses, including Management Fees), plus the sum of (A) the aggregate amount of any distributions to such Partner

of Proceeds from a Fund Investment representing the cost basis of Realized Fund Investments prior to the end of the Commitment Period, plus (B) the aggregate of any Capital Contributions drawn down to make an investment which was not consummated during the Commitment Period to the extent that such Capital Contributions have been returned to such Partner, plus (C) the aggregate amount of any distributions to such Partner representing a return of capital under Section 5.08(b) and (ii) if applicable, with respect to any partner of any Co-Investment Fund at any time, the amount by which such partner's Capital Commitment exceeds such partner's capital contributions made prior to such time, plus the amount of such partner's capital contributions returned to such partner and available for investment by such Co-Investment Fund.

"Writedown" means, as of any date, that portion of the amount by which the aggregate Capital Contributions for all unrealized Fund Investments exceeds the fair market value of such investments (as determined by the General Partner in accordance with Section 7.04), to the extent the General Partner determines, in its discretion, that any such excess reflects a fundamental and permanent diminishment in the value of such investments.

ARTICLE II

General Provisions

Section 2.01 *Partnership Name.* The name of the Partnership is MHR Institutional Partners III LP.

Section 2.02 *Office; Registered Agent.* (a) The Partnership shall maintain a registered office in Delaware at, and the name and address of the Partnership's registered agent in Delaware is, CT Corporation, 1209 Orange Street, Wilmington, Delaware 19801.

(b) The address of the principal office of the General Partner shall be 40 West 57th Street, 24th Floor, New York, New York 10019, or such other place in the United States as the General Partner shall designate in writing to the Limited Partners.

Section 2.03 *Purposes of the Partnership.* The purposes of the Partnership are (a) to identify potential Fund Investments, (b) to acquire, hold and dispose of Fund Investments, (c) pending utilization or disbursement of funds, to invest such funds in accordance with the terms of this Agreement and (d) to do everything necessary or desirable for the accomplishment of the above purposes or the furtherance of any of the powers herein set forth and to do every other act and thing incident thereto or connected therewith.

Section 2.04 *Liability of the Partners Generally.* (a) Except as otherwise provided in the Delaware Act, the General Partner shall have the liabilities of a partner in a partnership without limited partners to Persons other than the Partnership and the Limited Partners. Except as otherwise provided in this Agreement or the Delaware Act, the General Partner shall have the liabilities of a partner in a partnership without limited partners to the Partnership and the Limited Partners.

(b) Except as otherwise provided in this Agreement, the Subscription Agreements and the Delaware Act, no Limited Partner (or former Limited Partner) shall be obligated to make any contribution of capital to the Partnership or have any liability for the debts and obligations of the Partnership. Except as otherwise required by the Delaware Act, no Limited Partner, in its capacity as a Limited Partner, shall owe any fiduciary duty to any other Partner or the Partnership.

Section 2.05 *Fiscal Year.* The Fiscal Year of the Partnership for financial statement and federal income tax purposes shall begin on January 1st and end on December 31st of each year, except for short taxable years in the years of the Partnership's formation and termination and as otherwise required by the Code, unless the General Partner shall elect another Fiscal Year for the Partnership which is a permissible tax year under the Code.

Section 2.06 *Alternative Investment Structures.* (a) If the General Partner determines in good faith that for legal, tax, regulatory or other reasons it is in the best interests of some or all of the Partners that a Fund Investment be made through an alternative investment structure (including, without limitation, through a foreign entity or entities formed for the purpose of making Fund Investments outside of the United States), the General Partner shall require any Partner or Partners to make such Fund Investment through a partnership or other vehicle or vehicles (other than the Partnership) that will invest on a parallel basis with or in lieu of the Partnership, as the case may be (any such structure or vehicle, an "Alternative Vehicle"). The Partners shall be required to make capital contributions directly to each such Alternative Vehicle to the same extent, for the same purposes and on substantially identical terms and conditions as Partners are required to make Capital Contributions to the Partnership, in each case, subject to applicable legal, tax or regulatory constraints, and such capital contributions shall reduce the Unfunded Capital Commitments of the Limited Partners to the same extent as if Capital Contributions were made to the Partnership with respect thereto. Each Partner shall have the same economic interest in all material respects in Fund Investments made pursuant to this Section 2.06 as such Partner would have if such Fund Investment had been made solely by the Partnership.

(b) The determination of allocations and distributions pursuant to Article VI and Section 9.04 shall be calculated by treating investments made by any Alternative Vehicle established pursuant to this Section 2.06 as having been made by the Partnership; provided, that for purposes of the obligation of the General Partner to contribute the Clawback Amount to the Partnership pursuant to Section 6.03, the Clawback Amount shall be allocated among, and contributed to the capital of, the Partnership or any Alternative Vehicle established in proportion to the negative capital account balance, if any, of the General Partner or its Affiliate in the Partnership and each such Alternative Vehicle (although this proviso shall in no way limit the obligation of the General Partner to pay the Clawback Amount); provided, further, that if an Alternative Vehicle is not a partnership, the calculations described in this Section 2.06(b) shall be made as if such Alternative Vehicle were a partnership. Notwithstanding the foregoing, such distributions and allocations with respect to a particular Alternative Vehicle may be calculated separately from those of the Partnership (and vice versa) if, in the determination of the General Partner after consultation with counsel, aggregation of such amounts would increase the

likelihood of any tax consequences or legal or regulatory constraints, or create contractual or business risk, that would be significantly undesirable for the Partnership or any of its Partners.

(c) The General Partner shall use reasonable best efforts to structure any Alternative Vehicle organized under the laws of a jurisdiction outside the United States so as to avoid causing the Limited Partners to incur:

(i) any direct obligation either to pay any amount of tax in, or to file a tax return or comply with other tax reporting requirements of, the jurisdiction of organization of such Alternative Vehicle, solely as a result of the Limited Partner being an investor in the Partnership (the, "Jurisdictional Tax Requirements"); provided, however, that the Limited Partners will provide such information and submit such forms, and otherwise cooperate with the General Partner, as may be necessary under applicable law or treaty to permit the Partnership to satisfy any Jurisdictional Tax Requirements or to secure a reduction of taxes otherwise imposed by such jurisdiction of organization; and

(ii) any personal liability for the debts and obligations of such Alternative Vehicle, the Partnership or any other person in connection with such Fund Investment solely as a result of the Limited Partner being an investor in the Partnership.

For purposes of this Section 2.06(c), "reasonable best efforts" shall include making or structuring a Fund Investment in a manner that is consistent with the written advice of legal or tax counsel.

Section 2.07 *Parallel Funds.* The General Partner may establish one or more separate investment entities (each, a "Parallel Fund") to invest in parallel with the Partnership. A Parallel Fund may be established for legal, tax, regulatory or other reasons and may be subject to investment restrictions that are not applicable to the Partnership. The Partners acknowledge and agree that if a Parallel Fund is established for tax reasons, the organizational documents of such Parallel Fund may have provisions relating to distributions, allocations and taxation that are substantially different from those applicable to the Partnership, although it is intended that the economic effect of the terms of all such Parallel Funds will be substantially identical. In the event that one or more Parallel Funds is established by the General Partner, fees, expenses and other amounts payable under this Agreement and investments shall be equitably apportioned between the Partnership and such Parallel Fund(s).

ARTICLE III

Management And Operation Of The Partnership

Section 3.01 *Management Generally.* (a) The management, control and operation of the Partnership shall be vested exclusively in the General Partner. The Limited Partners shall have no part in the management, control or operation of the Partnership and shall have no authority or right to act on behalf of the Partnership in connection with any matter. The Limited Partners shall not have voting rights with respect to any Partnership matters, other than as expressly provided in this Agreement.

(b) The Partnership will enter into an agreement with the Manager, pursuant to which the Manager will perform investment advisory functions and receive semi-annual Management Fees from the Partnership.

Section 3.02 Authority of the General Partner. (a) The General Partner shall have the sole power (subject to paragraph (b) of this Section) on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership and to perform all acts which it may, in its discretion, deem necessary or desirable, including the power to:

- (i) identify investment opportunities for the Partnership;
- (ii) acquire, hold, manage, own, sell, transfer, convey, assign, exchange, pledge or otherwise dispose of any Fund Investment made or held by the Partnership;
- (iii) open, maintain and close bank accounts and draw checks or other orders for the payment of moneys;
- (iv) subject to the other provisions of this Agreement, enter into, and take any action under, any contract, agreement or other instrument as the General Partner shall determine to be necessary or desirable to further the purposes of the Partnership, including without limitation contracts or agreements with any Partner, prospective Partner or Affiliate thereof;
- (v) bring and defend actions and proceedings at law or in equity and before any governmental, administrative or other regulatory agency, body or commission;
- (vi) employ and dismiss from employment any and all attorneys, accountants, consultants, appraisers or custodians of the assets of the Partnership or a Person in which the Partnership makes a Fund Investment or other agents, on such terms and for such compensation as the General Partner may determine, whether or not such Person may be, or also be otherwise employed by, any Limited Partner or any Co-Investment Fund Investor; provided that any such employment shall be on an arm's-length basis;
- (vii) make all elections, investigations, evaluations and decisions, binding the Partnership thereby, that may in the judgment of the General Partner be necessary or desirable for the acquisition, management or disposition of Fund Investments by the Partnership;
- (viii) subject to Section 3.06, borrow money, which borrowing shall be on such terms as the General Partner shall determine in its discretion;
- (ix) incur expenses and other obligations on behalf of the Partnership in accordance with this Agreement, and, to the extent that funds of the Partnership are available for such purpose, pay all such expenses and obligations; and

(x) act for and on behalf of the Partnership in all matters incidental to the foregoing.

(b) The General Partner may delegate to any Person or Persons all or any of the powers, rights, privileges, duties and discretion vested in it in this Article III and such delegation may be made upon such terms and conditions as the General Partner shall determine; provided that the General Partner shall remain responsible for making decisions with respect to the acquisition or disposition of Fund Investments; and provided further that no such delegation shall modify the obligations or liabilities of the General Partner as general partner under the Delaware Act and under this Agreement.

(c) Every power vested in the General Partner pursuant to this Agreement shall be construed as a power to act in its sole and absolute discretion, except as otherwise expressly provided herein. No provision of this Agreement shall be construed to require the General Partner to violate the Act or any other law, regulation or rule of any self-regulatory organization.

Section 3.03 Other Authority. (a) The General Partner agrees to use its reasonable best efforts to operate the Partnership in such a way that the Partnership would not be deemed to be an "investment company" for purposes of the Investment Company Act and the General Partner would be in compliance with the Advisers Act. The General Partner shall use reasonable efforts to operate the Partnership in such a way that the General Partner would be in compliance with ERISA.

(b) The General Partner is hereby authorized to take any action it has determined in good faith to be necessary or desirable in order for the Partnership not to be in violation of the Investment Company Act, ERISA or the Advisers Act, including making structural, operating or other changes in the Partnership, making structural or other changes in any Fund Investment (including changes such that the Partnership qualifies as a "venture capital operating company" for purposes of ERISA), cancelling all or a portion of the Unfunded Capital Commitment of any Limited Partner, assisting in or requiring the sale in whole or in part of any Limited Partner's Interest, or dissolving (pursuant to Section 9.02(b)) the Partnership, provided that the General Partner shall use its reasonable best efforts to avoid taking any action that would have a materially adverse effect on any Limited Partner.

Section 3.04 Expenses. (a) The Partnership will be responsible for all partnership expenses ("Partnership Expenses") which shall include the following:

(i) Organizational Expenses not exceeding \$2,000,000, which shall be paid as provided in Section 3.04(c);

(ii) subject to Section 8.01, all out-of-pocket costs of the administration of the Partnership, including accounting, audit and legal expenses, bookkeeping expenses, interest due to Limited Partners in connection with withdrawals, costs of holding any meetings of Partners and the Advisory Committee, costs of any liability insurance obtained on behalf of the Partnership, the General Partner and/or the

Manager, costs of any litigation or investigation involving Partnership activities, and costs associated with reporting and providing information to existing and prospective Limited Partners;

(iii) all expenses incurred in connection with the registration, qualification or exemption of the Partnership under any applicable laws;

(iv) all unreimbursed expenses incurred in connection with the collection of amounts due to the Partnership from any Person;

(v) all expenses incurred in connection with the preparation of alterations and amendments to this Agreement or the Certificate;

(vi) subject to Section 8.01, all expenses incurred in connection with any litigation involving the Partnership (including the cost of any investigation and preparation) and the amount of any judgment or settlement paid in connection therewith;

(vii) all expenses for indemnity or contribution payable by the Partnership to any Person, whether payable under this Agreement or otherwise and whether payable in connection with any litigation involving the Partnership or otherwise;

(viii) all expenses incurred in connection with administrative proceedings relating to the determination of Partnership items at the Partnership level undertaken by the Tax Matters Partner, and any audit with respect to taxes;

(ix) all expenses incurred in connection with the dissolution and liquidation of the Partnership;

(x) any interest charges and other expenses directly related to borrowings obtained pursuant to Section 3.06;

(xi) all expenses incurred on account of taxes, fees or other governmental charges of the Partnership;

(xii) all unreimbursed costs and expenses directly related to investments or prospective investments by the Partnership, including out-of-pocket costs such as legal, accounting and other professional or third-party costs, brokerage commissions and other transaction costs, custody fees, fees of professional advisors and consultants relating to investments or prospective investments, specific expenses incurred in obtaining systems, research and other information utilized with respect to the Partnership's investment program, including to facilitate valuations and accounting requirements, and also including the costs of statistics and pricing services, service contracts for quotation equipment and related hardware and software; and any withholding or transfer taxes imposed on the Partnership, provided that any such expense item incurred for the account of the Partnership and the account of the General Partner (other than as a holder of its Interest), any Principal or any Affiliate thereof or any other person managed by the General Partner or any Affiliate of the General Partner, shall be equitably allocated

among the Partnership and such other accounts taking into account the relative size of the investment made or proposed to be made by each such account; and

(xiii) the Management Fee.

Subject to the provisions hereof (including Section 5.03(a)), the General Partner shall cause the Partnership to pay Partnership Expenses at such times and from such sources (including Unfunded Capital Commitments) as it may deem necessary or appropriate.

(b) The General Partner and the Manager will be responsible for their own operating and overhead expenses (except liability insurance), without reimbursement by the Partnership, which shall include the following:

(i) all expenses relating to providing investment management and other services to the Partnership (except as otherwise provided herein);

(ii) all routine expenses incidental to the operation of the General Partner and the Manager, including the compensation of their employees, office rent and other general overhead costs of the General Partner or the Manager; and

(iii) Organizational Expenses in excess of \$2,000,000.

The Partnership will not have its own separate employees or office, and it will not reimburse the General Partner or the Manager for employee compensation, office rent and other general overhead costs of the General Partner or the Manager.

(c) Partnership Expenses will be borne by the Partnership as set forth in paragraph (a) above and will be allocated among the Partners as provided in Section 6.07(b).

(d) To the extent permitted by applicable law, the General Partner shall be entitled to use "soft dollars" generated by the Partnership to pay for certain brokerage and research services and products used by the General Partner within the safe harbor afforded by Section 28(e) of the United States Securities Exchange Act of 1934, as amended. Subject to seeking best execution and to the extent permitted by law, the General Partner may consider referrals of potential Limited Partners as a factor in the selection of brokers.

Section 3.05 Management Fee. (a) The Manager will be entitled to receive from the Partnership a Management Fee (the "Management Fee") for its management services pursuant to an agreement with the Partnership, which will be payable to the Manager semi-annually in advance. The first semi-annual installment of the Management Fee will be payable on or about the Initial Investment Date and thereafter will be due on each January 1st and July 1st during the term of the Partnership. During the Commitment Period, the annual Management Fee will be equal to one and three-quarters percent (1.75%) of total Capital Commitments (including those Capital Commitments received on the Initial Closing Date and any Capital Commitments received at a Subsequent Closing). After the Commitment Period, the annual Management Fee will be equal to one and three-quarters percent (1.75%) of aggregate Funded Capital

Commitments less any write-downs (as determined by the General Partner in its discretion) of the cost basis of any Fund Investments calculated at the beginning of each semi-annual period. The Partnership will not be required to pay a Management Fee to the Manager in respect of Capital Commitments of the General Partner. The General Partner in its discretion, may waive the Management Fee with respect to Affiliates or other investors, but such investors shall share pro rata in all other applicable expenses. To the extent that the Partnership pays any placement agent fees, the Management Fee payable by the Partnership shall be reduced by such amount.

(b) An amount equal to eighty percent (80%) of any (i) transaction fees, monitoring fees and break-up fees paid to the General Partner or any Affiliate of the General Partner in connection with the acquisition or disposition of any Fund Investment (including, for the avoidance of doubt, any proposed Fund Investment), and (ii) director and advisor fees paid to an Affiliate of the General Partner or the General Partner as a direct consequence of any Fund Investment (excluding any stock options or other non-cash items granted to directors), will be applied first, to defray Partnership Expenses incurred in connection with such Fund Investment and second, to reduce Management Fees subsequently payable by the Partnership, but such fees shall not be less than \$0. If any Co-Investment Fund is also a participant in an investment in respect of which the transaction fees, break up fees, or director or advisor fees referred to in the preceding sentence are paid, the provisions of the preceding sentence shall apply only with respect to the Partnership's pro rata portion of the Partnership Expenses incurred in connection with such Fund Investment and with respect to the same pro rata portion of such transaction fees or break up fees. The portion of such fees allocable for such purpose will be subject to reduction for any unreimbursed expenses of unconsummated transactions which have been borne by the General Partner or its Affiliates.

(c) If the aggregate of the amount of transaction fees, monitoring fees, break up fees and director and advisor fees referred to in paragraph (b) above available to reduce Management Fees exceeds the Management Fee payable for the semi-annual period immediately succeeding the date such fees were paid, such excess shall be credited against the Management Fee payable for the next semi-annual period and each succeeding semi-annual period thereafter until the entire amount of such excess has been so credited (subject, in all cases, to reduction for any unreimbursed expenses of unconsummated transactions which have been borne by the General Partner or its Affiliates).

(d) Notwithstanding the other provisions of this Section 3.05, the Manager may from time to time elect to forego an amount of the Management Fee in favor of a right of the Manager or its designated Affiliates to receive an interest in future distributions of profits of the Partnership. Limited Partners will make Capital Contributions with respect to, or the General Partner may apply the Partnership's available cash, if any, for all or a portion of, the Management Fee foregone by a Manager in the same manner and at the same time as would have been required to fund such Management Fee. The amount so contributed by a Limited Partner, or of the Partnership's available cash applied by the General Partner, will instead be applied to fund a portion of the cost of Fund Investments, and will be treated as a notional capital contribution by the Manager or its designated Affiliates which (i) reduces the aggregate maximum Capital Contributions required of the General Partner pursuant to Section 5.02(b) and (ii) gives rise to an entitlement to allocations (but only out of subsequent profits), and related distributions, in

amounts that reflect (A) the returns that would have been allocated and distributed if each such notional capital contribution had constituted an actual Capital Contribution that otherwise would have been made in respect of the General Partner's Capital Commitment pursuant to Section 5.02(b), (B) notional interest associated with foregone Management Fees and (C) once all Partners have received aggregate distributions at least equal to aggregate Capital Contributions, any amount by which aggregate distributions with respect to notional capital are less than aggregate notional capital contributions. Notwithstanding the provisions of Section 12.01, the General Partner may make amendments to this Agreement which do not affect any Limited Partner in a materially adverse manner, including, without limitation, to the allocation and distribution provisions of Articles V and VI, without any consent or approval of the Limited Partners, in order to give effect to the provisions of this Section 3.05(d). The General Partner shall interpret this Section 3.05(d) consistently with Section 3.05(c) in order to give effect to that Section.

Section 3.06 *Borrowings.*

(a) The Partnership shall use commercially reasonable efforts (which may include the use of taxable "blocker" corporations) to minimize the possibility that a tax-exempt Partner will incur a material amount of unrelated business taxable income or unrelated debt-financed income. For purposes of this Section 3.06(a), good faith reliance on the advice of counsel or other experts (selected with due care) shall be deemed use by the Partnership of its reasonable efforts.

(b) Subject to Section 3.06(a), the General Partner shall have the right, at its option, to cause the Partnership to borrow money from any Person to consummate the purchase of Fund Investments, including to provide interim financing to the extent necessary prior to the receipt of Capital Contributions from Partners; provided that in no event will the aggregate principal amount of the Partnership's outstanding borrowings exceed forty percent (40%) of the aggregate Capital Commitments. Without limiting the terms of the preceding sentence, the General Partner shall have the right, at its option, to pledge the obligations of the Partners to make Capital Contributions in connection with any borrowings including, without limitation, any such pledges in connection with a guaranty required of the Partnership pursuant to a letter of credit or similar arrangement. Each Limited Partner shall upon the written request from the General Partner, for the benefit of one or more lenders or other persons extending credit to the Partnership, (i) acknowledge its obligations pursuant to this Agreement to make Capital Contributions, which may, as determined by the General Partner, include an acknowledgment that the General Partner, or the lender on behalf of the General Partner (in accordance with the agreements between such lender and the Partnership and/or the General Partner), may call such Capital Contributions in accordance with this Agreement to pay outstanding obligations to such lenders without, except as expressly set forth in this Agreement, defense, counterclaim or offset of any kind; provided, that the liability of the General Partner to make Capital Contributions shall not be increased thereby and such pledge and/or acknowledgment shall not result in the loss of a Limited Partner's limited liability status under this Agreement, and (ii) execute such documents as may be reasonably necessary to create a security interest in its obligations to make Capital Contributions, which the General Partner may perfect and assign for the benefit of a lender as determined by the General Partner in its discretion.

(c) The Partnership may borrow funds as contemplated in this Section 3.06 from any source selected by, and upon terms satisfactory to, the General Partner in its discretion, including, without limitation, from any Limited Partner, any Principal, the General Partner or any Affiliate of the foregoing.

Section 3.07 *Transactions with Affiliates.* Without the consent of the Advisory Committee, (i) the General Partner shall not cause the Partnership to purchase or borrow assets from, or sell or lend assets to, the General Partner or any Affiliate of the General Partner (other than a Portfolio Company) and (ii) the General Partner and its Affiliates shall not engage in any material financial transaction with a Portfolio Company (other than a transaction involving an investment or co-investment therein as otherwise contemplated herein or involving services of the type contemplated by Section 3.05(b)). Subject to the first sentence of this paragraph and to Section 4.01(b), the General Partner and its Affiliates shall have the right to perform investment advisory or other services for, and such Affiliates shall have the right to receive compensation from, the Partnership, any Co-Investment Fund or any Portfolio Company, and shall have the right to purchase property (including Securities) from, to sell property or lend funds to, or to co-invest or otherwise deal with, the Partnership, any Co-Investment Fund, any Portfolio Company, any Partner, Principal or any Affiliate of any of the foregoing. Each Limited Partner acknowledges and agrees that such actions may give rise to conflicts of interest between the Partnership and the Limited Partner on the one hand, and the General Partner or its Affiliates on the other hand, and that, except as set forth in Section 3.05(b), any fees or other compensation will not be shared with the Partnership or any Limited Partner.

Section 3.08 *Other Activities of the General Partner and its Affiliates.* Unless consented to by the holders of at least two-thirds of the aggregate Capital Commitment Percentages of the Limited Partners, until the Competing Fund Date, no less than a significant majority of the working time of Mark H. Rachesky and each of the other Principals will be devoted to matters related to the Partnership, the Co-Investment Funds and MRL. Subject to this Section 3.08, the Principals shall be required to devote such time to the affairs of the Partnership as the General Partner determines in its discretion may be necessary to manage and operate the Partnership. Each Principal, to the extent not otherwise directed by the General Partner and subject to this Section 3.08, shall be free to serve any other Person or enterprise in any capacity that he may deem appropriate in his discretion.

Section 3.09 *Annual Meeting.* The General Partner shall call a meeting of the Limited Partners at least annually by giving at least 15 days' written notice (including electronic transmission) specifying the date, time, and place thereof to each Limited Partner.

Section 3.10 *Reliance by Third Parties.* Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as set forth herein.

Section 3.11 *Advisory Committee.* (a) Promptly following the Initial Closing Date, the General Partner in its discretion, shall appoint an Advisory Committee consisting of representatives of at least three Limited Partners, or such greater number of representatives of Limited Partners (but not more than seven) as may be determined by the General Partner. No

Affiliate or employee of the General Partner shall serve as a member of the Advisory Committee. Members of the Advisory Committee shall serve concurrent two-year terms and shall be eligible for reappointment. Any member of the Advisory Committee may be removed by the vote of a Majority in Interest. In the event of a Default by a Limited Partner having a representative on the Advisory Committee, such representative shall be automatically removed without any vote or other action. The General Partner shall not have the right to remove members of the Advisory Committee, but shall have the right to fill any vacancy on the Advisory Committee at any time.

(b) The Advisory Committee shall advise the General Partner with respect to matters relating to (i) potential conflicts of interest relating to the acquisition, holding or disposition of Fund Investments (including as provided in Section 3.07), and (ii) upon request of the General Partner, the valuation of Partnership assets.

(c) The General Partner shall notify the Advisory Committee within 15 Business Days of each occasion on which (i) a Fund Investment acquired by the Partnership represents an allocation of less than the Partnership's pro rata share of a Distressed Investment, Post-Reorganization Investment or Other Investment opportunity pursuant to Section 4.01(b), (ii) a collective investment vehicle as permitted by the first sentence of Section 4.03(c) is created, (iii) the General Partner, any Principal, or any Affiliate thereof (exclusive of the Partnership, any Co-Investment Fund or MRL) (A) is allocated any portion of any Distressed Investment, Post-Reorganization Investment or Other Investment opportunity that is a Fund Investment pursuant to Section 4.01(e), or (B) otherwise acquires an investment in the Portfolio Company which is the subject of such Fund Investment and (iv) the Partnership acquires a Distressed Investment, Post Reorganization Investment or other Investment in a Portfolio Company in which the General Partner, any Principal, or any Affiliate thereof (exclusive of the Partnership, any Co-Investment Fund or MRL) is an investor. With respect to the notification required pursuant to each of clauses (i), (iii) and (iv) of this Section 3.11(c), the General Partner shall be entitled to keep confidential from the Advisory Committee any information (i) which the Partnership, the General Partner, any Principal or any Affiliate thereof is required by law, agreement, or otherwise to keep confidential, or (ii) the disclosure of which reasonably may have an adverse effect on (x) the ability to entertain, negotiate or consummate any proposed Fund Investment or any transaction directly or indirectly related to, or giving rise to, such proposed Fund Investment, (y) the Partnership or any other Person to whom the General Partner or any Affiliate of the General Partner owes a fiduciary duty, or (z) any Portfolio Company or any Person which is, directly or indirectly, the subject of a Fund Investment.

(d) The Advisory Committee shall meet at least annually at the principal place of business of the General Partner, or at such other place as may be selected by the General Partner, on such date as the General Partner and a majority of the members of the Advisory Committee may mutually agree, and at such other times as the General Partner or a majority of the members of the Advisory Committee may request. In the event of any change in the date, time or place of any such meeting, the General Partner shall promptly give reasonable notice to the members of the Advisory Committee. The General Partner shall provide to the Advisory Committee such information as is reasonably necessary to carry out its responsibilities. At each annual meeting of the Advisory Committee, the General Partner and the Advisory Committee shall discuss: (i) the operations and performance of the Partnership for the preceding Fiscal Year;

(ii) the matters referred to in paragraph (b) above; and (iii) any plans for winding up the affairs of the Partnership.

(e) Any recommendation to be made by the Advisory Committee shall require approval of a majority of its members. Unless a majority of the members of the Advisory Committee determines otherwise, attendance at Advisory Committee meetings may be by telephone conference. Members of the Advisory Committee may waive notice of any meeting before or after it is held. Any action of the Advisory Committee may be taken by majority written consent in lieu of a meeting. The Advisory Committee may establish such other rules of procedure as a majority of the members of the Advisory Committee shall agree upon. Such rules of procedure shall be subject to the approval of the General Partner, which approval shall not be unreasonably withheld.

(f) Neither the Advisory Committee nor any member thereof shall have the power to bind or act for or on behalf of the Partnership in any manner and in no event shall a member of the Advisory Committee be considered a General Partner of the Partnership by agreement, estoppel or otherwise or be deemed to participate in the control of the business of the Partnership as a result of the performance of his duties hereunder or otherwise. No member of the Advisory Committee shall be considered a fiduciary (within the meaning of Section 3(21) of ERISA) with respect to any Limited Partner subject to ERISA. No fees shall be paid by the Partnership to the members of the Advisory Committee, but such members shall be entitled to reimbursement by the Partnership for their reasonable out-of-pocket expenses incurred in the performance of their responsibilities in their capacities as members of the Advisory Committee.

Section 3.12 Confidentiality. (a) Each Limited Partner agrees to keep confidential, and not to make any use of (other than for purposes reasonably related to its interest in the Partnership or for purposes of filing such Limited Partner's tax returns) or disclose to any Person, any information or matter relating to the Partnership and its affairs and any information or matter related to any Fund Investment (other than disclosure to such Limited Partner's directors, employees, agents, advisors, custodian banks or representatives responsible for matters relating to the Partnership or to any other Person approved in writing by the General Partner (each such Person being hereinafter referred to as an "Authorized Representative")); provided that (i) such Limited Partner and its Authorized Representatives may make such disclosure to the extent that (x) the information to be disclosed is publicly known at the time of proposed disclosure by such Limited Partner or Authorized Representative, (y) the information otherwise is or becomes known to such Limited Partner other than through disclosure by the Partnership, the General Partner, any Portfolio Company or any Affiliate of, or other party that is subject to an obligation of confidentiality with, any of the foregoing entities, or (z) such Limited Partner reasonably believes disclosure is required by law or by legal process or in response to any governmental agency request or in connection with an examination by regulatory authorities or the National Association of Insurance Commissioners; provided that such agency, regulatory authorities or association is aware of the confidential nature of the information disclosed, (ii) such Limited Partner and its Authorized Representatives may make such disclosure to its beneficial owners to the extent required under the terms of its arrangements with such beneficial owners, and (iii) each Limited Partner will be permitted, after written notice to the General Partner, to correct any false or misleading information which becomes public concerning such Limited Partner's

relationship to the Partnership, the General Partner, any Portfolio Company or any proposed Portfolio Company. Prior to making any disclosure required by law, each Limited Partner shall use its reasonable best efforts to notify the General Partner of such disclosure. Prior to any disclosure to any Authorized Representative or beneficial owner, each Limited Partner shall use its reasonable best efforts to advise such Authorized Representative or beneficial owner of the obligations set forth in this Section 3.12(a).

(b) The General Partner may, to the maximum extent permitted by applicable law or this Agreement, keep confidential from any Limited Partner and any member of the Advisory Committee (including, without limiting the generality of the foregoing, a Limited Partner or Advisory Committee member that is not able to ensure confidentiality of information furnished to it as a consequence of state “sunshine” laws) any information, other than information required to be included in a report to Limited Partners pursuant to Section 7.03 (i) which the Partnership or the General Partner is required by law, agreement, or otherwise to keep confidential, or (ii) the disclosure of which the General Partner reasonably believes may have an adverse effect on (x) the ability to entertain, negotiate or consummate any proposed Fund Investment or any transaction directly or indirectly related to, or giving rise to, such proposed Fund Investment, (y) the Partnership or any other Person to whom the General Partner or any Affiliate of the General Partner owes a fiduciary duty, or (z) any Portfolio Company or any Person which is, directly or indirectly, the subject of a Fund Investment.

(c) The General Partner shall use reasonable efforts to keep confidential any information relating to a Limited Partner obtained by the General Partner in connection with or arising out of the Partnership which the Limited Partner requests be kept confidential (it being understood that the identity of any Limited Partner may be disclosed to any other Limited Partner).

ARTICLE IV

Investments and Investment Opportunities

Section 4.01 *Investments Generally.* (a) The assets of the Partnership shall, to the extent not required for the payment of Partnership Expenses (as determined by the General Partner in its discretion), and subject to Section 4.02, be invested in such Fund Investments as the General Partner shall determine in its discretion.

(b) The Partnership generally (i) will invest in any Fund Investment in parallel with one or more Co-Investment Funds and (ii) will receive an allocation thereof that is not less than its pro rata portion, calculated by reference to Available Capital at the time of the Partnership’s investment; provided that the Partnership generally will not be allocated a portion of any such investment opportunity that is less than such pro rata portion unless the General Partner makes a good faith determination that such allocation is equitable to the Partnership taking into account all circumstances that the General Partner reasonably considers to be relevant in making such determination; and provided, further, that the Partnership or any such Co-Investment Fund may invest in different proportions on account of the Default of a Limited Partner or a Co-Investment Fund Investor or in connection with any Other Investment.

Notwithstanding the foregoing, the Partnership or any Co-Investment Fund may invest in a different class or type of Securities if the General Partner believes it would be more advantageous in light of U.S. or foreign tax or other applicable laws or regulations, including regulations limiting foreign ownership of broadcast properties; provided that the economic terms of such investment are no different.

(c) If the General Partner decides to place an order for a Fund Investment it may place such an order on a combined basis on behalf of the Partnership with any Co-Investment Fund and may average the two prices with respect to such order.

(d) In connection with any Fund Investment where the transaction requires or permits a larger investment than the General Partner deems appropriate for the Partnership and any Co-Investment Fund (if any), the General Partner may, in its discretion (but shall not be required to), offer to certain Limited Partners the opportunity to co-invest with the Partnership (each such investment, a "Co-Investment"); provided, that a Co-Investment shall be on terms no more favorable to co-investing Limited Partners as the corresponding Fund Investment is to the Fund.

(e) The General Partner shall not permit the allocation of any portion of any Distressed Investment or Post-Reorganization Investment opportunity that is a Fund Investment to any person other than the Partnership or a Co-Investment Fund unless the General Partner makes a good faith determination that such allocation will not be disadvantageous to the Partnership.

Section 4.02 *Investment Limits.* (a) The Partnership shall not make any Fund Investment in the Securities of any Portfolio Company if such Fund Investment would cause more than 20% of the sum of (i) the Unfunded Capital Commitments plus (ii) the value of the net assets of the Partnership (determined in accordance with Section 7.04) to be invested in the Securities of such Portfolio Company.

(b) The Partnership shall not make any Fund Investment in Other Investments if such Fund Investment would cause more than 15% of the sum of (i) the Unfunded Capital Commitments plus (ii) the value of the net assets of the Partnership (determined in accordance with Section 7.04) to be invested in Other Investments.

Section 4.03 *Formation of Competing Fund.* (a) Without the approval of Limited Partners representing $66\frac{2}{3}\%$ of the aggregate Interests of all Limited Partners, until the Competing Fund Date, none of the Manager, the General Partner nor any of their respective Affiliates shall, directly or indirectly, close any Competing Fund for which any of the foregoing acts as the general partner, investment manager or primary source of investment opportunities. Prior to the end of the Commitment Period, any Competing Fund approved in accordance with the immediately preceding sentence (i) will invest in any new Fund Investments (other than Follow-Up Investments) in parallel with the Partnership and other Co-Investment Funds and may receive an allocation thereof that is at least equal to its pro rata portion, calculated by reference to the Available Capital of such Competing Fund, the Partnership and the other Co-Investment Funds at the time of the Partnership's investment and (ii) any such Competing Fund may invest

in any portion of a Follow-Up Investment otherwise available to the Partnership only if the General Partner determines, in its discretion, that it is not advisable for the Partnership to acquire such portion.

(b) The General Partner and its Affiliates reserve the right to establish a collective investment vehicle that has a stated investment program that differs from that of the Partnership or that is targeted primarily towards investors for which the Partnership is not designed to be a suitable investment vehicle. Subject to Sections 3.07 and 3.08, nothing in this Agreement shall be construed to restrict the General Partner or its Affiliates from managing or providing investment advisory services to separate accounts, whether or not such accounts have the same investment program as the Partnership.

(c) MRL shall not be deemed a Competing Fund or a Co-Investment Fund.

ARTICLE V

Capital Commitments And Contributions

Section 5.01 Admission of Limited Partners. (a) On the Initial Closing Date, each Person whose subscription for a limited partnership interest in the Partnership has been accepted by the General Partner shall, upon execution and delivery of the Subscription Agreement by the General Partner, become a Limited Partner and shall be shown as such on the books and records of the Partnership.

(b) On the Initial Closing Date, following the admission of Limited Partners to the Partnership, the Organizational Limited Partner shall withdraw from the Partnership and shall be entitled to receive the return of his capital contribution without interest or deduction.

Section 5.02 Capital Commitments. (a) No Person shall be admitted as a Limited Partner unless such Person agrees to a Capital Commitment of \$10 million or more; provided that the General Partner, in its discretion, may admit as Limited Partners Persons who agree to a Capital Commitment of less than \$10 million.

(b) The General Partner shall not accept any Capital Commitment that would cause aggregate Capital Commitments of Limited Partners (other than Affiliates of the General Partner) to exceed \$3,500,000,000.

(c) The General Partner shall cause the sum of (i) the Capital Commitments of the General Partner and its Affiliates and (ii) the capital commitments to the Parallel Funds by the General Partner and its Affiliates (such sum, the "GP Capital Commitment"), to equal at least the lesser of 1.0% of the aggregate Capital Commitments and \$10.0 million (increasing ratably with Capital Commitments of Limited Partners that are not Affiliates of the General Partner in excess of \$3,000,000,000 up to a maximum of \$35,000,000 if such Limited Partner Capital Commitments reach \$3,500,000,000), a majority of which shall be contributed by Mark H. Rachesky. Subject to the foregoing, the General Partner may allocate the GP Capital

Commitment among the Partnership and the Parallel Funds in its discretion, including to the extent necessary to reflect increases in the Capital Commitment of the General Partner (and capital commitments of the general partners of Parallel Funds) as a result of a subsequent closing for the Partnership or any Parallel Fund; provided that the GP Capital Commitment allocated to the Partnership shall not be less than the GP Capital Commitment multiplied by the fraction of (A) the aggregate Capital Commitments of the Limited Partners divided by (B) the sum of the aggregate Capital Commitments of the Limited Partners and the aggregate capital commitments of limited partners in the Parallel Funds, excluding for purposes of clauses (A) and (B) the Capital Commitments of Associated Partners in the Partnership and any Parallel Fund. Except as expressly provided herein, the GP Capital Commitment shall be treated in the same way as the Capital Commitment of the other Limited Partners that are not Affiliates of the General Partner.

Section 5.03 Capital Contributions. (a) Each Partner hereby agrees to make Capital Contributions to the Partnership from time to time as hereinafter set forth. Notwithstanding anything contained in this Agreement, no Partner shall be required to make any Capital Contribution to the Partnership to the extent that, at the time such Capital Contribution is to be made, such Capital Contribution exceeds such Partner's then Unfunded Capital Commitment.

(b) If a Drawdown Notice is delivered to the Limited Partners during the Commitment Period, the related Capital Contributions may be used either for Fund Investments or Partnership Expenses. If the applicable Drawdown Notice is delivered to the Limited Partners after the Commitment Period, the related Capital Contributions can be used solely for Partnership Expenses, Follow-up Investments and to consummate Fund Investments which are under active consideration by the Partnership prior to the termination of the Commitment Period.

Section 5.04 Drawdown Procedures. (a) Each Limited Partner shall, except as otherwise expressly provided herein, make Capital Contributions to the Partnership in such amounts and at such times as the General Partner shall specify in notices ("Drawdown Notices") delivered from time to time to such Limited Partner. All Capital Contributions shall be paid to the Partnership in immediately available funds in United States dollars by 11:00 a.m. (New York City time) on the date specified in the applicable Drawdown Notice. Contributions may include amounts that the General Partner determines in its discretion are necessary or desirable to establish reserves in respect of proposed Fund Investments, future Fund Investments or future Partnership Expenses. The General Partner shall make Capital Contributions to the Partnership in such amounts as hereinafter set forth and at the same times and in the same manner as the Limited Partners who are required to make related Capital Contributions, except with respect to payments of the Management Fee. Amounts drawn down will reduce a Partner's Unfunded Capital Commitment and generally may not be restored to Unfunded Capital Commitments, except that, in the discretion of the General Partner, amounts distributed to a Partner prior to the end of the Commitment Period representing all or any portion of the cost basis of Realized Fund Investments (including the expenses incurred in connection with such investments) that has been returned to such Partner shall be restored to the Partner's Unfunded Capital Commitment and be available to be redrawn for reinvestment or other proper Partnership purposes.

(b) Each Drawdown Notice shall specify:

- (i) the Drawdown Amount;
- (ii) whether the Drawdown is to be applied in respect of a Partnership Expense or a Fund Investment or both;
- (iii) the required Capital Contribution to be made by such Limited Partner;
- (iv) the date (the "Drawdown Date") on which such Capital Contribution is due (which, in the case of a Drawdown Date other than the initial Drawdown Date, shall be at least five Business Days from and including the date of delivery of the Drawdown Notice); and
- (v) the account of the Partnership to which such Contribution should be paid.

(c) In connection with any such Drawdown, each Partner shall be required to make a Capital Contribution equal to the product of (x) its Capital Commitment Percentage times (y) the Drawdown Amount specified in the applicable Drawdown Notice; provided that (i) in connection with any Drawdown for a Follow-up Investment, the General Partner may in its discretion determine that only Participating Partners with respect to the Fund Investment giving rise to the Follow-up Investment shall be required to make a Capital Contribution; and (ii) in connection with any Drawdown to fund any Partnership Expenses (including Partnership Expenses that relate to a specific Fund Investment), the General Partner may calculate the Capital Contributions to be made by the Partners with respect to such Partnership Expenses on any other basis (including requiring certain, but not all, Partners to fund all or a portion of such Partnership Expenses) if the General Partner determines in its discretion that such other basis is more equitable.

(d) If, in connection with the making of any Fund Investment or the payment of any Partnership Expense in respect of which a Drawdown Notice has been delivered, the General Partner shall determine, in its discretion, that it is necessary to increase the required Capital Contribution to be made by Partners in connection therewith, the General Partner shall deliver an additional Drawdown Notice to each Limited Partner amending the original Drawdown Notice and specifying:

- (i) the amount of any increase in the Drawdown Amount;
- (ii) the amount of the increase in the required Capital Contribution to be made by such Limited Partner; and
- (iii) the Drawdown Date with respect to the amount of the increase in the required Capital Contribution if different from the Drawdown Date specified in the original Drawdown Notice.

If the amount of the increase in the required Capital Contribution is equal to or less than 30% of the required Capital Contribution specified in the original Drawdown Notice,

the Drawdown Date with respect to such incremental amount shall be the later of (x) the Drawdown Date specified in the original Drawdown Notice and (y) three Business Days from and including the date of delivery of the additional Drawdown Notice. If the amount of such increase is greater than 25% of the required Capital Contribution specified in the original Drawdown Notice, the Drawdown Date with respect to such incremental amount shall be the later of (xx) the Drawdown Date specified in the original Drawdown Notice and (yy) five Business Days from and including the date of delivery of the additional Drawdown Notice.

Any increase in the required Capital Contribution of each Partner (including the General Partner) due to an increase in the Drawdown Amount specified in the original Drawdown Notice shall be calculated in accordance with this Section 5.04 (after giving effect to Sections 5.06 and 5.08, as appropriate) with respect to the amount of the increase in the Drawdown Amount.

(e) The General Partner will be authorized at any time to exclude a Limited Partner from participating in a particular Fund Investment when the General Partner makes a good faith determination that legal, regulatory or other requirements would preclude the participation of such Partner or where the participation of such Partner could have a material adverse effect on the Partnership. No item of income, gain, loss, deduction or credit arising from a Fund Investment shall be allocated to the Capital Account of a Partner who has been excluded from participating in such Investment in accordance with this Section 5.04(e).

(f) If the Offshore Feeder is unable to satisfy all or any portion of a Capital Contribution due to the Partnership, and such inability is caused by the default of one or more partners of the Offshore Feeder, the Offshore Feeder shall be treated as a Defaulting Partner in accordance with Section 5.06, but solely with respect to such defaulting partners' indirect interest in the Partnership and such limited partners' notional capital account maintained by the Partnership with respect to such partner.

Section 5.05 *No Liability of General Partner.* The General Partner shall not be liable to any Limited Partner, the Partnership or any other Person for permitting or requiring or failing to permit or require a Limited Partner to be excused from making all or a portion of any required Capital Contribution pursuant to this Article V.

Section 5.06 *Default by Limited Partners.* (a) In the event of a Default by any Limited Partner, the General Partner shall have the right to sell the entire Interest of the Defaulting Partner in the Partnership to any one or more other Partners (other than Defaulting Partners) at the highest price offered by such other Partner(s), or, in the discretion of the General Partner, to any third party or parties acceptable to the General Partner who shall offer a higher price and who otherwise qualify for admission as a Partner in the Partnership. The proceeds of any such sale shall be applied as follows:

(i) first, to reimburse the General Partner for any costs incurred in connection with such sale;

(ii) then, to pay interest to the Partnership at the Default Rate on any amounts due and owing by the Defaulting Partner from the date the payment was due through the date of the sale; and

(iii) then, to pay to the Defaulting Partner a maximum amount equal to two-thirds of the amounts outstanding to the credit of such Defaulting Partner's Capital Account as of the date of such sale.

Any remaining proceeds after payment of the amounts referred to in the preceding sentence shall be retained by the Partnership and treated as income to the Partnership, and the Defaulting Partner shall have no further rights thereto.

(b) As of the date of such sale, the transferee of such Defaulting Partner's Interest shall succeed to the Defaulting Partner's Capital Account, shall be treated for all purposes of this Agreement as having made the Capital Contributions of the Defaulting Partner, and shall be obligated to pay the entire remaining amount of the Defaulting Partner's Capital Commitment (including payment in full in immediately available funds on the date of such sale of the portion of such Capital Commitment then due and payable, if any). Effective as of such sale, the Defaulting Partner shall cease to be a Limited Partner and have no further rights in or against the Partnership or under this Agreement, and the transferee (if not already a Partner) shall be admitted to the Partnership as a Substituted Limited Partner in the Defaulting Partner's place and stead.

(c) The rights and remedies referred to in this Section 5.06 shall be in addition to, and not in limitation of, any other rights available to the General Partner or the Partnership under this Agreement or at law or in equity. The General Partner shall not be obligated to exercise the remedy for Default afforded pursuant to Section 5.06(a) and, at its sole and absolute discretion, the General Partner may pursue any other available legal remedies (instead of or in addition to the remedy provided in Section 5.06(a)) or none at all.

(d) The General Partner shall have the sole authority to compromise any claim of the Partnership relating to the obligation of any Limited Partner to make a Capital Contribution, and no consent or approval of any other Partner shall be required for such purpose.

(e) Until such time as the General Partner sells the Defaulting Partner's Interest, or in the event the General Partner is unable to sell such Interest, the General Partner may reduce the Defaulting Partner's Capital Account by the Defaulting Partner's share of the Management Fee and any other Partnership Expenses borne by the Limited Partners.

Section 5.07 *Funding the Shortfall Amount.* (a) If a Limited Partner has Defaulted or if a Co-Investment Fund Investor has defaulted with respect to an obligation to make a capital contribution to a Co-Investment Fund, then the General Partner may seek to fund the amount of such shortfall (the "Shortfall Amount") through the procedure set forth below.

(b) In the case of a funding shortfall,

(i) subject to the provisions of Section 5.03(a), the General Partner may in its discretion determine to increase the amount of the Capital Contribution required from each Limited Partner with respect to such Fund Investment or expense by an amount not exceeding 25% of such original Capital Contribution; provided that, to the extent permitted by the terms of any Co-Investment Fund, the General Partner shall require that the Co-Investment Fund Investors increase the amount they contribute to such investment or expense by a corresponding amount, and

(ii) the General Partner may also, on a basis it believes to be equitable and practicable, (x) offer Partners the opportunity to increase their Capital Contributions with respect to such Fund Investment and (y) offer any Co-Investment Fund Investor the same opportunity to increase the amount they invest in such Fund Investment. If any such Limited Partner or Co-Investment Fund Investor declines to invest in all or any portion of its share of the Shortfall Amount, such uncommitted amount will be offered to any Limited Partner and any Co-Investment Fund Investor who has agreed to invest in its share of the Shortfall Amount and concurrently advised the General Partner of its willingness to increase its Capital Contribution in excess of such share, and the General Partner shall allocate such uncommitted amount among all such other Limited Partners and Co-Investment Fund Investors on a basis the General Partner determines in its discretion is, under the circumstances, equitable and practicable, subject to the terms of the Co-Investment Fund.

(c) To the extent any Shortfall Amount has not been fully funded by the Limited Partners or Co-Investment Fund Investors (the "Secondary Shortfall Amount"), the General Partner may offer such Secondary Shortfall Amount to any other Person on such terms and conditions as the General Partner may determine, except that any such offer to the General Partner or an Affiliate of the General Partner shall be on substantially similar terms and conditions as apply to the Limited Partners.

(d) To the extent that the Secondary Shortfall Amount is not fully funded as set forth above (the "Gap Shortfall Amount"), the General Partner may fund such Gap Shortfall Amount by issuing Drawdown Notices pursuant to Section 5.04(d), and the required Capital Contribution of each Partner shall be calculated in accordance with Section 5.04(d).

(e) Notwithstanding anything else in this Section 5.07 to the contrary, the Partnership shall not be responsible for (and the General Partner shall not seek to fund from Limited Partners) a Shortfall Amount that relates to an expense solely attributable to a Co-Investment Fund.

Section 5.08 *Subsequent Closings.* (a) At any time until the close of business on the Final Closing Date, but not thereafter unless pursuant to Section 5.04 or pursuant to an amendment to this Agreement, the General Partner may in its discretion allow other Persons to commit to make investments in the Partnership and become Limited Partners or allow a Limited Partner to increase its original Capital Commitment. Nothing in this Section 5.08 shall require the approval of any Limited Partner.

(b) In the event Interests are sold to Limited Partners after the Initial Closing Date (a "Subsequent Closing") pursuant to Section 5.08(a), each such Limited Partner shall be required at the time of such Subsequent Closing to contribute to the Partnership the sum of: (i) its proportionate share, based on the Capital Commitment made by such Limited Partner at the Subsequent Closing, of the original cost of each unrealized Fund Investment, unless the General Partner in its discretion determines that it is appropriate to exclude such Limited Partner from being a Participating Partner with respect to any such investment, (ii) its proportionate share of Partnership Expenses, including Organizational Expenses, paid or accrued by the Partnership, (iii) the portion of the Management Fee attributable to the new Capital Commitment calculated as if the new Capital Commitment had been accepted as of the Initial Investment Date, plus (iv) an additional amount payable on items (i), (ii) and (iii), calculated at the Default Rate from the time of the Initial Closing Date with respect to items (i) and (ii), and calculated at the Default Rate from the time of the Initial Investment Date with respect to item (iii) (the "Additional Amount"). The amounts contributed pursuant to items (i) and (ii) will be refunded to Partners admitted prior to the Subsequent Closing pro rata in proportion to their Funded Capital Commitments and will be treated as Unfunded Capital Commitments. The Additional Amount paid to the Partnership on behalf of the Limited Partners with respect to items (i) and (ii) will also be refunded to Partners admitted prior to such Subsequent Closing pro rata in proportion to their Funded Capital Commitments. The amounts contributed pursuant to item (iii) and any Additional Amounts thereon will be paid to the Manager. Any Additional Amounts paid shall not be treated as a Capital Contribution and shall not reduce the payer's Unfunded Capital Commitment. Each Limited Partner that purchases an interest in the Partnership at a Subsequent Closing shall be deemed to have made a Capital Contribution with respect to each unrealized Fund Investment held at the relevant Subsequent Closing in an amount equal to the amount determined in accordance with (i) above.

Section 5.09 *Temporary Investment of Funds.* Subject to a determination by the General Partner in its discretion as to the amount of cash required in connection with the conduct of the Partnership's business, the General Partner shall invest all cash held by the Partnership, including all amounts being held by the Partnership for future investment in Fund Investments, payment of Partnership Expenses or distribution to the Partners, in Cash Equivalents.

Section 5.10 *Anticipatory Investment Transactions.* On or about the Initial Investment Date, the General Partner may cause the Partnership to acquire from certain Persons (which may include any affiliate of the General Partner) (the "Bridge Investors") one or more Fund Investments that were acquired at the recommendation of the General Partner in anticipation of the Partnership's commencement of investment operations. In connection with any such transaction, the assets underlying any such Fund Investment will be transferred or contributed to the Partnership by such Bridge Investors in exchange for an amount equal to the sum of (a) the purchase price paid by such Bridge Investors with respect to such Fund Investment, (b) all fees and expenses (including legal and other professional fees, transaction costs and an interim management fee to the Manager at the same rate specified in Section 3.05 on average invested capital of the Bridge Investors) incurred in connection with the acquisition, holding and transfer of such Fund Investment and (c) a carrying charge calculated at the Default Rate from the date of purchase or expenditure of the foregoing amount by the Bridge Investors through the date of contribution or transfer to the Partnership, as the case may be.

ARTICLE VI

Distributions; Capital Accounts; Allocations

Section 6.01 *Distributions Generally.* Subject to the provisions of Section 5.06 and Article IX, distributions shall be made in accordance with this Article VI. Except as expressly set forth in this Agreement (including, without limitation, in Section 6.02), all calculations with respect to distributions shall be made on a Fund Investment by Fund Investment and Participating Partner by Participating Partner basis.

Section 6.02 *Dispositions of Proceeds from Fund Investments* (a) Subject to Sections 6.02(b), 6.02(c), 6.02(d), 6.03 and 6.04, each Participating Partner's Investment Percentage of any Proceeds realized on any date from any Fund Investment shall be distributed as follows:

(i) first, one hundred percent (100%) to such Participating Partner until the cumulative amount of Proceeds, including interest, dividends and other income distributed in respect of Realized Fund Investments then and previously disposed of equals the aggregate of the following:

(A) the Funded Capital Commitments attributable to all Realized Fund Investments plus unrecouped Funded Capital Commitments with respect to Writedowns;

(B) an allocable portion of unrecouped Management Fees, Organizational Expenses and other Partnership Expenses (excluding such amounts originally funded by Proceeds rather than Capital Contributions); and

(C) the Preferred Return on amounts included in Sections 6.02(a)(i)(A) and 6.02(a)(i)(B);

(ii) second, 100% to the General Partner until such time as the General Partner has received 20% of the sum of the distributed Preferred Return and distributions made pursuant to this Section 6.02(a)(ii); and

(iii) thereafter, 80% to such Participating Partner and 20% to the General Partner (the amounts distributable to the General Partner pursuant to Sections 6.02(a)(ii) and 6.02(a)(iii), the "Carried Interest").

(b) For purposes of determining amounts to be distributed to Limited Partners pursuant to this Section 6.02, the General Partner shall combine gains and losses from hedging instruments employed as a hedge with respect to a Fund Investment with the Proceeds realized from the applicable Fund Investment.

(c) The General Partner may elect to apply amounts otherwise distributable pursuant to Section 6.02(a)(iii) above, including Carried Interest, in order to accelerate the return to Limited Partners of Funded Capital Commitments attributable to unrealized Fund Investments.

(d) Proceeds from any temporary Fund Investment in Cash Equivalents shall be distributed as deemed appropriate by the General Partner to all Partners pro rata based on their respective Investment Percentages of such Proceeds.

(e) The General Partner will be obligated to distribute any Proceeds from the disposition of Fund Investments, together with any dividends or interest income earned from such Fund Investments, within 90 days after the completion of such disposal (or related series of disposals), subject to the reinvestment and recall provisions of Section 5.04(a); provided that the General Partner shall not be required to distribute non-cash Proceeds; and provided further that Proceeds may be retained by the Partnership to meet obligations for expenses or Management Fees or, prior to the end of the Commitment Period, to fund Fund Investments (subject to Section 5.04(a)); and provided further that the General Partner shall not be required to make a distribution where the amount distributed to each of the Partners would be insignificant.

(f) In the discretion of the General Partner, the Partnership may make cash distributions to the General Partner in an amount sufficient (when added to any other distributions received by the General Partner) to pay federal, state and local income taxes on income allocated for tax purposes to Persons (including the Principals) that are entitled to receive from the General Partner allocations attributable to the Carried Interest (based on the highest marginal tax rates applicable to an individual resident in New York City and taking into account the deductibility of state and local income taxes for Federal income tax purposes).

Section 6.03 Clawback. (a) Upon termination of the Partnership and at any time when Limited Partners are required to return distributions pursuant to Section 8.01(f), the General Partner will be required to restore funds to the Partnership to enable the Partnership to make distributions to the Limited Partners in an amount equal to the greater of (i) the excess, if any, of total Capital Contributions plus the Preferred Return thereon over the cumulative amount of distributions received by the Limited Partners and (ii) the amount by which (A) cumulative Carried Interest distributions to the General Partner in respect of Limited Partners exceed (B) twenty percent (20%) of the amount by which (I) the sum of cumulative distributions to Limited Partners plus cumulative Carried Interest distributions in respect of Limited Partners exceeds (II) the cumulative amount of Capital Contributions by Limited Partners (in each case after giving effect to any returns of distributions pursuant to Section 8.01(f)). The obligation of the General Partner to make this payment to the Partnership will be limited to the cumulative amounts actually received by the General Partner from the Partnership on account of its Carried Interest, as described in Section 6.02(a)(iii) above, net of the associated income tax liability thereon (calculated on a pro forma basis in the manner contemplated by Section 6.02(f), taking into account any income tax refunds received by the Principals attributable to loss allocations representing the reversal of prior Carried Interest allocations) and after taking into account any amounts previously returned by the General Partner pursuant to this Section. Subject to the foregoing, the General Partner will not have any other financial obligation to restore losses to the Limited Partners.

(b) In order to provide a fund to secure the performance of the General Partner's obligations pursuant to Section 6.03(a) and in order to provide for any net unrealized depreciation in the aggregate value of Fund Investments at the time of a Carried Interest

distribution to be taken into account for such purpose, the General Partner shall establish the Clawback Security Account with one or more unaffiliated financial institutions upon the first distribution to the General Partner in respect of its Carried Interest that calls for a deposit to the Clawback Security Account pursuant to this Section 6.03(b), and the General Partner shall maintain such Clawback Security Account in accordance with the provisions of this Section 6.03(b) until its obligations under Section 6.03(a) have expired or have been fully discharged. On each date as of which a Carried Interest amount is distributable to the General Partner and as of the close of each calendar quarter when there is any balance in the Clawback Security Account, the General Partner shall calculate the difference between (i) the cumulative Capital Contributions by Limited Partners plus the Preferred Return thereon, and (ii) the sum of (A) the cumulative distributions to Limited Partners (including distributions payable at such time) plus (B) the balance of the Clawback Security Account plus (C) eighty percent (80%) of the net asset value of the Partnership, calculated for this purpose by using the lesser of the cost basis or current fair value of any unrealized Fund Investment. If the amount specified in clause (i) of the preceding sentence exceeds the amount specified in clause (ii) thereof as of the date of a Carried Interest Distribution to the General Partner, the General Partner shall be required to deposit in the Clawback Security Account an amount equal to the lesser of (x) the amount of such excess or (y) the amount of the Carried Interest Distribution. If the amount specified in clause (ii) of the preceding sentence exceeds the amount specified in clause (i) thereof as of the date of a Carried Interest distribution to the General Partner or as of any quarterly calculation date, the General Partner shall be permitted to withdraw from the Clawback Security Account an amount equal to any such excess. The balances from time to time held in the Clawback Security Account may be invested at the sole direction of the General Partner. The General Partner shall be entitled to withdraw at any time and from time to time any realized net income and gains from the Clawback Security Account. The General Partner shall not voluntarily grant or create a security interest or lien with respect to the Clawback Security Account unless such security interest or lien is subordinated to the entitlements of the Partnership hereunder.

Section 6.04 Other General Principles of Distribution (a) Distributions in Kind. Distributions made prior to the termination of the Partnership may take the form only of cash or Marketable Securities, and distributions made at the termination of the Partnership may take the form of cash, Marketable Securities or other Securities. In any distribution of property in kind, the General Partner shall not discriminate among the Partners but shall in any such distribution (i) distribute to the applicable Partners property of the same type, and (ii) if cash and property in kind are to be distributed simultaneously in respect of any Fund Investment, distribute cash and property in kind in the same proportion to each such Partner. For purposes of allocations pursuant to Section 6.07(a), property to be distributed in kind shall be valued at the fair market value thereof by the General Partner in its reasonable discretion, in accordance with Section 7.04, on a date as near as reasonably practicable to the date of such distribution.

(b) Notwithstanding the foregoing, if any Limited Partner notifies the General Partner that such Limited Partner is prohibited by applicable law or regulation from holding directly the property to be distributed in kind, the General Partner shall, in lieu of making such distribution in kind to such Limited Partner and to the extent permitted by applicable law, use reasonable efforts to sell such property on such Limited Partner's behalf on terms acceptable to

such Limited Partner and, upon such sale, the General Partner shall promptly distribute to such Limited Partner the net proceeds of such sale.

(c) **Withholding of Certain Amounts.** Notwithstanding anything else contained in this Agreement, the General Partner may, in its discretion, withhold from any distribution of cash or property in kind to any Partner pursuant to this Agreement, the following amounts:

(i) any amounts due from such Partner to the Partnership or the General Partner pursuant to this Agreement to the extent not otherwise paid; and

(ii) any amounts required to pay or reimburse (A) the Partnership for the payment of any taxes properly attributable to such Partner or (B) the General Partner for any advances made by the General Partner for such purpose.

Section 6.05 Limitations on Distributions to the General Partner. (a) Notwithstanding anything else contained in this Article VI, no distribution shall be made to the General Partner which is based upon a share of the capital gains or capital appreciation of the funds of a Limited Partner to the extent (but only to the extent) necessary in order for the General Partner to comply with any restrictions on the payment thereof pursuant to the Advisers Act and the regulations thereunder.

(b) At such time as any amount that would otherwise be distributed to the General Partner but for the operation of Section 6.05(a) (the "Undistributed Amount") is no longer subject to the restrictions of Section 6.05(a), the General Partner shall be entitled to cause the Partnership to make such distribution to the General Partner. If the General Partner receives a distribution that, it is later determined, it should not have received in order to be in compliance with the Advisers Act, it shall return or repay such amount to the Partnership for distribution to the applicable Limited Partners pursuant to the Advisers Act either pursuant to Section 9.04 upon dissolution of the Partnership or, at its option or if required by law, at such earlier time as it may determine or as shall be required.

(c) All or any portion of the Undistributed Amount may be invested in such Cash Equivalents as the General Partner shall deem appropriate. Subject to applicable law, gains realized or other income earned in respect of any such Undistributed Amounts shall be distributable to the General Partner at such times (including prior to the date on which it is determined that all or any portion of such Undistributed Amount may be distributed pursuant to Section 6.05.(a)) and in such amounts as it shall deem appropriate.

Section 6.06 Withdrawal of Capital. No Partner shall be permitted to borrow, or to make an early withdrawal of, any portion of its Capital Account, except as otherwise expressly provided herein.

Section 6.07 Capital Accounts; Allocations. (a) **Capital Accounts.** There shall be established for each Partner on the books and records of the Partnership a capital account (a "Capital Account"), which shall initially be zero. The Capital Account of each Partner shall be:

- (i) credited with any capital contributed to the Partnership by such Partner;
- (ii) credited with any allocations of income, profit or gain made to such Partner;
- (iii) in the event of an Event of Default with respect to such Partner, credited or debited pursuant to Section 5.06(a);
- (iv) debited by the amount of cash (or the value of other property as determined by the General Partner pursuant to Section 7.04) distributed to such Partner; and
- (v) debited by any allocation of expense (other than any expense that should properly be included in the basis of any asset of the Partnership), deduction or loss made to such Partner.

(b) Allocation of Partnership Expenses. For purposes of Section 6.02 and subject to the provisions of Section 3.04 and this Section 6.07, Partnership Expenses shall be allocated among the Fund Investments as follows: as of any date and with respect to any Fund Investment, there shall be allocated an amount (the "Allocable Expenses") equal to (x)(i) the aggregate Capital Contributions cumulatively made by the Partners in respect of Partnership Expenses (including Organizational Expenses) through such date, multiplied by (ii) the fraction obtained by dividing the Capital Contributions made with respect to such Fund Investment by (A) prior to the termination of the Commitment Period, the aggregate Capital Commitments and (B) after the termination of the Commitment Period, the aggregate Capital Contributions made with respect to such Fund Investment and any other Fund Investments that are not Realized Fund Investments at such date. It is the intention of the General Partner to allocate all Partnership Expenses to the Fund Investments over the life of the Partnership, and the General Partner may in its discretion vary the calculation of Allocable Expenses with respect to any Fund Investment in a manner it determines to be more equitable. For the avoidance of doubt Partnership Expenses that relate to a specific Fund Investment shall be allocated solely among the Participating Partners with respect to such Fund Investment. For purposes of calculating distributions on dissolution and the General Partner's obligation to make a clawback contribution pursuant to Section 6.03, the Allocable Expenses required to be then reimbursed shall be equal to the aggregate Capital Contributions cumulatively made by the Partners in respect of Partnership Expenses (including Organizational Expenses), net of such expenses previously reimbursed. For purposes of calculating distributions, Organizational Expenses will be amortized over a period not exceeding the 180 month period applicable for U.S. Federal income tax purposes.

(c) Residual Allocations. Prior to dissolution of the Partnership, the Partnership's remaining net income or net loss (after giving effect to clauses (a) and (b) above) and each item of income, gain, loss, deduction or expense included in the determination shall be allocated among the Partners in a manner consistent with the corresponding distributions made or to be made pursuant to this Article VI. Without limiting the generality of the foregoing, the following principles shall be applied:

(i) Allocations as between the General Partner and Participating Partners shall be determined separately for each Participating Partner.

(ii) Allocations of net income or gain and net loss shall be made between such Participating Partner and the General Partner in such a manner that, if the Partnership were wound up and its assets distributed pursuant to Article IX immediately after such allocation, such distributions would, as nearly as possible, be equal to the distributions that would be made pursuant to this Article VI.

(d) Allocations upon Dissolution. Upon the dissolution of the Partnership, the realized gains and losses of the Partnership attributable to sales of assets pursuant to Section 9.04 and the unrealized gains and losses of the assets to be distributed pursuant to Section 9.04 shall be allocated among the Partners in a manner consistent with the provisions of this Article VI.

(e) Timing of Allocations on Dispositions of Fund Investments. In connection with the disposition of Fund Investments, allocations of profit and loss shall be made from time to time within any Fiscal Year to the extent necessary to effect the intent of the distribution provisions of this Article VI and Article IX.

(f) There shall be established on the books and records of the Partnership, a Capital Account in respect of the Offshore Feeder. In addition, the Partnership shall maintain a notional sub-account in respect of each underlying partner of the Offshore Feeder, which shall be debited and credited in accordance with Article VI of this Agreement as if it were the capital account of a separate Partner for all purposes of this Agreement (it being understood that a partner of the Offshore Feeder is not intended to be, and shall not be, considered a Partner for purposes of the Delaware Act or other applicable law).

Section 6.08 Tax Allocations. (a) For federal, state and local income tax purposes, each item of income, gain, loss, deduction and credit of the Partnership shall be allocated among the Partners as nearly as possible in the same manner as the corresponding item of income, expense, gain or loss is allocated pursuant to the other provisions of this Article VI. It is intended that the Capital Accounts will be maintained at all times in accordance with Section 704 of the Code and applicable Treasury regulations thereunder, and that the provisions hereof relating to the Capital Accounts be interpreted in a manner consistent therewith. The General Partner shall be authorized to make appropriate amendments to the allocations of items pursuant to this Section 6.08 in its discretion to comply with Section 704 of the Code or applicable Treasury regulations thereunder; provided that no such change shall have an adverse effect upon the amount distributable to any Limited Partner hereunder.

(b) Notwithstanding any other provision of this Agreement, if a Limited Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) which gives rise to a negative Capital Account (or which would give rise to a negative Capital Account when added to expected adjustments, allocations or distributions of the same type), such Limited Partner shall be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as reasonably possible; provided that the Partnership's subsequent income,

gains, losses, deductions and credits shall be allocated among the Partners so as to achieve as nearly as possible the results that would have been achieved if this Section 6.08(b) had not been in this Agreement, except that no such allocation shall be made which would violate the provisions or purposes of Treasury Regulation Section 1.704-1(b).

(c) The economic burden of any tax (whether collected through withholding or directly imposed on the Partnership or any subsidiary (whether by law, regulation or contract)) or potential tax that, in the General Partner's reasonable discretion, is attributable to the identity, jurisdiction or other relevant tax attributes of a Partner may be specially allocated by the General Partner, in its discretion, to any such Partner, and the General Partner may similarly specially allocate amounts held in reserve by the Partnership or any subsidiary related to such tax or potential tax, or an indemnity related thereto, or a purchase price discount, holdback, offset or similar reduction in gross proceeds reasonably related to such tax or potential tax. An amount equal to all such taxes paid or withheld shall be treated as an advance against subsequent distributions due to such Partner for purposes of Section 6.02 and shall be subject to withholding from such Partner pursuant to Section 6.04(c) or repayment by such Partner pursuant to Section 8.01(c).

ARTICLE VII

Books And Records; Reports; Valuation

Section 7.01 *Books and Records; Accounting Method.* (a) The General Partner shall keep or cause to be kept at the address of the General Partner (or at such other place as the General Partner shall advise the other Partners in writing) full and accurate books and records of the Partnership. Subject to Section 3.12(b), such books and records shall be available, upon ten (10) Business Days' notice to the General Partner, for inspection and copying at reasonable times during business hours by each Limited Partner or its duly authorized agents or representatives for a purpose reasonably related to such Limited Partner's interest in the Partnership.

(b) The Partnership's books of account, for purposes of the reports to be given to Limited Partners pursuant to Section 7.03, shall be kept on a basis that uses generally accepted accounting principles as a guideline.

Section 7.02 *Partnership Tax Returns.* (a) The General Partner shall cause to be prepared and timely filed all tax returns required to be filed for the Partnership. The General Partner may, in its discretion, make, or refrain from making, any income or other tax elections for the Partnership that it deems necessary or advisable, including an election pursuant to Section 754 of the Code.

(b) The General Partner is hereby designated as the Partnership's "Tax Matters Partner" under Section 6231(a)(7) of the Code. The General Partner is specifically directed and authorized to take whatever steps the General Partner, in its discretion, deems necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury regulations. Any Partner may elect, in the discretion of the General Partner or as

otherwise required by law, to participate in any administrative proceedings relating to the determination of Partnership items at the Partnership level. Expenses of such administrative proceedings undertaken by the Tax Matters Partner shall be Partnership Expenses. Each Limited Partner who elects to participate in such proceedings shall be responsible for any expenses incurred by such Limited Partner in connection with such participation. The cost of any resulting audits or adjustments of a Limited Partner's tax return shall be borne solely by the affected Limited Partner.

(c) The General Partner shall not permit the Partnership to elect, and the Partnership shall not elect, to be treated as an association taxable as a corporation for U.S. federal, state or local income tax purposes under U.S. Treasury Regulations Section 301.7701-3(a) or under any corresponding provision of state or local law. The General Partner shall not permit the registration or listing of Interests in the Partnership on an "established securities market," within the meaning of U.S. Treasury Regulations Section 1.7704-1.

Section 7.03 Reports. (a) The books of account and records of the Partnership shall be audited as of the end of each Fiscal Year by the Partnership's independent certified public accountants. The Partnership's independent certified public accountants shall be a nationally recognized independent certified public accounting firm selected from time to time by the General Partner in its discretion. All reports provided to the Limited Partners pursuant to this Section 7.03 shall be prepared on a basis that uses U.S. generally accepted accounting principles as a guideline.

(b) With respect to each Fiscal Quarter in which the Partnership operates, the General Partner shall prepare or cause to be prepared, and provide to each Limited Partner, an interim report containing such information concerning the affairs of the Partnership which the General Partner in its discretion considers appropriate (which need not be audited or include any financial statements). The General Partner shall utilize reasonable efforts to mail such report to each Limited Partner not later than 45 days after the end of each such Fiscal Quarter (other than the fourth quarter).

(c) With respect to each Fiscal Year in which the Partnership operates, the General Partner shall prepare or cause to be prepared, and provide to each Limited Partner, an audited report setting forth at the end of such Fiscal Year the following: a balance sheet of the Partnership; an income statement of the Partnership; a statement of the changes of the Partnership's capital; a statement of changes in cash flow of the Partnership; and a statement of changes in the net assets of the Partnership. The General Partner shall utilize reasonable efforts to mail such report to each Limited Partner not later than 90 days after the end of each Fiscal Year.

(d) With respect to each Fiscal Year in which the Partnership operates, the General Partner shall prepare or cause to be prepared, and provide to (i) each Partner and (ii) each former Partner (or its successors, assigns, heirs or personal representatives) who may require such information in preparing its Federal income tax return and who may request such information from the General Partner in writing, (x) a United States federal income tax form K-1, (y) a statement setting forth the amount of unrelated business taxable income and unrelated debt

financed income allocated by the Partnership to such Partner or former Partner in such Fiscal Year, and (z) such information as is necessary for such Partner or former Partner to complete its state and federal tax or information returns, to the extent such information is reasonably available to the General Partner. The General Partner shall utilize reasonable efforts to mail such materials not later than 95 days after the end of each Fiscal Year.

(e) Upon the reasonable request of any Limited Partner, subject to Section 3.12, and upon reasonable notice to the General Partner, the General Partner shall furnish to such Limited Partner such information relating to investments of the Partnership as shall be necessary to enable such Limited Partner to obtain or retain tax exempt status in jurisdictions in which the Partnership is deemed to be conducting business, if applicable.

Section 7.04 Valuation. Valuations of Partnership assets shall be conducted in accordance with U.S. generally accepted accounting principles and as follows:

(a) The value of any Marketable Security shall be the last sale price at the relevant valuation date on the composite tape or on the principal exchange on which such Security is traded. If no such sale of such Security was reported on that date, and in the case of over-the-counter Securities not described above in this paragraph (a), the value shall be the mean between the current bid and offer prices quoted on such valuation date by an unaffiliated market maker or other financial institution which regularly trades such Securities.

(b) The value of any Security not referred to in paragraph (a) above or with respect to which the General Partner, in its reasonable discretion, shall determine that the valuation methodology referred to in paragraph (a) above does not fairly represent the value of such Security or instrument, shall be (i) the price that a willing buyer would be prepared to offer and a willing seller would be prepared to accept therefor in an arm's-length transaction for regular way settlement in cash, determined by or pursuant to the direction of the General Partner or (ii) in the case of a position that is subject to restrictions on resale or liquidation, a value that fairly reflects the financial effect of such restrictions.

ARTICLE VIII

Exculpation And Indemnification

Section 8.01 Exculpation and Indemnification. (a) None of the General Partner, the Manager or any member of the Advisory Committee and any of their respective directors, officers, managers, members, employees, Affiliates, and, subject to approval by the General Partner, independent contractors and agents (each an "Indemnified Party") shall be liable to the Partnership or to any of the Partners for any losses, claims, damages or liabilities arising from any act or omission performed or omitted by it in connection with this Agreement or the Partnership's business or affairs, including losses due to the negligence of brokers or other agents of the Partnership, except for any losses, claims, damages or liabilities to the extent attributable to such Indemnified Party's gross negligence, bad faith, willful misconduct or intentional and material breach of this Agreement. For purposes of this Section 8.01, good faith reliance on the advice of counsel or other experts (selected with due care) by an Indemnified Party acting under

this Agreement satisfies such Indemnified Party's obligation to make reasonable good faith efforts. The foregoing provisions shall not affect the General Partner's obligation to correct any allocations to the Capital Accounts of the Partners or distributions to the Partners pursuant to Article VI if such allocations or distributions were not made in accordance with this Agreement. The General Partner shall not be personally liable to any Limited Partner for the repayment of any positive balance in such Limited Partner's Capital Account or for contributions by such Limited Partner to the capital of the Partnership or by reason of any change in the Federal or state income tax laws applicable to the Partnership or its investors. To the extent that, at law or in equity, an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or to a Partner, such Indemnified Party acting under this Agreement shall not be liable to the Partnership or to any Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they expand or restrict the duties and liabilities of an Indemnified Party otherwise existing at law or in equity, are agreed by the Partners to modify to that extent such other duties and liabilities of an Indemnified Party.

(b) The Partnership shall, to the fullest extent permitted by applicable law, indemnify and hold harmless each Indemnified Party against any losses, claims, damages or liabilities to which such Indemnified Party may become subject in connection with any matter arising out of or in connection with this Agreement or the Partnership's business or affairs, unless a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review determines that any such loss, claim, damage or liability is primarily attributable to such Indemnified Party's gross negligence, bad faith, willful misconduct or intentional and material breach of this Agreement. If any Indemnified Party becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with this Agreement or the Partnership's business or affairs, the Partnership will periodically reimburse the Indemnified Party for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided that such Indemnified Party shall promptly repay to the Partnership the amount of any such reimbursed expenses paid to it to the extent that it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified by the Partnership in connection with such action, proceeding or investigation as provided in the exception contained in the immediately preceding sentence. If for any reason (other than the gross negligence, bad faith, willful misconduct or intentional and material breach of this Agreement, by such Indemnified Party) the foregoing indemnification is unavailable to such Indemnified Party, or insufficient to hold it harmless, then the Partnership shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative benefits received by the Partnership, on the one hand, and the Indemnified Party on the other hand or, if such allocation is not permitted by applicable law, to reflect not only the relative benefits referred to above but also any other relevant equitable considerations.

(c) Each Partner covenants for itself and its successors and assigns that such Person will, at any time prior to or after dissolution of the Partnership on demand, whether before or after such Person's withdrawal from the Partnership, pay to the Partnership or the General Partner any amount which the Partnership or the General Partner, as the case may be, pays in respect of taxes (including withholding taxes) imposed upon income of or distributions to such

Partner (except to the extent that such amount has otherwise been recovered by means of a reduction in the amount that would otherwise have been distributed to such Partner).

(d) Notwithstanding anything else contained in this Agreement (other than the immediately preceding paragraph), the reimbursement, indemnity and contribution obligations of the Partnership under Section 8.01(b) shall:

(i) be in addition to any liability which the Partnership may otherwise have;

(ii) extend upon the same terms and conditions to the directors, officers, members, managers, employees, agents, independent contractors and Affiliates of each Indemnified Party;

(iii) be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of such Indemnified Party and any such Persons; and

(iv) be limited to the assets of the Partnership and the amount of the Partners' aggregate Unfunded Capital Commitments.

(e) Subject to the provisions of Section 17-607 of the Delaware Act and Section 8.01(f) below, nothing in this Article VIII (other than Section 8.01(c)) shall require any Limited Partner to make any payment to any Person on account of any litigation involving the Partnership (including any amount upon judgment or settlement) or on account of any indemnity, contribution or similar expense other than payments in the form of Capital Contributions called for by the General Partner to fund such expenses.

(f) The General Partner may require all Partners to return distributions made to them to satisfy the Partnership's indemnity obligations pursuant to Section 8.01(b); provided that: (i) no Limited Partner shall be obligated to return a distribution after the third anniversary of the date of such distribution, (ii) the aggregate amount of distributions which a Limited Partner shall be required to return hereunder shall not exceed 25% of the amount of such Limited Partner's Capital Commitment, and (iii) with respect to any indemnity obligation arising from a Fund Investment, (A) only those Limited Partners that have an Investment Percentage in such Fund Investment shall be required to return any amounts with respect to such Fund Investment and (B) the amount that those Limited Partners who have an Investment Percentage in such Fund Investment shall be required to return shall be based on the Investment Percentage of each such Limited Partner in such Fund Investment; provided, that each such Limited Partner shall not be required to return to the Partnership in respect of such indemnity obligation any amounts in excess of the aggregate amount of distributions received by such Limited Partner from all Fund Investments.

(g) The foregoing provisions of this Section 8.01 shall survive for a period of three years from the date of dissolution of the Partnership; provided that if at the end of such period, there are any actions, proceedings or investigations then pending or expected, the General Partner shall so notify the Limited Partners at such time (which notice shall include a brief

description of each such action, proceeding or investigation and of the liabilities asserted therein) and the foregoing provisions of this Section 8.01 shall survive with respect to each such action, proceeding or investigation set forth in such notice (or any related action, proceeding or investigation based upon the same or similar claim) until such date that such action, proceeding or investigation is ultimately resolved; and provided further that the provisions of this Section 8.01 shall not affect the obligations of the Limited Partners under Section 17-607 of the Delaware Act.

Section 8.02 Jurisdiction. To the fullest extent permitted by applicable law, the General Partner and each Limited Partner hereby agree that any claim, action or proceeding by any Limited Partner seeking any relief whatsoever against any Indemnified Party based on, arising out of or in connection with this Agreement or the Partnership's affairs shall be brought only in the Chancery Court of the State of Delaware (or other appropriate state court in the State of Delaware) or the Federal Courts located in the State of Delaware, and not in any other State or Federal court in the United States of America or any court in any other country. The General Partner and each Limited Partner acknowledge that, in the event of any breach of this provision, the Indemnified Parties have no adequate remedy at law and shall be entitled to injunctive relief to enforce the terms of this Article VIII.

ARTICLE IX

Duration And Dissolution Of The Partnership

Section 9.01 Duration. The Partnership shall dissolve four years after the end of the Commitment Period, unless sooner dissolved pursuant to Section 9.02, provided that the General Partner may, in its discretion, upon written notice to the Partners, given on up to three occasions not less than 30 days prior to the date the Partnership would otherwise dissolve, extend the term of the Partnership for up to three successive one-year terms following the expiration of such initial term.

Section 9.02 Dissolution. Subject to the Delaware Act, the Partnership shall be dissolved and its affairs shall be wound up upon the earliest of:

- (a) the expiration of the term of the Partnership provided in Section 9.01;
- (b) the written election of the General Partner, in its discretion, to dissolve the Partnership;
- (c) 120 days after (i) the death of Dr. Rachesky, (ii) the Disability of Dr. Rachesky or (iii) Dr. Rachesky otherwise ceases to devote his working time primarily (which shall mean no less than a majority of such working time) to matters related to the Partnership, the Co-Investment Funds and MRL (unless consented to by the holders of at least two thirds of the aggregate Capital Commitment Percentages of the Limited Partners or the Competing Fund Date has occurred), unless, prior to the expiration of such 120 day period, Limited Partners (other than Defaulting Partners and Associated Partners) whose Capital Commitments represent at least seventy five percent (75%) of the Capital Commitments of all Partners shall have voted in favor

of continuing the Partnership without dissolution. In connection with any such vote to continue the Partnership without dissolution, and by a like supermajority, the Limited Partners may vote to replace the existing General Partner with a new General Partner. In such event, the interest of the replaced General Partner shall be converted to the Interest of a Limited Partner, except that (i) the replaced General Partner shall remain entitled to receive the same distributions that it would have been entitled to receive if it remained the sole General Partner with respect to Fund Investments made prior to such General Partner's replacement, and (ii) the replaced General Partner shall not be required to make any Capital Contributions to fund any new Fund Investments identified by the replacement General Partner (and it shall not be a Participating Partner with respect to any such Fund Investment). If such replacement was for a reason provided in clauses (i), (ii) or (iii) of the first sentence of this Section 9.02(c), the provisions of Section 6.03 shall cease to be applicable to the replaced General Partner.

(d) the occurrence of any other event which results in the General Partner (or a successor to its business) ceasing to be the General Partner of the Partnership; and

(e) the first anniversary of the Initial Closing Date, but only in the event the Initial Investment Date does not occur prior to such date.

Section 9.03 *Liquidation of Partnership Assets.* Upon dissolution, the Partnership's business shall be wound up and its assets (other than those to be distributed in kind pursuant to Section 9.04) shall be liquidated in an orderly manner. The General Partner shall be the liquidator and shall wind up the affairs pursuant to this Agreement. If the General Partner is unable to perform this function, a Majority in Interest may elect one or more liquidators to act as the liquidator in carrying out such liquidation. In performing its duties, the liquidator is authorized to sell, distribute, exchange or otherwise dispose of the assets of the Partnership in any reasonable manner that the liquidator shall determine to be in the best interest of the Partners.

Section 9.04 *Distribution Upon Dissolution of the Partnership.* Upon dissolution of the Partnership, the liquidator winding up the affairs of the Partnership shall determine in its discretion which assets of the Partnership shall be sold and which assets of the Partnership shall be retained for distribution in kind to the Partners. Assets to be distributed in kind shall be valued as described in Section 7.04, with an independent valuer experienced in appraising the fair value of such assets to be selected by the liquidator substituted in the role of the General Partner provided therein (which selection shall be subject to the approval of a Majority in Interest, which approval shall not be unreasonably withheld) with respect to assets which are not described in Section 7.04(a). Subject to the Delaware Act, after all liabilities of the Partnership have been satisfied or duly provided for, the remaining assets of the Partnership shall be distributed to the Partners pro rata to their positive Capital Account balances, as adjusted in accordance with Article VI (including, without limitation, adjustments attributable to sales of assets pursuant to this Section 9.04 and adjustments to reflect unrealized gain or loss in the assets to be distributed).

Section 9.05 *Withdrawal of a Limited Partner; Termination of Commitments.* (a) Except as otherwise provided in Article XI and Section 9.05(e), a Limited Partner may not withdraw from the Partnership at any time prior to its termination. No withdrawal under Article

XI or Section 9.05(e) shall affect the Unfunded Capital Commitment of any other Limited Partner.

(b) The General Partner may require the withdrawal of any Limited Partner at any time for Cause. In the event the General Partner determines to require a withdrawal of a Limited Partner or Limited Partners solely for the reason provided in clause (iii) of the definition of "Cause," (i) the General Partner shall notify each Limited Partner that has informed the General Partner in writing that it is subject to Title I of ERISA of the General Partner's intention to require such a withdrawal; (ii) subject to Article XI of the Agreement exclusive of Section 11.01, the General Partner shall permit each such Limited Partner to Transfer all or part of its Interest to an Affiliate which is not subject to ERISA within 5 Business Days of the date the notice pursuant to clause (i) was provided, provided such transferee would not be subject to withdrawal pursuant to the first sentence of this Section 9.05(b) (as determined by the General Partner at the time of Transfer); and (iii) subsequent to such 5 Business Day period, in the event the General Partner determines to require such withdrawal if insufficient Transfers have been made pursuant to clause (ii), the General Partner will require that each Limited Partner subject to ERISA withdraw a pro rata portion of its Interest based on its Capital Commitment.

(c) Upon the death or incompetency of an individual Limited Partner, such Limited Partner's executor, administrator, guardian, conservator or other legal representative may exercise all of such Limited Partner's rights for the purpose of settling such Limited Partner's estate or administering such Limited Partner's property, except that the General Partner may reduce or cancel a Limited Partner's obligation to make future Capital Contributions on such terms as the General Partner determines in its discretion.

(d) Except as expressly provided in this Agreement, no event affecting a Limited Partner (including bankruptcy or insolvency) shall affect the Partnership.

(e) If a change in the membership of the Partnership proposed to be effected or permitted by the General Partner will cause the assets of the Partnership to be considered Plan Assets for purposes of ERISA, the General Partner shall so notify each Limited Partner that has informed the General Partner in writing that it is subject to Title I of ERISA. Not later than the effective date of such change, the General Partner shall either (i) certify to each such Limited Partner that the General Partner qualifies as an "investment manager" within the meaning of ERISA and acknowledge that the General Partner shall be a fiduciary with respect to such Limited Partner in accordance with ERISA or (ii) permit such Limited Partner to withdraw from the Partnership in a commercially reasonable manner reflecting the fair market value of the Interest being withdrawn.

ARTICLE X

Transferability Of General Partner's Interest

Section 10.01 *Transferability of General Partner's Interest* (a) Except as otherwise provided herein, the General Partner may not, directly or indirectly, sell exchange, transfer,

assign, pledge, hypothecate or otherwise dispose of all or any portion of its interest in the Partnership (any direct or indirect sale, exchange, transfer, assignment, pledge, hypothecation or other disposition of an interest in the Partnership being herein collectively called a "Transfer") to any Person without the prior approval of a Majority in Interest. If the General Partner so determines in its discretion, and such prior approval of the Limited Partners so provides (if such approval is required for such Transfer), the General Partner may admit any Person to whom the General Partner proposes to make such a Transfer as an additional or substituted general partner of the Partnership to carry on the business of the Partnership. Any transferee of all of the interest of the General Partner shall be admitted as a general partner of the Partnership immediately prior to the withdrawal of the transferor general partner.

(b) To the extent required by the Advisers Act, the General Partner shall notify the Limited Partners of any change in its membership within a reasonable time after such change.

(c) Except as otherwise provided in this Section 10.01, the General Partner may not withdraw from the Partnership prior to its termination.

(d) Notwithstanding any other provision of this Section 10.01, the General Partner's interest may be transferred in a transaction not involving a change of actual control or management of the investment advisory business of the General Partner, and each Limited Partner will be deemed to have consented to any such transfer.

ARTICLE XI

Transferability Of A Limited Partner's Interest

Section 11.01 *Restrictions on Transfer.* (a) No Transfer of all or any part of a Limited Partner's Interest (including, without limitation, any sub-participation thereof) in the Partnership may be made without the prior written consent of the General Partner (which may, in the General Partner's discretion, be withheld or granted on such terms as such General Partner determines).

(b) Notwithstanding any other provision on this Agreement, no Transfer of an Interest shall be permitted if such Transfer would (i) unless the General Partner otherwise consents in its discretion, cause the Partnership to have more than 100 partners, as determined for purposes of Treasury Regulations Section 1.7704-1(h) or (ii) cause the Partnership to be treated as a publicly traded partnership within the meaning of Code Section 7704 and Treasury Regulations Section 1.7704-1.

Section 11.02 *Expenses of Transfer; Indemnification.* All expenses, including attorneys' fees and expenses, incurred by the General Partner or the Partnership in connection with any Transfer shall be borne by the transferring Limited Partner or such Limited Partner's transferee (any such transferee, when admitted and shown as such on the books and records of the Partnership, being hereinafter called a "Substituted Limited Partner"). In addition, the transferring Limited Partner or such transferee shall indemnify the Partnership and the General Partner in a manner satisfactory to the General Partner against any losses, claims, damages or

liabilities to which the Partnership or the General Partner may become subject arising out of or based upon any false representation or warranty made by, or breach or failure to comply with any covenant or agreement of, such transferring Limited Partner or such transferee in connection with such Transfer.

Section 11.03 Recognition of Transfer; Substituted Limited Partners. (a) The Partnership shall not recognize for any purpose any purported Transfer of all or any part of a Limited Partner's Interest in the Partnership and no purchaser, assignee, transferee or other recipient of all or any part of such Interest shall become a Substituted Limited Partner hereunder unless:

(i) the conditions of Sections 11.01, 11.02 and 11.03(b) shall have been satisfied;

(ii) the General Partner shall have been furnished with the documents effecting such Transfer, in form reasonably satisfactory to the General Partner, executed and acknowledged by both the seller, assignor or transferor and the purchaser, assignee, transferee or other recipient;

(iii) such purchaser, assignee, transferee or other recipient shall have represented that such Transfer was made in accordance with all applicable laws and regulations;

(iv) all necessary governmental consents shall have been obtained in respect of such Transfer; and

(v) all necessary instruments reflecting such admission shall have been filed in each jurisdiction in which such filing is necessary in order to qualify the Partnership to conduct business or to preserve the limited liability of the Limited Partners.

(b) Each Substituted Limited Partner, as a condition to its admission as a Limited Partner, shall execute and acknowledge such instruments (including a counterpart of this Agreement), in form and substance satisfactory to the General Partner, as the General Partner reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of such Substituted Limited Partner to be bound by all the terms and provisions of this Agreement with respect to the Interest in the Partnership acquired by such Substituted Limited Partner. The admission of a Substituted Limited Partner shall not require the approval of any Limited Partner. Such transferee shall be admitted as a Substituted Limited Partner upon approval by the General Partner when each of the foregoing requirements of this Section 11.03 have been complied with, and as promptly as practicable thereafter the books and records of the Partnership shall be changed to reflect the admission of such Substituted Limited Partner.

Section 11.04 Transfers During a Fiscal Year. If any Transfer of a Partner's interest in the Partnership shall occur at any time other than the end of the Partnership's Fiscal Year, the distributive shares of the various items of Partnership income, gain, loss, and expense as computed for tax purposes and the related cash distributions shall be allocated between the

transferor and the transferee on a basis consistent with applicable requirements under Section 706 of the Code; provided that no such allocation shall be effective unless, without limitation, (i) the transferor and the transferee shall have given the Partnership written notice, prior to the effective date of such Transfer, stating their agreement that such allocation shall be made on such proper basis, (ii) the General Partner shall have consented to such allocation, and (iii) the transferor and the transferee shall have agreed to reimburse the General Partner for any incremental accounting fees and other expenses incurred by the General Partner in making such allocation.

Section 11.05 Securities Laws. The Interests have been issued pursuant to a claim of exemption from the registration or qualification provisions of federal and state securities laws and may not be sold or otherwise Transferred, in whole or in part, without compliance with the registration or qualification provisions of applicable federal and state securities laws or applicable exemptions therefrom.

Section 11.06 Legends. If certificates for any Interest or Interests are issued evidencing a Limited Partner's Interest, each such certificate shall bear such legends as may be required by applicable federal or state laws, or as may be deemed necessary or appropriate by the General Partner to reflect restrictions upon transfer contemplated herein.

ARTICLE XII

Miscellaneous

Section 12.01 Amendments to the Partnership Agreement. (a) Except as otherwise provided in this Section 12.01, this Agreement may be amended, in whole or in part, with the written consent of (i) the General Partner and (ii) a Majority in Interest; provided that no amendment of this Agreement shall:

(i) without the prior written consent of all the Limited Partners (other than any Defaulting Partners or Associated Partners), amend this Section 12.01;

(ii) without the prior written consent of each Limited Partner adversely affected thereby, (A) increase the Capital Commitment of any Limited Partner (other than as provided in this Agreement), (B) reduce the Capital Commitment of any Limited Partner (other than as provided in this Agreement), (C) change the provisions of Article VI to alter any Limited Partner's rights with respect to allocations or with respect to distributions, (D) change the provisions of Section 9.05(b) or Section 9.05(e) or (E) change the amount, timing of payment or method of calculation of the Management Fee; and

(iii) without the approval of Limited Partners holding Capital Commitments representing the percentage of Capital Commitments specified in any provision of this Agreement required for any action or approval of the Partners, amend such provision.

(b) Notwithstanding the foregoing, the General Partner may at any time without the consent of the other Partners:

(i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner under this Agreement, for the benefit of the Limited Partners;

(ii) cure any ambiguity or correct or supplement any conflicting provisions of this Agreement or make other changes that would not, in the reasonable opinion of the General Partner, be adverse to the Limited Partners;

(iii) make any changes required by any governmental body or agency which is deemed to be for the benefit or protection of the Limited Partners or any class thereof (such as Limited Partners subject to ERISA); provided that no such amendment referred to in this paragraph (iii) may be made unless it is for the benefit of, or not adverse to, the interests of the Limited Partners, such change does not affect the right of the General Partner to manage and control the Partnership's business, does not affect the allocation of profits and losses among the Partners in a manner that is adverse to any Limited Partner and does not affect the limited liability of the Limited Partners;

(iv) amend this Agreement to reflect a change in the identity of the General Partner following a transfer of a General Partner's partnership interest in accordance with the terms of this Agreement;

(v) amend this Agreement to effect compliance with any applicable law or regulation; and

(vi) restate this Agreement together with any amendments hereto which have been duly adopted in accordance herewith to incorporate such amendments in a single, integrated document.

(c) The General Partner shall give written notice of any proposed amendment to this Agreement (other than any amendment of the type contemplated by clause (v) or (vi) of this Section 12.01(b)) to all of the Limited Partners, which notice shall set forth the text of the proposed amendment.

Section 12.02 Approvals. Each Limited Partner agrees that, except as otherwise specifically provided herein and to the extent permitted by applicable law, for purposes of granting the approval of the Limited Partners with respect to any proposed action of the Partnership (including any such approval required under the Advisers Act), the written approval of a Majority in Interest shall bind the Partnership and each Limited Partner and shall have the same legal effect as the written approval of each Partner. The General Partner may request the written approval of a Majority in Interest to approve any matter required to be so approved by the Advisers Act.

Section 12.03 Investment Representation. Each Partner, by executing this Agreement, represents and warrants that its interest in the Partnership has been acquired by it for its own

account, or for the account of a commingled pension trust or other institutional investor previously specified in writing to the Partnership with respect to whom it has full investment discretion, for investment and not with a view to resale or distribution thereof and that it is fully aware that in agreeing to admit it as a Partner, the General Partner and the Partnership are relying upon the truth and accuracy of this representation and warranty.

Section 12.04 Successors; Counterparts. This Agreement (i) shall be binding as to the executors, administrators, estates, heirs and legal successors of the Partners and (ii) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

Section 12.05 Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. In particular, it shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Delaware Act. If, nevertheless, it shall be determined by a court of competent jurisdiction that any provision or wording of this Agreement shall be invalid or unenforceable under such Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable law, and, in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable provisions.

Section 12.06 Filings. The General Partner shall promptly prepare, following the execution and delivery of this Agreement, any documents required to be filed and recorded, or, in the General Partner's view, appropriate for filing and recording, under the Delaware Act, and the General Partner shall promptly cause each such document to be filed and recorded in accordance with such Act and, to the extent required by local law, to be filed and recorded or notice thereof to be published in the appropriate place in each state in which the Partnership may hereafter establish a place of business. The General Partner shall also promptly cause to be filed, recorded and published such statements of fictitious business name and other notices, certificates, statements or other instruments required by any provision of any applicable law of the United States or any State or other jurisdiction which governs the conduct of its business from time to time.

Section 12.07 Power of Attorney. Each Limited Partner does hereby constitute and appoint the General Partner as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute, sign and file a Certificate of Limited Partnership of the Partnership, and, subject to Section 12.01, any amendment thereof required because of an amendment to this Agreement or in order to effectuate any change in the membership of the Partnership, any amendments to this Agreement adopted in accordance with Section 12.01 and all such other instruments, documents and certificates which may from time to time be required by the laws of the United States of America, the State of Delaware or any other State, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership or to dissolve the Partnership and to obtain from the Internal Revenue Service, on behalf of each Limited Partner, a Form 6166, "Certification of Filing a Tax Return".

Such representatives and attorneys-in-fact shall not have any right, power or authority to amend or modify this Agreement when acting in such capacities.

The power of attorney granted hereby is coupled with an interest and shall (i) survive and not be affected by the subsequent dissolution, termination or bankruptcy of the Limited Partner granting the same or the transfer of all or any portion of such Limited Partner's interest in the Partnership, and (ii) extend to such Limited Partner's successors, assigns and legal representatives.

Section 12.08 *No Bill for Partnership Accounting.* Subject to mandatory provisions of law applicable to a Limited Partner and to circumstances involving a breach of this Agreement, each of the Partners covenants that it will not (except with the consent of the General Partner) file a bill for Partnership accounting.

Section 12.09 *Goodwill.* No value shall be placed on the name or goodwill of the Partnership.

Section 12.10 *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including a telecopy, electronic transmission or similar writing), shall be given by telecopy, electronic transmission, certified or express mail or special courier service, and shall be given to such party at its address, telecopy number or e-mail address set forth in a schedule filed with the records of the Partnership or such other address or telecopy number as such party may hereafter specify for the purpose by notice to the General Partner (if such party is a Limited Partner) or to all the Limited Partners (if such party is one of the General Partner). Each such notice, request or other communication shall be effective (i) if given by telecopy or electronic transmission, when such notice is transmitted to the telecopy number or e-mail address specified pursuant to this Section 12.10, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified pursuant to this Section 12.10; provided that notices to the General Partner under Article V shall not be effective until received.

Section 12.11 *Entire Agreement.* This Agreement together with the Subscription Agreements shall constitute the entire agreement and understanding among all the parties hereto with respect to the subject matter hereof, it being acknowledged and agreed that the General Partner, without the approval of any other Partner, may enter into a supplemental written agreement with any Limited Partner, in connection with the admission of such Limited Partner to the Partnership, affecting the terms hereof in order to meet certain requirements of such Limited Partner. The parties hereto agree that any terms contained in any such supplemental agreement with a Limited Partner shall govern with respect to such Limited Partner notwithstanding the provisions of this Agreement.

Section 12.12 *No Third Party Rights.* Except as set forth in Article VIII or as otherwise granted by the General Partner, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

IN WITNESS WHEREOF, the undersigned have hereto set their hands as of the day and year first above written.

GENERAL PARTNER:

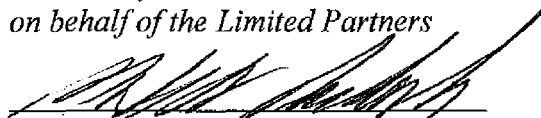
MHR INSTITUTIONAL ADVISORS III LLC
as General Partner



By: Mark H. Rachesky, M.D.
Managing Member

LIMITED PARTNERS:

By: MHR INSTITUTIONAL ADVISORS III LLC
*as Attorney-in-Fact
on behalf of the Limited Partners*



By: Mark H. Rachesky, M.D.
Managing Member