EXECUTION VERSION

NEW MOUNTAIN PARTNERS III, L.P.

AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

Dated as of May 25, 2007

THE LIMITED PARTNER INTERESTS (THE "INTERESTS") OF NEW MOUNTAIN PARTNERS III, L.P. HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. INTERESTS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH THE SECURITIES ACT, ANY APPLICABLE U.S. STATE SECURITIES LAWS AND ANY OTHER APPLICABLE SECURITIES LAWS AND THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT. THE INTERESTS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THIS AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT. THEREFORE, PURCHASERS OF INTERESTS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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NEW MOUNTAIN PARTNERS III, L.P.

This AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of NEW MOUNTAIN PARTNERS III, L.P., a Delaware limited partnership (the "Fund"), is made and entered into as of May 25, 2007, by and among New Mountain Investments III, L.L.C., a Delaware limited liability company, as the general partner of the Fund and the Persons listed in the books and records of the Fund as limited partners of the Fund, for the purpose of amending and restating the Limited Partnership Agreement (the "Original Agreement") of the Fund, dated as of March 21, 2007, between the General Partner and Steven B. Klinsky (the "Initial Limited Partner"). Capitalized terms used herein without definition have the meanings specified in Section 1.1.

R E C I T A L S:

WHEREAS, the Fund was formed under the Partnership Law pursuant to a Certificate of Limited Partnership filed with the Secretary of State of the State of Delaware on March 21, 2007 and from its formation was governed by the Original Agreement; and

WHEREAS, the General Partner and the Limited Partners wish to permit the withdrawal of the Initial Limited Partner and the admission of the limited partners referred to above as Limited Partners of the Fund and further to amend and restate the Original Agreement in its entirety and enter into this Agreement;

NOW, THEREFORE, the parties hereto hereby agree to continue the Fund and hereby amend and restate the Original Agreement, which is replaced and superseded in its entirety by this Agreement, as follows:

ARTICLE I

GENERAL PROVISIONS

1.1 Definitions. As used herein the following terms have the meanings set forth below:

"Actively Invested Capital" shall mean, with respect to any Limited Partner as of any date, an amount equal to all Capital Contributions of such Limited Partner in respect of Portfolio Investments that have not been disposed of by the Fund as of such date, minus the aggregate amount of writedowns on Portfolio Investments that have been written-down by more than 50% of cost, which for the avoidance of doubt shall not include Waiver Contributions. If the General Partner determines in good faith that a Portfolio Investment is worthless,

such Portfolio Investment shall be treated for purposes of this definition as having been disposed of by the Fund for $0.

"Additional Amount" shall have the meaning set forth in Section 10.2(b)(ii).

"Additional Partner" shall mean any Person admitted to the Fund as a Limited Partner after the Initial Closing, other than Substitute Partners admitted to the Fund as contemplated by Sections 3.4(c), 3.5(c), 3.7(e), 5.4(c), 5.5(c) and 10.1(d).

"Adjustment Date" shall mean the last day of each Fiscal Year or any other date that the General Partner determines to be appropriate for an interim closing of the Fund's books.

"Adverse Consequence" shall mean (*a*) a violation of a statute, rule, regulation or governmental administrative policy applicable to a Partner of a U.S. federal or state or non-U.S. governmental authority that is reasonably likely to have a material adverse effect on a Portfolio Company or any Affiliate thereof or on the Fund, the General Partner, the Manager or any of their respective Affiliates or on any Partner or any Affiliate of any such Partner or, with respect to an ERISA Partner, on the sponsor of such ERISA Partner or any of such sponsor's Affiliates, (*b*) an occurrence that is reasonably likely to subject a Portfolio Company, the Fund, the General Partner, the Manager, any Partner or any of their respective Affiliates or, with respect to an ERISA Partner, the sponsor of such ERISA Partner or any of such sponsor's Affiliates, to any material regulatory requirement or burdensome filing requirement to which it would not otherwise be subject, or that is reasonably likely to materially increase any such regulatory requirement beyond what it would otherwise have been or (*c*) an occurrence that is reasonably likely to result in any Securities or other assets owned by the Fund to be deemed to be "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or applicable Similar Laws or that is reasonably likely to result in a non-exempt "prohibited transaction" under ERISA or section 4975 of the Code. For the avoidance of doubt, the incurrence of ECI from an ECI Investment or the incurrence of UBTI from a UBTI Investment shall not have an Adverse Consequence on a Limited Partner if such Limited Partner is offered the opportunity to elect to make its Capital Contribution in respect thereof through a Corporation.

"Advisers Act" shall mean the U.S. Investment Advisers Act of 1940, as amended from time to time.

"Advisory Committee" shall have the meaning set forth in Section 3.9(a).

"Affiliate" shall mean, with respect to any specified Person, (*a*) a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified, (*b*) a Permitted Fund or other Person with respect to which such Person acts as investment adviser and (*c*) any relative or spouse of such Person who has the same home as such Person; *provided* that Portfolio Companies, portfolio companies of Fund I (except for purposes of Section 2.3(d)), portfolio companies of Fund II (except for purposes of Section 2.3(d)) and Related Investment Funds shall not be deemed to be "Affiliates" of the Manager, the General Partner or the Fund; and *provided, further*, that each of the Principals shall be deemed to be an "Affiliate" of the Manager and the General Partner for so long as such Principal is an employee of the Manager or any of its Affiliates; and *provided, finally*, that the Manager shall be deemed to be an Affiliate of the General Partner and vice-versa.

"Affiliated Partner" shall mean the Waiver Entity and any Limited Partner in which the Manager and/or one or more of its Affiliates holds Securities having a value equal to at least $500,000.

"Agreed Value" shall have the meaning set forth in Section 10.3(b).

"Agreement" shall mean this Amended and Restated Limited Partnership Agreement, as amended, supplemented or restated from time to time.

"Alternative Investment Vehicle" shall have the meaning set forth in Section 4.6(d).

"Annual Certificate Failure Event" shall have the meaning set forth in Section 3.4(a).

"Annual Meeting" shall have the meaning set forth in Section 8.3.

"Available Assets" shall mean, as of any date, the excess of *(a)* the cash, cash equivalent items and Temporary Investments held by the Fund over *(b)* the sum of the amount of such items as the General Partner determines to be necessary for the payment of the Fund's expenses, liabilities and other obligations (whether fixed or contingent), and for the establishment of appropriate reserves for such expenses, liabilities and obligations as may arise, including the maintenance of adequate working capital for the continued conduct of the Fund's investment activities and operations.

"Benefit Plan Partner" shall mean any Limited Partner that is an "employee benefit plan" within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), a "plan" within the meaning of section 4975(e)(1) of the

Code (whether or not subject to section 4975 of the Code) or any Limited Partner investing the assets of any such "employee benefit plan" or "plan".

"BHC Act" shall mean the U.S. Bank Holding Company Act of 1956, as amended from time to time.

"BHC Partner" shall have the meaning set forth in Section 3.6.

"Bridge Investment" shall have the meaning set forth in Section 4.1(b).

"Business Day" shall mean any day other than (*a*) Saturday and Sunday and (*b*) any other day on which banks located in New York City are required or authorized by law to remain closed.

"Capital Account" shall have the meaning set forth in Section 6.1.

"Capital Commitment" shall mean, with respect to any Partner, the amount set forth as such in such Partner's accepted Subscription Agreement and reflected in the books and records of the Fund, as amended from time to time pursuant to this Agreement.

"Capital Contribution" shall mean, with respect to any Partner, the amount of capital contributed pursuant to a single Drawdown or the aggregate amount of such contributions made, as the context may require, by such Partner to the Fund pursuant to this Agreement (and, as the context may require, by such Partner to the Corporation formed for a UBTI Investment or an ECI Investment, as applicable, and any Alternative Investment Vehicle), other than (*a*) Additional Amounts and (*b*) amounts contributed to the Fund and subsequently returned to such Partner in connection with proposed but unconsummated investments or the admission of Subsequent Closing Partners.

"Capital Under Management" shall have the meaning set forth in Section 7.2(a)(i).

"Claims" shall have the meaning set forth in Section 9.1(a).

"Class A Interest" shall mean any Interest held by a Class A Limited Partner.

"Class A Limited Partner" shall mean any Limited Partner that has not affirmatively elected to be a Class B1 Limited Partner or a Class B2 Limited Partner.

"Class B1 Interest" shall mean any Interest held by a Class B1 Limited Partner which Interest shall not be offered to 50 persons or more in accordance with Article 2, Paragraph 3, Item 2B of the Securities and Exchange Law of Japan (the "Shouninzu Shibo").

"Class B1 Limited Partner" shall mean any Limited Partner that has elected in its Subscription Agreement to acquire Class B1 Interests.

"Class B2 Interest" (for Japanese investors acquiring interests as Professional Institutional Investors only) shall mean any Interest held by a Class B2 Limited Partner, which Interest may be offered to Professional Institutional Investors, as defined in the Cabinet Ordinance Concerning Definitions under Article 2 of the Securities and Exchange Law of Japan, pursuant to the requirements of Article 1-4, Paragraph 2 of the Enforcement Order of the Securities and Exchange Law of Japan (exception to the Shouninzu Shibo for Professional Institutional Investors).

"Class B2 Limited Partner" shall mean any Limited Partner that has elected in its Subscription Agreement to acquire Class B2 Interests.

"Closing" shall mean the Initial Closing and any date as of which the General Partner shall admit one or more Subsequent Closing Partners to the Fund pursuant to this Agreement and one or more Subscription Agreements.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Co-Investment Fund" shall have the meaning set forth in Section 4.6(b)(i).

"Co-Investment Percentage" shall have the meaning set forth in Section 4.6(b)(ii).

"Co-Investors" shall have the meaning set forth in Section 4.6(b)(iii).

"Combined Limited Partner" shall mean any Limited Partner in the Fund or limited partner (or similar member) in a Parallel Fund.

"Combined Partner" shall mean any Partner in the Fund or partner (or similar member) in a Parallel Fund.

"Communications Act" shall mean the U.S. Communications Act of 1934, as amended from time to time.

"Corporation" shall mean a corporation or other entity (which may, at the election of the General Partner, be a U.S. limited liability company or other entity, including a non-U.S. entity in circumstances deemed appropriate in good faith by the General Partner) that is treated as a corporation for U.S. federal income tax purposes formed for the purpose of being an interest holder in a UBTI Fund or an ECI Fund or for the purpose of holding a UBTI Investment or an ECI Investment.

"Covered Actions" shall have the meaning set forth in Section 9.1(a).

"Covered Person" shall mean the General Partner, the Manager, each Principal and each of their respective Affiliates; each of the current and former shareholders, officers, directors, employees, partners, members and managers of any of the General Partner, the Manager and each of their respective Affiliates; each Person serving, or who has served, as a member of the Management Advisory Board or the Advisory Committee (and, with respect to Claims or Damages arising out of or relating to service on the Advisory Committee only, the Limited Partner that such Person represents and each of such Limited Partner's officers, directors, employees, partners, members and managers).

"Damages" shall have the meaning set forth in Section 9.1(a).

"Default" shall have the meaning set forth in Section 5.5(a).

"Defaulted Amount" shall have the meaning set forth in Section 5.5(b).

"Defaulted Capital Commitment" shall have the meaning set forth in Section 5.5(c).

"Defaulting Partner" shall have the meaning set forth in Section 5.5(a).

"Designated Investments" shall have the meaning set forth in Section 3.7(b).

"Direct Payment" shall have the meaning set forth in Section 5.2(a).

"Disabling Conduct" shall mean, with respect to any Person, (*a*) gross negligence; (*b*) such Person's violation of any law, including but not limited to, violation of any federal or state securities law, that has a material adverse effect on the Fund; (*c*) such Person's material breach of this Agreement or any other agreement between the Fund and the General Partner, the Manager, or their Affiliates; or (*d*) such Person's fraud, bad faith, willful misconduct or breach of or reckless disregard of fiduciary duty (as such duty is modified herein and it being understood that taking or omitting to take any actions which any Person was expressly permitted or required to take or omit for its own account pursuant to this

Agreement shall not be deemed a breach of or reckless disregard of fiduciary duty hereunder). Notwithstanding the foregoing, the definition of "Disabling Conduct", as it relates to the members of the Advisory Committee (and the Limited Partners represented by such members, solely with respect to the activities of such members acting in their capacity as Advisory Committee members), shall mean fraud, bad faith or willful misconduct.

"Distributable Cash" shall mean cash received by the Fund from the sale or other disposition of, or dividends, interest or other income from or in respect of, a Portfolio Investment or Temporary Investment, or otherwise received by the Fund, other than Capital Contributions, Direct Payments or Additional Amounts.

"DOL" shall mean the U.S. Department of Labor, or any governmental agency that succeeds to the powers and functions thereof.

"DOL Regulations" shall mean the regulations of the DOL included within 29 C.F.R. section 2510.3-101, as the same may be amended from time to time.

"Drawdown Date" shall have the meaning set forth in Section 5.2(a).

"Drawdown Notice" shall have the meaning set forth in Section 5.2(a).

"Drawdowns" shall mean the Capital Contributions or Direct Payments made to the Fund pursuant to Section 5.2 from time to time by the Partners pursuant to a Drawdown Notice.

"ECI" shall mean items of income realized by the Fund effectively connected with the conduct of a U.S. trade or business or otherwise subject to regular U.S. federal income taxation on a net basis, other than any such income which arises as a result of, or with respect to, (a) those connections which are taken into account in determining Excluded Taxes and (b) the operation of Section 7.2(a)(ii) of the Agreement.

"ECI Fund" shall mean an Alternative Investment Vehicle formed pursuant to Section 4.6(d)(iv) to make an ECI Investment.

"ECI Investment" shall mean any proposed Portfolio Investment that the General Partner determines in good faith is reasonably likely to generate ECI.

"Effective Date" shall mean the date which is the earliest of (x) the end of the "Investment Period" as defined in the limited partnership agreement of Fund II, (y) the date on which Fund II has fully drawn-down or reserved its remaining capital commitments for the payment of Fund Expenses throughout the Term and

the funding of Portfolio Investments, including Follow-On Investments (as such terms are defined in the limited partnership agreement of Fund II) or (z) such other date as determined appropriate by the General Partner to commence the Investment Period. The General Partner shall give written notice of the Effective Date to the Limited Partners promptly upon the declaration thereof.

"Employee Co-Investment Fund" shall have the meaning set forth in Section 4.6(b)(ii).

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Partner" shall mean any Limited Partner that is a "benefit plan investor" within the meaning of Section 3(42) of ERISA.

"ERISA Withdrawal Date" shall have the meaning set forth in Section 3.4(a).

"Estimate" shall have the meaning set forth in Section 5.6(a).

"Event of Dissolution" shall have the meaning set forth in Section 11.1.

"Excess Organizational Expenses" shall mean the amount of Organizational Expenses (other than Placement Fees) in excess of $1,000,000.

"Excluded Taxes" shall mean any taxes imposed as a result of any present, future or former connection between a Limited Partner and the United States (including (*a*) taxes imposed as a result of the status of a Limited Partner as a U.S. person under the Code, (*b*) taxes imposed as a result of any trade or business activities in the United States of a Limited Partner or as a result of any permanent establishment of the Limited Partner in the United States, or (*c*) taxes imposed on a direct or indirect shareholder of a Limited Partner, where such Limited Partner is a controlled foreign corporation, passive foreign investment company, foreign personal holding company or similar entity), other than a connection resulting solely from any of the transactions contemplated by this Agreement.

"Excused Partner" shall mean, with respect to any Portfolio Investment, any Limited Partner that, pursuant to Sections 3.4(a), 3.7(b) or 5.4, has been excused from making a Capital Contribution in respect thereof.

"FCC" shall mean the U.S. Federal Communications Commission, or any governmental entity that succeeds to the powers and functions thereof.

"FCC (Foreign-Restricted) Company" shall mean any Portfolio Company that, directly or indirectly, owns, controls or operates a communications facility that is operated pursuant to a license or other authorization granted by the FCC and is subject to the provisions of section 310(b) of the Communications Act.

"FCC Insulation Policies" shall mean the policies of the FCC designed to insulate limited partners from attribution in certain entities subject to FCC regulations, as articulated in MM Docket No. 83-46, FCC 85-252 (released June 24, 1985), as modified on reconsideration in MM Docket No. 83-46, 86-410 (released November 28, 1986) and GEN Docket No. 90-314, ET Docket No. 92-100, FCC 95-92 (released March 3, 1995), as those policies may be further modified from time to time.

"FCC Ownership Rules" shall mean the multiple and cross-ownership rules of the FCC, including, without further limitation, 47 C.F.R. sections 73.3555 and 76.501, and any other regulations or written policies of the FCC that *(a)* limit or restrict ownership in FCC Regulated Entities on the basis of ownership in other entities and *(b)* provide that Limited Partners may, in accordance therewith, be insulated from having attributable interests in FCC Regulated Entities in which the partnerships in which they hold limited partner interests have attributable interests, as amended from time to time.

"FCC Regulated Entity" shall mean any Portfolio Company that, directly or indirectly, owns, controls or operates a broadcast radio or television station, a cable television system, a "daily newspaper" (as such term is defined in section 73.3555 of the FCC's rules and regulations, as they may be amended from time to time) or any other communications facility operated pursuant to a license granted by or otherwise subject to regulations of or ownership limitations imposed by the FCC.

"Fee Income" shall mean the sum of (*a*) 65% of the sum of all transaction fees, investment banking fees, break-up fees, advisory fees, monitoring fees or other similar fees received by the Manager, the General Partner or any of their respective Affiliates in connection with the consummation, holding or disposition of a Portfolio Investment or the termination of a proposed Portfolio Investment, net of related expenses (for the avoidance of any doubt, such fees shall not include any fees received directly or indirectly from the Portfolio Company, proposed Portfolio Company or any other Person in respect of any investor or potential investor (other than the Fund) in such Portfolio Company or proposed Portfolio Company, or the capital provided or proposed to be provided thereby) and (*b*) 100% of all directors' fees, including the Value of any options, warrants and other non-cash compensation paid, granted or otherwise conveyed for services as members of boards of directors of Portfolio Companies that are

received by the Manager, the General Partner or any of their respective Affiliates, net of any related expenses to the extent not already reimbursed; *provided* that any such options, warrants or other non-cash compensation shall be valued on the date of the disposition of such options, warrants or other non-cash compensation or of the securities underlying such options or warrants or other non-cash compensation; and *provided, further,* that the cash proceeds of any break-up fee received by the General Partner, the Manager or any of their respective Affiliates in connection with the termination of a proposed Portfolio Investment shall be used first to reimburse the Fund for any expenses actually paid by the Fund relating to such proposed Portfolio Investment. For purposes of Section 7.2(a), the amount of the reduction of the Management Fee resulting from Fee Income shall be determined *pro rata* among the Fund and any Parallel Funds, Successor Funds, Related Investment Funds or other funds or investment vehicles affiliated with the General Partner (including Fund II) based upon the ratio of the capital contributions by any such fund with respect to the related Portfolio Investment to the aggregate capital contributions with respect to the related Portfolio Investment (or, in the case of net break-up and topping fees, based upon the ratio of the respective capital commitments of any relevant funds).

"Final Admission Date" shall mean the nine-month anniversary of the Initial Closing.

"Fiscal Year" shall mean the fiscal year of the Fund, as determined pursuant to Section 1.5.

"FOIA" shall have the meaning set forth in Section 13.10(c).

"Follow-On Investment" shall mean an investment by the Fund in Securities of a Portfolio Company or a Person whose business is related or complementary to that of (and will be under common management with) a Portfolio Company in which the General Partner determines that it is appropriate or necessary for the Fund to invest for the purpose of preserving, protecting or enhancing the Fund's prior investment in such Portfolio Company.

"Follow-Up Investment" shall mean any Portfolio Investment in which on or prior to the end of the Investment Period the Fund (or the General Partner or one of its Affiliates, on behalf of the Fund) has entered into a letter of intent, written agreement in principle, definitive agreement to invest or has otherwise committed in writing thereto.

"Foundation Partner" shall mean a Limited Partner that is (*a*) a "private foundation" within the meaning of section 509 of the Code and (*b*) so indicates on its Subscription Agreement or otherwise in writing to the General Partner on or

before the Closing at which such Limited Partner is admitted to the Fund and is so identified in the books and records of the Fund.

"Fund" shall have the meaning set forth in the preamble hereto.

"Fund Counsel" shall have the meaning set forth in Section 13.14.

"Fund Expenses" shall mean the costs, expenses and liabilities that in the good faith judgment of the General Partner are incurred by or arise out of the operation and activities of the Fund, including, without limitation: (*a*) the Management Fee; (*b*) the fees and expenses relating to consummated Portfolio Investments, proposed but unconsummated Portfolio Investments and Temporary Investments, including the evaluation, acquisition, holding and disposition thereof, to the extent that such fees and expenses are not reimbursed by a Portfolio Company or other third Person; *provided* that *(i)* expenses (including travel and entertainment expenses) incurred in connection with the preliminary investigation of potential investment opportunities to the extent not reimbursed by Portfolio Companies or other third Persons or capitalized as part of the acquisition price of a Portfolio Investment and *(ii)* travel, entertainment and other ordinary course of business expenses of monitoring of Portfolio Investments to the extent not reimbursed by Portfolio Companies or other third Persons, shall be borne by the General Partner, the Manager or its Affiliates but not the Fund or any Limited Partner; (*c*) an amount equal to 100% of all premiums for insurance protecting the Fund and any Covered Persons from liabilities to third Persons in connection with Fund affairs to the extent such premiums cover liabilities with respect to actions or omissions of the Fund or of any Covered Person that would otherwise be subject to indemnification by the Fund pursuant to the terms of this Agreement; (*d*) legal, custodial and accounting expenses, including expenses associated with the preparation of the Fund's financial statements, tax returns and Schedule K-1s; (*e*) auditing, accounting, banking and consulting expenses; (*f*) appraisal expenses; (*g*) expenses related to organizing Persons through or in which Portfolio Investments may be made; (*h*) expenses of the Advisory Committee; (*i*) costs and expenses that are classified as extraordinary expenses under generally accepted accounting principles; (*j*) taxes and other governmental charges, fees and duties payable by the Fund; (*k*) Damages (including the costs of any indemnity or contribution right granted to any placement agent or third-party finder for Interests engaged by the Fund or its Affiliates); (*l*) costs of reporting to the Partners and of the Annual Meeting; and (*m*) costs of winding up and liquidating the Fund; but not including Organizational Expenses or Manager Expenses.

"Fund I" shall mean the collective reference to New Mountain Partners, L.P., a Delaware limited partnership, and any co-investment funds, employee co-investment funds, parallel funds and alternative investment vehicles established

pursuant to the limited partnership agreement of New Mountain Partners, L.P. (as amended from time to time).

"Fund II" shall mean the collective reference to New Mountain Partners II, L.P., a Delaware limited partnership, and any co-investment funds, employee co-investment funds, parallel funds and alternative investment vehicles established pursuant to the limited partnership agreement of New Mountain Partners II, L.P. (as amended from time to time).

"Fund III Investment Team Members" shall have the meaning set forth in Section 5.6(a).

"General Partner" shall mean New Mountain Investments III, L.L.C., a Delaware limited liability company, and any additional or successor general partner admitted to the Fund as a general partner thereof in accordance with the terms hereof, as the context requires, in its capacity as a general partner of the Fund.

"Guarantee" shall have the meaning set forth in Section 11.3.

"Initial Closing" shall mean the closing of the sale as of the date hereof of Interests in the Fund.

"Initial Investment Date" shall have the meaning set forth in Section 4.3(d).

"Initial Limited Partner" shall have the meaning set forth in the preamble hereto.

"Interest" shall mean the entire limited partner interest owned by a Limited Partner in the Fund at any particular time, including the right of such Limited Partner to any and all benefits to which a Limited Partner may be entitled as provided in this Agreement, together with the obligations of such Limited Partner to comply with all the terms and provisions of this Agreement. Interests shall be either Class A Interests, Class B1 Interests or Class B2 Interests, which shall be identical in all respects except as expressly set forth in Section 10.1 and the three classes shall not be treated as separate classes of Interests for any purpose except to the extent required to comply with Japanese law. Class B1 Interests and Class B2 Interests shall, for the avoidance of doubt, be identical in all respects except as provided in Section 10.1.

"Interim Escrow Account" shall have the meaning set forth in Section 3.4(a).

"Investment Company Act" shall mean the U.S. Investment Company Act of 1940, as amended from time to time, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

"Investment Objectives" shall have the meaning set forth in Section 1.3.

"Investment Period" shall mean the period commencing on the Effective Date and ending on the earliest to occur of (*a*) the fifth anniversary of the Final Admission Date, (*b*) the first date on which all Remaining Capital Commitments (net of amounts reserved by the General Partner for the payment of Fund Expenses throughout the Term and the funding of Follow-Up Investments and Follow-On Investments) are zero and (*c*) the date of any early termination of the Investment Period pursuant to Section 5.6.

"Limited Partners" shall mean the Persons admitted as limited partners of the Fund, which limited partners shall be listed in the books and records of the Fund as limited partners of the Fund, and shall include their successors and permitted assigns to the extent admitted to the Fund as Substitute Partners in accordance with the terms hereof, in their capacities as limited partners of the Fund, and shall exclude any Person that ceases to be a Partner in accordance with the terms hereof. Limited Partners shall be either Class A Limited Partners, Class B1 Limited Partners or Class B2 Limited Partners, which shall be identical in all respects except as expressly set forth in Section 10.1. For purposes of the Partnership Law, the Limited Partners shall constitute a single class, series and group of limited partners.

"Majority in Advisory Committee Interest" shall mean, at any time, the Combined Limited Partners represented on the Advisory Committee holding a majority of the total limited partner interests represented on the Advisory Committee, as determined on the basis of Capital Commitments and capital commitments to any Parallel Fund, in the case of the Combined Limited Partners. For purpose of the foregoing determination, any Interests held by a Defaulting Partner or an Affiliated Partner shall not be included.

"Majority (or other specified percentage) in Interest" shall mean, at any time, the Limited Partners (or Combined Limited Partners, as applicable) holding a majority of the total limited partner interests then entitled to vote in the Fund (or in the Fund and any Parallel Fund, in the case of the Combined Limited Partners) as determined on the basis of Capital Commitments (and capital commitments to any Parallel Fund, in the case of the Combined Limited Partners) except as provided in Section 3.6. Any other specified percentage in Interest of the Limited Partners (or Combined Limited Partners, as applicable) means, at any time, the Limited Partners (or Combined Limited Partners) holding the specified

percentage of the total limited partner interests then entitled to vote in the Fund (or in the Fund and any Parallel Fund, in the case of the Combined Limited Partners), as determined on the basis of Capital Commitments (and capital commitments to any Parallel Fund, in the case of the Combined Limited Partners) except as provided in Section 3.6. For purpose of the foregoing determinations, any Interests held by a Defaulting Partner or an Affiliated Partner shall not be included.

"Management Advisory Board" shall mean the board of executives chosen by the General Partner with whom the General Partner may consult from time to time concerning general industry trends and related matters.

"Management Fee" shall have the meaning set forth in Section 7.2(a).

"Manager" shall mean New Mountain Capital, L.L.C., a Delaware limited liability company, and any successor thereto.

"Manager Expenses" shall mean the costs and expenses incurred by the Manager in providing for its and the General Partner's normal operating overhead, including salaries of the Manager's employees and rent and other expenses incurred in maintaining the Manager's place of business but not including Organizational Expenses or Fund Expenses.

"Marketable Securities" shall mean Securities that are (*a*) traded on an established U.S. national or non-U.S. securities exchange or (*b*) reported through NASDAQ or a comparable established non-U.S. over-the-counter trading system or (*c*) otherwise traded over-the-counter or purchased and sold in transactions effected pursuant to Rule 144A under the Securities Act, in each case that the General Partner believes are marketable at a price approximating their Value within a reasonable period of time and are not subject to restrictions on Transfer under the Securities Act or other applicable securities laws or subject to contractual restrictions on Transfer.

"Memorandum" shall have the meaning set forth in Section 13.13.

"NASDAQ" shall mean the automated screen-based quotation system operated by the Nasdaq Stock Market, Inc., a subsidiary of the National Association of Securities Dealers, Inc., or any successor thereto.

"Net Unrealized Loss" shall mean, with respect to any Limited Partner as of any date of determination, the excess, if any, of (*a*) the aggregate Capital Contributions of such Limited Partner used to fund the purchase price of each Portfolio Investment (other than a Bridge Investment) then held by the Fund over (*b*) the aggregate of the product of (*i*) the Value of each such Portfolio Investment

as of such date of determination and (*ii*) such Limited Partner's Sharing Percentage for such Portfolio Investment.

"New Mountain" shall mean the Manager and its Affiliates (*provided* that for this purpose Related Investment Funds shall be deemed to be Affiliates of the Manager).

"Non-Defaulting Partners" shall have the meaning set forth in Section 5.5(b).

"Non-Plan Party" shall have the meaning set forth in Section 3.4(a).

"Non-U.S. Limited Partner" shall mean a Limited Partner that has represented in its Subscription Agreement that such Limited Partner is not a "U.S. Person" as such term is defined pursuant to section 7701(a)(30) of the Code. Any Limited Partner that is treated as a flow-through vehicle for U.S. federal income tax purposes and that itself has any partners that are not "U.S. Persons" (as such term is defined pursuant to section 7701(a)(30) of the Code) may elect for all or a designated portion of its Interest to be considered as held by a "Non-U.S. Limited Partner" for all purposes under this Agreement by providing written notice to that effect to the General Partner on or prior to the closing date for such Limited Partner's subscription for an Interest in the Fund. In connection with any ECI Investment, any Limited Partner making such election may either (a) make all or such designated portion of its Capital Contribution directly to the ECI Fund formed for such ECI Investment or (b) make all or such designated portion of its Capital Contribution to the Corporation formed for such ECI Investment or be deemed to participate in such ECI Investment through a Corporation pursuant to Section 4.6(d)(v).

"Non-U.S. Person" shall mean (*a*) a citizen of a country other than the United States, (*b*) an entity organized under the laws of a jurisdiction other than those of the United States or any state, territory or possession of the United States, (*c*) a government other than the government of the United States or of any state, territory or possession of the United States, (*d*) a corporation, limited partnership, limited liability company or other entity of which, in the aggregate, more than 25% of the capital stock or other partnership, membership or ownership interests is owned of record or voted by Persons described in any of clauses (*a*) through (*c*) above or an entity described in this clause (*d*), or (*e*) a representative of, or entity controlled by, Persons described in any of the foregoing clauses (*a*) through (*e*).

"Non-Voting Interests" shall have the meaning set forth in Section 3.6.

"Organizational Expenses" shall mean all reasonable costs and expenses incurred in connection with the formation and organization of, and sale of interests in, the Fund and the Parallel Funds and the organization of the General Partner, as determined by the General Partner, including all Placement Fees and all out-of-pocket legal, accounting, printing, consultation, administrative, travel and filing fees and expenses.

"Original Agreement" shall have the meaning set forth in the preamble hereto.

"Other Giveback Amount" shall have the meaning set forth in Section 9.1(b)(ii).

"Parallel Funds" shall have the meaning set forth in Section 4.6(c).

"Partners" shall mean the General Partner and the Limited Partners.

"Partnership Law" shall mean the Delaware Revised Uniform Limited Partnership Act, 6 *Del. C.* § 17-101 *et seq.*, as amended, and any successor to such statute.

"Payment Date" shall have the meaning set forth in Section 7.2(a).

"Period" shall mean, for the first Period, the period commencing on the date of this Agreement and ending on the next Adjustment Date; and thereafter shall mean the Period commencing on the day after an Adjustment Date and ending on the next Adjustment Date.

"Permitted Fund" shall mean any investment vehicle raised by the General Partner, a Principal or any Affiliate thereof for which the General Partner, a Principal or an Affiliate thereof acts as the general partner or investment manager or serves in a similar capacity and which does not have as its principal investment objective the achievement of long-term capital appreciation through direct private equity and equity-related investments in accordance with strategies substantially similar to the Investment Objectives of the Fund.

"Person" shall mean any individual or entity, including a corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated association, government or governmental agency or authority.

"Placement Fees" shall mean the fees and any interest on deferred fees charged by any placement agent designated by the General Partner or the Fund for the marketing and sale of interests in the Fund and the Parallel Funds.

"Portfolio Company" shall mean an entity in which a Portfolio Investment is made by the Fund.

"Portfolio Investments" shall mean debt or equity investments (other than Temporary Investments) made by the Fund, including any Bridge Investments.

"Pre-Existing Investment" shall have the meaning set forth in Section 2.3(b).

"Pre-Removal Investments" shall have the meaning set forth in Section 10.3(d)(ii).

"Prime Rate" shall mean the rate of interest published from time to time in *The Wall Street Journal*, Eastern Edition, designated therein as the prime rate.

"Principals" shall mean Steven B. Klinsky, Michael Ajouz, Adam Collins, Michael Flaherman, Douglas F. Londal, Mat Lori, Thomas Morgan, Alok Singh and J. David Wargo, and shall include Qualified Replacements and such other individuals designated by the General Partner as Principals from time to time, in each case for so long as such individual remains affiliated with the General Partner, the Manager or any of their respective Affiliates.

"Proceeding" shall have the meaning set forth in Section 9.1(a).

"Public Plan Partner" shall mean a Limited Partner that *(a)* is, or is majority owned by a Person that is, a governmental plan or a church plan within the meaning of sections 3(32) and 3(34), respectively, of ERISA or is a Benefit Plan Partner, *(b)* is not an ERISA Partner but is subject to Similar Law and (*c*) so indicates on its Subscription Agreement or otherwise in writing to the General Partner on or before the Closing at which such Limited Partner is admitted to the Fund and is so identified in the books and records of the Fund.

"Qualified Replacement" shall have the meaning set forth in Section 5.6(b).

"Related Investment Funds" shall mean all Alternative Investment Vehicles, Co-Investment Funds, Employee Co-Investment Funds, Parallel Funds and their respective alternative investment vehicles established by the General Partner pursuant to this Agreement.

"Remaining Capital Commitment" shall mean, with respect to any Partner as of any date, an amount equal to such Partner's Capital Commitment decreased by (*x*) the aggregate amount of such Partner's Capital Contributions and Direct Payments, decreased by (*y*) with respect to the General Partner and the Affiliated

Partners, the aggregate amount of Waiver Contribution Amounts made by all Partners invested in Portfolio Investments through the date of any determination (as allocated among the General Partner and the Affiliated Partners as determined by the General Partner in its sole discretion)), increased by all distributions from the Fund to such Partner to the extent of such Partner's Capital Contributions and Direct Payments (*a*) returned to such Partner in connection with unconsummated investments, (*b*) used (other than as Waiver Contributions) to fund investments disposed of within the time periods specified in Sections 4.1(b) and 4.1(d), (*c*) used to pay Waiver Contribution Amounts, Organizational Expenses or Fund Expenses and (*d*) returned in connection with the admission to the Fund of any Subsequent Closing Partner; *provided* that if the date of determination with respect to a Partner's Remaining Capital Commitment is after delivery of a Drawdown Notice but before the related Drawdown Date, the amount specified as payable by such Partner in such Drawdown Notice (as the same may be amended by a subsequent Drawdown Notice related thereto) shall not be included in such Partner's Remaining Capital Commitment unless, in the case of a Drawdown Notice for a Portfolio Investment, such Portfolio Investment is abandoned or unless and to the extent that such Partner is an Excused Partner with respect to such Portfolio Investment.

"Rules" shall have the meaning set forth in Section 13.14.

"Runoff Activities" shall mean (*a*) holding and disposing of the investments and other assets of the Fund, (*b*) making further investments only in Temporary Investments, Follow-Up Investments and Follow-On Investments in accordance with the terms hereof, (*c*) issuing Drawdown Notices in respect of Follow-Up Investments, Follow-On Investments, Organizational Expenses, Fund Expenses and Waiver Contribution Amounts in accordance with the terms hereof, (*d*) engaging in the other non-investment activities of the Fund and (*e*) engaging in other activities that the General Partner determines are necessary, advisable, convenient or incidental to the foregoing.

"Securities" shall mean shares of capital stock, partnership interests, limited liability company interests, warrants, options, bonds, notes, debentures and other equity and debt securities of whatever kind of any Person, whether readily marketable or not.

"Securities Act" shall mean the U.S. Securities Act of 1933, as amended from time to time, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

"Sharing Percentage" shall mean, (*x*) with respect to any Partner (including the Waiver Entity relating to any Capital Commitment thereof funded

by it in cash) and any Portfolio Investment, a fraction, expressed as a percentage, the numerator of which is the aggregate amount of the Capital Contributions of such Partner used to fund the cost of such Portfolio Investment, net of those amounts in respect of the Waiver Contribution Amount, and the denominator of which is the aggregate amount of the Capital Contributions of all of the Partners used to fund the cost of such Portfolio Investment (including for this purpose Waiver Earnings) and (*y*) with respect to the Waiver Entity (unrelated to any Capital Commitment thereof funded by it in cash) the Waiver Interest Percentage with respect to such Portfolio Investment; *provided* that any adjustments related to Subsequent Closing Partners pursuant to Section 10.2 attributable to such Portfolio Investment shall be taken into account in determining the foregoing; and *provided, further*, that for these purposes (but not for the purpose of determining Remaining Capital Commitments) the Capital Contribution of each Partner in respect of a Portfolio Investment shall be adjusted to reflect any changes as a result of any reduction in the distributions to a Defaulting Partner pursuant to Section 5.5(d) and of any withdrawal of capital pursuant to Sections 3.4(a) or 3.7(e). For the avoidance of doubt, the foregoing provisions shall apply *mutatis mutandis* to any Portfolio Investment made by a Partner through an Alternative Investment Vehicle.

"Shouninzu Shibo" shall have the meaning set forth in the definition of "Class B1 Interest" in this Article I.

"Similar Law" shall mean any federal, state, local, non–U.S. or other law or regulation that could cause the underlying assets of the Fund to be treated as assets of the Limited Partner by virtue of its Interest and thereby subject the Fund and the General Partner (or other Persons responsible for the investment and operation of the Fund's assets) to laws or regulations that are similar to the fiduciary responsibility or prohibited transaction provisions contained in Title I of ERISA or section 4975 of the Code.

"Subscription Agreements" shall mean the Subscription Agreements entered into by the Limited Partners in connection with their purchases of Interests in the Fund.

"Subsequent Closing Partner" shall have the meaning set forth in Section 10.2(a).

"Substitute Partner" shall have the meaning set forth in Section 10.1(d).

"Successor Fund" shall have the meaning set forth in Section 2.3(a).

"Tax-Exempt Partner" shall mean any Limited Partner (*a*) that (*i*) is exempt from tax under section 501 of the Code and is subject to section 511 of the Code, or (*ii*) is treated as a partnership for U.S. federal income tax purposes and whose partners or members include one or more Persons described in clause (i) above, and (*b*) so indicates on its Subscription Agreement or otherwise in writing to the General Partner on or before the Closing at which such Limited Partner is admitted to the Fund and is so identified in the books and records of the Fund. Any Limited Partner that is treated as a flow through vehicle for U.S. federal income tax purposes and has one or more tax exempt partners may elect for all or a designated portion of its Interest to be considered as held by a "Tax-Exempt Partner" for all purposes under this Agreement by providing written notice to that effect to the General Partner on or prior to the closing date for such Limited Partner's subscription for Interests. In connection with any UBTI Investment, any Limited Partner making such election may either (a) make all or such designated portion of its Capital Contribution directly to the UBTI Fund formed for such UBTI Investment or (b) make all or such designated portion of its Capital Contribution to the Corporation formed for such UBTI Investment or be deemed to participate in such UBTI Investment through a Corporation pursuant to Section 4.6(d)(v).

"Temporary Investment" shall mean investments in (*a*) cash or cash equivalents, (*b*) marketable direct obligations issued or unconditionally guaranteed by the United States, or issued by any agency thereof, maturing within one year from the date of acquisition thereof, (*c*) money market instruments, commercial paper or other short-term debt obligations having at the date of purchase by the Fund the highest or second highest rating obtainable from either Standard & Poor's Ratings Services or Moody's Investors Services, or their respective successors, (*d*) interest bearing accounts at a registered broker-dealer, (*e*) money market mutual funds, (*f*) certificates of deposit maturing within one year from the date of acquisition thereof issued by commercial banks incorporated under the laws of the United States or any state thereof or the District of Columbia, each having at the date of acquisition by the Fund combined capital and surplus of not less than $500 million, (*g*) overnight repurchase agreements with primary Federal Reserve Bank dealers collateralized by direct U.S. Government obligations or (*h*) pooled investment funds or accounts that invest only in Securities or instruments of the type described in (*a*) through (*g*). If there exists any uncertainty as to whether any investment by the Fund constitutes a Temporary Investment or Portfolio Investment, such investment shall be deemed a Temporary Investment unless the General Partner determines in the exercise of its good faith judgment that such investment is a Portfolio Investment.

"Term" shall have the meaning set forth in Section 1.4.

"Third Party Co-Investors" shall mean (*a*) individual Limited Partners selected by the General Partner in its discretion, whose co-investment the General Partner expects to bring a strategic benefit to the Fund, taking into account the best interests of the Fund or (*b*) Persons other than Limited Partners and other than the General Partner, the Manager and their respective Affiliates.

"Transfer" shall mean any sale, assignment, conveyance, pledge, mortgage, encumbrance, hypothecation or other disposition, or the act of so doing, as the context requires.

"Transferee" shall have the meaning set forth in Section 10.1(b).

"Transferor" shall have the meaning set forth in Section 10.1(b).

"Treasury Regulations" shall mean the regulations of the U.S. Treasury Department issued pursuant to the Code.

"UBTI" shall mean "unrelated business taxable income" within the meaning of section 512 of the Code, determined without regard to the special rules contained in section 512(a)(3) of the Code that are applicable solely to organizations described in paragraphs (7), (9), (17) or (20) of section 501(c) of the Code.

"UBTI Fund" shall mean an Alternative Investment Vehicle formed pursuant to Section 4.6(d)(iv) to make a UBTI Investment and structured as a limited partnership or other entity treated as a partnership for U.S. federal income tax purposes.

"UBTI Investment" shall mean any proposed Portfolio Investment that the General Partner determines in good faith is reasonably likely to generate UBTI.

"Value" shall mean (*a*) with respect to Marketable Securities (*i*) that are primarily traded on a securities exchange, the average of their closing sale prices on the principal securities exchange on which they are traded for each Business Day during the period commencing ten trading days prior to the date of such distribution and ending ten trading days after the date of such distribution or, if no sales occurred on any such day, the mean between the closing "bid" and "asked prices" on such day and (*ii*) the principal market for which is or is deemed to be the over-the-counter market, the average of their closing sales prices on each Business Day during such period, as published by NASDAQ or any similar organization, or if such price is not so published on any such day, the mean between their closing "bid" and "asked" prices, if available, on such day, which prices may be obtained from any reputable pricing service, broker or dealer and (*b*) subject to the next two succeeding sentences, with respect to all other

Securities or other assets of or interests in the Fund, other than cash, the value determined by the General Partner in good faith in accordance with U.S. generally accepted accounting principles considering all factors, information and data deemed to be pertinent. For purposes of clauses (B), (C) and (D) of Section 3.4(b) and Section 3.7(e), and for purposes of the dissolution of the Fund pursuant to Article XI with respect to the Securities and other assets described in clause (*b*) above that are distributed in kind, the General Partner shall obtain (at the Fund's expense) a valuation from an independent recognized investment banking, accounting or other appraisal firm selected by the General Partner. For purposes of any determination pursuant to the definition of "Net Unrealized Loss", the Value of each Portfolio Investment consisting of Securities other than (*i*) Marketable Securities or (*ii*) Securities exchangeable or convertible into or exercisable for Marketable Securities shall be calculated as of December 31st of each Fiscal Year of the Fund and shall be in effect for the Fiscal Year commencing immediately after such date and shall initially be determined by the General Partner within 60 days thereafter, which shall promptly supply the Advisory Committee with such valuations and the General Partner's basis therefor; *provided* that if the Advisory Committee objects in writing (which objection must be within 30 days of any notice of such valuation), and the General Partner and the Advisory Committee are unable to agree upon a mutually acceptable valuation within 30 days after such objection is made, the General Partner shall (at the Fund's expense) cause a nationally recognized investment banking, accounting or other appraisal firm mutually acceptable to the General Partner and the Advisory Committee to make a valuation, and such firm's determination of such valuation shall be binding on all parties. The General Partner will value each of the Portfolio Investments in accordance with U.S. generally accepted accounting principles, and any material modification of such methodology, other than to comply with law, shall require Advisory Committee approval.

"VCOC" shall mean a "venture capital operating company" within the meaning of the DOL Regulations.

"Waiver Contribution Amount" shall mean, with respect to each Portfolio Investment, an amount equal to the product of (*x*) the Waiver Contribution Percentage and (*y*) the aggregate Capital Contributions required to be made by the General Partner and the Affiliated Partners in respect of such Portfolio Investment pursuant to Section 5.2(d).

"Waiver Contribution Percentage" shall mean a percentage to be identified in writing by the General Partner to the Limited Partners prior to the Effective Date.

"Waiver Contributions" shall mean, with respect to each Portfolio Investment, the aggregate Capital Contributions to the Fund by Limited Partners under Section 5.2(d) to be invested in respect of Waiver Contribution Amounts for such Portfolio Investment.

"Waiver Earnings" shall mean as of any date the amount of any income earned through such date from the investment of Waiver Contribution Amounts in Temporary Investments prior to the investment of such Waiver Contribution Amounts in Portfolio Investments.

"Waiver Entity" shall mean the General Partner (only in respect of its right to receive distributions under Section 6.3) or an Affiliate thereof designated as such by the General Partner.

"Waiver Interest Percentage" shall mean, with respect to each Portfolio Investment, a fraction, expressed as a percentage, (x) the numerator of which is the Limited Partners' Waiver Contributions (and for this purpose the Waiver Earnings thereon) with respect to such Portfolio Investment, and (y) the denominator of which is the Partners' Capital Contributions with respect to such Portfolio Investment (including Waiver Contributions and for this purpose the Waiver Earnings thereon).

1.2 Name and Office.

(a) Name. The name of the Fund is New Mountain Partners III, L.P. Upon the termination of the Fund, all of the Fund's right, title and interest in and to the use of the name "New Mountain Partners III, L.P." and any variation thereof, including any name to which the name of the Fund is changed, shall become the property of the General Partner and the Limited Partners shall have no right and no interest in and to the use of any such name. The General Partner shall provide the Limited Partners with prompt notice of any change in the name of the Fund.

(b) Office. The Fund shall have its principal place of business at c/o New Mountain Investments III, L.L.C., 787 Seventh Avenue, 49th Floor, New York, New York 10019. The Fund may maintain such other office or offices at such location or locations within or without the State of Delaware in the United States as the General Partner may from time to time select. The General Partner shall give prompt written notice of any change in its principal place of business to the Limited Partners. The registered office of the Fund in the State of Delaware is located at One Rodney Square, 10th Floor, Tenth and King Streets, Wilmington, New Castle County, Delaware 19801, and the registered agent for service of process on the Fund at such address is RL&F Service Corp. At any time, the Fund may designate another registered agent and/or registered office.

1.3 Purposes. The purposes of the Fund are to seek long-term capital appreciation through acquiring, holding and disposing of direct private equity and equity-related investments, in accordance with and subject to the other provisions of this Agreement (the "Investment Objectives"); to engage in such other activities as the General Partner deems necessary, advisable, convenient or incidental to the foregoing; and to engage in any other lawful acts or activities consistent with the foregoing for which limited partnerships may be organized under the Partnership Law. The Fund shall not make any Portfolio Investments prior to the Effective Date.

1.4 Term. The Fund commenced on March 21, 2007 and shall continue in business unless the Fund is sooner dissolved, wound up and terminated, until the tenth anniversary of the Effective Date; *provided* that, unless the Fund is sooner dissolved, the term of business of the Fund may be extended by the General Partner for up to two successive periods of one year each; and *provided, further* that the second such extension shall require the consent of a Majority in Interest of the Combined Limited Partners (such term, as so extended if extended, and the period in which the Fund is in dissolution being referred to as the "Term"). Notwithstanding the dissolution of the Fund, the Fund shall continue in existence as a separate legal entity until cancellation of the Certificate of Limited Partnership of the Fund in accordance with Section 11.5.

1.5 Fiscal Year. The Fiscal Year of the Fund shall end on the 31st day of December in each year. The Fund shall have the same Fiscal Year for income tax and for financial and partnership accounting purposes.

1.6 Powers. In furtherance of the purposes specified in Section 1.3 and without limiting the generality of Section 2.1, but subject to the other provisions of this Agreement, the Fund shall be and hereby is authorized and empowered to do or cause to be done any and all acts deemed by the General Partner to be necessary and advisable in furtherance of the purposes of the Fund, without any further act, approval or vote of any Person, including any Limited Partner. Without limiting the generality of the foregoing, the Fund (and the General Partner on behalf of the Fund) is hereby authorized and empowered:

(a) to acquire, hold, manage, vote, own and Transfer the Fund's interests in Securities or any other investments made or other assets held by the Fund, in accordance with the Investment Objectives;

(b) to establish, maintain or close one or more offices within or without the State of Delaware and in connection therewith to rent or acquire office space and to engage personnel;

(c) to open, maintain and close bank, brokerage and money market (including margin) accounts, to draw checks or other orders for the payment of

moneys, to exchange U.S. dollars held by the Fund into non-U.S. currencies and vice versa, to enter into or invest in currency forward or futures contracts, short sales and other derivative contracts or instruments of all kinds to hedge the acquisition, holding or disposition of Portfolio Investments (but not for speculative purposes), and to invest such funds as are temporarily not otherwise required for Fund purposes in Temporary Investments;

(d) to set aside funds for reasonable reserves, anticipated contingencies and working capital;

(e) to bring, defend, settle and dispose of Proceedings pursuant to the terms of this Agreement;

(f) to retain consultants, custodians, attorneys, placement agents, accountants and other agents and employees, including Persons who may be Limited Partners or Affiliates thereof, and to authorize each such agent and employee (who may be designated as officers) to act for and on behalf of the Fund;

(g) to retain the Manager to render investment advisory and managerial services to the Fund as contemplated by and subject to Section 7.1; *provided* that such retention shall not relieve the General Partner of any of its obligations hereunder;

(h) to execute, deliver and perform its obligations under the Subscription Agreements and any other agreements to induce any Person to purchase Interests in the Fund;

(i) to execute, deliver and perform its obligations under contracts and agreements of every kind, and amendments thereto, necessary or incidental to the offer and sale of Interests in the Fund, to the acquisition, holding and Transfer of Securities, or otherwise to the accomplishment of the Fund's purposes, and to take or omit to take such other action in connection with such offer and sale, with such acquisition, holding or Transfer, or with the investment and other activities of the Fund, as may be necessary or advisable to further the purposes of the Fund;

(j) subject to Sections 4.2 and 4.4, to borrow and to issue guarantees;

(k) to prepare and file all tax returns of the Fund; to make such elections under the Code and other relevant tax laws as to the treatment of items of Fund income, gain, loss and deduction, and as to all other relevant matters, as the General Partner deems necessary or appropriate; and to determine which items of cash outlay are to be capitalized or treated as current expenses;

(l) to take all action that may be necessary or advisable for the continuation of the Fund's valid existence as a limited partnership under the Partnership Law and in each other jurisdiction in which such action is necessary to protect the limited liability of the Limited Partners or to enable the Fund, consistent with such limited liability, to conduct the investment and other activities in which it is engaged; and

(m) to carry on any other activities necessary to, in connection with, or incidental to any of the foregoing or the Fund's investment and other activities.

The Fund, and the General Partner on behalf of the Fund, may enter into and perform the Subscription Agreements and any documents contemplated thereby or related thereto and any amendments thereto, without any further act, vote or approval of any Person, including any Partner, notwithstanding any other provision of this Agreement. The General Partner is hereby authorized to enter into the documents described in the preceding sentence on behalf of the Fund, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Fund. Notwithstanding any provision in this Agreement other than the provisions of Section 4.2(a)(iv), the General Partner, without the consent of any Partner or other Person being required, shall have the right at its option to make a collateral assignment or pledge to a lender or other credit party of the Fund of (i) the assets of the Fund, (ii) the Capital Commitments, (iii) the General Partner's right to call Capital Contributions and exercise remedies upon a default by a Limited Partner in payment of its Capital Contribution and (iv) all other rights, titles, interests, remedies, powers and privileges of the Fund and/or the General Partner under this Agreement and each Subscription Agreement; provided that any exercise of such rights, titles, interests, remedies, powers and privileges shall be in accordance with this Agreement; and provided, further, that in no way shall any Limited Partner be required to fund Capital Contributions to any party other than the Partnership (or an Alternative Investment Vehicle or Corporation, as applicable) as a result thereof.

1.7 Admission of Limited Partners. A Person shall be admitted at the Initial Closing as a limited partner of the Fund at the time that (a) this Agreement or a counterpart hereof is executed by or on behalf of such Person and (b) a Subscription Agreement or a counterpart thereof is executed by or on behalf of such Person and by the General Partner on behalf of the Fund. Immediately following the admission of Limited Partners on the date hereof, the Initial Limited Partner shall cease to be a partner of the Fund and the Fund shall return the original capital contribution made by the Initial Limited Partner, who shall have no further rights or claims against, or obligations as a partner of, the Fund. After the Initial Closing, Persons shall be admitted as limited partners of the Fund as provided in Sections 10.1 and 10.2.

1.8 Expenses. Subject to the operation of Section 7.2(a)(ii), all Organizational Expenses and all Fund Expenses shall be paid by the Fund. To the extent that the General Partner, the Manager or any of their respective Affiliates pays any Organizational Expenses or Fund Expenses on behalf of the Fund, the Fund shall reimburse the General Partner, the Manager or such Affiliate, as the case may be, upon request. All Manager Expenses shall be paid by the Manager or the General Partner.

1.9 Size of Fund. The sum of (*a*) Capital Commitments of the Limited Partners (excluding the Capital Commitments of the General Partner, the Affiliated Partners and any Limited Partner who is a member of the Management Advisory Board) and (*b*) the capital commitments of Combined Limited Partners of the Parallel Funds (excluding the capital commitments of any general partner thereof, any other partner thereof Affiliated with the General Partner and any Combined Limited Partner who is a member of the Management Advisory Board) shall not exceed $5.0 billion.

ARTICLE II

THE GENERAL PARTNER

2.1 Management of the Fund, etc. The General Partner hereby continues as the general partner of the Fund upon its execution of a counterpart to this Agreement. The management, control and operation of, and the determination of policy with respect to, the Fund and its investment and other activities shall be vested exclusively in the General Partner (acting directly or through its duly appointed agents). The General Partner is hereby authorized and empowered on behalf and in the name of the Fund and in its own name, if necessary or appropriate, but subject to the other provisions of this Agreement, to carry out any and all of the purposes of the Fund and to perform all acts and enter into and perform all contracts and other undertakings that it may in its discretion deem necessary, advisable, convenient or incidental thereto, including organizing any Related Investment Funds. The General Partner may exercise on behalf of the Fund, and may delegate to the Manager, all of the powers set forth in Section 1.6; *provided* that the management and the conduct of the activities of the Fund shall remain the sole responsibility of the General Partner and all decisions relating to the selection and disposition of the Fund's investments shall be made exclusively by the General Partner in accordance with this Agreement.

2.2 Reliance by Third Parties. In dealing with the General Partner and its duly appointed agents, including the Manager, no Person shall be required to inquire as to the General Partner's or any such agent's authority to bind the Fund.

2.3 Conflicts of Interest, etc.

(a) Sponsorship of Successor Funds. Until the earlier of (*i*) the date on which at least 80% of the aggregate Capital Commitments of the Non-Defaulting Partners has been contributed to the Fund or committed in writing to make Portfolio Investments, used to pay Waiver Contribution Amounts, Organizational Expenses and Fund Expenses, or reserved for the funding of Follow-Up Investments, Follow-On Investments and the payment of Fund Expenses and (*ii*) the last day of the Investment Period, neither the General Partner nor any of its Affiliates will accept management or other fees in respect of, or make investments on behalf of, any pooled multiple-investment vehicle (other than Fund I, Fund II, the Fund, any Related Investment Funds, any Permitted Funds and any special purpose entity formed in connection with a specific Portfolio Investment) which has as its principal investment objective the achievement of long-term capital appreciation through direct private equity and equity-related investments in accordance with strategies substantially similar to the Investment Objectives of the Fund (any such vehicle, a "Successor Fund") without the consent of 66• % in Interest of the Combined Limited Partners.

(b) Personal Investments. During the Investment Period, neither the General Partner nor any of its Affiliates may acquire, invest in, hold or dispose of Securities of any Portfolio Company, or any Securities that would be required to be offered to the Fund pursuant to Section 2.3(c), without the consent of the Advisory Committee or a Majority in Interest of the Combined Limited Partners; *provided* that the foregoing restriction shall not apply to (*i*) Securities held by the General Partner and its Affiliates through any Related Investment Fund, Fund I, Fund II, any Successor Fund, any Permitted Fund, any special purpose entity formed in connection with a specific Portfolio Investment or the Fund in accordance with the provisions hereof or (*ii*) Securities of a Portfolio Company that were granted or paid to any such Person in such Person's capacity as a director of such Portfolio Company or an Affiliate thereof (which shall for the avoidance of doubt constitute Fee Income hereunder); and *provided, further*, that nothing in this Section 2.3(b) shall prohibit any Affiliate of the General Partner from acquiring, investing in, reinvesting in, holding or disposing of Securities of a Person or an Affiliate of a Person in which such Affiliate of the General Partner either holds an investment, or as to which such Affiliate of the General Partner has entered into a written commitment to invest, prior to the Initial Closing (or, in the case of any Person that becomes an Affiliate of the General Partner after the date of the Initial Closing, prior to the date on which such Person becomes such an Affiliate) (any such investment by an Affiliate of the General Partner being referred to as a "Pre-Existing Investment"). The General Partner agrees that it shall not cause the Fund to invest in Securities of any company in which any Affiliate of the General Partner holds a Pre-Existing Investment, unless the Advisory Committee or a Majority in Interest of the Combined Limited Partners otherwise consents.

(c) Allocation of Deal Flow. Subject to Section 4.6, during the Investment Period any direct private equity or equity-related investment opportunity having a transaction value in excess of $10 million, other than a Pre-Existing Investment, that is presented to the General Partner or any of its Affiliates and that the General Partner believes in good faith is suitable and appropriate for the Fund and consistent with the Investment Objectives will be offered by the General Partner to the Fund, and the General Partner shall cause its Affiliates to offer any such investment opportunities to the Fund, to the extent that the Fund has available Remaining Capital Commitments net of reserves, including amounts reserved for (*i*) payment of Organizational Expenses and Fund Expenses throughout the Term, (*ii*) funding of Follow-Up Investments and Follow-On Investments and (*iii*) funding of any written commitments of the Fund, sufficient to enable the Fund effectively to participate in such investment opportunity. Notwithstanding the foregoing, (*A*) no investment opportunity that is presented to an Affiliate of the General Partner in such Affiliate's capacity as director, trustee or other fiduciary of a Person (other than the Manager, the General Partner and their respective Affiliates) in connection with such Person's proposed investment therein shall be required to be offered to the Fund, (*B*) the General Partner may offer to a Successor Fund or a Permitted Fund any investment opportunity to the extent that the General Partner determines in good faith that the size of such investment opportunity will exceed the Remaining Capital Commitments of the Fund, less anticipated expenses and reserves, at the time such investment opportunity becomes available, *(C)* the Fund may co-invest with Fund II in connection with the initial investment in any investment opportunity and in any Follow-On Investment with respect thereto, *(D)* Fund II may make (I) additional new investments prior to the Effective Date or (II) new investments after the Effective Date for which written notice has been given to the Limited Partners prior to the Effective Date and (*E*) Fund I and Fund II may make additional investments in or relating to investments initially made prior to the Effective Date by Fund I or Fund II; *provided* that in the case of the preceding clause (C) any such co-investment shall be subject to the co-investment conditions set forth in Section 4.6(b)(iii).

(d) Transactions with Affiliates. (*i*) The Fund may enter into (*A*) contracts and transactions with any of the General Partner and its Affiliates authorized or contemplated by this Agreement and (*B*) any such contracts not authorized or contemplated by this Agreement and (*ii*) the General Partner and its Affiliates may enter into (*A*) contracts and transactions with the Fund and with any Portfolio Company authorized or contemplated by this Agreement and (*B*) any such contracts not authorized or contemplated by this Agreement; *provided* in each case referred to in clause (i)(B) or clause (ii)(B) above (including, without limitation, any Transfer of Securities of a Portfolio Company between the Fund, on the one hand, and the General Partner, any Principal or any of their respective Affiliates, on the other hand), that the Advisory Committee or a Majority in Interest of the Combined Limited Partners has consented to such contract or transaction; and *provided, further*, that this Section 2.3(d) shall not apply to any payments of or arrangements with respect to Fee Income.

(e) Devotion of Time. During the Investment Period, for so long as he is employed by the Manager or any of its Affiliates, Steven B. Klinsky shall dedicate substantially all of his business time to New Mountain, the Fund and their respective portfolio companies. In addition, the General Partner and the Manager shall cause their personnel, including the Principals, to devote such time as shall be reasonably necessary to conduct the business affairs of the Fund in an appropriate manner. Subject to the foregoing and to the other provisions of this Agreement, the General Partner, the Manager, the Principals and their respective Affiliates may engage independently or with others in other investments or business ventures of any kind.

(f) Other Potential Conflicts of Interest.

(i) While the General Partner and the Manager intend to avoid situations involving conflicts of interest, each Limited Partner acknowledges that there may be situations in which the interests of the Fund, in a Portfolio Company or otherwise, may conflict with the interests of any Related Investment Fund, Fund I, Fund II, any Successor Fund, any Permitted Fund, the General Partner, the Manager, the Principals or their respective Affiliates. Each Limited Partner agrees that the activities of any Related Investment Fund, Fund I, Fund II, any Successor Fund, any Permitted Fund, the General Partner, the Manager, the Principals and their respective Affiliates expressly authorized or contemplated by this Section 2.3 or in any other provision of this Agreement may be engaged in by such Related Investment Fund, Fund I, Fund II, such Successor Fund, such Permitted Fund, the General Partner, the Manager, the Principals or any such Affiliate, as the case may be, and will not, in any case or in the aggregate, be deemed a breach of this Agreement or any duty that might be owed by any such Person to the Fund or to any Partner.

(ii) On any matter involving a conflict of interest not provided for in this Section 2.3 or elsewhere in this Agreement, (*A*) each of the General Partner and the Manager will be guided by its good faith judgment as to the best interests of the Fund and shall take such actions as are determined by the General Partner or the Manager, as the case may be, to be necessary or appropriate to ameliorate such conflicts of interest and (*B*) the General Partner or the Manager will consult with the Advisory Committee with respect to any matter as to which it determines in good faith that a material conflict of interest exists. If the General Partner or the Manager consults with the Advisory Committee with respect to a matter giving rise to a conflict of interest, and if the Advisory Committee waives such conflict of interest or the General Partner or the Manager acts in a manner, or pursuant to standards or procedures, approved by the Advisory Committee with respect to such conflict of interest, then none of the Related Investment Funds, Fund I, Fund II, the Successor Funds, the Permitted Funds, the General Partner, the Manager, the Principals or any of their respective Affiliates shall have any

liability to the Fund or any Partner for actions in respect of such matter taken in good faith by them, including actions in the pursuit of their own interests; *provided* that in the course of such consultation the General Partner or the Manager, as applicable, did not engage in Disabling Conduct; and *provided further* that any such waiver, standards or procedures shall be recorded in the written minutes of the meeting of the Advisory Committee at which such waiver, standards or procedures were approved.

2.4 Liability of the General Partner and Other Covered Persons.

(a) General. Except as otherwise provided in the Partnership Law and this Agreement, the General Partner has the powers, duties, responsibilities and liabilities of a partner in partnership without limited partners to (*i*) Persons other than the Fund and the other Partners and (*ii*) the Fund and other Partners. To the fullest extent permitted by law, no Covered Person shall be liable to the Fund or any Partner, for any act or omission, including any mistake of fact or error in judgment, taken, suffered or made by such Covered Person in good faith and in the belief that such act or omission is in or is not contrary to the best interests of the Fund and is within the scope of authority granted to such Covered Person by this Agreement; *provided* that such act or omission does not constitute Disabling Conduct; and *provided, further*, that the members of the Advisory Committee (and the Combined Limited Partners represented by such members, solely with respect to the activities of such members acting in their capacity as Advisory Committee members) shall not be liable to the Fund or any Partner for any act or omission taken in such capacity, absent Disabling Conduct. Except as otherwise provided herein, no Partner shall be liable to the Fund or any Partner for any action taken by any other Partner. To the extent that, at law or in equity or otherwise, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Fund or to the Partners, any Covered Person acting under this Agreement shall not be liable to the Fund or any Partner for its good faith reliance on the provisions of this Agreement. To the fullest extent permitted by law, the provisions of this Agreement, to the extent that they expand, restrict or eliminate the duties (including fiduciary duties) and liabilities of a Covered Person otherwise existing at law or in equity or otherwise, are agreed by the Partners to replace such other duties and liabilities of such Covered Person.

(b) Reliance. A Covered Person shall incur no liability to the Fund or any Partner in acting in good faith upon any signature or writing believed by such Covered Person to be genuine, may rely in good faith on a certificate signed by an executive officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge, and may rely in good faith with respect to legal matters on an opinion of counsel selected by such Covered Person with reasonable care. Each Covered Person may act directly or through such Covered Person's agents or attorneys selected and monitored in each case by such Covered Person without Disabling Conduct. Each Covered Person may consult with counsel, appraisers, engineers, accountants and any

other skilled Person selected and monitored by such Covered Person without Disabling Conduct, and shall not be liable to the Fund or any Partner for anything done, suffered or omitted in reasonable reliance upon the advice of any of such Persons if in the good faith judgment of the Covered Person the advice such Person is giving falls within such Person's area of professional expertise. No Covered Person shall be liable to the Fund or any Partner for any error of judgment made in good faith by an officer or employee of such Covered Person; *provided* that such error does not constitute Disabling Conduct of such Covered Person (or of such officers and employees).

(c) General Partner Not Liable for Return of Capital Contributions or Direct Payments. Except as provided in Sections 9.1(b) or 11.3, neither the General Partner nor any of its Affiliates shall be liable for the return of the Capital Contributions or Direct Payments of any Partner, and such return shall be made solely from Available Assets of the Fund, if any, and each Limited Partner hereby waives any and all claims that it may have against the General Partner or any Affiliate thereof in this regard.

(d) Bankruptcy, Dissolution or Withdrawal of the General Partner. In the event of the bankruptcy or dissolution and commencement of winding-up of the General Partner or the occurrence of any other event that causes the General Partner to cease to be a general partner of the Fund under the Partnership Law, the Fund shall be dissolved and wound up as provided in Article XI, unless the General Partner Transfers its interest in the Fund and the transferee is admitted as a replacement general partner of the Fund pursuant to Section 10.1(f), the General Partner is removed and replaced pursuant to Section 10.3 or the business of the Fund is continued pursuant to Section 11.1(c). The General Partner shall take no action to accomplish its voluntary dissolution. The General Partner shall not withdraw as general partner of the Fund prior to the dissolution of the Fund except pursuant to Section 10.1.

2.5 Management Advisory Board.

(a) To the extent the General Partner and the Manager deem necessary and advisable in their discretion, the General Partner and the Manager shall consult from time to time with members of the Management Advisory Board on various matters concerning general industry trends and related matters, such as investments and broad strategy. The Management Advisory Board, and any member thereof, will not control or have any authority to bind the Fund, and as an advisory body the Management Advisory Board shall not be construed as a board of directors or similar body with management, decision-making, investment or fiduciary authority or responsibility.

(b) Members of the Management Advisory Board may be reimbursed by the Fund for their reasonable out-of-pocket expenses in connection with the performance of their responsibilities as members of the Management Advisory Board. The members of the Management Advisory Board shall not receive a fee from the Fund for acting in such

capacity. For the avoidance of doubt, the Partners acknowledge that members of the Management Advisory Board may receive compensation from the General Partner and its Affiliates, including a share of the Distributable Cash due to the General Partner hereunder.

(c) The Partners acknowledge that *(i)* members of the Management Advisory Board will not be acting in a fiduciary capacity with respect to the General Partner, the Manager, the Fund or any Limited Partner, *(ii)* members of the Management Advisory Board have substantial responsibilities outside of their Management Advisory Board activities and are not obligated to devote any fixed portion of their time to the activities of the Fund and *(iii)* none of the members of the Management Advisory Board or their Affiliates shall be subject to the restrictions set forth in Section 2.3 and will not be prohibited from engaging in activities which compete or conflict with those of the Fund.

ARTICLE III

THE LIMITED PARTNERS

3.1 No Participation in Management, etc. Except as expressly provided in this Agreement, no Limited Partner shall have the right or power to participate in the management or control of the Fund's investment or other activities, transact any business in the Fund's name or have the power to sign documents for or otherwise bind the Fund. Except as expressly provided herein, no Limited Partner shall have the right to vote for the election, removal or replacement of the General Partner or for the admission of any additional or substitute general partners. No provision of this Agreement shall obligate any Limited Partner other than an Affiliate of the General Partner to refer investments to the Fund or restrict any investments that a Limited Partner may make. The exercise by any Limited Partner of any right conferred herein shall not be construed to constitute participation by such Limited Partner in the control of the business of the Fund so as to make such Limited Partner liable as a general partner for the debts and obligations of the Fund for purposes of the Partnership Law. To the fullest extent permitted by law, no Limited Partner shall owe any duty (fiduciary or otherwise) to the Fund or any other Partner as a result of such Limited Partner's status as a Limited Partner; *provided* that this sentence shall not limit any express obligations or liabilities of a Limited Partner provided for herein or in such Limited Partner's Subscription Agreement.

3.2 Limitation of Liability. Except as may otherwise be provided by the Partnership Law or as expressly provided for herein, the liability of each Limited Partner is limited to its Capital Commitment, and no Limited Partner shall be obligated to make a Capital Contribution or Direct Payment at any time exceeding its then Remaining Capital Commitment.

3.3 No Priority. No Limited Partner shall have priority over any other Limited Partner either as to the return of the amount of its Capital Contributions or Direct Payments or, except as provided in Article VI, as to any allocation of any item of income, gain, loss, deduction or credit of the Fund.

3.4 ERISA Partners and Public Plan Partners.

(a) Action by a Limited Partner. If an ERISA Partner or a Public Plan Partner shall deliver to the General Partner (*i*) an opinion, in form and substance reasonably satisfactory to the General Partner, from counsel reasonably satisfactory to the General Partner (which opinion shall be provided as promptly as reasonably practicable by the General Partner to all other ERISA Partners and Public Plan Partners), that (A) in the case of an ERISA Partner, as a result of the adoption of or amendment to any statute or regulation or a development in the case law or the DOL's interpretation of the DOL Regulations regarding the definition of "plan assets" for purposes of Title I of ERISA or section 4975 of the Code, or the failure of the General Partner to comply with Section 4.3(a), there is a reasonable likelihood that all or any part of the Fund's assets would be deemed to be "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or (B) in the case of a Public Plan Partner, as a result of a change in the statute or regulation applicable to such Public Plan Partner that authorizes or governs such Public Plan Partner's investment in the Fund, investing in the Fund would be illegal for such Public Plan Partner, or there is a reasonable likelihood all or any part of the Fund's assets would be deemed to be "plan assets" for purposes of applicable Similar Law, as the case may be, or (*ii*) a written notice that the General Partner has failed to deliver an annual certificate described in Section 4.3(b) as required therein and the General Partner does not cure such failure by delivery of such certificate within 30 days of such written notice (an "Annual Certificate Failure Event"), such Limited Partner may:

(A) accelerate, with the consent of the General Partner, the payment of its Remaining Capital Commitment so as to avail itself of any "grandfather" provisions that may be applicable under such statute, regulation or interpretation thereof;

(B) request the Fund to make or, if the Fund fails to do so, itself make an appropriate application for exemptive relief to the DOL; or

(C) Transfer all or any portion of its Interest in the Fund to a third Person whose acquisition of such Interest would result in a reduction in the percentage of the Fund's assets that are or might be treated as assets of an "employee benefit plan" within the meaning of Section 3(42) of ERISA for purposes of Title I of ERISA, Section 4975 of the Code or a Benefit Plan Partner subject to applicable Similar Law, as the case may be (a "Non-Plan Party"), in a transaction that complies with Section 10.1.

If, notwithstanding its commercially reasonable best efforts, an ERISA Partner or a Public Plan Partner is unable pursuant to this Section 3.4(a) to dispose of such portion of its Interest in the Fund that is sufficient to prevent the Fund's assets from being deemed "plan assets" for purposes of Title I of ERISA, Section 4975 of the Code or applicable Similar Laws, as applicable, or, in the case of a Public Plan Partner, to prevent the investment by such Public Plan Partner in the Fund from being considered illegal, within 30 days of delivery of the opinion or Annual Certificate Failure Event referred to in Section 3.4(a) or the General Partner having notified such Limited Partner of the determination described in the first sentence of Section 3.4(b), then if such Limited Partner so elects, by notice in writing given to the General Partner within 30 days of delivery of such opinion or notification of such determination or Annual Certificate Failure Event, (*1*) such Limited Partner shall be entitled to withdraw from the Fund effective upon the 60th day after the General Partner receives such notice of such election from such Limited Partner (or upon such other date as may be agreed to by the General Partner and such Limited Partner) (the "ERISA Withdrawal Date") and (*2*) prior to such 60th day (or such other date) the General Partner shall liquidate or make a special distribution in respect of such Limited Partner's Interest in the Fund as provided in Section 3.4(b), clause (D). During the period beginning from the delivery of such opinion or the Annual Certificate Failure Event pursuant to Section 3.4(a) or the General Partner having notified such Limited Partner of the determination described in the first sentence of Section 3.4(b), as applicable, unless the General Partner in its sole discretion requires the ERISA Partner or Public Plan Partner to fund its Capital Contributions to an escrow account (an "Interim Escrow Account") established by the General Partner (the terms of which shall be intended to meet the specifications for such an arrangement as set forth in DOL Ad. Op. Let. 95-04A (1995)), until the earlier of (x) the ERISA Withdrawal Date and (y) such time as the matter is resolved in accordance with the provisions of this Section 3.4, the adversely affected ERISA Partner or Public Plan Partner, as the case may be, will be excused from making any Capital Contributions to the Fund (other than Capital Contributions for Fund Expenses other than Management Fees) in a manner comparable to that provided in Section 5.4; *provided* that such Limited Partners shall not be excused from making any Capital Contributions to any new or existing Alternative Investment Vehicles with respect to which none of the events specified in the first clause of this sentence has occurred. Any Capital Contributions funded by an ERISA Partner or Public Plan Partner into an Interim Escrow Account, plus interest thereon (net of the escrow agent's fees and expenses) shall be returned by the escrow agent to such ERISA Partner and Public Plan Partner to the extent of such Limited Partner's withdrawal from the Fund, as determined in accordance with this Section 3.4. All costs and expenses incurred in connection with actions taken by or with respect to a Limited Partner under this Section 3.4(a) shall be paid by such Limited Partner; *provided* that if the Limited Partner's Transfer or withdrawal pursuant to this Section 3.4(a) is necessitated as a result of a breach by the General Partner of its obligation under Section 4.3(a), then the reasonable legal expenses and other costs directly related to such Transfer or withdrawal shall be borne by the General Partner; and *provided further*, that for the avoidance of any

doubt, such costs and expenses shall include only the reasonable out-of-pocket legal expenses (including the cost of obtaining the opinion referred to in the first sentence of this Section 3.4(a)) and other out-of-pocket costs directly related to such withdrawal and liquidation or distribution and shall not include any economic loss on Portfolio Investments incurred by such Limited Partner in connection therewith.

(b) Action by the General Partner. If the General Partner determines reasonably and in good faith that (*i*) there is a reasonable likelihood that all or any part of the assets of the Fund would be deemed to be "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or (*ii*) investment in the Fund would become illegal for a Public Plan Partner or there is a reasonable likelihood that all or any part of the assets of the Fund would be deemed to be "plan assets" of a Public Plan Partner for purposes of applicable Similar Law, as the case may be, each ERISA Partner (in the case of a determination referred to in clause (i) above) or such Public Plan Partner (in the case of a determination referred to in clause (ii) above) will, upon the written request and with the reasonable cooperation of the General Partner, use commercially reasonable best efforts (or, if such reasonable likelihood of such assets being deemed "plan assets" for purposes of Title I of ERISA or section 4975 of the Code arose because of the General Partner's failure to comply with Section 4.3(a), such ERISA Partner or Public Plan Partner will cooperate in the commercially reasonable best efforts of the General Partner) to dispose of such ERISA Partner's or Public Plan Partner's entire interest in the Fund (or such portion of its Interest that the General Partner determines is sufficient to prevent the Fund's assets from being deemed to be "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or any applicable Similar Law or to prevent investment in the Fund by such Public Plan Partner from being considered illegal, as the case may be) to a Non-Plan Party at a price reasonably acceptable to such ERISA Partner or Public Plan Partner, in a transaction that complies with Section 10.1; *provided* that if the Limited Partner's Transfer pursuant to the preceding sentence is necessitated as a result of a breach by the General Partner of its obligation under Section 4.3(a), then the reasonable legal expenses and other costs directly related to such Transfer shall be borne by the General Partner; and *provided, further*, that for the avoidance of any doubt, such costs and expenses shall include only the reasonable out-of-pocket legal expenses and other out-of-pocket costs directly related to such Transfer and shall not include any economic loss on Portfolio Investments incurred by such Limited Partner in connection therewith. If an ERISA Partner or a Public Plan Partner has not disposed of its entire Interest in the Fund (or such portion of its Interest that the General Partner determines is sufficient to prevent the Fund's assets from being deemed "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or applicable Similar Laws or to prevent the investment in the Fund by such Public Plan Partner from being considered illegal) within 30 days of the General Partner having notified such ERISA Partner or Public Plan Partner of the General Partner's determination described in the first sentence of this Section 3.4(b), then, notwithstanding anything to the contrary herein, the General Partner shall have the right, but not the obligation, upon five Business Days' prior written notice, to do

any or all of the following to reduce or alleviate any restrictions, prohibitions or other material complications resulting from the Fund's assets being deemed "plan assets" for purposes of Title I of ERISA or section 4975 of the Code or applicable Similar Laws or to prevent such investment in the Fund by such Public Plan Partner from being considered illegal:

(A) prohibit an ERISA Partner, Benefit Plan Partner or a Public Plan Partner, as the case may be, from making a Capital Contribution with respect to any and all future Portfolio Investments and reduce its Remaining Capital Commitment to any amount greater than or equal to zero;

(B) offer on a *pro rata* basis to each Non-Defaulting Partner other than ERISA Partners and, if determined to be appropriate by the General Partner, other than Public Plan Partners or Benefit Plan Partners that are not ERISA Partners, the opportunity to purchase a portion of the ERISA Partner's, Benefit Plan Partner's or Public Plan Partner's interest in the Fund at the Value thereof, including all or such portion of the ERISA Partner's, Benefit Plan Partner's or Public Plan Partner's Remaining Capital Commitment (calculated prior to giving effect to paragraph (A) above of this Section 3.4(b)); *provided* that any portion so offered and not purchased may be offered by the General Partner in its discretion to one or more Non-Defaulting Partners;

(C) offer to any Non-Plan Party the opportunity to purchase, or purchase itself, at the Value thereof, all or any portion of the ERISA Partner's, Benefit Plan Partner's or Public Plan Partner's Interest in the Fund that remains after giving effect to the transactions contemplated by paragraph (B) above of this Section 3.4(b);

(D) liquidate all or any portion of an ERISA Partner's, Benefit Plan Partner's or Public Plan Partner's Interest in the Fund, in which case such ERISA Partner's, Benefit Plan Partner's or Public Plan Partner's right to receive future distributions pursuant to Articles VI and XI shall be appropriately adjusted in good faith by the General Partner and the General Partner shall, subject to the Partnership Law, cause the Fund to make a special distribution to such Partner of cash, cash equivalents or Securities, or any combination of the foregoing, as determined by the General Partner, in an amount (or having a Value) equal to the Value of such Interest being liquidated; or

(E) dissolve and terminate the Fund and distribute the Fund's assets in accordance with Article XI.

In determining the appropriate action to take under this Section 3.4(b), the General Partner shall take into consideration the effect of such action on all of the Partners,

including those Partners that have not caused the General Partner to consider any of the foregoing actions.

(c) Documentation, etc. Subject to the requirements of Section 10.1, the details and documentation relating to any transaction or transactions effected pursuant to this Section 3.4 shall be as determined by the General Partner and shall not require the consent of the Advisory Committee or of any of the Limited Partners. Upon the closing of any transaction or transactions effected pursuant to this Section 3.4, the General Partner (*i*) may admit each purchaser that is not already a Partner or Substitute Partner immediately prior to the time of such purchase to the Fund as a Substitute Partner on such terms and upon the delivery of such documents as the General Partner shall determine to be appropriate and (*ii*) shall make such additional adjustments to the Capital Accounts, Capital Commitments, Sharing Percentages, Remaining Capital Commitments, Capital Contributions and Direct Payments of such ERISA Partner or Public Plan Partner and of all Partners and Substitute Partners who have purchased Interests pursuant to this Section 3.4 as it shall determine to be appropriate to give effect to and reflect such transactions. The General Partner may, without the consent of any other Partner, amend the books and records of the Fund as may be necessary or appropriate to reflect the changes in Partners and Capital Commitments made pursuant to this Section 3.4.

3.5 Limited Partner Insulation with Respect to FCC Regulated Entity Investments.

(a) General. In addition to any other restrictions applicable to Limited Partners set forth in this Agreement and notwithstanding any other provisions hereof, for so long as the Fund holds an interest in one or more FCC Regulated Entities, no Limited Partner (other than an Affiliated Partner) and no officer, director, partner, member or equivalent official of a Limited Partner (other than an Affiliated Partner) shall:

(i) act as an employee of the Fund or any FCC Regulated Entity if such Person's functions, directly or indirectly, relate to the media or common carrier enterprises of the Fund; or

(ii) serve, in any material capacity, as an independent contractor or agent with respect to the media or common carrier enterprises of the Fund; or

(iii) communicate with the Fund, the General Partner, any FCC Regulated Entity (including with an officer, director, partner, member, agent, representative or employee of the foregoing) on matters pertaining to the day-to-day operations of its business; or

(iv) perform any services for the Fund or any FCC Regulated Entity relating to the media or common carrier activities of the Fund or any FCC

Regulated Entity, with the exception of making loans to, or acting as surety for, the Fund or such FCC Regulated Entity (to the extent otherwise consistent with the FCC's attribution rules, including the equity/debt plus attribution standard); or

(v) become actively involved in the management or operation of the media or common carrier businesses of the Fund or of any FCC Regulated Entity; or

(vi) vote on the admission of additional general partners of the Fund; or

(vii) vote on the removal of the General Partner.

To the extent that the foregoing provisions of this Section 3.5(a) do not otherwise restrict any Limited Partner, and any officer, director, partner, member or equivalent official of such Limited Partner, with respect to any FCC (Foreign-Restricted) Company or any FCC (Foreign-Restricted) Company business of the Fund because such FCC (Foreign-Restricted) Company is not a FCC Regulated Entity, such provisions shall be read so as to restrict such Limited Partner and such officer, director, partner, member or equivalent official with respect to such FCC (Foreign-Restricted) Company and any such business of the Fund.

(b) FCC Compliance. To ensure that the Fund has the ability to invest in media and communications services companies consistent with the requirements of the Communications Act and the rules, regulations and policies of the FCC, each Limited Partner shall use its reasonable best efforts to provide the General Partner, promptly upon request, the following information:

(i) information reasonably necessary regarding the percentage of its equity Securities owned, controlled or voted by Non-U.S. Persons, and the number and percentage of its partners that are Non-U.S. Persons;

(ii) all other non-confidential information that the General Partner reasonably requires to make necessary filings with, or other submissions to, the FCC; and

(iii) all other non-confidential information that the General Partner reasonably deems necessary, advisable or convenient to enable the Fund to make, manage and dispose of actual or potential Portfolio Investments in compliance with this Agreement and the FCC Ownership Rules.

In addition, no Limited Partner shall take any action that such Limited Partner knows would cause a violation by the Fund of the Communications Act or the rules, regulations, or policies of the FCC or that would restrict the ability of the Fund to make an investment in a FCC Regulated Entity.

(c) Transfers by and Changes of Control of Limited Partners, etc. Each Limited Partner that does not notify the Fund in writing at the time of its admission to the Fund that it is a Non-U.S. Person and that thereafter becomes a Non-U.S. Person whether as a result of a change in control, reorganization of such Limited Partner or otherwise shall provide notice of such event 30 days prior to the effective time of such change. If the General Partner determines that (*i*) the direct or indirect aggregate percentage ownership of interests in the Fund by Non-U.S. Persons will exceed 24.99% for purposes of the Communications Act as a result of a Transfer by a Limited Partner of its Interest in the Fund to a Non-U.S. Person or a change of control or reorganization described in the preceding sentence and (*ii*) such ownership would cause the Fund or a FCC (Foreign-Restricted) Company in which the Fund has an ownership interest to violate the Communications Act or the rules and regulations of the FCC, then such Limited Partner (or its Transferee) shall, at the request of the General Partner, Transfer its entire Interest in the Fund (or such portion of such Interest that, in the discretion of the General Partner, is sufficient to reduce the ownership of interests in the Fund by Non-U.S. Persons to 24.99% or less) to a Person that is not a Non-U.S. Person in a transaction that complies with Section 10.1.

(d) Use of Alternative Investment Vehicles. If the General Partner intends to make a Portfolio Investment in a FCC Regulated Entity, an Alternative Investment Vehicle shall be established pursuant to Section 4.6(d) to make such Portfolio Investment unless the General Partner (*i*) determines in good faith that there is good reason that such Portfolio Investment should be held by the Fund and (*ii*) obtains an opinion of counsel, on which the Limited Partners are entitled to rely, to the effect that such investment in such FCC Regulated Entity will not be attributed to any Limited Partner under the FCC Ownership Rules or cause any Limited Partner or the Fund to be in violation of the FCC Ownership Rules. Any such Alternative Investment Vehicle shall be structured and shall contain provisions to provide to the extent possible that the Limited Partners will not be attributed with an ownership interest in such FCC Regulated Entity for purposes of the FCC Ownership Rules, including provisions substantially similar to those contained in Sections 3.5(a)-(c).

3.6 Limited Partners Subject to the Bank Holding Company Act. Any portion of an Interest held for its own account by a Limited Partner that is a bank holding company, as defined in Section 2(a) of the BHC Act, or a subsidiary of such bank holding company or a non-U.S. bank subject to the BHC Act pursuant to the International Banking Act of 1978, as amended, or any subsidiary of any such non-U.S. bank (each, a "BHC Partner"), together with the Interests of all Affiliates that are Combined Limited Partners that is determined initially at the time of admission of that Limited Partner, upon any Closing, upon the withdrawal of another Limited Partner or any other event that causes a change in the relative ownership percentages of the Partners hereunder to be in the aggregate in excess of 4.99% of the Interests of the Limited Partners, excluding for purposes of calculating this percentage portions of any other interests that are non-voting

Interests pursuant to this Section 3.6 and any other Section of this Agreement (collectively the "Non-Voting Interests"), shall be a non-voting Interest (whether or not subsequently transferred in whole or in part to any other Person except as provided in the following sentence) and shall not be included in determining whether the requisite percentage in Interest of the Limited Partners (or Combined Limited Partners, as applicable) have consented to, approved, adopted or taken any action hereunder; *provided* that such Non-Voting Interest shall be permitted to vote on any proposal to continue the business of the Fund following a dissolution event under Section 11.1 and on matters as to which nonvoting equity interests are permitted to vote pursuant to 12 CFR § 225.2(q)(2). Upon any Closing or other event such as a reduction in Capital Commitments or withdrawal of a Limited Partner that causes a change in the ownership percentages of the Partners, a recalculation of the Interests held by all BHC Partners and their Affiliates shall be made, and only that portion of the total Interest held by each BHC Partner and its Affiliates that is determined as of the date of the applicable Closing or the date of such withdrawal or other event, as applicable, to be in the aggregate in excess of 4.99% (or such greater percentage as may be permitted under Section 4(c)(6) of the BHC Act without regard to Section 4(k) thereof) of the Interests of the Limited Partners, excluding Non-Voting Interests as of such date, shall be a Non-Voting Interest. Notwithstanding the foregoing, any BHC Partner may elect in writing upon its admission for this Section 3.6 not to apply to its Interest by stating that such BHC Partner is not prohibited from acquiring or controlling more than 4.99% (or such greater percentage as may be permitted under Section 4(c)(6) of the BHC Act) of the voting Interests held by the Limited Partners pursuant to such BHC Partner's reliance on Section 4(k) of the BHC Act. Any such election by a BHC Partner may be rescinded at any time by written notice to the General Partner; *provided* that any such rescission shall be irrevocable.

3.7 Foundation Partners.

(a) General. To assure compliance with certain provisions of the Code affecting "private foundations" as described in section 509 of the Code, the General Partner shall use its reasonable best efforts to meet the requirements set forth in this Section 3.7 as long as such provisions of the Code (or substantially similar provisions) are in effect. All terms in this Section 3.7 in quotes have the respective meanings defined in section 4943 or 4946 of the Code and the regulations thereunder, unless otherwise indicated. The terms "corporation" and "partnership" as used in this Section 3.7 refer to the characterization of an organization for U.S. federal income tax purposes. As used in this Section 3.7, (*i*) the references to direct or indirect ownership are references to holdings treated as owned under section 4943 of the Code, including, without limitation, holdings treated as owned by reason of ownership by a nominee or ownership of an interest in another entity, and (*ii*) the references to "knowledge" are references to actual knowledge or belief of direct or indirect ownership by a Foundation Partner or by "disqualified persons" with respect to such Foundation Partner, as the case may be, without any investigation.

(b) Restrictions on Excess Business Holdings Investments. A Foundation Partner will be excused pursuant to Section 5.4 from making a Capital Contribution in respect of any Portfolio Investment to the extent that in connection with such Portfolio Investment the Fund would purchase or otherwise acquire, directly or indirectly, any stock of any corporation, any interest in any partnership or any interest in any other unincorporated entity and, to the knowledge of the General Partner, the aggregate direct and indirect holdings of the stock of any such corporation, profits interest in any such partnership or beneficial interest in any such other unincorporated entity, as the case may be, by any Foundation Partner and all Persons that are "disqualified persons" with respect to such Foundation Partner, would immediately thereafter exceed 20% of the "voting stock" of such corporation, 20% of the "profits interest" in such partnership, or 20% of the "beneficial interest" in any such other unincorporated entity, as the case may be; *provided* that the foregoing shall not apply in the event the Foundation Partner's interest in such Portfolio Investment falls within the de minimis exception contained in section 4943 of the Code; and *provided, further,* that in all cases such 20% figure will be proportionately increased or decreased if the 20% ownership limitation set forth as of the date hereof in section 4943 of the Code is proportionately increased or decreased. In the case of a proposed investment in a Person that does not have publicly traded securities, the General Partner shall use its commercially reasonable efforts obtain a representation from such Person as to the nature and extent, to the knowledge of such Person, of the direct and indirect holdings in it by Persons that are "disqualified persons" with respect to such Foundation Partner and by entities designated by such Foundation Partner (the "Designated Investments") on the list referred to in Section 3.7(d) and furnished to such Person. In determining whether any Foundation Partner may be excused pursuant to this Section 3.7(b), the General Partner shall be entitled to rely on the response of such Person unless the General Partner has knowledge that such response is incorrect.

(c) Restrictions on Certain Admissions and Transfers. No Partner shall consent to any Person becoming a General Partner or Limited Partner, by Transfer of its interest in the Fund or otherwise, to the extent that, to the knowledge of such Partner, such Person is a "disqualified person" or more than 5% of the interests in such Person are owned by "disqualified persons" with respect to a Foundation Partner, without the prior written consent of such Foundation Partner.

(d) Lists of Disqualified Persons. Each Foundation Partner shall provide the General Partner with a list designating the "disqualified persons" and the Designated Investments with respect to such Foundation Partner. Such Foundation Partner shall promptly notify the General Partner in writing of any changes in such list. The General Partner may rely on the completeness of such list.

(e) Transfer, Withdrawal Under Certain Circumstances. Notwithstanding any provision of this Agreement to the contrary, any Foundation Partner may elect to use all commercially reasonable efforts to Transfer its Interest in the Fund to another Person in a

transaction that complies with Section 10.1 or, if such Transfer is not practicable, may withdraw from the Fund, if such Foundation Partner shall deliver to the General Partner an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the General Partner, to the effect that such Transfer or withdrawal is necessary for such Foundation Partner to avoid (*i*) excise taxes imposed by subchapter A of chapter 42 of the Code (other than sections 4940 and 4942 thereof), or (*ii*) a material breach of the fiduciary duties of such Foundation Partner's trustees under any U.S. federal or state law applicable to such trustees or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction. In the event of the delivery of the opinion of counsel referred to in the preceding sentence, any Transfer of a Foundation Partner's Interest in the Fund and/or any withdrawal of such Foundation Partner contemplated by this Section 3.7(e) shall be effected pursuant to the procedures outlined in Section 3.4 (modified as the General Partner determines is appropriate in this context), as if such Foundation Partner were an ERISA Partner.

3.8 Bankruptcy, Dissolution or Withdrawal of a Limited Partner. The bankruptcy, dissolution or withdrawal of a Limited Partner shall not in and of itself dissolve or terminate the Fund. No Limited Partner shall withdraw from the Fund prior to the dissolution of the Fund except pursuant to Section 3.4, 3.7 or 4.6.

3.9 Advisory Committee.

(a) Appointment of Members, etc. The General Partner shall establish no later than 30 days after the Final Admission Date an advisory committee (the "Advisory Committee") having at least five members and, unless the Advisory Committee otherwise consents, not more than nine members. Each member shall be appointed by the General Partner. Each voting member of the Advisory Committee shall be a representative of a Combined Limited Partner (other than an Affiliated Partner); *provided* that no Limited Partner shall have more than one representative on the Advisory Committee. The General Partner shall have the right to appoint one representative of the General Partner to serve as a non-voting member and the Chairman of the Advisory Committee. Each Person appointed to the Advisory Committee shall serve until such Person's death, resignation or removal at the request of the Partner that such Person represents. Any member of the Advisory Committee may grant in writing to another member of the Advisory Committee or any other Person such member's proxy to vote on any matter upon which action is taken at such meeting. Any member of the Advisory Committee may resign by giving the General Partner 30 days' prior written notice, and shall be deemed removed, in the sole discretion of the General Partner (except pursuant to clause (iv) of this sentence), if the Limited Partner that the member represents (*i*) becomes a Defaulting Partner, (*ii*) assigns more than 50% of its Interest in the Fund to a Person that is not an Affiliate of such Partner, (*iii*) is determined pursuant to Section 5.4(c) to be a Limited Partner whose continued participation in the Fund would have an Adverse Consequence or (*iv*) is notified that such member has been removed upon the

recommendation of the General Partner with the consent of a majority of the other members of the Advisory Committee. Upon the death or resignation of a member of the Advisory Committee or the removal of such member upon the recommendation of the General Partner or the Limited Partner that such member represents, the Limited Partner that such member represents may appoint a replacement for such member. Upon the deemed removal of a member of the Advisory Committee, the General Partner may appoint a replacement member.

(b) Scope of Authority. The Advisory Committee shall be authorized to (*i*) consent to, approve, review or waive any matter requiring the consent, approval, review or waiver of the Advisory Committee as set forth in this Agreement and (*ii*) provide such advice and counsel as is requested by the General Partner or required pursuant to this Agreement in connection with actual and potential conflicts of interest, valuation matters and other matters relating to the Fund. The Advisory Committee shall constitute a committee of the Fund and shall take no part in the control or management of the Fund, nor shall it have any power or authority to act for or on behalf of the Fund, and all investment decisions, as well as all responsibility for the management of the Fund, shall rest with the General Partner. Except for those matters for which the consent, approval, review or waiver of the Advisory Committee is required by this Agreement, any actions taken by the Advisory Committee shall be advisory only, and none of the General Partner, the Manager or any of their respective Affiliates shall be required or otherwise bound to act in accordance with any decision, action or comment of the Advisory Committee or any of its members. No member of the Advisory Committee shall take any action in such capacity inconsistent with the provisions of Section 3.5.

(c) Other Activities of the Members. The Partners acknowledge that the members of the Advisory Committee and the Limited Partners on behalf of whom such members act as representatives (*i*) will not be obligated, to the extent permitted by applicable law, to act in a fiduciary capacity with respect to, and shall not owe any duty (fiduciary or otherwise) to, the Fund or any Partner in respect of the activities of the Advisory Committee, (*ii*) have substantial responsibilities in addition to their Advisory Committee activities and are not obligated to devote any fixed portion of their time to the activities of such Committee and (*iii*) other than any non-voting member appointed by the General Partner, will not be subject to the restrictions set forth in Section 2.3 and will not be prohibited from engaging in activities that compete or conflict with those of the Fund, nor shall any such restrictions apply to any of their respective Affiliates.

(d) Meetings. Regular meetings of the Advisory Committee shall be held semi-annually, commencing after the Effective Date, upon not less than 30 days' prior written notice by the General Partner to the members of the Advisory Committee; *provided* that one such semi-annual meeting shall be concurrent with the Annual Meeting. Special meetings of the Advisory Committee may be called by the General Partner at any time to consider matters for which the consent, approval, review or waiver

of the Advisory Committee is required by this Agreement or is requested by the General Partner. In addition, a special meeting of the Advisory Committee may be called by a majority of the voting members of the Advisory Committee at any time. Notice of each such special meeting shall be given by telephone, hand delivery or air courier service or sent by facsimile or other electronic means to each member of the Advisory Committee at least five Business Days prior to the date on which the meeting is to be held. Attendance at any meeting of the Advisory Committee shall constitute waiver of such notice. The quorum for a meeting of the Advisory Committee shall be a majority of its voting members. Members of the Advisory Committee may participate in a meeting of the Advisory Committee by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. All actions taken by the Advisory Committee shall be by a vote of a majority of the voting members present at a meeting thereof or by a written consent setting forth the action so taken and signed by a majority of the voting members of the Advisory Committee. Except as expressly provided in this Section 3.9, the Advisory Committee shall conduct its business in such manner and by such procedures as a majority of its members deems appropriate.

(e) Fees and Expenses, etc. The members of the Advisory Committee shall serve without compensation, but shall be reimbursed by the Fund for all reasonable out-of-pocket expenses incurred in attending meetings of the Advisory Committee. The members of the Advisory Committee shall be indemnified by the Fund as provided in Article IX and entitled to the benefit of the exculpation provisions set forth herein.

ARTICLE IV

INVESTMENTS

4.1 Investments in Portfolio Companies.

(a) Portfolio Investments. The General Partner will seek to obtain opportunities for the Fund to make Portfolio Investments in accordance with the Investment Objectives. The General Partner shall obtain advice of duly qualified local counsel (or other recognized tax adviser) with respect to any Portfolio Investment made in a jurisdiction outside of the United States substantially to the effect that the making of such Portfolio Investment will not cause any Limited Partner, solely as a result of the Limited Partner being a limited partner in the Fund, to be required to either (*i*) file a tax return in such jurisdiction (other than any form or declaration required to establish a right to the benefit of an applicable tax treaty or an exemption from or reduced rate of withholding or similar taxes, or in connection with an application for a refund of withholding or similar taxes) or (*ii*) pay income tax in such jurisdiction, in each case with respect to income of such Limited Partner not derived from a Portfolio Investment in such jurisdiction.

(b) Bridge Investments. The Fund may provide interim financing to, or make investments that are intended to be of a temporary nature in equity or debt Securities of, any Portfolio Company or any subsidiary thereof in connection with or subsequent to an investment by the Fund in such Portfolio Company (each, a "Bridge Investment"). However, the acquisition cost of Bridge Investments in any Portfolio Company and its Affiliates, when aggregated with all other Portfolio Investments in such Portfolio Company and its Affiliates and outstanding guarantees made by the Fund with respect to such Portfolio Company and its Affiliates, shall not exceed the lesser of *(i)* 30% of the aggregate Capital Commitments and *(ii)* the Remaining Capital Commitments, less anticipated Fund Expenses, Organizational Expenses and reserves as of the time that such Bridge Investment is made, all as determined by the General Partner in good faith; *provided* that at any given time the Fund may have outstanding Bridge Investments in one Portfolio Company and its Affiliates whose acquisition cost, when aggregated with the acquisition cost of all other Portfolio Investments in such Portfolio Company and its Affiliates and outstanding guarantees made by the Fund with respect to such Portfolio Company and its Affiliates, shall not exceed 35% of the aggregate Capital Commitments. The General Partner intends that the Fund will make Bridge Investments on a highly selective and limited basis in cases where the General Partner determines that any such Bridge Investment is crucial to the operations of a Portfolio Company or to securing a transaction for the Fund. Bridge Investments that are not repaid, refinanced or otherwise disposed of within 13 months after the date that such Bridge Investment was made shall no longer be treated as Bridge Investments for purposes of Sections 6.3 and 6.4.

(c) Investments Following Termination of Investment Period. Subject to the final sentence of Section 5.6(a), following the termination of the Investment Period, no investments in Portfolio Companies will be made by the Fund, and no Capital Commitments shall be drawn down to fund Portfolio Investments other than Follow-Up Investments, or investments provided for by the terms of Securities held by the Fund prior to the termination of the Investment Period; *provided* that Remaining Capital Commitments may be drawn down from time to time following the termination of the Investment Period to fund Follow-On Investments in an aggregate amount of up to 15% of aggregate Capital Commitments.

(d) Reinvestment. The General Partner may increase the Partners' Remaining Capital Commitments by an amount equal to all or any portion of Distributable Cash received by the Fund and distributed to the Partners in respect of a Portfolio Investment within 13 months after the Fund's acquisition of such Portfolio Investment, up to the acquisition cost of such Portfolio Investment, such increase to be allocated among the Partners in accordance with their Sharing Percentages for such Portfolio Investment, and the amount so added to each Partner's Remaining Capital Commitment shall be subject to recall by the Fund.

4.2 Investment Restrictions.

(a) Without the consent of the Advisory Committee or a Majority in Interest of the Combined Limited Partners, the Fund shall not:

(i) except as otherwise provided in Section 4.1(b) with respect to Bridge Investments, make any Portfolio Investment in any Portfolio Company that (when taken together with all other Portfolio Investments by the Fund in, and outstanding guarantees made by the Fund with respect to, such Portfolio Company and its Affiliates) would result in an investment by the Fund at that time of an aggregate amount in such Portfolio Company and its Affiliates in excess of 20% of the aggregate Capital Commitments; *provided* that the Fund may have outstanding at any given time Portfolio Investments in one Portfolio Company and its Affiliates that (when taken together with all other Portfolio Investments by the Fund in, and outstanding guarantees made by the Fund with respect to, such Portfolio Company and its Affiliates) would result in an investment by the Fund at that time of an aggregate amount in such Portfolio Company and its Affiliates of up to 25% of the aggregate Capital Commitments; notwithstanding the foregoing, in no event shall the Fund make any such investment that would result in an investment by the Fund (including any Bridge Investments) at that time of an aggregate amount in such Portfolio Company and its Affiliates in excess of 30% (or 35% in the case of one Portfolio Company and its Affiliates outstanding at any time) of the aggregate Capital Commitments (or, if such investment is made prior to the Final Admission Date, an amount that the General Partner reasonably determines will not exceed 30% (or 35% in the case of one Portfolio Company and its Affiliates outstanding at any time) of anticipated aggregate Capital Commitments; *provided* that if as of the Final Admission Date an investment in a single Portfolio Company and its Affiliates that was made prior to the Final Admission Date exceeds the foregoing concentration limits, then the General Partner shall use its good faith commercially reasonable best efforts to dispose of a portion of the investment on commercially reasonable terms in order to cause the investment to comply with such concentration limits);

(ii) invest in excess of 20% of the aggregate Capital Commitments in Portfolio Companies organized and operating principally outside the United States and Canada; *provided* that, prior to making any such investment, the Fund shall receive an opinion of counsel qualified in the jurisdiction where the applicable Portfolio Company is organized substantially to the effect that under the laws of such jurisdiction the limited liability of the Limited Partners will be recognized;

(iii) make public market purchases of Securities at any time to the extent that, at such time, more than 5% of the aggregate Capital Commitments

would at such time be invested in Securities purchased in the public market; *provided* that with respect to (*A*) Temporary Investments and (*B*) any purchase of Securities in which the Fund has made and continues to hold a substantial private investment in Securities of the same Portfolio Company or any Affiliate thereof, the Fund may make such public market purchases of Securities to the extent that, as a result of such purchases, no more than 10% of the aggregate Capital Commitments would at such time be invested in Securities purchased in the public markets; and *provided, further,* that notwithstanding the foregoing, the Fund shall not invest in the aggregate more than 20% of the aggregate Capital Commitments in public market purchases of Securities;

(iv) borrow money, except that the Fund may pay Placement Fees on a deferred basis and may borrow for the purpose of *(i)* covering Fund Expenses (including Management Fees), *(ii)* providing interim financing to consummate the purchase of Portfolio Investments prior to the receipt of Capital Contributions (including for the purpose of funding Capital Contributions from Defaulting Partners, which borrowings or indebtedness (and the interest expenses relating thereto) shall be specially allocated solely to such Defaulting Partners) or *(iii)* providing funds for the payment of amounts to withdrawing Limited Partners; *provided* that such outstanding borrowings by the Fund permitted by clauses (*ii*) and (*iii*) above, when aggregated with borrowings under clause (*i*) above, shall, in the aggregate, not exceed Remaining Capital Commitments at the time any such borrowings are entered into; *provided, further*, that any borrowings pursuant to clause (ii) above shall be repaid promptly upon the receipt of such Capital Contributions by the Fund; *provided, further,* that, except, in the case of any ERISA Partner or Public Plan Partner, to the extent the Fund's assets could be deemed to include "plan assets" of such ERISA Partner or Public Plan Partner, the General Partner shall use commercially reasonable efforts to offer each Partner that is not then in default on any obligation to make Capital Contributions or Direct Payments the opportunity, on at least three Business Days' written notice, to fund its share of any such borrowing, unless, at the time such borrowing is incurred, the General Partner reasonably expects that such borrowing will be outstanding for a period of less than 30 calendar days, except that the General Partner shall provide for such opportunity once such borrowing has been outstanding for a period of 25 calendar days; *provided, further*, that any Partner that funds its share of the proposed borrowing by the proposed borrowing date shall not bear any interest, fees or other expenses attributable to any such borrowing; and *provided, finally*, that if the General Partner delivers such notice at least three (3) Business Days prior to the borrowing date specified in such notice, any Partner that does not fund its share of the proposed borrowing by the proposed borrowing date shall pay its *pro rata* share (determined in a manner consistent with Section 5.2(d) for all Partners other than those who have elected to fund their respective shares of the proposed borrowing) of any interest, fees or

other expenses attributable to (but not the principal of) any such borrowing and, notwithstanding any provision of this Agreement to the contrary, such amounts shall not be treated as Capital Contributions or Direct Payments hereunder and shall not reduce such Partner's Capital Commitment or Remaining Capital Commitment;

(v) make an investment in any other pooled investment vehicle that provides for a payment by the Fund of a management fee or a carried interest or other incentive or performance-based fee; *provided* that the General Partner shall structure any such investment in such a manner that the Limited Partners will not pay a management fee and/or a carried interest to both the Fund and any such vehicle with respect to such investment (for the avoidance of doubt, it being acknowledged that stock option, "cheap stock" and similar incentive arrangements for management of Portfolio Companies and joint venture vehicles shall not be subject to this clause (v)); or

(vi) invest directly in real estate assets or oil and gas properties, although the Fund may invest in companies with substantial real estate or oil and gas holdings.

(b) The Fund shall not invest in any transaction to acquire control of an issuer which is publicly opposed by the board of directors (or analogous governing body) of such issuer; *provided* that the acquisition of a business in connection with a bankruptcy or similar restructuring shall not be prohibited, notwithstanding any opposition of the equity owners or any other constituency of any such business or their representatives.

4.3 ERISA. For so long as there is any Limited Partner which is an ERISA Partner then:

(a) The General Partner shall use its reasonable best efforts at all times to conduct the affairs of the Fund such that the assets of the Fund will not constitute plan assets of any ERISA Partner for purposes of the fiduciary responsibility or prohibited transaction provisions of Title I of ERISA or section 4975 of the Code.

(b) The Fund shall, no later than the end of each "annual valuation period" (as defined in Section 2510.3-101 of the DOL Regulations) if the Fund is a VCOC, or the end of the calendar year if the Fund is not a VCOC, annually provide a certificate to each ERISA Partner and Public Plan Partner stating (i) the Fund has consulted with counsel (which may be counsel to the General Partner) in connection with the preparation and delivery of such certificate and (ii) whether or not the Fund satisfies the statement set forth in Section 4.3(a) above and include in such certificate a reasonable level of detail regarding the basis for the

conclusion set forth therein; *provided* that no Person shall have any liability to any Limited Partner with respect to the delivery of such certificate if such certificate was prepared and delivered in good faith and on a reasonable basis. The General Partner's obligation to deliver such certificate shall terminate upon the commencement of the "distribution period" as provided in section 2510.3-101(d)(2)(ii) of the DOL Regulations; *provided* that the General Partner's obligation to deliver any certificate shall resume in the event the distribution period of the Fund terminates by operation of law.

(c) If at any time during the period in which the Fund is required to satisfy the statement set forth in Section 4.3(a) above the General Partner is advised by counsel that the Fund's assets would reasonably likely be deemed by the DOL to be "plan assets" of any ERISA Partner for purposes of Title I of ERISA or Section 4975 of the Code, then the General Partner shall notify each ERISA Partner and Public Plan Partner of such determination as soon as reasonably practicable following the date on which such determination is made.

(d) If there are any ERISA Partners as of the closing date of the Fund's first Portfolio Investment (the "Initial Investment Date") or as of the first date on which a Portfolio Investment is made through an Alternative Investment Vehicle pursuant to Section 4.6(d), then on or prior to the Initial Investment Date the General Partner shall deliver to each ERISA Partner and Public Plan Partner as of such date an opinion of counsel to the effect that as of such date and after giving effect to such Portfolio Investment, the Fund or the Alternative Investment Vehicle, as the case may be, will not constitute plan assets of any ERISA Partner for purposes of the fiduciary responsibility or prohibited transaction provisions of Title I of ERISA or section 4975 of the Code; *provided* however, if as of such date "benefit plan investors" own less than 25% of the total value of each class of equity interest in the Fund or Alternative Investment Vehicle, as the case may be, within the meaning of Section 3(42) of ERISA and the regulations that may be promulgated thereunder, then in lieu of such opinion the General Partner shall deliver to such ERISA Partners and Public Plan Partners a certificate, prepared in consultation with counsel, to the effect that as of such date and after giving effect to such Portfolio Investment, the Fund's assets or Alternative Investment Vehicle's assets, as applicable, are not plan assets of any ERISA Partner for purposes of Title I of ERISA or section 4975 of the Code.

4.4 Unrelated Business Taxable Income; Effectively Connected Income. The General Partner shall use its reasonable best efforts to structure Portfolio Investments in a manner that will not result in the realization *(a)* by any Tax-Exempt Partner of a substantial amount of UBTI, or *(b)* by any Non-U.S. Limited Partner of a substantial amount of ECI, other than (i) UBTI or ECI that may result from reductions in Management Fees pursuant to Section 7.2(a)(ii), or (ii) UBTI that may result from any

borrowing made pursuant to Section 4.2(a)(iv). Notwithstanding the foregoing, the covenant set forth in the preceding sentence shall not apply with respect to any proposed Portfolio Investment that is made through an Alternative Investment Vehicle pursuant to Section 4.6(d) in which Tax-Exempt Partners and Non-U.S. Limited Partners, as applicable, are offered the opportunity to invest through a Corporation, or that is made through a Corporation as provided for in Section 4.6(d)(v); *provided* that with respect to the foregoing: (I) Portfolio Investments identified by the General Partner in its good faith judgment as being reasonably likely to generate UBTI shall not exceed 25% of aggregate Capital Commitments, and (II) Portfolio Investments identified by the General Partner in its good faith judgment as being reasonably likely to generate ECI shall not exceed 25% of aggregate Capital Commitments. The incurrence of UBTI or ECI by the Fund shall in no way indicate that the General Partner has failed to comply with the covenants set forth above.

4.5 Temporary Investments. To the extent commercially practicable, the General Partner shall cause the Fund to invest cash held by the Fund in Temporary Investments pending investment in Portfolio Investments, pending distribution or pending payment of Organizational Expenses or Fund Expenses.

4.6 Related Investment Funds.

(a) General. Notwithstanding any other provision of this Agreement, the General Partner or an Affiliate thereof may establish one or more Related Investment Funds as provided in this Section 4.6.

(b) Co-Investment Funds.

(i) *Co-Investment by Limited Partners and Third Party Co-Investors.* If the General Partner determines that it is appropriate for Limited Partners to co-invest (other than in their capacity as Partners or Third Party Co-Investors) with the Fund in the Securities of, or provide financing to, a Portfolio Company, the General Partner shall offer the opportunity to co-invest to the Limited Partners *pro rata*, in accordance with their respective Remaining Capital Commitments, subject to such timing and other conditions as the General Partner may impose. To the extent that one or more Limited Partners declines any such opportunity for any reason, the General Partner shall offer to each of the participating Limited Partners, *pro rata* in accordance with their co-investment amounts in such investment, the opportunity to increase their co-investment amounts in such investment. Any such co-investment shall, if the General Partner so requires, be made through one or more investment partnerships or other vehicles (each a "Co-Investment Fund") formed to facilitate such co-investment; *provided* that no Limited Partner shall be required to co-invest through a Co-Investment Fund to the extent such Limited Partner, for regulatory or legal reasons, is prohibited from

doing so. Any management fee or carried interest charged by the General Partner or its Affiliates in respect of the participation of a Limited Partner in a Co-Investment Fund shall not exceed those charged in respect of the Fund; *provided* that the carried interest, if any, may be calculated solely with respect to any one co-investment made by any such Co-Investment Fund. Each Co-Investment Fund shall be controlled by the General Partner or an Affiliate thereof and may be governed by organizational documents similar to those of the Fund. In determining the appropriateness of offering any such opportunity to the Limited Partners, the General Partner may take into account the advisability of offering such opportunity (with or without the participation of any co-investing Limited Partners) to Third Party Co-Investors; *provided* that the General Partner will offer such opportunities to Third Party Co-Investors only to the extent that the General Partner determines such participation to be in or not opposed to the best interests of the Fund. Any such offer may be made to such Limited Partners and/or Third Party Co-Investors in such proportions as the General Partner shall determine, and the General Partner may allocate such portion of an investment opportunity to a Co-Investment Fund as the General Partner shall deem appropriate. Participation by a Limited Partner in a co-investment opportunity, whether directly or through a Co-Investment Fund, shall be entirely the responsibility and investment decision of such Limited Partner, and none of the Fund, the General Partner, the Manager or any of their respective Affiliates shall assume any risk, responsibility or expense, or be deemed to have provided any investment advice, in connection therewith.

(ii) *Co-Investment by Employees and other Designees of the Manager.* Until the Final Admission Date, the General Partner or an Affiliate thereof may form one or more investment partnerships or other vehicles (each an "Employee Co-Investment Fund") to provide the Principals and other employees and designees of the Manager and its Affiliates with the opportunity to co-invest with the Fund in Portfolio Companies. Employee Co-Investment Funds will invest *pro rata* with the Fund in each Portfolio Investment in an aggregate amount equal to a percentage of Fund's Capital Commitments to be designated annually, which aggregate percentage in respect of all such Employee Co-Investment Funds shall not exceed 10% (the "Co-Investment Percentage"); *provided* that such maximum percentage may be exceeded with respect to a particular Portfolio Investment in the event that the Fund's investment in such Portfolio Investment is limited due to the provisions of Section 4.2 or due to the amount of Remaining Capital Commitments available to make such Portfolio Investment. The General Partner shall have the option, exercisable annually, to increase, but not decrease, the Co-Investment Percentage on a prospective basis (but not in excess of 10%). The General Partner may exercise such option for any Fiscal Year by giving notice to the Fund stating the proposed Co-Investment Percentage for such Fiscal Year during the month of December of the preceding Fiscal Year. Such election shall

take effect and shall become irrevocable as of January 1 of the Fiscal Year in which the General Partner intends such increase to take effect. The General Partner shall promptly notify the Limited Partners as to the effectiveness of any such election. In the case of the period through December 31, 2007, such notice shall be given prior to the earlier of *(i)* the date on which the Fund executes a definitive agreement with respect to its first Portfolio Investment and *(ii)* the date that is ninety (90) days after the Effective Date. The General Partner will promptly notify the Advisory Committee in writing of the formation of any new Employee Co-Investment Fund and the amount of capital committed thereto.

(iii) *Co-Investment Conditions.* Each co-investment by a Co-Investment Fund or an Employee Co-Investment Fund (collectively, "Co-Investors") shall, subject to legal, tax, regulatory, accounting or other similar considerations, be made at substantially the same time and on substantially the same terms as the Fund. Any investment expenses or indemnification obligations related to investments or proposed investments in which Co-Investors co-invest (or propose to co-invest) with the Fund shall be allocated among the Fund and such Co-Investors in proportion to the capital committed (or to be committed) by each to such investment or proposed investment. Each Co-Investor shall otherwise bear all expenses related to its formation, operations and liquidation. The General Partner shall cause the Co-Investors to dispose of any such investment in a Portfolio Company on a *pro rata* basis with the Fund and at substantially the same time and on substantially the same terms that the Fund disposes of its investment in such Portfolio Company, subject to legal, tax, regulatory, accounting or other similar considerations.

(c) Parallel Funds.

(i) *Formation of Parallel Funds to Accommodate Investor Needs.* Prior to the Final Admission Date, the General Partner may, to accommodate legal, tax, regulatory, accounting or other similar considerations of certain investors, form one or more pooled investment vehicles having substantially the same terms as the Fund except as set forth below (each, a "Parallel Fund") to co-invest with the Fund; *provided* that for the avoidance of doubt, Alternative Investment Vehicles, Co-Investment Funds and Employee Co-Investment Funds shall not be considered Parallel Funds. Each Parallel Fund shall be controlled by the General Partner or an Affiliate thereof and will be governed by organizational documents that are substantially similar in all material respects to those of the Fund, with such modifications as may be required by the legal, tax, regulatory, accounting or other similar considerations referred to above. Subject to such legal, tax, regulatory, accounting or other similar considerations, the Parallel Funds will co-invest with the Fund in each Portfolio Company in proportion to the respective remaining capital commitments of the Parallel Funds and the Fund

immediately prior to such investment. All references in this Section 4.6(c) to the limited partners of a Parallel Fund shall be deemed to include all investors in a Parallel Fund formed as a vehicle other than a limited partnership. The General Partner shall provide to any Limited Partner who makes a request therefor in writing copies of the organizational documents of any Parallel Fund.

(ii) *Parallel Investment Conditions.* Each investment by a Parallel Fund shall, subject to legal, tax, regulatory, accounting or other similar considerations, be on substantially the same terms as and on economic terms that are no more favorable to such Parallel Fund than those received by the Fund. Any investment expenses or indemnification obligations related to investments or proposed investments in which Parallel Funds participate (or propose to participate) with the Fund shall be allocated among the Fund and any Parallel Funds in proportion to the capital committed (or to be committed) by each to such investment or proposed investments. Each Parallel Fund shall bear its share of the Fund's Organizational Expenses and Fund Expenses in proportion to the respective capital commitments of the Fund and the Parallel Funds, subject to such adjustment as the General Partner deems fair and equitable to the Fund and the Parallel Funds. Each Parallel Fund shall otherwise bear all expenses related to its formation, operations and liquidation. The Fund and the Parallel Funds shall sell their respective interests in a Portfolio Company at the same time and on the same terms, in proportion to their respective ownership interests therein, subject to legal, tax, regulatory, accounting or other similar considerations.

(iii) *Mechanics of Formation of Parallel Funds.* In the event that the General Partner forms one or more Parallel Funds, the General Partner shall have full authority, without the consent of any other Person, to amend this Agreement, so long as any such amendment would not have an adverse effect on any Limited Partner, as may be necessary or appropriate to facilitate the formation and operation of such Parallel Funds and the investments contemplated by this Section 4.6(c), and to interpret in good faith any provision of this Agreement, whether or not so amended, to give effect to the intent that the Fund and such Parallel Funds effectively constitute a single investment fund, including conforming the governing agreement of any such Parallel Fund to this Agreement in connection with any amendments hereto consented to by the requisite percentage of the Combined Limited Partners, acting collectively pursuant to the terms hereof as if the limited partners of the Parallel Funds were limited partners of the Fund, unless such amendment would not be applicable, in the good faith judgment of the General Partner, to the Parallel Fund, including for legal, tax or regulatory reasons, or if the amendment treats the limited partners of the Parallel Fund in a manner materially different than the Limited Partners in the Fund generally. Accordingly, if any such Parallel Funds are formed, all references in this Agreement to the Fund shall, where appropriate, be deemed to include any

Parallel Funds. Subject to applicable legal, tax, regulatory, accounting or other similar considerations, at the time that a Parallel Fund first admits limited partners, and upon each date on which a Subsequent Closing Partner is admitted to the Fund or increases its Capital Commitment or an additional limited partner is admitted to a Parallel Fund (or a previously admitted partner increases its commitment to a Parallel Fund), any Securities then held by the Fund and/or the Parallel Funds shall be purchased and sold at cost (plus Additional Amounts thereon) between the Fund and the Parallel Funds so that their resulting ownership of such Securities is proportionate to the relative capital commitments of the Fund and the Parallel Funds, and the General Partner shall make all adjustments as may be necessary or appropriate to give effect to the intent of this Section 4.6(c). All expenses incurred in connection with such purchases and sales with respect to a Parallel Fund, and any related costs or expenses, shall be borne *pro rata* by the Fund and such Parallel Fund.

(d) Alternative Investment Vehicles.

(i) *Formation of Alternative Investment Vehicles for Particular Investments.* If at any time the General Partner determines that for legal, tax, regulatory, accounting or other similar considerations it is in or not opposed to the best interests of the Fund that certain or all Partners participate in all or any portion of a potential Portfolio Investment through one or more alternative investment structures, the General Partner may effect the making of all or any portion of such investment outside of the Fund by requiring certain or all Partners, subject in all cases to Sections 3.4(a), 3.7(b) and 5.4, to make capital contributions with respect to such potential portfolio investment to a limited partnership or other vehicle that would provide for the limited liability of the Limited Partners investing therein (each, an "Alternative Investment Vehicle"). Subject to Sections 3.4(a), 3.7(b) and 5.4, the General Partner shall also have the right to direct that capital contributions of certain or all Partners with respect to a potential Portfolio Investment be made through an Alternative Investment Vehicle if, in the determination of the General Partner, the consummation of the potential Portfolio Investment would be prohibited or unduly burdensome for the Fund because of legal or regulatory constraints but would be permissible or less burdensome if an Alternative Investment Vehicle were utilized. Each Alternative Investment Vehicle shall be controlled by the General Partner or an Affiliate thereof and will be governed by organizational documents substantially similar in all material respects to those of the Fund, with such modifications as may be required by the legal, tax, regulatory, accounting or other similar considerations referred to above; *provided* that the organizational documents of any such Alternative Investment Vehicle (including, for the avoidance of doubt, any UBTI Fund) shall contain provisions identical to those provisions of this Agreement that deal with ERISA and Similar Law. The General Partner shall, upon the written request of any

Limited Partner investing in an Alternative Investment Vehicle, provide to such Limited Partner copies of the organizational documents of any such Alternative Investment Vehicle.

(ii) *Alternative Investment Conditions.* Each Partner investing in an Alternative Investment Vehicle shall be obligated to make contributions to or in respect of such Alternative Investment Vehicle in a manner similar to that provided by Section 5.2, and each such Partner's Remaining Capital Commitment shall be reduced by the amount of such contributions to the same extent as if such contributions were made to the Fund as Capital Contributions or Direct Payments. Any management fee funded by a Partner with respect to an Alternative Investment Vehicle shall reduce such Partner's share of the Management Fee funded by such Partner, and payable to the Manager by the Fund, by a corresponding amount. Each Alternative Investment Vehicle shall otherwise bear all expenses related to its formation, operations and liquidation. The investment results of an Alternative Investment Vehicle shall be aggregated with the investment results of the Fund for purposes of determining distributions either by the Fund or such Alternative Investment Vehicle unless the General Partner determines in good faith based on advice of counsel that such aggregation increases the risk of any material adverse tax consequences or imposes material legal or regulatory constraints and the Advisory Committee consents to the disaggregation of the investment results of such Alternative Investment Vehicle.

(iii) *Mechanics of Formation of Alternative Investment Vehicles.* Notwithstanding anything in Section 12.1 to the contrary, in the event that the General Partner forms one or more Alternative Investment Vehicles, the General Partner shall have full authority, without the consent of any other Person, to amend this Agreement as may be reasonably necessary or appropriate to facilitate the formation and operation of such Alternative Investment Vehicle and the investments contemplated by this Section 4.6(d), and to interpret in good faith any provision of this Agreement, whether or not so amended, to give effect to the intent of these provisions; *provided* that any such amendment would not have an adverse effect on any Limited Partner. The General Partner shall make all adjustments as may be necessary or appropriate to give effect to the intent of this Section 4.6(d). The limited partnership agreement and/or other organizational documents of any Alternative Investment Vehicle may be executed on behalf of the Limited Partners investing therein by the General Partner pursuant to the power of attorney granted by each of the Limited Partners pursuant to Section 12.2.

(iv) *Special Provisions Applicable to UBTI Investments and ECI Investments.* If the Fund is going to make a UBTI Investment or an ECI Investment, the General Partner shall make that Portfolio Investment through a

UBTI Fund or an ECI Fund (which may be the same Alternative Investment Vehicle) and not through the Fund or may cause the Fund or an Alternative Investment Vehicle to hold all or a portion of such investments through a Corporation (including as provided for in clause (v) below), as applicable, pursuant to this Section 4.6; *provided* that if, in the case of a UBTI Investment that is not also an ECI Investment, no Tax-Exempt Partner elects to make its Capital Contribution in respect thereof through a Corporation, then such UBTI Investment may be consummated through the Fund. Tax-Exempt Partners may, subject to legal, tax and regulatory considerations, within seven (7) Business Days of being provided with the Drawdown Notice referred to in Section 5.2, elect to make their Capital Contribution in respect of any UBTI Investment through the Corporation established in connection therewith in lieu of funding such contribution directly to such UBTI Fund. Non-U.S. Limited Partners may, within seven (7) Business Days of being provided with the Drawdown Notice referred to in Section 5.2, subject to legal, tax and regulatory considerations, elect to make their Capital Contribution in respect of any ECI Investment through the Corporation established in connection therewith in lieu of funding such contribution directly to the applicable UBTI Fund or ECI Fund, as applicable. Alternatively, each Tax-Exempt Partner or Non-U.S. Limited Partner may elect to fund its Capital Contribution to a UBTI Fund or ECI Fund, as applicable, through an entity that is an Affiliate of such Limited Partner that is designated by such Limited Partner for such purpose pursuant to documents reasonably acceptable to the General Partner. Participation in a Corporation shall be treated as participation in the relevant Alternative Investment Vehicle for all purposes hereof; *provided* that amounts paid to the Corporation shall be treated as having been paid to the Limited Partner directly for purposes of calculations pursuant to Article VI; and *provided, further,* that expenses associated with the Corporation shall be borne by such entities or the direct or indirect, as applicable, participants therein. This Section 4.6(d)(iv) shall also apply to a Portfolio Investment that becomes a UBTI Investment or an ECI Investment after the making thereof by the Fund.

(v) Notwithstanding anything herein to the contrary, the General Partner may, in its discretion, structure all or any portion of any UBTI Investment or ECI Investment through one or more Corporations, the stock of which is held by the Fund or one or more Alternative Investment Vehicles and, if so structured, the General Partner may in its discretion deem that (*A*) for purposes of this Agreement, the portion of any such Portfolio Investment held by the Fund or an Alternative Investment Vehicle indirectly through a Corporation and the portion held by the Fund or an Alternative Investment Vehicle away from such Corporation are separate Portfolio Investments, (*B*) the Tax-Exempt Partners and Non-U.S. Limited Partners electing to participate in such Portfolio Investment through a Corporation shall be deemed to have made any required Capital

Contributions or Direct Payments in respect of the portion of such investment held through such Corporation and shall be deemed, to the extent applicable in the General Partner's discretion, to have been excused pursuant to Section 5.4 from the remaining portion of such investment, (*C*) the Limited Partners not electing to participate in such Portfolio Investment through a Corporation shall be deemed, to the extent applicable in the General Partner's discretion, to have made any required Capital Contributions or Direct Payments in respect of the portion of such investment held by the Fund or an Alternative Investment Vehicle away from such Corporation and shall be deemed to have been excused pursuant to Section 5.4 from the remaining portion of such investment and (*D*) Distributable Cash generated by the portion of such Portfolio Investment held through such Corporation (which, for the avoidance of any doubt is net of expenses associated with the Corporation) shall be specially allocated to Tax-Exempt Partners and Non-U.S. Limited Partners electing to participate in such Portfolio Investment through such Corporation. Notwithstanding anything in this Agreement to the contrary, the General Partner may structure, or re-structure at any time, such Portfolio Investment in its discretion such that (x) any such Corporation (and the Fund and any Alternative Investment Vehicles) may hold such Portfolio Investment indirectly through an entity treated as a partnership for U.S. federal income tax purposes, (y) the General Partner (or an Affiliate thereof) or the Fund or Alternative Investment Vehicle may serve as the special limited partner, general partner or similar manager of such entity and (z) the General Partner (or an Affiliate thereof) or the Fund or Alternative Investment Vehicle may receive a share of the distributions from such entity or proceeds realized from the sale of such entity (or the sale of the Corporation investing in such entity) equal to the distributions pursuant to Section 6.3 that the General Partner would have otherwise been entitled to receive pursuant to this Agreement had the relevant portion of such Portfolio Investment not been held through a Corporation (and/or such Corporation had not been sold); *provided* that (notwithstanding any other provisions of this Agreement to the contrary) in the case of the Fund or such Alternative Investment Vehicle serving as the general partner or similar manager of such entity, distributions from or proceeds realized from the sale of such entity (or the sale of the Corporation investing in such entity) received by the Fund or such Alternative Investment Vehicle representing such distributions to the General Partner pursuant to Section 6.3 shall be specially allocated and distributed by the Fund or such Alternative Investment Vehicle to the General Partner only and distributions of Distributable Cash from such entity to the Fund or such Alternative Investment Vehicle shall be distributed to the Partners in accordance with the terms of this Agreement or the governing agreements of such Alternative Investment Vehicle, as applicable. The limited partnership agreement and/or other organizational documents of any Corporation may be executed on behalf of the Limited Partners investing therein by the General Partner pursuant to the

power of attorney granted by each of the Limited Partners pursuant to Section 12.2.

ARTICLE V

CAPITAL COMMITMENTS; CAPITAL CONTRIBUTIONS AND DIRECT PAYMENTS

5.1 Capital Commitments. Except as otherwise provided herein, each Partner shall make Capital Contributions and Direct Payments in the aggregate amount not to exceed its Capital Commitment, which is set forth opposite such Partner's name in the books and records of the Fund. Notwithstanding any other provision of this Agreement to the contrary, the aggregate Capital Commitments of the General Partner and the Affiliated Partners, together with direct or indirect capital commitments of the Principals and their family investment vehicles to any Related Investment Funds, shall equal at least the greater of (*i*) $50 million or (*ii*) 2.0% of total Capital Commitments and capital commitments to the Parallel Funds. The General Partner and/or one or more of the Affiliated Partners may increase, but not decrease, such amount up to a maximum of $100 million, from time to time effective as of any January 1 upon written notice to the Limited Partners; *provided* that any such increase shall be applicable only with respect to Portfolio Investments, Temporary Investments, Fund Expenses and Organizational Expenses made after the date of such increase; *and provided further* that any such increase shall not be applicable to Follow-On Investments without the consent of the Advisory Committee. Steven B. Klinsky and his family investment vehicles shall directly or indirectly make a capital commitment of at least $30 million of the foregoing in aggregate to the Fund, the General Partner and/or any Related Investment Fund. No Capital Contributions or Direct Payments shall be required to be made prior to the Effective Date.

5.2 Capital Contributions and Direct Payments. Except as otherwise provided in Sections 3.4(a), 3.7(b) and 5.4 or elsewhere in this Agreement, the Capital Contributions and Direct Payments of the Partners shall be paid in separate Drawdowns in amounts determined pursuant to the terms of Section 5.2(d), subject to the following terms and conditions:

(a) Timing of Drawdown Notices; Use of Drawdowns. The General Partner shall provide each Partner with a notice of each Drawdown (a "Drawdown Notice") at least 10 Business Days prior to the date on which such Drawdown is due and payable (the "Drawdown Date"). Each Drawdown shall be used to make Portfolio Investments by the Fund or shall be applied to provide for Organizational Expenses, Fund Expenses or Waiver Contribution Amounts. Each Drawdown shall be made as a Capital Contribution; *provided* that each Limited Partner agrees to make payments ("Direct Payments") directly to the General

Partner (or pay any such party as the General Partner may direct) in cash from time to time, payable in U.S. dollars, in installments as follows, for any Organizational Expenses or Fund Expenses that may be due and payable pursuant to a Drawdown Notice prior to the Initial Investment Date:

(i) each Limited Partner shall reimburse the General Partner (or pay such other party as the General Partner may direct) for such Limited Partner's *pro rata* share, calculated pursuant to Section 5.2(d)(ii), of the aggregate amount to be paid by all Limited Partners for Organizational Expenses (other than Placement Fees and Excess Organizational Expenses), and a Drawdown Notice shall be delivered in respect of such Direct Payments specifying the Drawdown Date therefor;

(ii) each Limited Partner (other than an Affiliated Partner) shall reimburse the General Partner (or pay such other party as the General Partner may direct) for such Limited Partner's *pro rata* share, calculated pursuant to Section 5.2(d)(iv), of the aggregate amount to be paid by all Limited Partners (other than Affiliated Partners) for Placement Fees and Excess Organizational Expenses, and a Drawdown Notice shall be delivered in respect of such Direct Payments specifying the Drawdown Date therefor;

(iii) each Limited Partner (other than an Affiliated Partner) shall pay the General Partner (or pay any such party as the General Partner may direct) such Limited Partner's share of the Management Fee then due and owing by such Limited Partner as determined in accordance with Section 7.2, and a Drawdown Notice shall be delivered in respect of such Direct Payments specifying the Drawdown Date therefor; and

(iv) each Limited Partner shall reimburse the General Partner (or pay such other party as the General Partner may direct) for such Limited Partner's *pro rata* share, calculated pursuant to Section 5.2(d)(ii), of the aggregate amount to be paid by all Limited Partners for Fund Expenses (other than Management Fees), and a Drawdown Notice shall be delivered in respect of such Direct Payments specifying the Drawdown Date therefor.

Without limiting the foregoing provisions relating to Direct Payments, (1) if accepting Capital Contributions to the Fund prior to the Initial Investment Date would result in 25% or more of the total value of any class of equity interest in the Fund being held by "benefit plan investors" within the meaning of Section 3(42) of ERISA and the regulations that may be promulgated threunder on or prior to the Initial Investment Date, the Drawdown Date with respect to each ERISA

Partner and Public Plan Partner in respect of any Capital Contribution to the Fund called for on or prior to the Initial Investment Date shall be the Initial Investment Date, and the General Partner shall provide each ERISA Partner and Public Plan Partner with notice of the anticipated closing date for such Portfolio Investment in the Drawdown Notice relating to such Portfolio Investment and a follow up notice to each ERISA Partner and Public Plan Partner identifying the actual closing date and (2) each ERISA Partner and Public Plan Partner shall fund its Capital Contribution for the Fund's first Portfolio Investment as early as practicable on the actual closing date thereof; *provided* that in lieu of the foregoing the General Partner may in its discretion establish an escrow account in connection with the Drawdown for the Fund's first Portfolio Investment to be made by each ERISA Partner and Public Plan Partner, and the Drawdown specified in the related Drawdown Notice shall be funded into such escrow account at such time as set forth in such notice, which date shall not be more than fifteen Business Days prior to the date of the anticipated closing of the investment to which such notice relates (the terms of the escrow shall be intended to meet the specifications for such an arrangement as set forth in DOL Ad. Op. Let. 95-04A (1995)). At the closing of the initial investment to which such Drawdown relates, subject to written notification from the Fund that any opinion of counsel or certificate required under Section 4.3(c) has been issued, the agent for such escrow account shall transfer to the Fund an amount equal to the aggregate amount funded into the escrow account by such ERISA Partners and Public Plan Partners plus interest thereon. If such investment fails to close within fifteen Business Days of the date of the anticipated closing (as set forth in the relevant Drawdown Notice), (i) the amounts funded by each ERISA Partner and Public Plan Partner and (ii) interest thereon shall be returned by the agent to each such ERISA Partner and Public Plan Partner.

Notwithstanding anything to the contrary herein, the General Partner may require the Limited Partners to make Capital Contributions, rather than Direct Payments, for Organizational Expenses or Fund Expenses on or prior to the Initial Investment Date if the General Partner reasonably determines that less than 25% of the total value of each class of equity interest in the Fund will not be held by "benefit plan investors" within the meaning of Section 3(42) of ERISA and the regulations that may be promulgated threunder.

(b) Contents of Drawdown Notices. In the case of a Drawdown to be used to make a Portfolio Investment, the relevant Drawdown Notice shall give such description of such Portfolio Investment as the General Partner shall determine is appropriate, including the identity of the related Portfolio Company, a general description of the business to be acquired, the Securities expected to be acquired and the purchase price therefor (unless the General Partner determines that any such disclosure would be contrary to the best interests of the Fund).

In addition, such Drawdown Notice shall specify, to the knowledge of the General Partner as of the date thereof, *(i)* the amounts of such Drawdown that will be used by the Fund to make Portfolio Investments or pay Organizational Expenses and/or Fund Expenses, *(ii)* in the case of a Drawdown Notice in respect of a Portfolio Investment, the aggregate amount expected to be invested in such Portfolio Investment by each of the Fund (or an Alternative Investment Vehicle) and any Related Investment Funds and *(iii)* in the case of a Drawdown Notice in respect of Fund Expenses, the amounts attributable to the Management Fee and to other categories of expenses constituting Fund Expenses, as well as a reasonably detailed calculation showing any offsets to the Management Fee pursuant to Section 7.2(a)(ii). The Drawdown Notice shall also contain a statement as to whether the Portfolio Investment is a UBTI Investment or an ECI Investment.

(c) Revised Drawdown Notices. Notwithstanding Section 5.2(a), if the actual Capital Contribution or Direct Payment to be paid by a Partner changes after delivery of a Drawdown Notice (due to, for example, a change in the amount or nature of the Securities to be acquired by the Fund or a default by or excuse of another Partner), the General Partner shall issue a revised Drawdown Notice to the Partners. Such Partners (other than Excused Partners, in the case of a particular Portfolio Investment) shall pay any additional Capital Contribution or Direct Payment thereby required no later than the Drawdown Date specified in such revised Drawdown Notice (*provided* that such revised Drawdown Notice shall be issued at least five Business Days prior to such Drawdown Date; and *provided, further*, that in the event that a revised Drawdown Notice is issued after the excuse of at least 35% in Interest of the Limited Partners, such revised Drawdown Notice shall be issued at least 10 Business Days prior to such Drawdown Date).

(d) Calculation of Each Partner's Share of a Drawdown. Each Partner shall pay the Capital Contributions and Direct Payments determined in accordance with the provisions of this Section 5.2(d) for a particular Drawdown and specified in the relevant Drawdown Notice, as the same may be revised pursuant to Section 5.2(c), by wire transfer in immediately available funds to the account, and no later than the Drawdown Date, specified in such Drawdown Notice. In connection with Capital Contributions for a Portfolio Investment or potential Portfolio Investment, the General Partner and/or the Waiver Entity shall be required to contribute to the Fund, and the Fund (from Waiver Contributions and Waiver Earnings) shall be required to fund an amount, in a manner determined by the General Partner so that the combined amount of such aggregate contribution and funding equals the aggregate amount of Capital Contributions required from the General Partner and/or the Waiver Entity hereunder in respect of such Portfolio Investment. Except as otherwise provided herein, the required Capital Contribution or Direct Payment of each Partner (other than (i) Excused

Partners, in the case of a particular Portfolio Investment and Fund Expenses determined by the General Partner to be attributable to such Portfolio Investment and (ii) Affiliated Partners, in the case of Management Fees, Placement Fees, Excess Organizational Expenses and Waiver Contribution Amounts) shall equal the following, in each case up to an amount not to exceed such Partner's Remaining Capital Commitment:

(i) in the case of a Portfolio Investment, including Fund Expenses determined by the General Partner to be attributable to such Portfolio Investment, such Partner's *pro rata* share (based on the Remaining Capital Commitments of all the Partners other than Excused Partners with respect to such Portfolio Investment, or, at the discretion of the General Partner, in the case of a Follow-On Investment, based on such Partner's *pro rata* share of the Capital Contributions and Direct Payments of all Partners who contributed to the original Portfolio Investment) of the aggregate amount required for the Fund to make such Portfolio Investment and pay such attributable Fund Expenses,

(ii) in the case of Organizational Expenses (other than Placement Fees or Excess Organizational Expenses) or Fund Expenses (other than the Management Fee or a Fund Expense described in clause (i) above), such Partner's *pro rata* share (based on the Capital Commitments of all the Partners) of the aggregate amount required to pay such Organizational Expenses or Fund Expenses, as the case may be,

(iii) in the case of the Management Fee, such Limited Partner's share of the Management Fee then payable by the Fund calculated as provided in Section 7.2,

(iv) in the case of Placement Fees or Excess Organizational Expenses, such Limited Partner's *pro rata* share (based on the Capital Commitments of all the Limited Partners (other than Affiliated Partners)) of any Placement Fees or Excess Organizational Expenses then payable by the Fund, and

(v) in the case of Waiver Contribution Amounts, such Limited Partner's *pro rata* share (based on the Capital Under Management of all Limited Partners (other than Affiliated Partners)) of the Waiver Contribution Amount.

(e) Use of Distributable Cash to Fund Drawdowns. The General Partner may determine to hold back and use Distributable Cash that otherwise would be distributable to a Partner pursuant to Article VI to pay all or part of any

Capital Contribution or Direct Payment that is required to be made by such Partner, to the extent that either (i) such retained amounts, if distributed, would have increased the Remaining Capital Commitment of such Partner in accordance with the definition of "Remaining Capital Commitment" or (ii) if such amounts had been distributed to the Partner and immediately recontributed thereby as a Capital Contribution, such Partner's Remaining Capital Commitment would have been reduced by such amount (and therefore such amounts may not exceed such Limited Partner's then Remaining Capital Commitment); *provided* that the amount of such Distributable Cash so held back and used for such payments shall be deemed for all purposes of this Agreement (other than Section 9.1(b)) to have been distributed to such Partner and then recontributed to the Fund by such Partner as a Capital Contribution or Direct Payment as of the date on which such Distributable Cash is actually wired or otherwise paid out of the Fund's account, and in the case of clause (ii) above such Partner's Remaining Capital Commitment shall be reduced by such amount. In the event that the amount held back with respect to any Partner is not sufficient to cover such Partner's Capital Contribution or Direct Payment requirement, the amount necessary to cover the balance of such Capital Contribution or Direct Payment shall be paid by such Partner pursuant to a Drawdown Notice as provided in this Section 5.2. Prior to or concurrent with the payment of any Capital Contributions or Direct Payments out of Distributable Cash pursuant to this Section 5.2(e), the General Partner will provide to each Limited Partner the distribution notice described in Section 6.3(a) and, if such Capital Contributions are to be used to make a Portfolio Investment, the information required to be provided in a Drawdown Notice issued pursuant to Section 5.2(b). In addition to the foregoing, each Limited Partner agrees that the General Partner may hold back and use Distributable Cash that otherwise would be distributable to a Limited Partner to pay all or part of any amounts otherwise owing by such Limited Partner to the Fund, the General Partner or the Manager pursuant to the terms of this Agreement, including Section 10.1(b)(i).

(f) No Third Party Beneficiaries. The provisions of this Section 5.2 are intended solely to benefit the Fund and the Partners and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any creditor of the Fund (and no such creditor shall be a third party beneficiary of this Agreement), and no Partner shall have any duty or obligation to any creditor of the Fund to make any contributions to the Fund pursuant to this Section 5.2 or to cause the General Partner to deliver to any Partner a Drawdown Notice.

5.3 Return of Unused Capital Contributions. If any proposed Portfolio Investment with respect to which there has been a Drawdown is not consummated within 45 days following the relevant Drawdown Date, or if the amount of funds drawn down for any particular Portfolio Investment exceeds the amount necessary to consummate such Portfolio Investment, the General Partner shall promptly return such Drawdown or

such excess amount of funds, together, in each case, with any interest or gains thereon (net of any Fund Expenses in respect thereof), to the Partners in the same proportions that such funds were contributed by the Partners; *provided* that, subject to Sections 3.4(a), 3.7(b) and 5.4, some or all of such Drawdown or such excess amount of funds (and any interest or gains thereon) may be retained by the Fund and not so returned (*a*) to the extent that the Fund is likely, as determined by the General Partner, to consummate a proposed Portfolio Investment within 60 days following the relevant Drawdown Date and (*b*) to the extent that the General Partner determines that it is desirable to retain such funds for the future payment of Fund Expenses within 60 days following the relevant Drawdown Date, and instead such funds may be used to fund such proposed Portfolio Investment or to pay such Fund Expenses; and *provided, further*, that if the General Partner determines to rely on clause (a) of the first proviso of this Section 5.3, the General Partner shall promptly provide to the Limited Partners the information required to be provided in a Drawdown Notice issued pursuant to Section 5.2(b). The Remaining Capital Commitment of each Partner may in the General Partner's discretion be increased by amounts returned pursuant to this Section 5.3 (other than any interest or gains returned), which amounts shall not be treated as Capital Contributions or Direct Payments.

5.4 Partners Excused from Making Capital Contributions.

(a) Conditions to Excuse. A Limited Partner will be excused from making a Capital Contribution to the Fund, or shall be entitled to a return of Capital Contributions previously made to the Fund and retained pursuant to Section 5.2(e) or 5.3, in each case in respect of a particular Portfolio Investment, if the following conditions are met:

(i) such Limited Partner reasonably determines that (*A*) the making of such investment as described in the relevant Drawdown Notice (and such Limited Partner's making a Capital Contribution in respect of such investment) is reasonably likely to have a Adverse Consequence on such Limited Partner, (*B*) if such Portfolio Investment is proposed to be made in a Portfolio Company that is organized under the laws of a jurisdiction other than the United States (or any political subdivision thereof), such contribution would result in such Limited Partner being either (*1*) subject to material income tax in such jurisdiction on income of such Limited Partner or its affiliates not derived from the Fund or (*2*) required to file an income tax return with such non-U.S. jurisdiction that includes income of such Limited Partner or its affiliates not derived from the Fund, where such income would not otherwise be so included, or *(C)* its participation in such Portfolio Investment would violate a written investment policy of the Limited Partner identified to the General Partner in writing prior to such Limited Partner's admission to the Fund (and agreed to in writing for this purpose by the General Partner) and which is in effect as of the date on which such excuse is sought, or the General Partner reasonably determines based upon advice of counsel that the

participation of such Limited Partner in such investment is reasonably likely to have an Adverse Consequence on the Fund, the Manager, a Portfolio Company or its Affiliates or a Partner or its Affiliates or would prevent the Fund from being able to consummate such investment or would otherwise result in a material increase in the risk or difficulty to the Fund of consummating such investment or impose any material filing, tax, regulatory or other burden to which the Fund, a Portfolio Company, the Manager or any Partner or its Affiliates would not otherwise be subject;

(ii) in the case of a determination by a Limited Partner pursuant to paragraph (i) above of this Section 5.4(a), such Limited Partner shall notify the General Partner in writing no later than five Business Days after delivery of the relevant Drawdown Notice (or such later date as the General Partner may determine) of its intention to avail itself of the provisions of this Section 5.4(a), and shall deliver to the General Partner an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the General Partner, to the effect of the paragraph (i) above of this Section 5.4(a) (other than as to materiality), and such other information concerning the circumstances giving rise to the excuse as the General Partner may reasonably request; and

(iii) in the case of a determination by the General Partner pursuant to paragraph (i) above of this Section 5.4(a), the General Partner shall advise such Limited Partner in writing, no later than five Business Days after delivery of the relevant Drawdown Notice, of its intention to invoke the provisions of this Section 5.4(a) and shall deliver to such Limited Partner the advice of counsel that forms the basis for the General Partner's determination, which advice and counsel shall be reasonably satisfactory to the Limited Partner, to the effect of clause (i) above of this Section 5.4(a) (other than as to materiality).

The General Partner and the affected Limited Partner shall each use commercially reasonable efforts to alleviate the circumstances described in clause (i) of this Section 5.4(a) and to the extent that, as a result of such efforts, such circumstances are alleviated, including through a reduction of such Limited Partner's Capital Contribution, the provisions of this Section 5.4 shall not apply or shall apply only to the affected portion of such Capital Contribution, as the case may be. In the case of a Limited Partner that is, or is administered by, an officer or agency of the U.S. federal government or of a state or local government, (*A*) the term "governmental administrative policy" as used in the definition of "Adverse Consequence" shall include policies of such governmental officer or agency relating to impermissible investments as to which the General Partner has been advised prior to the issuance of the relevant Drawdown Notice and (*B*) the provisions of this Section 5.4(a) shall not be deemed to require an opinion of counsel addressing such policies. In the case of a determination by a Limited Partner pursuant to Section 5.4(a)(i)(C) above, the provisions of this Section 5.4(a) shall not be deemed to

require an opinion of counsel addressing such policy. Each Limited Partner agrees that its rights under this Section 5.4(a) will be exercised on an investment-by-investment basis and in good faith. A Limited Partner that is excused from a Portfolio Investment under this Section 5.4(a) shall have no right to receive any distributions in respect of such Portfolio Investment. The General Partner may waive all or any portion of the conditions applicable to Limited Partners set forth in this Section 5.4(a).

(b) Effect of Excuse. If any Limited Partner is excused from a Portfolio Investment pursuant to Sections 3.4(a), 3.7(b) or 5.4(a), the General Partner may elect to make the investment without the participation of such Excused Partner or not to make the investment. If the General Partner elects to make the investment, the General Partner shall notify the Limited Partners of the excuse and may (*i*) increase the Capital Contributions with respect to such investment from the other Partners in proportion to their Remaining Capital Commitments to the extent necessary to fund the excused amount (but not in excess of their Remaining Capital Commitments), as contemplated by Section 5.2(c), and/or (*ii*) offer to such other Partners as the General Partner shall determine the opportunity to co-invest (other than in their capacity as Partners) in such Portfolio Investment an aggregate amount equal to the excused amount. The operation of this Section 5.4 shall not limit the obligation of any Excused Partner to contribute to the Fund the full amount of its Remaining Capital Commitment in respect of all subsequent Portfolio Investments and all Organizational Expenses and Fund Expenses.

(c) Sale of Interest. If at any time the General Partner determines, after consultation with the affected Limited Partner and counsel to the General Partner, that there is a reasonable likelihood that the continuing participation in the Fund by such Limited Partner would have a Adverse Consequence on the General Partner, the Fund, any Portfolio Company or any of their respective Affiliates, such Limited Partner will, upon the written request and with the reasonable cooperation of the General Partner, use commercially reasonable efforts to dispose of such Limited Partner's entire interest in the Fund (or such portion of its interest as the General Partner shall determine is sufficient to prevent or remedy such Adverse Consequence) to one or more of the other Limited Partners or any other Person at a price reasonably acceptable to such Limited Partner, in a transaction that complies with Section 10.1. If a determination is made by the General Partner under this Section 5.4(c) that would affect more than one Limited Partner in substantially the same manner, the General Partner shall request that all of the affected Limited Partners take the actions set forth in the preceding sentence in proportion to their respective Capital Commitments. The General Partner shall make such revisions to the books and records of the Fund as may be necessary or appropriate to reflect the changes in Partners and Capital Commitments contemplated by this Section 5.4(c).

5.5 Partners that Default on Capital Contributions or Direct Payments.

(a) General. If any Limited Partner (other than an Excused Partner with respect to a Portfolio Investment) fails to make, in a timely manner, all or any portion of any Capital Contribution, Direct Payment or any other payment required to be made by such Limited Partner hereunder, and such failure continues for five Business Days (or, in the case of a revised Drawdown Notice issued pursuant to Section 5.2(c), 10 Business Days) after receipt of written notice thereof from the General Partner (a "Default"), then such Limited Partner may be designated by the General Partner in its sole discretion as in default under this Agreement (a "Defaulting Partner") and shall thereafter be subject to the provisions of this Section 5.5. The General Partner may, in its sole discretion, choose not to designate any Limited Partner as a Defaulting Partner and may agree to waive or permit the cure of any Default by a Partner, subject to such conditions as the General Partner and the Defaulting Partner may agree upon.

(b) Funding of Defaulted Amount. With respect to any amount that is in Default other than the Management Fee and any Waiver Contribution Amounts (the "Defaulted Amount"), the General Partner may *(i)* increase the Capital Contributions or Direct Payments of the Partners that have funded the amount specified in the Drawdown Notice that is the subject of the Default (the "Non-Defaulting Partners") in proportion to their respective Capital Commitments, Remaining Capital Commitments, Capital Contributions and Direct Payments, or Capital Under Management, as appropriate under the relevant clause of Section 5.2(d) (but not in excess of their Remaining Capital Commitments), to the extent necessary to fund the Defaulted Amount, as contemplated by Section 5.2(c), and/or *(ii)* if the Defaulted Amount was to be used to fund a Portfolio Investment, offer to such Non-Defaulting Partners, subject to such timing and other conditions as the General Partner in good faith may impose, the opportunity to co-invest, in accordance with the provisions of Section 4.6(b), in such Portfolio Investment an aggregate amount equal to the Defaulted Amount.

(c) Defaulted Capital Commitment. With respect to the Remaining Capital Commitment of any Defaulting Partner (the "Defaulted Capital Commitment"), the General Partner may (*i*) admit to the Fund a Substitute Partner to assume all or a portion of the balance of such Defaulted Capital Commitment on such terms and upon the delivery of such documents as the General Partner shall determine to be appropriate and/or (*ii*) offer to all Non-Defaulting Partners, subject to such timing and other conditions as the General Partner in good faith may impose, the opportunity to increase their Capital Commitments *pro rata* in accordance with their Capital Commitments (with the right to increase proportionately their respective shares in the event that one or more Non-Defaulting Partners declines such offer), up to an amount equal in the aggregate to the Defaulted Capital Commitment. The General Partner shall make such revisions to the books and records of the Fund as may be necessary to reflect the change in Partners and Capital Commitments contemplated by this Section 5.5(c).

(d) Forfeiture and Application of Forfeited Amounts. Without prejudice to is rights under Section 5.5(e), the General Partner may take any or all of the following actions with respect to a Defaulting Partner: (*i*) reduce amounts otherwise distributable to such Defaulting Partner by 50% effective from and after the date of such Default and withhold the remaining 50% of any future distributions that otherwise would be payable to such Defaulting Partner pursuant to Article VI until the dissolution of the Fund, (*ii*) cease to allocate any income and gain to such Defaulting Partner with respect to its remaining interest in the Fund, but continue to allocate its *pro rata* share of losses and deductions and (*iii*) require such Defaulting Partner to remain fully liable for payment of up to its *pro rata* share of Organizational Expenses and Fund Expenses as if the Default had not occurred. The General Partner may apply amounts otherwise distributable to such Defaulting Partner in satisfaction of all amounts payable by such Defaulting Partner. In addition, such Defaulting Partner shall have no further right to make Capital Contributions to participate in any Portfolio Investment and shall be treated for purposes of Sections 5.2 and 5.4 as if such Defaulting Partner was no longer a Partner. The General Partner may charge such Defaulting Partner interest on the Defaulted Amount and any other amounts not timely paid at a rate per annum equal to the Prime Rate plus 2% from the date such amounts were due and payable through the date that full payment of such amounts is actually made or, if such amounts are not paid, through the end of the Term, and to the extent not paid such interest charge may be deducted from amounts otherwise distributable to such Defaulting Partner. Any such interest owed to the Fund shall be allocated and distributed to the Non-Defaulting Partners *pro rata* in proportion to their Capital Commitments. Amounts forfeited to the Fund and not otherwise applied to the payment of the expenses specified in clause (iii) of the first sentence of this Section 5.5(d) or in Section 5.5(e), plus any interest thereon, shall be allocated and distributed to the Non-Defaulting Partners *pro rata* in proportion to their Capital Commitments; *provided* that no Non-Defaulting Partner shall receive an allocation and distribution in respect of a Portfolio Investment with respect to which such Partner is an Excused Partner. The General Partner shall make such adjustments, including adjustments to the Capital Accounts of the Partners (including such Defaulting Partner), as it determines to be appropriate to give effect to the provisions of this Section 5.5. The General Partner agrees that it shall not, without the consent of the Advisory Committee, waive or omit to take any of the remedies provided for in this Section 5.5(d) in respect of a Defaulting Partner that is an Affiliate of the General Partner.

(e) Other Remedies; Payment of Expenses. The General Partner shall have the right to pursue all remedies at law or in equity available to it with respect to the Default of a Defaulting Partner. No course of dealing between the General Partner and any Defaulting Partner and no delay in exercising any right, power or remedy conferred in this Section 5.5 or now or hereafter existing at law or in equity or by statute or otherwise shall operate as a waiver or otherwise prejudice any such right, power or remedy. In addition to the foregoing, the General Partner may in its sole discretion institute a lawsuit against any Defaulting Partner for specific performance of its obligation to make Capital

Contributions, Direct Payments and any other payments to be made hereunder by a Limited Partner and to collect any overdue amounts hereunder. Notwithstanding any other provision of this Agreement, each Limited Partner agrees to pay on demand all costs and expenses (including attorneys' fees) incurred by or on behalf of the Fund in connection with the enforcement of this Agreement against such Partner as a result of a Default by such Partner, and agrees that any such payment shall not constitute a Capital Contribution or Direct Payment.

(f) Consents. Whenever the vote, consent or decision of a Limited Partner is required or permitted pursuant to this Agreement or under the Partnership Law, a Defaulting Partner shall not be entitled to participate in such vote or consent, or to make such decision, and such vote, consent or decision shall be tabulated or made as if such Defaulting Partner were not a Partner.

(g) Adequacy of Remedies. Each Limited Partner acknowledges that it has been admitted to the Fund in reliance upon its agreements under this Section 5.5 (as well as the other provisions of this Agreement), that the General Partner and the Fund may have no adequate remedy at law for a breach hereof and that damages resulting from such breach may be impossible to ascertain as of the date of the Closing at which such Limited Partner is admitted to the Fund or as of the date of such breach.

5.6 Early Termination of Investment Period.

(a) Termination Events. The Investment Period will terminate, and the Fund, subject to the last sentence of this Section 5.6(a), will engage only in Runoff Activities, (*i*) upon the date on which Steven B. Klinsky ceases to be employed, including as a result of his death, disability or incapacity, by the Manager or one or more of its Affiliates or is permanently unable to substantially perform the duties of his employment with the Manager or its Affiliates as a result of his permanent disability or incapacity, (*ii*) thirty (30) days after a determination by a court of competent jurisdiction that a Principal has engaged in Disabling Conduct having a material adverse effect on the Fund, unless such Principal is not Steven B. Klinsky and such Principal has ceased to be an employee of the Manager or one or more of its Affiliates by the end of such 30-day period, (*iii*) upon the vote, after the second anniversary of the Final Admission Date, of 80% in Interest of the Combined Limited Partners obtained within any 120-day period, (*iv*) upon written notice from the General Partner to the Limited Partners that the Investment Period is terminated in connection with the acceptance of management fees or other fees in respect of, or the making of investments on behalf of, a Successor Fund; *provided* that the General Partner shall not give such notice until the date on which at least 80% of the aggregate Capital Commitments of the Non-Defaulting Partners has been contributed to the Fund or committed in writing to make Portfolio Investments, used to pay Waiver Contribution Amounts, Organizational Expenses and Fund Expenses, or reserved for the funding of Follow-Up Investments, Follow-On Investments and the payment of Fund Expenses

without the consent of 66• % in Interest of the Combined Limited Partners, after which date such notice may be given or withheld in the General Partner's sole discretion, or (*v*) upon the vote of 80% in Interest of the Combined Limited Partners following a unanimous vote of the Advisory Committee, recorded in writing, finding that (A) Mr. Klinsky failed during the Investment Period to dedicate substantially all of his business time to New Mountain, the Fund and their respective portfolio companies; *provided* that the Advisory Committee shall previously have voted unanimously to notify, and so notified in writing, Mr. Klinsky of its reasonable belief that he was failing to devote such time as contemplated by the foregoing and Mr. Klinsky failed within 60 days following his receipt of such written notice to satisfy the Advisory Committee that he was or would be devoting his business time in accordance with the foregoing or (B) a majority of the Fund III Investment Team Members failed during the Investment Period to dedicate substantially all of their business time to New Mountain, the Fund and their respective portfolio companies. The "Fund III Investment Team Members" shall mean the persons listed on Schedule A and any other person approved as a "Fund III Investment Team Member" by the Advisory Committee prior to the termination of the Investment Period pursuant to this Section 5.6(a)(v)(B) or pursuant to Section 5.6(b), as applicable; *provided* that if any person is approved by the Advisory Committee as a replacement for a person listed on Schedule A then the replaced person shall no longer be counted for purposes hereof; and *provided, further*, that the Advisory Committee may approve the removal of any person from Schedule A and in such event such person shall no longer be counted for purposes hereof. The General Partner shall promptly notify the Limited Partners in writing of the occurrence of the events described in clauses (i) and (ii) (whether such occurrence is during or after the Investment Period) of the first sentence of this Section 5.6(a) and offer to meet with the Limited Partners to discuss such occurrence, and, upon the vote of 66• % in Interest of the Combined Limited Partners following the occurrence of any such event, the Fund will be dissolved and its affairs shall be wound up pursuant to the provisions of Article XI. If, prior to any vote with respect to an event described in clause (ii), the Principal in question ceases to be an employee of the Manager or one or more of its Affiliates, the Investment Period shall continue, and the Fund shall continue its investment program, as of the date on which such Principal ceased to be so employed. In such event, the Investment Period shall be calculated without taking into account the period during which the Investment Period was suspended. Except as expressly provided in this Section 5.6, from and after the date that the Investment Period ends as contemplated by this Section 5.6, the General Partner shall continue to act on behalf of the Fund and to perform the functions of the General Partner, and shall have all of the rights and privileges of the General Partner hereunder. In the event of a termination of the Investment Period pursuant to clause (i) or (v) of the first sentence of this Section 5.6(a), (*A*) until the approval, if any, of a Qualified Replacement pursuant to Section 5.6(b) (which would result in the recommencement of the Investment Period), the Fund shall be permitted to make new Portfolio Investments, in each case with the unanimous written consent of the Advisory Committee, and (*B*) if no Qualified Replacement is approved pursuant to Section 5.6(b) within 12 months of such

termination, the remaining Principal(s) shall present to the Advisory Committee a good faith estimate (the "Estimate") of the portion of the Remaining Capital Commitments reasonably required to support Runoff Activities for the remainder of the Term, and, upon the Advisory Committee's approval of such Estimate, which approval shall not be unreasonably withheld, all Remaining Capital Commitments shall be reduced *pro rata* to conform to the Estimate.

(b) Qualified Replacement. At any time after the termination of the Investment Period pursuant to Sections 5.6(a)(i), 5.6(a)(v)(A) or 5.6(a)(v)(B), the General Partner may, by written notice to each member of the Advisory Committee, nominate a Qualified Replacement for Mr. Klinsky or any Fund III Investment Team Member, as applicable. The General Partner will use commercially reasonable efforts (*i*) to provide information to the members of the Advisory Committee with respect to any such nominee, and if requested by such members shall arrange for an interview of such nominee with such members at a mutually convenient time and place, and (*ii*) to schedule a vote by the Advisory Committee no sooner than 15 days but no later than 30 days after the notice of nomination is given. A nominee's election shall be effective upon *(A)* the affirmative vote of a majority of the voting members of the Advisory Committee and *(B)* the affirmative vote of a Majority in Interest of the Combined Limited Partners obtained within 60 days following the vote of the Advisory Committee referred to in clause (A), and upon such election such nominee shall constitute a "Qualified Replacement." If fewer than a majority of the Combined Limited Partners shall have voted whether or not to approve a nominee in accordance with the preceding sentence within 30 days of the approval by the Advisory Committee, the General Partner shall deliver a second written notice to each member of the Advisory Committee, and if a Majority in Advisory Committee Interest votes to elect such nominee within 60 days of the date of such second notice, such nominee shall become a Qualified Replacement. The Investment Period shall continue, and the Fund shall continue its investment program, upon the replacement of (*i*) Mr. Klinsky, in the case of an election of a Qualified Replacement following the termination of the Investment Period pursuant to Sections 5.6(a)(i) or 5.6(a)(v)(A) or (*ii*) such Fund III Investment Team Members as are necessary such that a majority of the Fund III Investment Team Members will be dedicating substantially all of their business time to New Mountain, the Fund and their respective portfolio companies, in the case of the election of a Qualified Replacement or Qualified Replacements, as applicable, following the termination of the Investment Period pursuant to Section 5.6(a)(v)(B). In such event, the Investment Period shall be calculated without taking into account the period during which the Investment Period was suspended.

ARTICLE VI

CAPITAL ACCOUNTS; DISTRIBUTIONS; ALLOCATIONS; WITHHOLDING

6.1 Capital Accounts. There shall be established on the books and records of the Fund a capital account (a "Capital Account") for each Partner.

6.2 Adjustments to Capital Accounts. As of the last day of each Period, the balance in each Partner's Capital Account shall be adjusted by (*a*) increasing such balance by (*i*) such Partner's allocable share of each item of the Fund's income and gain for such Period (allocated in accordance with Section 6.10) and (*ii*) the Capital Contributions and Direct Payments, if any, made by such Partner during such Period and (*b*) decreasing such balance by (*i*) the amount of cash or the Value of Securities or other property distributed to such Partner pursuant to this Agreement and (*ii*) such Partner's allocable share of each item of the Fund's loss and deduction for such Period (allocated in accordance with Section 6.10). Each Partner's Capital Account shall be further adjusted with respect to any special allocations or adjustments pursuant to this Agreement.

6.3 Distributions Attributable to Portfolio Investments. (a) Except as otherwise provided herein, Distributable Cash attributable to any Portfolio Investment (other than a Bridge Investment) shall be distributed within 90 days after receipt by the Fund (or, if distribution within such 90-day period is not practicable, as soon as practicable thereafter). Prior to or concurrent with any distribution of Distributable Cash pursuant to this Section 6.3(a), the General Partner will provide a notice to each Limited Partner stating the amount to be distributed or deemed to be distributed to such Limited Partner and the source or sources of such Distributable Cash. Distributable Cash attributable to any such Portfolio Investment shall initially be apportioned among the Partners (including the Waiver Entity subject to Section 6.3(b)) in proportion to their Sharing Percentages with respect to such Portfolio Investment. Except as otherwise provided herein, the amount apportioned to the General Partner and each Affiliated Partner shall be distributed to the General Partner and such Affiliated Partner, respectively. The amount apportioned to each other Limited Partner shall be distributed as follows:

(i) *Return of Capital, Net Unrealized Losses and Apportioned Expenses*: First, 100% to such Limited Partner until the cumulative amount distributed to such Limited Partner pursuant to this Section 6.3(a)(i) is equal to the sum of:

(A) the aggregate Capital Contributions of such Limited Partner used to fund the acquisition cost of such Portfolio Investment and of each

Portfolio Investment (other than a Bridge Investment) previously disposed of (other than Waiver Contributions) and the amount of such Limited Partner's Net Unrealized Loss at such time, and

(B) the aggregate Capital Contributions and Direct Payments of such Limited Partner used to fund Organizational Expenses, Waiver Contribution Amounts and Fund Expenses that at the time of such distribution are apportioned pursuant to Section 6.6(c) to the Portfolio Investments (or portions thereof) described in clause (a)(i)(A) above at such time;

(ii) *Preferred Return*: Second, 100% to such Limited Partner until the cumulative amount distributed to such Limited Partner pursuant to this Section 6.3(a)(ii) and Section 6.3(a)(iv) is sufficient to provide such Limited Partner with an amount equal to interest at the rate of 8% per annum, compounded annually, on (*i*) the Capital Contributions described in clause (a)(i)(A) above (computed from the due dates specified in the applicable Drawdown Notices until the dates distributions with respect thereto are made pursuant to this Section 6.3(a)) and (*ii*) the Capital Contributions and Direct Payments described in clause (a)(i)(B) above (computed from the due dates specified in the applicable Drawdown Notices until the dates distributions are made pursuant to this Section 6.3(a));

(iii) *Catch Up*: Third, 100% to the General Partner until the cumulative amount distributed to the General Partner with respect to such Limited Partner pursuant to this Section 6.3(a), is equal to 20% of the excess of (*i*) the cumulative amounts distributed to such Limited Partner and to the General Partner in respect of such Limited Partner pursuant to this Section 6.3(a), over (*ii*) the Capital Contributions and Direct Payments of such Limited Partner then described in paragraph (a) above; and

(iv) *80/20 Split*: Fourth, 80% to such Limited Partner and 20% to the General Partner.

In connection with each distribution under this Section 6.3(a), the General Partner shall make such determinations as may be required by the definition of "Net Unrealized Loss".

(b) Limitation on Distributions to the Waiver Entity and Catch-Up. Distributions to the Waiver Entity shall be limited to the extent necessary so that its Fund interest constitutes a "profits interest" (except to the extent of its actually contributed capital). In furtherance of the foregoing, the General Partner shall, if necessary, limit distributions to the Waiver Entity in respect of any Portfolio Investment under Section 6.3(a) with respect to each Limited Partner whose Waiver Contributions were invested in

such Portfolio Investment so that such distributions do not exceed the sum of the amount of available profits (as determined by the General Partner) in respect of any such Limited Partner determined by the General Partner in good faith. In the event that in connection with any distribution the Waiver Entity's distributions are reduced pursuant to the preceding sentence, an amount equal to such excess distributions shall be treated as instead apportioned to the relevant Limited Partner under Section 6.3(a), and the General Partner shall upon the occurrence of future distributions make appropriate adjustments (as determined by the General Partner in good faith) to such future distributions with respect to such Limited Partner under Section 6.3(a)(i) so that the Waiver Entity receives (consistent with the principles of this Section 6.3(b)) an amount equal to such excess distributions out of amounts that, but for this Section 6.3(b), would have been distributed to the Waiver Entity with respect to such Limited Partner.

6.4 General Distributions.

(a) Distributions Not Attributable to Portfolio Investments. Except as otherwise provided herein, Distributable Cash not attributable to a Portfolio Investment (other than Waiver Earnings) shall be distributed to the Partners in proportion to their Capital Contributions to the investment giving rise to such Distributable Cash, and shall be distributed no less frequently than quarterly unless the aggregate amount available for distribution pursuant to this Section 6.4(a) at the time such quarterly distribution would be required is less than $5 million, in which case such distribution shall be deferred until the next succeeding quarter in which such $5 million threshold is met.

(b) Distributions Attributable to Bridge Investments. Except as otherwise provided herein, Distributable Cash attributable to any Bridge Investment shall be distributed as soon as reasonably practicable upon the Fund's receipt thereof to the Partners in proportion to their Sharing Percentages with respect to such Bridge Investment. Notwithstanding anything to the contrary in Section 4.1(b) or this Section 6.4(b), in the event that a Bridge Investment is not repaid, refinanced or otherwise disposed of within 13 months of the date that such Bridge Investment was made, (*i*) such Bridge Investment shall cease to be treated as a Bridge Investment on the date that is 13 months after the date of investment and shall thereafter be deemed to be part of the Portfolio Investment with respect to which such Bridge Investment was made for all purposes of this Agreement and (*ii*) any amounts theretofore distributed pursuant to this Section 6.4(b) with respect to such Bridge Investment shall thereafter be taken into account in determining subsequent distributions under Section 6.3(a) so that each Partner receives, to the extent possible, the aggregate amount of distributions that it would have received had such Bridge Investment been deemed to be a Portfolio Investment that is not a Bridge Investment for purposes of this Agreement from and after the date that such Bridge Investment was made.

6.5 Tax Distributions. Notwithstanding any provision of Section 6.3(a) to the contrary, the Fund may, either prior to, together with or subsequent to any distribution of Distributable Cash attributable to a Portfolio Investment pursuant to Section 6.3(a), make distributions to all Partners (other than any Defaulting Partners or any Excused Partners with respect to such Portfolio Investment), regardless of their tax status, in amounts intended to enable such Partners (or any Person whose tax liability is determined by reference to the income of any such Partner) to discharge their U.S. federal, state and local (and as the General Partner shall determine, non-U.S.) income tax liabilities arising from allocations made (or to be made) pursuant to Section 6.11 with respect to such Portfolio Investment; *provided* that no more than one such tax distribution shall be made during each quarter unless more than one disposition or other distribution in respect of a Portfolio Investment occurs during such quarter, in which case a tax distribution may be made in connection with each such disposition or other distribution. The amounts distributable pursuant to this Section 6.5 shall be determined by the General Partner, taking into account the maximum combined U.S. federal, New York State and New York City tax rate applicable to individuals or corporations (whichever is higher) on ordinary income and capital gain (taking into account the applicable holding period), as the case may be, the amounts of ordinary income and capital gain allocated to the Partners pursuant to this Agreement, the deductibility of state and local income taxes, and otherwise based on such reasonable assumptions as the General Partner determines in good faith to be appropriate. The amount distributable to any Partner pursuant to any clause of Section 6.3(a) shall be reduced by the amount distributed to such Partner pursuant to this Section 6.5, and the amount so distributed under this Section 6.5 shall be deemed also to have been distributed to the extent of such reduction pursuant to such clause of Section 6.3(a) for purposes of making the calculations required by Sections 6.3(a), 11.2 and 11.3. For purposes of the preceding sentence, the General Partner shall allocate in good faith any distributions received by it pursuant to this Section 6.5 among Distributable Cash apportioned to each Partner.

6.6 General Distribution Provisions.

(a) Overriding Limitations on Distributions. Notwithstanding any other provision of this Agreement, distributions shall be made only to the extent of Available Assets and in compliance with the Partnership Law and other applicable law.

(b) Distributions Relating to a Partial Disposition of a Portfolio Investment. If less than all of a Portfolio Investment is disposed of by the Fund, the portion disposed of and the portion retained shall for purposes of Articles VI and XI (including for purposes of applying the definitions used therein) be deemed to be separate Portfolio Investments. Any Capital Contributions, Direct Payments, allocations or distributions made with respect to such Portfolio Investment, and any amounts received or expenses paid by the Fund prior to such disposition that are attributable to such Portfolio Investment, shall be

allocated between the portion disposed of and the portion retained in proportion to their respective acquisition costs.

(c) Apportionment of Expenses. For the purposes of Section 6.3(a), any Capital Contributions and Direct Payments of a Partner that were used to pay Fund Expenses and that were contributed to the Fund pursuant to Section 5.2(d)(i) in respect of a particular Portfolio Investment shall be apportioned to such Portfolio Investment. Capital Contributions and Direct Payments of a Partner used to pay Organizational Expenses, other Fund Expenses or Waiver Contributions shall be apportioned among the Portfolio Investments (other than Bridge Investments) such that, to the extent practicable, the amount of such Organizational Expenses, Fund Expenses or Waiver Contributions apportioned to such Portfolio Investments disposed of and to the portions of such Portfolio Investments then representing a Net Unrealized Loss shall equal the product of such Organizational Expenses, Fund Expenses or Waiver Contributions multiplied by a fraction, the numerator of which is the aggregate Capital Contributions of the Partners used to fund such Portfolio Investments and portions and the denominator of which is (*i*) during the Investment Period, the Partners' aggregate Capital Commitments and (*ii*) after the Investment Period, the Partners' aggregate Capital Contributions used to fund the acquisition cost of Portfolio Investments (other than Bridge Investments); *provided* that, in lieu of apportioning any amount of Organizational Expenses, Fund Expenses or Waiver Contributions not previously distributed to Portfolio Investments then held by the Fund, the General Partner may apportion such amounts to Portfolio Investments that have been disposed of or that represent a Net Unrealized Loss.

(d) Distributions to Persons Shown on Fund Records. Any distribution by the Fund pursuant to Articles VI and XI to the Person shown on the Fund's records as a Partner or to such Person's legal representatives, or to the Transferee of such Person's right to receive such distributions as provided herein, shall acquit the Fund and the General Partner of all liability to any other Person that may be interested in such distribution by reason of any Transfer of such Person's interest in the Fund for any reason (including a Transfer of such interest by reason of the death, incompetence, bankruptcy or liquidation of such Person).

(e) Distribution of Amounts Subject to Recall. The amount of any distribution to a Partner that is subject to recall by the Fund shall be specified in a written notice from the General Partner that accompanies such distribution.

6.7 Distributions in Kind.

(a) General. Prior to the dissolution, winding up and liquidation of the Fund and except in connection with payments to a withdrawing Limited Partner as provided herein, the General Partner may distribute only Marketable Securities as distributions in kind. In connection with any distribution of Securities, the General Partner shall provide

five Business Days' written notice to each Partner of such distribution, which notice shall include a brief description of the business activities of the Portfolio Company to which such Securities relate and shall set forth the date on which the General Partner has determined to cause such distribution to be made. In the event that a distribution of Marketable Securities or other Securities is made, such Securities shall be deemed to have been sold at their Value and the proceeds of such sale shall be deemed to have been distributed in the form of Distributable Cash to the Partners for all purposes of this Agreement. Distributions of Marketable Securities and, upon dissolution, winding up and liquidation of the Fund, distributions of any other Securities or other property shall be made in proportion to the aggregate amounts that would be distributed to each Partner pursuant to Section 6.3, as determined by the General Partner. If a distribution consists of both cash and Securities or Securities of more than one class (with each lot of Securities with a separate basis or holding period being treated as a separate class of Securities), each Partner receiving such distribution shall, to the extent practicable, receive the same proportion of cash and Securities of each class being distributed. To the extent that the foregoing is not practicable, a Partner may be compelled to accept a distribution of any asset in kind from the Fund to the extent that the percentage of the asset distributed to such Partner exceeds a percentage of that asset that is equal to the percentage in which such Partner shares in distributions from the Fund. The General Partner may cause certificates evidencing any Securities to be distributed to be imprinted with legends as to such restrictions on Transfer as it may determine are necessary or appropriate, including legends as to applicable U.S. federal or state or non-U.S. securities laws or other legal or contractual restrictions, and may require any Partner to which Securities are to be distributed, as a condition to such distribution, to agree in writing (*i*) that such Partner will not Transfer such Securities except in compliance with such restrictions and (*ii*) to such other matters as the General Partner may determine are necessary or appropriate.

(b) Election to Receive Securities in Lieu of Cash. In connection with the proposed sale or exchange by the Fund of Securities in a Portfolio Company, the General Partner may offer to the Partners the right to receive a distribution of Securities. If such offer is made by the General Partner, the General Partner shall provide at least five Business Days' notice to each Partner of such proposed sale or exchange, which notice shall include a brief description of the business activities of the Portfolio Company to which such Securities relate, and any material restrictions on the sale of such Securities, and shall offer to each Partner the right to receive as a distribution an amount of such Securities equal in value to all or a specified percentage of the cash distributions that otherwise would be made to such Partner pursuant to Section 6.3 or 11.2. Any Limited Partner that fails to respond in writing to such notice within five Business Days following receipt thereof shall receive the distribution in cash. Subject to the discretion of the General Partner as to the terms and conditions of the elective in kind distribution and, to the extent consistent with or not opposed to the best interests of the Fund as determined by the General Partner in good faith, when any such Securities are sold or exchanged by

the Fund, the General Partner (*i*) will use commercially reasonable efforts to cause the Fund to refrain from selling or exchanging a sufficient number of such Securities so that the General Partner can cause the Fund to distribute to the electing Partners a number of such Securities having a Value equal to the amount of cash that would have been distributed to such Partners but for such election and *(ii)* will distribute such Securities to the electing Partners in accordance with the provisions of this Article VI.

(c) Election to Receive Cash in Lieu of Securities. If, within five Business Days of the notice referred to in Section 6.7(a) with respect to a distribution in kind of Marketable Securities, a Partner notifies the General Partner in writing that such Partner elects, in lieu of receiving such distribution of Marketable Securities, to have the Fund dispose of such Marketable Securities on such Partner's behalf, the General Partner shall use its reasonable best efforts to dispose on behalf of such Partner, as soon as is reasonably practicable, such Marketable Securities at such price and on such terms as the General Partner shall determine in good faith to be then achievable under the circumstances and to distribute to such Partner instead the net proceeds from such disposition. Any taxable gain or loss recognized by the Fund upon the disposition of Marketable Securities pursuant to this Section 6.7(c) shall be allocated equitably pursuant to Section 6.10 among only those Partners receiving proceeds instead of Marketable Securities, and such Partners will bear all of the expenses (including, without limitation, underwriting costs and brokerage commissions) of such disposition. Regardless of whether a Limited Partner receives a distribution in kind or cash in lieu of Securities, the calculation of amounts distributable to the General Partner pursuant to Section 6.3(a) (or Section 11.2 determined with reference to Section 6.3(a)) shall be based on the Value of the Securities to be distributed in kind.

(d) Distribution of Non-Marketable Securities Upon Liquidation of the Fund. If upon the liquidation of the Fund, the Fund holds non-Marketable Securities, and if a Limited Partner so notifies the General Partner in writing, then in lieu of distributing to such Limited Partner its share of such Securities, the General Partner shall use its reasonable best efforts to dispose of such Securities on behalf of such Limited Partner. In the event the General Partner is unable to dispose of such Securities within a reasonable period of time, the General Partner shall give such Limited Partner at least ten Business Days' prior written notice of its intention to make a distribution in kind of such Securities to such Limited Partner. Such Limited Partner may within such notice period elect, by written notice to the General Partner or liquidating trustee, as the case may be, to decline the receipt of such distribution in kind. In the event that such Limited Partner elects to decline the receipt of the proposed in kind distribution, the General Partner or liquidating trustee, as the case may be, shall hold such Securities for the benefit of such Limited Partner until such Securities are liquidated. The General Partner or liquidating trustee, as the case may be, shall liquidate such Securities at the same time and on the same terms as the General Partner's liquidation of its own holdings of such Securities. Such Limited Partner shall bear only its *pro rata* share of the out-of-pocket expenses

incurred by the General Partner or the liquidating trustee, as the case may be, in holding such Securities.

6.8 Negative Capital Accounts. Except as provided in Sections 9.1(b), no Limited Partner shall be required to make up a negative balance in its Capital Account. Except as otherwise expressly provided in this Agreement or as required by law, the General Partner shall not be required to make up a negative balance in its Capital Account.

6.9 No Withdrawal of Capital. Except as otherwise expressly provided in this Agreement, no Partner shall have the right to withdraw capital from the Fund or to receive any distribution of or return on such Partner's Capital Contributions or Direct Payments.

6.10 Allocations to Capital Accounts. Except as otherwise provided herein, each item of income, gain, loss and deduction of the Fund (determined in accordance with U.S. tax principles as applied to the maintenance of capital accounts) shall be allocated among the Capital Accounts of the Partners with respect to each Period as of the end of such Period in a manner that as closely as possible gives economic effect to the provisions of Articles VI and XI and the other relevant provisions of this Agreement; *provided* that (*a*) the Management Fee shall be allocated among the Limited Partners in accordance with the amount calculated with respect to each Limited Partner as provided in Section 7.2 and reversed by subsequent allocations of items of income and gain to the extent necessary to give the economic effect described above, (*b*) Placement Fees payable by the Fund with respect to a Limited Partner's Capital Commitment shall be allocated to such Limited Partner and (*c*) interest expense described in Section 4.2(a)(iv) shall be specially allocated *pro rata* to the Partners other than those Partners making a Capital Contribution pursuant to Section 4.2(a)(iv).

6.11 Tax Allocations and Other Tax Matters. Except as otherwise provided herein, each item of income, gain, loss, deduction and credit recognized by the Fund shall be allocated among the Partners for U.S. federal, state and local income tax purposes, to the extent permitted under the Code and the Treasury Regulations, in the same manner that each such item is allocated to the Partners' Capital Accounts. Notwithstanding the foregoing, the General Partner shall have the power to adjust allocations made pursuant to this Section 6.11 as may be necessary to maintain substantial economic effect, or to ensure that such allocations are in accordance with the interests of the Partners in the Fund, in each case within the meaning of the Code and the Treasury Regulations. All matters concerning allocations for U.S. federal, state and local and non-U.S. income tax purposes, including accounting procedures, not expressly provided for by the terms of this Agreement shall be determined in good faith by the General Partner. The General Partner may in its discretion cause the Fund to make the election under section 754 of the Code. The General Partner is hereby designated as the tax matters partner of the Fund, as

provided in the Treasury Regulations pursuant to section 6231 of the Code and any similar provisions under any other state or local or non-U.S. tax laws. Each Partner hereby consents to such designation and agrees that upon the request of the General Partner it will execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. The General Partner shall not permit the Fund to elect, and the Fund shall not elect, to be treated as an association taxable as a corporation for U.S. federal, state or local income tax purposes under Treasury Regulations section 301.7701-3(a) or under any corresponding provision of state or local law.

6.12 Withholding.

(a) General. Each Partner shall, to the fullest extent permitted by applicable law, indemnify and hold harmless the Fund and the General Partner, and each Partner hereby agrees that the Fund shall, to the fullest extent permitted by applicable law, similarly indemnify and hold harmless each other Covered Person who is or who is deemed to be the responsible withholding agent for U.S. federal, state or local or non-U.S. income tax purposes against all claims, liabilities and expenses of whatever nature relating to such Covered Person's obligation to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Fund or as a result of such Partner's participation in the Fund, except to the extent it shall have been determined by a court of competent jurisdiction in a final judgment that such claims, liabilities or expenses resulted from the Disabling Conduct of such Covered Person.

(b) Authority to Withhold; Treatment of Withheld Tax. Notwithstanding any other provision of this Agreement, each Partner hereby authorizes the Fund to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Fund or any of its Affiliates (pursuant to the Code or any provision of U.S. federal, state or local or non-U.S. tax law) with respect to such Partner or as a result of such Partner's participation in the Fund (including as a result of a distribution in kind to such Partner). If and to the extent that the Fund shall be required to withhold or pay any such withholding or other taxes, such Partner shall be deemed for all purposes of this Agreement to have received a payment from the Fund as of the time that such withholding or other tax is withheld or required to be paid, whichever is earlier, which payment shall be deemed to be a distribution of Distributable Cash with respect to such Partner's interest in the Fund to the extent that such Partner (or any successor to such Partner's interest in the Fund) would have received a cash distribution but for such withholding. To the extent that such payment exceeds the cash distribution that such Partner would have received but for such withholding, the General Partner shall notify such Partner as to the amount of such excess and such Partner shall make a prompt payment to the Fund of such amount by wire transfer, which payment shall not constitute a Capital Contribution or Direct Payment and, consequently, shall not reduce the Remaining Capital Commitment or increase the Capital Account of such Partner. The

Fund may hold back from any such distribution in kind property having a Value equal to the amount of such taxes until the Fund has received payment of such amount.

(c) Withholding Tax Rate. Any withholdings referred to in this Section 6.12 shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel, or other evidence, satisfactory to the General Partner to the effect that a lower rate is applicable or that no withholding is applicable.

(d) Withholding from Distributions to the Fund. In the event that the Fund receives a distribution or payment from or in respect of which tax has been withheld, the Fund shall be deemed to have received cash in an amount equal to the amount of such withheld tax, and each Partner shall be treated as having received as a distribution of Distributable Cash pursuant to the relevant clause of Section 6.3(a) or Section 6.4 the portion of such amount that is attributable to such Partner's interest in the Fund as equitably determined by the General Partner.

ARTICLE VII

THE MANAGER

7.1 Appointment of the Manager. The Fund hereby appoints the Manager to act as the investment adviser to and the manager of the Fund as follows:

(a) The Manager shall manage the operations of the Fund, shall have the right to execute and deliver documents on behalf of the Fund and otherwise bind the Fund in lieu of the General Partner and shall have discretionary authority with respect to investments of the Fund, including the authority to investigate, analyze, structure and negotiate potential investments and to evaluate, monitor, exercise voting rights, liquidate and take other appropriate action with respect to investments on behalf of the Fund; *provided* that the management and the conduct of the activities of the Fund shall remain the ultimate responsibility of the General Partner and all decisions relating to the selection and disposition of the Fund's investments shall be made exclusively by the General Partner in accordance with this Agreement. The appointment of the Manager by the Fund shall not relieve the General Partner of its obligations to the Fund hereunder or under the Partnership Law.

(b) The Manager shall act in conformity with this Agreement and with the instructions and directions of the General Partner, and in no event shall the Manager be considered a general partner of the Fund by agreement, estoppel, as a result of the performance of its duties or otherwise.

(c) The General Partner shall not appoint a successor or replacement Manager, and the Manager shall not Transfer all or any part of its rights and obligations under this Agreement to any Person, in each case without the prior consent of 66• % in Interest of the Combined Limited Partners, unless such successor, replacement or transferee is an Affiliate of the Manager or the General Partner. Notwithstanding the foregoing, nothing in this Agreement shall preclude changes in the composition of the members constituting the limited liability company which is the Manager; and *provided, further*, that such limited liability company may be reconstituted or reorganized from the limited liability company form to the limited or general partnership form or to the corporate form or other form of business entity or vice versa without the consent of the Combined Limited Partners; *provided, however*, that no such reconstitution or reorganization of the Manager shall have a material adverse effect on the Fund.

(d) Notwithstanding anything contained in Section 7.1(c), upon the General Partner or an Affiliate thereof ceasing to be the general partner of the Fund, the Manager shall cease to act as the investment adviser to and the manager of the Fund.

7.2 Management Fee.

(a) Payment and Calculation of the Management Fee. In consideration of the management and other services referred to in Section 7.1, the Manager shall be paid an annual management fee (the "Management Fee") beginning as of the Effective Date and continuing throughout the Term. The Management Fee shall be payable in semi-annual installments in advance on each January 1 and July 1 (each a "Payment Date"); *provided* that the first such semi-annual installment shall be paid on the Effective Date, or such later date as may be specified in writing by the General Partner, and shall be adjusted on a *pro rata* basis according to the actual number of days during the period commencing on the date of the Effective Date and ending on the day before the next Payment Date (or, if the Effective Date is less than 60 days before the next Payment Date, ending on the day before the next following Payment Date). The Management Fee for each semi-annual period shall be equal to the aggregate of the following amounts, calculated with respect to each Limited Partner (other than an Affiliated Partner):

(i) (*A*) through the earlier of (I) the last day of the Investment Period or (II) the date of management fees or other fees becoming payable in respect of or the making of investments on behalf of a Successor Fund, an amount equal to for each Limited Partner other than an Affiliated Partner, 0.875% (*i.e.*, 1.75% per annum) of the Capital Commitment of such Limited Partner and (*B*) thereafter, an amount equal to 0.50% (*i.e.*, 1.0% per annum) of the Actively Invested Capital of such Limited Partner as of the relevant Payment Date (the amounts of Capital

Commitments or Actively Invested Capital referred to in clauses *(A)* and *(B)* above, respectively, such Limited Partner's "Capital Under Management"); and

(ii) reduced, but not below zero, by the sum of:

(A) an amount equal to any Placement Fees and Excess Organizational Expenses in respect of which such Limited Partner has made Capital Contributions or Direct Payments since the preceding Payment Date,

(B) an amount equal to any Waiver Contributions which such Limited Partner has made since the preceding Payment Date, and

(C) an amount equal to 50% (*i.e.*, 100% per annum) of such Limited Partner's *pro rata* share (based on the Capital Commitments of the Partners) of all Fee Income received in the prior calendar year.

To the extent that the Management Fee with respect to any Limited Partner is not reduced as of any given Payment Date by the amounts referred to in clause (*ii*) of the preceding sentence (or any portion thereof determined with respect to a previous Payment Date and carried over to the current Payment Date pursuant to this sentence) because the Management Fee with respect to such Limited Partner has been reduced to zero, the excess shall be carried over to the next succeeding Payment Date (and, if necessary, to one or more subsequent Payment Dates) and applied as a reduction of the Management Fee with respect to such Limited Partner, but not below zero, for such succeeding Payment Date (or a subsequent Payment Date). If upon termination of the Fund an unapplied balance of the amounts referred to in clauses (*ii*)(A) and (*ii*)(B) of the second preceding sentence remains, the General Partner shall promptly refund to each Limited Partner an amount in cash equal to the product of (*x*) the percentage of the aggregate Management Fee earned by the General Partner over the term of the Fund for which such Limited Partner was responsible and (*y*) the amount of such unapplied balance. If upon termination of the Fund an unapplied balance of the amounts referred to in clause (*ii*)(C) of the second preceding sentence remains, the General Partner shall promptly refund to each Limited Partner that has previously requested in writing that the General Partner do so an amount in cash equal to the product of (*x*) the percentage of the aggregate Management Fee earned by the General Partner over the term of the Fund for which such Limited Partner was responsible and (*y*) the amount of such unapplied balance. Installments for any period other than a full semi-annual period shall be adjusted on a *pro rata* basis according to the actual number of days elapsed. The General Partner may at any time defer payment to the Manager of all or any part of any installment of the Management Fee.

(b) Each Limited Partner's Share of the Management Fee. Each Limited Partner's share of the Management Fee shall be equal to the amount calculated with respect to such Limited Partner pursuant to Section 7.2(a) and shall be payable as provided in Section 5.2(d). In addition, each Subsequent Closing Partner shall be required to pay to the Fund an additional amount calculated as provided in Section 10.2(b)(i)(D) as a retroactive installment of Management Fees, which amount shall be paid by the Fund to the Manager pursuant to Section 10.2(c).

ARTICLE VIII

BOOKS AND RECORDS; REPORTS TO PARTNERS; ETC.

8.1 Maintenance of Books and Records. 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 or the Manager shall determine and, if during the Term, shall advise the Limited Partners in writing) full and accurate accounts of the transactions of the Fund in proper books and records of account, during the Term and for a period of at least four years thereafter, which books and records shall set forth full and accurate information regarding the Fund in all material respects, including all information required by the Partnership Law. Such books and records shall be maintained in accordance with U.S. generally accepted accounting principles, which shall be the basis for the preparation of the financial reports to be delivered to current and former Partners pursuant to this Article VIII. Such books and records shall be available, upon five Business Days' notice to the General Partner, for inspection and copying at reasonable times during business hours by a Limited Partner or its duly authorized agents or representatives for any purpose reasonably related to such Limited Partner's interest as a limited partner in the Fund. For the avoidance of any doubt, the General Partner acknowledges and agrees that, notwithstanding anything contained in Section 13.10(a) to the contrary, any Limited Partner acting in compliance with this Agreement and the requirements of applicable law shall be entitled to receive a list of names, addresses and Capital Commitments of the Limited Partners within five (5) Business Days after making a request therefor.

8.2 Audits and Reports.

(a) Financial Reports. The books and records of account of the Fund shall be audited as of the end of each Fiscal Year by such nationally recognized accounting firm as shall be selected by the General Partner. The General Partner shall prepare and deliver a financial report in accordance with U.S. generally accepted accounting principles (audited in the case of a report sent as of the end of a Fiscal Year and unaudited in the case of a report sent as of the end of a quarter) to each Limited Partner as soon as reasonably practicable and in any event within 90 days after the end of each Fiscal Year and as soon as reasonably practicable and in any event within 60 days after the end of each of the first three quarters of each Fiscal Year (subject in each case to reasonable

delays in the event of the late receipt of any necessary financial statements from any Portfolio Company), during the Term, setting forth for such Fiscal Year or quarter:

(i) the assets and liabilities of the Fund as of the end of such Fiscal Year or quarter;

(ii) the net profit or net loss of the Fund for such Fiscal Year or quarter; and

(iii) such Limited Partner's closing Capital Account balance as of the end of such Fiscal Year.

(b) Quarterly Reports. The General Partner shall use commercially reasonable efforts to cause to be prepared and delivered to each Limited Partner, with the financial reports described in Section 8.2(a), descriptive investment information for each Portfolio Company, including the current Value (determined pursuant to the provisions hereof) and a description of material changes in the financial condition or results of operations of each Portfolio Company and such other information concerning the Fund's investments as the General Partner may determine to provide. In addition, with reasonable promptness, the General Partner will deliver such other information available to the General Partner as any Limited Partner may from time to time reasonably request in order to comply with regulatory requirements, including reporting requirements, to which such Limited Partner is subject.

8.3 Annual Meeting. The General Partner shall cause the Fund to have a meeting of the Combined Limited Partners once each year beginning in the year after the year of Effective Date (the "Annual Meeting"). At the Annual Meeting the General Partner will review the investment performance of the Fund. The Fund's potential investments will not be submitted for discussion and none of the Combined Limited Partners shall play any role in the Fund's governance or participate in the control of the investment or other activities of the Fund. In addition, the General Partner or a Majority in Interest of the Limited Partners or Combined Limited Partners, as applicable, may call a special meeting of the Fund and the Parallel Funds by giving at least twenty-one (21) days' notice of the time and place of such meeting to each Limited Partner or Combined Limited Partner, as applicable, which notice shall set out the agenda for such meeting. The chairman of any meeting shall be a Person affiliated with and designated by the General Partner. Meetings of the Partners (or Combined Partners, as applicable), including the Annual Meeting, may be conducted, and the Partners may participate therein, by means of conference telephone or similar communications by means of which all persons participating in the meeting can hear and be heard. A Limited Partner or Combined Limited Partner, as applicable, may vote at any meeting either in person or by a proxy which such Limited Partner or Combined Limited Partner, as applicable, has duly executed in writing. The General Partner may permit Persons other than Partners (or

Combined Partners, as applicable) to participate in a meeting; *provided* that no such Person shall be entitled to vote. Any action required to be, or which may be, taken at any meeting by the Limited Partners *(i)* shall be approved upon the affirmative vote of a Majority in Interest of the Limited Partners or Combined Limited Partners, as applicable, at any such meeting, unless another consent requirement with respect to such action is specified in this Agreement (in which case such action shall be approved upon the affirmative vote required for such consent) and *(ii)* may be taken in writing without a meeting if consents thereto are given by the General Partner and Limited Partners or Combined Limited Partners, as applicable, holding Interests in an amount not less than the amount that would be necessary to take such action at a meeting.

8.4 Tax Returns and Tax Information. The General Partner shall cause the Fund initially to elect the Fiscal Year as its taxable year and shall use its reasonable best efforts to cause to be prepared and timely filed all tax returns required to be filed for the Fund in the jurisdictions in which the Fund conducts business or derives income for all applicable tax years. The General Partner shall use its reasonable best efforts to prepare and deliver within 90 days after the end of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial statements from any Portfolio Company) to each Limited Partner (and each other Person that was a Limited Partner during such Fiscal Year or its legal representatives), U.S. Internal Revenue Service Schedule K-1, "Partner's Share of Income, Credits, Deductions, Etc.", or any successor schedule or form, for such Person.

8.5 Banking. All funds of the Fund may be deposited in such bank, brokerage or money market accounts as shall be established by the General Partner. Withdrawals from and checks drawn on any such account shall be made upon such signature or signatures as the General Partner may designate.

ARTICLE IX

INDEMNIFICATION

9.1 Indemnification of Covered Persons.

(a) General. The Fund shall and hereby does, to the fullest extent permitted by applicable law, indemnify, hold harmless and release (and to the fullest extent permitted by law, each Partner does hereby release, it being understood for the avoidance of doubt that no Partner shall be directly liable to a Covered Person for such indemnification obligation to such Covered Person) each Covered Person from and against any and all claims, demands, liabilities, costs, expenses, damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated, whether or not in connection with Proceedings by or in the right of the Fund or any of the Partners

("Claims"), that may accrue to or be incurred by any Covered Person, or in which any Covered Person may become involved, as a party or otherwise, or with which any Covered Person may be threatened, relating to or arising out of the investment or other activities of the Fund or any Alternative Investment Vehicle or Corporation, or activities undertaken in connection with the Fund or any Alternative Investment Vehicle or Corporation, or otherwise relating to or arising out of this Agreement, including acting as a director or the equivalent of any entity in which a Portfolio Investment is made during the period of time in which the Fund holds an interest therein ("Covered Actions"), including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and counsel fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a "Proceeding"), whether civil or criminal (all of such Claims, amounts and expenses covered by this Section 9.1 are referred to collectively as "Damages"), except to the extent that (*i*) such Damages arose from Disabling Conduct to which such Covered Person has pleaded guilty or nolo contendere, or it shall have been determined by a court of competent jurisdiction in a final judgment that such Damages arose from Disabling Conduct of such Covered Person or (*ii*) such Damages arise out of a Claim between or among the General Partner, the Manager or their respective members, partners or shareholders (as the case may be). Notwithstanding the foregoing, a Covered Person will only be eligible for indemnification pursuant to this Section 9.1 for Claims relating to or arising out of transactions or Covered Actions that took place during the time such Covered Person was a shareholder, officer, director, employee, partner, member or manager of any of the General Partner, the Manager or any of their respective Affiliates or during the time such Covered Person was a member of the Management Advisory Board or the Advisory Committee, as applicable. The termination of any Proceeding by settlement shall not, of itself, create a presumption that any Damages relating to such settlement or otherwise relating to such Proceeding arose primarily from Disabling Conduct of any Covered Person. The General Partner shall notify the Advisory Committee of any settlement agreement entered into by any Covered Person in respect of a Proceeding if such settlement agreement would give rise to an indemnification obligation under this Agreement.

(b) Return of Certain Distributions. Notwithstanding any other provision of this Agreement, at any time and from time to time prior to the second anniversary of the last day of the Term, the General Partner may require the Partners to return distributions to the Fund in an amount sufficient to satisfy all or any portion of the indemnification obligations of the Fund pursuant to Section 9.1(a), whether such obligations arise before or after the last day of the Term or, with respect to any Partner, before or after such Partner's withdrawal from the Fund; *provided* that each Partner shall return distributions in respect of its share of any such indemnification payment as follows:

(i) if the Claims or Damages indemnified against arise out of a Portfolio Investment, by each Partner to which Distributable Cash was distributed

in connection with such Portfolio Investment, in such amounts as shall result in each Partner retaining cumulative distributions from the Fund (net of any returns of distributions under this Section 9.1(b)) in the cumulative amount that would have been distributed to such Partner had the amount of such Distributable Cash been, at the time of such distribution, reduced by the amount of such indemnification obligations, as equitably determined by the General Partner; and

(ii) thereafter, or in any other circumstances (an "Other Giveback Amount"), by the Partners in proportion to their Capital Commitments; *provided* that notwithstanding the foregoing clause (ii), to the extent that distributions pursuant to Section 6.3(a) (or Section 11.2 with reference to Section 6.3(a)) in respect of any Limited Partner have been made to the General Partner and have not already been repaid pursuant to this Section 9.1(b), such Limited Partner's share of such Other Giveback Amount shall be reduced, and the General Partner's share of such Other Giveback Amount shall be increased, by an amount equal to the lesser of (x) the amount of such distributions to the General Partner pursuant to Section 6.3(a) (or Section 11.2 with reference to Section 6.3(a)) that have not already been returned and (y) 20% of such Limited Partner's share of such Other Giveback Amount.

Any distributions returned pursuant to this Section 9.1(b) shall not be treated as Capital Contributions or Direct Payments, but shall be treated as returns of distributions and reductions in Distributable Cash, in making subsequent distributions pursuant to Sections 6.3, 6.5 and 11.2 and in determining the amount that the General Partner is required to contribute to the Fund pursuant to Section 11.3 (other than for purposes of computing a Limited Partner's preferred return, which shall be computed based on the timing and amounts of actual Capital Contributions and Direct Payments made and actual distributions received and returned); *provided* that if the amount that the General Partner is required to contribute to the Fund pursuant to Section 11.3 has already been calculated prior to the date of any return of distributions pursuant to this Section 9.1(b), then the amount that a Limited Partner is required to return pursuant to this Section 9.1(b) shall be decreased by the amount, if any, that would be distributable to such Limited Partner if the amount that the General Partner is required to contribute to the Fund pursuant to Section 11.3 were recalculated as of the date of any such return of distributions. Notwithstanding anything in this Article IX to the contrary, a Partner's liability under the first sentence of this Section 9.1(b) is limited as follows: (*A*) each distribution received by a Partner pursuant to this Agreement shall be subject to contribution pursuant to this Section 9.1(b) for a period of two years following the date of such distribution and (*B*) the aggregate distributions returned by a Partner pursuant to this Section 9.1(b) (other than distributions to the General Partner pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) in respect of any Limited Partner) shall not exceed an amount equal to 33• % of such Partner's Capital Commitment to the Fund; *provided* that if at the end of either of the two-year periods specified in this sentence or in the first

sentence of this Section 9.1(b) there are any Proceedings then pending or any other liability (whether contingent or otherwise) or claim then outstanding, the General Partner shall so notify the Limited Partners at such time (which notice shall include a brief description of each such Proceeding (and of the liabilities then asserted in such Proceeding) or of such liabilities and claims) and the obligation of the Limited Partners to return any distribution for the purpose of meeting the Fund's indemnity obligations under Sections 9.1 shall survive with respect to each such Proceeding, liability and claim set forth in such notice (or any related Proceeding, liability or claim based upon the same or a similar claim or facts) until the date that such Proceeding, liability or claim is ultimately resolved and satisfied; *provided, further*, that the provisions of this Section 9.1(b) shall not affect the obligations of the Limited Partners under the Act or other applicable law. Nothing in this Section 9.1(b), express or implied, is intended or shall be construed to give any Person other than the Fund or the Partners any legal or equitable right, remedy or claim under or in respect of this Section 9.1(b) or any provision contained herein.

(c) Expenses. Reasonable expenses (including attorney's fees) incurred by a Covered Person in defense or settlement of any Claim that may be subject to a right of indemnification hereunder may be advanced by the Fund to such Covered Person prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be determined ultimately by a court of competent jurisdiction that the Covered Person was not entitled to be indemnified hereunder. Subject to Section 9.1(d), all judgments against the Fund and either or both of the General Partner or the Manager, in respect of which the General Partner or the Manager is entitled to indemnification, shall first be satisfied from Fund assets, including Capital Contributions or Direct Payments and any payments under Section 9.1(b), before the General Partner or the Manager, as the case may be, is responsible therefor. Anything contained in this Section 9.1(c) to the contrary notwithstanding, no advance payment pursuant to this Section 9.1(c) shall be made with respect to any action brought by a Majority in Interest of the Combined Limited Partners (including any derivative actions brought by a Majority in Interest of the Combined Limited Partners) during the pendency of such suit and no payment shall be made if such Limited Partners substantially prevail on the merits in such suit.

(d) Other Sources. The General Partner shall cause the Fund to use commercially reasonable efforts to obtain the funds needed to satisfy its indemnification obligations under this Article IX from Persons other than the Partners (for example, out of Fund assets or pursuant to insurance policies or Portfolio Company indemnification arrangements) before causing the Fund to make payments pursuant to Section 9.1(a) and before requiring the Partners to return distributions to the Fund pursuant to Section 9.1(b). Notwithstanding the foregoing, nothing in this Section 9.1(d) shall prohibit the General Partner from causing the Fund to make such payments or requiring the Partners to return such distributions if the General Partner determines that the Fund is not likely to obtain sufficient funds from such other sources in a timely fashion, or that attempting to

obtain such funds would be futile or not in the best interests of the Fund (for example, nothing in this Section 9.1(d) shall require the General Partner to cause the Fund to sell any Portfolio Investment before such time as the General Partner shall determine is advisable).

(e) Survival of Protection. The provisions of this Section 9.1 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 9.1 and regardless of any subsequent amendment to this Agreement, and no amendment to this Agreement shall reduce or restrict the extent to which these indemnification provisions apply to actions taken or omissions made prior to the date of such amendment.

(f) Reserves. If the General Partner determines that it is appropriate or necessary to do so, the General Partner may cause the Fund to establish reasonable reserves, escrow accounts or similar accounts to fund its obligations under this Section 9.1.

(g) Prohibited Drawdowns. The Fund shall not make any Drawdown for the purpose of making an investment in any Portfolio Company if the General Partner has actual knowledge or reason to believe that such Portfolio Company intends to use the proceeds from such investment to indemnify any Covered Person under circumstances in which such Covered Person would not otherwise be entitled to indemnification under this Section 9.1.

9.2 Notices of Claims, etc. Promptly after receipt by a Covered Person of notice of the commencement of any Proceeding, such Covered Person shall, if a claim for indemnification in respect thereof is to be made against the Fund, give written notice to the Fund of the commencement of such Proceeding; *provided* that the failure of any Covered Person to give such notice as provided herein shall not relieve the Fund of its obligations under this Article IX except to the extent that the Fund is actually materially prejudiced by such failure to give such notice. If any such Proceeding is brought against a Covered Person (other than a member of the Advisory Committee (or the Combined Limited Partner that such member represents) or a derivative suit in right of the Fund), the Fund will be entitled to participate in and to assume the defense thereof to the extent that the Fund may wish, with counsel reasonably satisfactory to such Covered Person. After notice from the Fund to such Covered Person of the Fund's election to assume the defense of such Proceeding, the Fund will not be liable for expenses subsequently incurred by such Covered Person in connection with the defense thereof. The Fund will not consent to entry of any judgment or enter into any settlement of such Proceeding that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Covered Person of a release from all liability in respect to such Proceeding and the related Claim. The right of any Covered Person to the indemnification provided

herein shall be cumulative with, and in addition to, any and all rights to which such Covered Person may otherwise be entitled by contract or as a matter of law or equity or otherwise and shall extend to such Covered Person's successors, assigns, heirs and legal representatives.

ARTICLE X

TRANSFERS; SUBSEQUENT CLOSING PARTNERS

10.1 Transfers by Partners.

(a) Transfers by Limited Partners. Except as set forth in this Article X or in Sections 3.4(c), 3.5(c), 3.7(e), 5.4(c) and 5.5(c), no Limited Partner may Transfer all or any part of its Interest in the Fund. Notwithstanding the foregoing, a Limited Partner may, with the prior written consent of the General Partner and upon compliance with Section 10.1(b), Transfer all or a portion of such Limited Partner's Interest in the Fund. The consent of the General Partner to any such Transfer by a Limited Partner may be withheld by the General Partner in its discretion; *provided* that such consent will not be unreasonably withheld if such Transfer is (*i*) in connection with a merger of an ERISA Partner that is a trust subject to ERISA into another trust that is subject to ERISA or an appointment of a successor trustee for the same trust, (*ii*) to an Affiliate of such Limited Partner or (*iii*) to another Partner that is not a Defaulting Partner.

(b) Conditions to Transfer. Any purported Transfer by a Limited Partner pursuant to the terms of this Article X shall be subject to the satisfaction of the following conditions:

(i) the Limited Partner that proposes to effect such Transfer (a "Transferor") and/or the Person to whom such Transfer is to be made (a "Transferee") shall have undertaken to pay all reasonable expenses incurred by the Fund, the General Partner or the Manager in connection therewith (whether or not such proposed Transfer is consummated);

(ii) the General Partner shall have been given at least 30 days' prior written notice of the proposed Transfer;

(iii) the Fund shall have received from the Transferee and, in the case of clause (C) below, from the Transferor to the extent specified by the General Partner, (*A*) such assignment agreement and other documents, instruments and certificates as may be reasonably requested by the General Partner, pursuant to which such Transferee shall have agreed to be bound by this Agreement, including if requested a counterpart of this Agreement executed by or on behalf of such Transferee, (*B*) a certificate or representation to the effect that the

representations set forth in the Subscription Agreement of such Transferor are (except as otherwise disclosed to and consented to by the General Partner) true and correct with respect to such Transferee as of the date of such Transfer and (*C*) such other documents, opinions, instruments and certificates as the General Partner shall have reasonably requested;

(iv) such Transferor or Transferee shall have delivered to the Fund the opinion of counsel described in Section 10.1(c);

(v) the General Partner shall have obtained the advice of counsel, at the expense of such Transferor and subject to reasonable qualifications, substantially to the effect that the proposed Transfer would not, or could not in the future, cause the Fund to be in violation of section 310(b) of the Communications Act;

(vi) the Transfer will be made in compliance with Section 3.7(c);

(vii) each of the Transferor and the Transferee shall have provided a certificate or representation to the effect that (*A*) the proposed Transfer will not be effected on or through (*1*) a U.S. national, regional or local securities exchange, (*2*) a non-U.S. securities exchange or (*3*) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers and (*B*) it is not, and its proposed Transfer or acquisition (as the case may be) will not be made by, through or on behalf of, (*1*) a Person, such as a broker or a dealer, making a market in interests in the Fund or (*2*) a Person that makes available to the public bid or offer quotes with respect to Interests in the Fund;

(viii) such Transfer will not be effected on or through an "established securities market" or a "secondary market or the substantial equivalent thereof", as such terms are used in section 1.7704-1 of the Treasury Regulations;

(ix) such Transfer would not cause the Fund to lose its status as a partnership for U.S. federal income tax purposes or cause the Fund to be treated as a "publicly traded partnership" within the meaning of section 7704 of the Code and the regulations promulgated thereunder; and

(x) such Transfer would not cause the Fund to be required to register with any governmental authority.

The General Partner may waive in whole or in part any or all of the conditions set forth in this Section 10.1(b), if the General Partner determines that such waiver is in or not opposed to the best interests of the Fund; *provided* that the General Partner shall not knowingly waive either clause (viii) or (ix) of the preceding sentence.

(c) Opinion of Counsel. The opinion of counsel referred to in Section 10.1(b)(iv) with respect to a proposed Transfer shall be in form and substance satisfactory to the General Partner, shall be from counsel satisfactory to the General Partner (which counsel may be in-house counsel of the Transferor or Transferee) and, unless otherwise specified by the General Partner, shall be substantially to the effect that:

(i) such Transfer will not require registration under the Securities Act or violate any provision of any applicable non-U.S. securities laws;

(ii) the Transferee is a Person that is a "qualified purchaser" as such term is defined in section 2(a)(51) of the Investment Company Act;

(iii) such Transfer will not require any of the Manager, the General Partner or any Affiliate of the Manager or the General Partner to register as an investment adviser under the Advisers Act if such Person is not already so registered;

(iv) such Transfer will not cause the Fund to be taxable as a corporation under the Code;

(v) such Transfer will not cause all or any portion of the assets of the Fund to constitute "plan assets" under the DOL Regulations or any applicable Similar Law; and

(vi) such Transfer will not violate either this Agreement or the laws, rules or regulations of any state or any governmental authority applicable to the Transferor, the Transferee or such Transfer.

In giving such opinion, counsel may, with the consent of the General Partner, rely as to factual matters on certificates of the Transferor, the Transferee and the General Partner and may include in its opinion customary qualifications and limitations.

(d) Substitute Partners. Notwithstanding any other provision of this Agreement, a Transferee may be admitted to the Fund as a substitute Limited Partner of the Fund (a "Substitute Partner") only with the consent of the General Partner; *provided* that such consent shall not be unreasonably withheld in connection with any Transfer pursuant to the proviso of the third sentence of Section 10.1(a). Unless the General Partner, the Transferor and the Transferee otherwise agree, in the event of the admission of a Transferee as a Substitute Partner, all references herein to the Transferor shall be deemed to apply to such Substitute Partner, and such Substitute Partner shall succeed to all of the rights and obligations of the Transferor hereunder. A Person shall be deemed admitted to the Fund as a Substitute Partner at the time that the foregoing conditions are satisfied as acknowledged in writing by the General Partner and such Person is listed as a limited partner of the Fund in the books and records of the Fund.

(e) Additional Transfer Restrictions on Class B1 Interests and Class B2 Interests. No Transfer by a Class B1 Limited Partner or a Class B2 Limited Partner of all or any part of a Class B1 Interest or a Class B2 Interest, whether voluntary or involuntary (including, without limitation, to an Affiliate or by operation of law), shall be valid or effective and shall be prohibited unless such Transfer complies with the following restrictions:

(i) No Transfer of a Class B1 Interest shall be valid or effective and shall be prohibited unless all of such Class B1 Interest is transferred to one person or one legal entity at one time; and

(ii) No Transfer of a Class B2 Interest to any Person in Japan shall be valid or effective and shall be prohibited unless:

(A) such Person is a Professional Institutional Investor, as defined in the Cabinet Ordinance Concerning Definitions under Article 2 of the Japanese Securities and Exchange Law (it being understood, for avoidance of doubt, that Transfer to any Person outside of Japan shall not be restricted nor limited by this Section 10.1(e)); and

(B) the Class B2 Limited Partner delivers a document informing the Transferee that:

(1) the Class B2 Interests are subject to restrictions on the Transfer thereof to a Person in Japan other than a Professional Institutional Investor;

(2) the Class B2 Interests have not been registered under Article 4, Paragraph 1 of the Japanese Securities and Exchange Law by virtue of the fact that the Class B2 Interests are being offered in accordance with Article 2, Paragraph 3, Item 2B of the Japanese Securities and Exchange Law and Article 1-4, Paragraph 2 of the Enforcement Ordinance of the Japanese Securities and Exchange Law; and

(3) a document containing the information in this Section 10.1(e)(ii)(B) is required to be delivered to the Transferee on or prior to the date of the consummation of the Transfer.

(f) Transfers by the General Partner. The General Partner may not Transfer all or any part of its interest in the Fund, except as otherwise provided in this Agreement and except that the General Partner may, subject to the consent of the Advisory Committee, Transfer its interest in the Fund to a Person directly or indirectly controlled by the General Partner or by the Principals in which the General Partner or the Principals,

as the case may be, retain a significant economic interest; *provided* that such Advisory Committee consent shall not be required in the event that the General Partner must Transfer its interest to comply with applicable law; *provided, further,* that without the consent of the Advisory Committee the General Partner may, at the General Partner's expense, be reconstituted as or converted into a corporation, partnership or other form of entity (any such reconstituted or converted entity being deemed to be the General Partner for all purposes hereof) by merger, consolidation, conversion or otherwise, or Transfer its interest as the general partner of the Fund to one of its Affiliates, so long as the reconstituted, converted or transferee entity is under common control with the General Partner and (i) such reconstitution, conversion or transfer does not have adverse tax, legal or other consequences for the Limited Partners, the Fund, any Alternative Investment Vehicle or any Parallel Fund and (ii) such corporation, other entity or Affiliate shall have assumed in writing, or shall have succeeded to by operation of law, the obligations of the General Partner under this Agreement and any other related agreements of the General Partner. The General Partner agrees that it will not permit any of the Principals to Transfer more than 25% of his interest in the General Partner; *provided* that the following Transfers shall be excluded from the calculation of such 25% limit: *(i)* Transfers to estate planning vehicles for the primary benefit of descendants (whether natural or adopted) or other family members (including spouses and former spouses) of any such Principals, *(ii)* Transfers to descendants (whether natural or adopted) or other family members (including spouses or former spouses) of any such Principals, *(iii)* Transfers in connection with any such Principal ceasing to be employed by the Manager or one or more of its Affiliates and *(iv)* Transfers to or for the benefit of employees of the Manager or its Affiliates. Notwithstanding the foregoing, Steven B. Klinsky shall at all times retain at least 51% of his interest in the General Partner and the Manager, except for Transfers described in clauses *(i)-(ii)* and *(iv)* of the preceding sentence. If the General Partner Transfers its entire interest in the Fund pursuant to this Agreement (including the first sentence of this Section 10.1(f)), the transferee shall automatically be admitted to the Fund as the replacement general partner of the Fund immediately prior to such Transfer without any further action, approval or vote of any Person, including any other Partner, upon execution of a counterpart of this Agreement and such transferee shall continue the business of the Fund without dissolution of the Fund.

(g) Transfers in Violation of Agreement Not Recognized. Unless effected in accordance with and as permitted by this Agreement, no attempted Transfer or substitution shall be recognized by the Fund, any purported Transfer or substitution not effected in accordance with and as permitted by this Agreement shall, to the fullest extent permitted by law, be void and the Fund shall recognize no rights of the purported transferee, including the right to receive distributions (directly or indirectly) from the Fund or to acquire an interest in the capital or profits of the Fund.

(h) Certain Changes in Record Ownership. A change in record ownership of an Interest in the Fund by reason of a change in the identity of the trustee or other

fiduciary of a Benefit Plan Partner shall not be deemed a Transfer within the meaning of this Section 10.1; *provided* that the Limited Partner affected by such change shall notify the General Partner in writing of such change promptly and in no event later than 30 days after such event. The records of the Fund shall be changed by the General Partner to reflect the identity of the new trustee or other fiduciary upon receipt of such notice and the execution and delivery of such documents as the General Partner shall require in connection with such change. Pending the receipt of such notice and documentation, the Fund and the General Partner shall be entitled to rely on the records of the Fund for all purposes in connection with the affected Interest.

10.2 Subsequent Closing Partners.

(a) Conditions to Admission. Notwithstanding any provision in this Agreement, the General Partner shall have full power and authority to schedule one or more additional Closings on any date not later than the Final Admission Date to admit Additional Partners to the Fund or to permit previously-admitted Partners to increase their Capital Commitments (Additional Partners and Partners increasing their Capital Commitments being collectively referred to as "Subsequent Closing Partners", and all references to the admission to the Fund and the Capital Commitment of a Subsequent Closing Partner being understood to include the increase in the Capital Commitment and the increased amount of the Capital Commitment, respectively, of a previously-admitted Partner). Prior to admitting any Subsequent Closing Partner to the Fund, the General Partner shall have determined that the following conditions have been satisfied:

(i) The Subsequent Closing Partner shall have executed and delivered such documents, instruments and certificates and shall have taken such actions as the General Partner shall deem necessary or desirable to effect such admission, including if requested the execution of (*A*) a Subscription Agreement containing representations and warranties by the Subsequent Closing Partner that are substantially the same as those made by the previously-admitted Limited Partners in the Subscription Agreements executed at the Initial Closing and (*B*) a counterpart of this Agreement.

(ii) The admission of the Subsequent Closing Partner shall not result in *(A)* a violation by the Fund of any applicable law, including the U.S. federal securities laws and ERISA, or any term or condition of this Agreement, including Section 3.7(c), *(B)* the Fund being required to register under the Investment Company Act, *(C)* any of the General Partner, the Manager or any of their respective Affiliates that is not already registered under the Advisers Act being required to register as an investment adviser under the Advisers Act or *(D)* the Fund becoming taxable as a corporation or association.

(iii) The Subsequent Closing Partner shall have paid or unconditionally agreed to pay to the Fund the amounts specified in Section 10.2(b).

(b) Payments by Subsequent Closing Partners. On the date that each Subsequent Closing Partner is admitted or increases its Capital Commitment to the Fund, each Subsequent Closing Partner shall pay or, with the consent of the General Partner, unconditionally agree to pay the following amounts:

(i) *Retroactive Capital Contributions or Direct Payments.* Each Subsequent Closing Partner shall make (x) a Capital Contribution to the Fund, or, (y) if the date on which such Subsequent Closing Partner is admitted to the fund is prior to the Initial Investment Date, make a Direct Payment, in an amount equal to the sum of:

(A) in the case of each Portfolio Investment then held by the Fund with respect to which such Subsequent Closing Partner is not an Excused Partner, the percentage of such Subsequent Closing Partner's Capital Commitment that is equal to a fraction, the numerator of which is the aggregate Capital Contributions used to fund the cost of such Portfolio Investment and the denominator of which is the aggregate Capital Commitments of all the Partners (including Subsequent Closing Partners) other than Excused Partners with respect to such Portfolio Investment, less such amount as is necessary to take into account all distributions theretofore made;

(B) the percentage of such Subsequent Closing Partner's Capital Commitment that is equal to a fraction, the numerator of which is the aggregate Capital Contributions and Direct Payments used to fund Organizational Expenses (other than Placement Fees and Excess Organizational Expenses) and Fund Expenses (other than the Management Fee) and the denominator of which is the aggregate Capital Commitments of all the Partners (including Subsequent Closing Partners), less such amount as is necessary to take into account all amounts theretofore returned;

(C) in the case of Partners other than Affiliated Partners, the percentage of such Subsequent Closing Partner's Capital Commitment that is equal to a fraction, the numerator of which is the aggregate Capital Contributions and Direct Payments used to fund Placement Fees and Excess Organizational Expenses and the denominator of which is the aggregate Capital Commitments of all the Partners (including Subsequent Closing Partners) other than Affiliated Partners, less such amount as is necessary to take into account all amounts theretofore returned;

(D) in the case of Partners other than Affiliated Partners, the Management Fee that would have previously been paid by such Subsequent Closing Partner had such Subsequent Closing Partner been admitted to the Fund on or prior to the Effective Date, less such amount as necessary to take into account such Subsequent Closing Partner's *pro rata* share of any Waiver Contributions, Fee Income, Placement Fees or Excess Organizational Expenses, as provided in Section 7.2(a)(ii); and

(E) in the case of Partners other than Affiliated Partners, the Waiver Contributions that would have previously been paid by such Subsequent Closing Partner had such Subsequent Closing Partner been admitted to the Fund on or prior to the Effective Date.

(ii) *Additional Amounts Payable by Subsequent Closing Partners.* Each Subsequent Closing Partner shall also pay interest (an "Additional Amount") at a rate per annum equal to the Prime Rate plus 2% on:

(A) the amounts specified in clauses (A), (B), (C) and (E) of Section 10.2(b)(i) from the dates on which the Capital Contributions or Direct Payments, as applicable, described therein were made through the date on which such Subsequent Closing Partner is admitted to the Fund or pays such amount, whichever is later, which Additional Amount shall be paid to the Fund and distributed to the previously-admitted Partners; and

(B) the amount specified in clause (D) of Section 10.2(b)(i) from the dates on which Management Fee payments would have been made had such Subsequent Closing Partner been admitted to the Fund on or prior to the Effective Date through the date on which such Subsequent Closing Partner is admitted to the Fund or pays such amounts, whichever is later, which Additional Amount shall be paid to the Fund and paid by the Fund to the Manager.

Additional Amounts made pursuant to this Section 10.2(b)(ii) by a Subsequent Closing Partner shall not constitute Capital Contributions or Direct Payments and, consequently, such payments shall not reduce the Remaining Capital Commitment or increase the Capital Account of such Subsequent Closing Partner and shall not increase the Remaining Capital Commitment or reduce the Capital Account of any other Partner.

A Person shall be deemed admitted to the Fund as a Subsequent Closing Partner at the time that the foregoing conditions are satisfied and such Person is listed as a limited partner of the Fund in the books and records of the Fund.

(c) Adjustments Relating to Retroactive Capital Contributions, Direct Payments and Additional Amounts. Any amount paid by a Subsequent Closing Partner pursuant to Sections 10.2(b)(i)(A) and 10.2(b)(ii)(A) relating to Portfolio Investments shall be paid by the Fund promptly after receipt to the previously-admitted Partners, *pro rata* in accordance with their Capital Contributions used to fund such Portfolio Investments, and the Partners' Sharing Percentages with respect thereto shall be appropriately adjusted. Any amount paid by a Subsequent Closing Partner pursuant to Sections 10.2(b)(i)(B) and 10.2(b)(ii)(A) relating to Organizational Expenses (other than Placement Fees and Excess Organizational Expenses) and Fund Expenses (other than the Management Fee) shall be paid by the Fund promptly after receipt to the previously-admitted Partners, *pro rata* in accordance with their Capital Commitments. Any amount paid by a Subsequent Closing Partner pursuant to Sections 10.2(b)(i)(C) and 10.2(b)(ii)(A) relating to Placement Fees and Excess Organizational Expenses shall be paid by the Fund promptly after receipt to the previously-admitted Partners (other than Affiliated Partners), *pro rata* in accordance with their Capital Commitments. Any amount paid by a Subsequent Closing Partner pursuant to Sections 10.2(b)(i)(D) and 10.2(b)(ii)(B) relating to the Management Fee shall be paid by the Fund to the Manager. Any amount paid by a Subsequent Closing Partner pursuant to Sections 10.2(b)(i)(E) and 10.2(b)(ii)(A) relating to Waiver Contributions shall be paid by the Fund promptly after receipt to the previously-admitted Partners (other than Affiliated Partners), *pro rata* in accordance with their prior payments in respect of Waiver Contributions. Any adjustment to the Management Fee relating to a reallocation of the reduction in the Management Fee as provided in Section 10.2(b)(i)(D) may be effected by reducing the amount otherwise to be paid to each previously-admitted Limited Partner (other than Affiliated Partners) by the amount that should be paid by such previously-admitted Partner to fund the additional Management Fee in an amount necessary to make the Manager whole in respect of such reallocated reduction, and, if so credited, such amount shall be deemed to have been distributed to such previously-admitted Partner and then recontributed by such previously-admitted Partner as a Capital Contribution or Direct Payment, as applicable, to pay such additional Management Fee amount (and shall be paid by the Fund to the Manager). All payments that are paid to previously-admitted Partners pursuant to this Section 10.2 shall, in accordance with section 707(a) of the Code, be treated for all purposes of this Agreement and for all accounting and tax reporting purposes as payments made directly from the Subsequent Closing Partner to the previously-admitted Partners or the Manager, as the case may be, and not as items of Fund income, gain, loss, deduction, contribution or distribution. Each Subsequent Closing Partner shall succeed to the Capital Contributions and Direct Payments of the previously-admitted Partners attributable to the portion of the amount remitted to such previously-admitted Partners pursuant to Sections 10.2(b)(i)(A) and 10.2(b)(i)(B) and its Remaining Capital Commitment shall be adjusted accordingly. In addition, the Capital Contributions or Direct Payments, as applicable, of the previously-admitted Partners shall be decreased and their Remaining Capital Commitments increased accordingly.

(d) Amendment of Books and Records. The books and records of the Fund shall be amended by the General Partner as appropriate to show the name of each Subsequent Closing Partner and the amount of its Capital Commitment.

10.3 Removal for Cause

(a) (i) Combined Limited Partners holding 66• % in Interest of the Combined Limited Partners may, following a determination by such Combined Limited Partners of the occurrence an event of Cause and a failure of the General Partner to cure such Cause following written notice thereof (a "Cause Notice") to the General Partner within the period of time specified in paragraph (iii) below, require the removal of the General Partner from the Fund and the substitution of another Person as general partner of the Fund in lieu thereof (which successor general partner shall be approved by a Majority in Interest of the Combined Limited Partners). Any such removal shall be effective as of the date specified in the Cause Notice, which date shall be not less than 45 calendar days following receipt of a Cause Notice. A successor general partner of the Fund shall be deemed admitted as the general partner of the Fund upon its execution of a counterpart to this Agreement, effective immediately prior or contemporaneously with the removal of the replaced General Partner and such successor general partner shall continue the Fund without dissolution.

(ii) For purposes of this Section 10.3(a), "Cause" means (A) a breach of the General Partner's obligation to make Capital Contributions and the General Partner's and the Manager's obligation to fund the Manager Expenses in accordance with this Agreement, (B) a finding by any court or governmental body of competent jurisdiction in a final, non-appealable judgment, or an admission by the General Partner or the Manager in a settlement of any lawsuit, that the General Partner or the Manager has committed fraud, willful misconduct, a material breach of its duties under this Agreement or a material violation of applicable securities laws, in each case which has a material adverse effect on the business of the Fund or the ability of the General Partner or the Manager to perform their respective duties to the Fund or (C) a conviction of, or plea of guilty or nolo contendere by the General Partner, the Manager or any Principal in respect of a felony in connection with any New Mountain activities. For purposes of clause (ii)(B) of the foregoing sentence, the conduct of a Principal or any employee of the Manager in connection with their activities relating to the Fund or any Alternative Investment Vehicle shall be attributable to the General Partner or the Manager.

(iii) A cure of any event constituting Cause under this Section 10.3(a) must occur: (A) if such event relates to Section 10.3(a)(ii)(A) above, within five (5) Business Days after receipt of a Cause Notice; and (B) if such event relates to Section 10.3(a)(ii)(B) or (C) above, as promptly as reasonably practicable and in

any event within 30 calendar days following receipt of a Cause Notice; *provided* that in either case the General Partner shall be deemed to have cured any finding of Cause if it terminates or causes the termination of employment with the General Partner and its Affiliates of all individuals who engaged in the conduct constituting such Cause and makes the Fund whole for any actual financial loss which such conduct had caused the Fund; and *provided, further*, that in either case an event of Cause shall be deemed to be cured in the event (x) the General Partner submits a plan to the Combined Limited Partners for their consideration describing the General Partner's intended course of action and period of time required to cure the event constituting Cause, (y) a Majority in Interest of the Combined Limited Partners approves such plan prior to the expiration of the cure period applicable to such event of Cause pursuant to this clause (iii) and (z) the General Partner actually cures the event of Cause in the manner contemplated by the plan approved pursuant to clause (y) within the time period specified therein.

(b) Upon removal of the General Partner pursuant to Section 10.3(a), the interests of the General Partner and its Affiliated Partners in the Fund shall be converted into special limited partner interests pursuant to Section 10.3(d) unless the General Partner and the successor general partner selected pursuant to Section 10.3(a)(i) agree that such successor general partner shall purchase for cash the respective interests of the General Partner and its Affiliated Partners in the Fund at an agreed upon price (the "Agreed Value").

(c) If a successor general partner shall purchase for cash the respective interests of the General Partner and its Affiliated Partners in the Fund at an agreed upon price, then upon the effective date of removal of the General Partner pursuant to Section 10.3(a)(i) the General Partner and each Affiliated Partner shall sell, assign and transfer to the successor general partner all of the General Partner's and such Affiliated Partner's right, title and interest in and to the Fund and the Fund's assets upon payment in cash of the Agreed Value by such successor general partner.

(d) If the interests of the General Partner and its Affiliated Partners shall be converted to special limited partner interests, then upon the effective date of any removal of the General Partner pursuant to Section 10.3(a), the successor general partner shall be admitted as the general partner of the Fund in accordance with the terms of this Agreement and, upon such admission, the General Partner being removed shall assign and transfer to the successor general partner all of the General Partner's right, title and interest as general partner of the Fund; *provided* that, notwithstanding any provision in this Agreement, upon such assignment and transfer:

(i) (A) the respective interests in the Fund of the General Partner and its Affiliated Partners shall each be converted into a special limited partnership interest in the Fund and such Persons shall become special Limited Partners with

a Remaining Capital Commitment equal to $0.00 (subject to clauses (ii), (iii) and (iv) below), (B) the interest of the General Partner and its Affiliated Partners in Portfolio Investments shall be not subject to distributions in favor of another party as provided in Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) nor shall the General Partner and its Affiliated Partners be required to pay or bear any Organizational Expenses or Fund Expenses (other than Fund Expenses relating to a Portfolio Investment in which such Partner has a Sharing Percentage) and (C) neither the General Partner nor the Affiliated Partners shall be removed as a Limited Partner without its written consent;

(ii) the General Partner and its Affiliated Partners, as special Limited Partners, shall retain their respective Sharing Percentages in each Portfolio Investment that was consummated by the Fund during the period when the removed General Partner served as general partner of the Fund and prior to the effective date of the removed General Partner's removal pursuant to Section 10.1(a) (the "Pre-Removal Investments") and shall be entitled to receive all distributions in respect of their respective Capital Contributions for (together with any income from Temporary Investments related thereto), and Sharing Percentages in, such Pre-Removal Investments pursuant to the terms of this Agreement as in effect immediately prior to the effective date of removal hereunder, and the successor general partner shall not have any Sharing Percentage in (or otherwise any rights to receive distributions, including distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)), directly or indirectly in respect of) such Pre-Removal Investments; *provided* that the distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) otherwise distributable to the removed General Partner with respect to any Pre-Removal Investment shall be reduced by $33^{1/3}\%$;

(iii) subject to the proviso to Section 10.3(d)(ii), all distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) (and any income from Temporary Investments related thereto) with respect to any Portfolio Investment otherwise payable to the successor general partner shall instead be made as a special distribution to the removed General Partner, in its capacity as a special Limited Partner, until the removed General Partner has received cumulative distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) equal to the amount of distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) that the removed General Partner otherwise would have been entitled to receive pursuant to the terms of this Agreement as in effect immediately prior to the effective date of removal calculated as if (x) the removed General Partner had not been removed pursuant

to Section 10.3(a) and (y) no Portfolio Investments had been made by the Fund other than the Pre-Removal Investments;

(iv) all obligations under this Agreement for the General Partner and its Affiliated Partners (either as Limited Partner, general partner or otherwise, but subject to the obligations of former Partners under Section 9.1(b)) to make any contributions of capital or other payments, whether by debit to its Capital Account or otherwise (including, to avoid any doubt, payment of Organizational Expenses, Fund Expenses (other than Fund Expenses relating to a Portfolio Investment in which such Partner has a Sharing Percentage) or amounts to fund the acquisition of Portfolio Investments) shall cease, and neither the General Partner nor its Affiliated Partners shall be bound by the covenants set forth in Section 2.3 or any other similar provision of this Agreement upon the effective date of removal or cessation; *provided* that the General Partner and its Affiliated Partners, in their respective capacities as special Limited Partners, shall otherwise have all of the rights and protections of a Limited Partner; and *provided, further*, that if upon the dissolution, winding up and termination of the Fund any amount would be payable to the Fund pursuant to Section 11.3 (calculated pursuant to the terms of this Agreement as in effect immediately prior to the effective date of removal hereunder), then (A) the removed General Partner, as a former general partner of the Fund, and the successor general partner shall contribute to the Fund their respective portions of the amount payable to the Fund pursuant to Section 11.3, which portions shall be satisfied solely out of and to the extent of their respective prior distributions pursuant to Section 6.3(a)(iii) or (iv) (or Section 11.2 with reference to Section 6.3(a)(iii) or (iv)) and which portions shall be in the same ratio as (x) with respect to the removed General Partner, the portion of the amount payable to the Fund pursuant to Section 11.3 attributable solely to Pre-Removal Investments bears to (y) with respect to the successor general partner, the portion of the amount payable to the Fund pursuant to Section 11.3 attributable solely to Portfolio Investments other than the Pre-Removal Investments and (B) if after the application of the foregoing clause (A) the Fund has not yet received the full amount payable to the Fund pursuant to Section 11.3 and either the removed General Partner or the successor general partner has returned the amount described in Section 11.3(b)(ii) in satisfaction thereof, then either the removed or successor general partner, as the case may be, shall contribute (solely out of and to the extent of any remaining amount described in Section 11.3(b)(ii)) an amount equal to such shortfall; and

(v) the successor general partner shall assume all of the other contractual obligations of the General Partner and the Affiliated Partners to the Fund, the Parallel Funds and the limited partners (in their capacities as such) of the Fund and the Parallel Funds.

(e) The removed General Partner, the Manager, each Principal and each of their respective Affiliates, and each of the current and former shareholders, officers, directors, employees, partners, members and managers of any of the removed General Partner, the Manager and each of their respective Affiliates and any other Person who served at the request of the removed General Partner on behalf of the Fund as an officer, director, partner, member or manager shall continue to be entitled to indemnification hereunder pursuant to Section 9.1(a) but only with respect to Claims (i) relating to Portfolio Investments made prior to the removal of the removed General Partner or (ii) arising out of or relating to their activities during the period prior to the removal of the removed General Partner as the general partner of the Fund or otherwise arising out of the removed General Partner's status as general partner of the Fund or any Parallel Fund or any of their Affiliates.

(f) Notwithstanding anything to the contrary set forth herein, any amendment on or after the effective date of the removal of the General Partner to (i) any provision of this Agreement that adversely affects the removed General Partner's or its Affiliates' rights under this Agreement and is not adverse to any other Partner or (ii) any of Sections 10.3(d) through 10.3(g), shall require the written consent of the removed General Partner.

(g) Notwithstanding any provision in this Agreement, the removed General Partner shall have the right, without the consent of any Limited Partner or the successor general partner or any other Person, to cause the name of the Partnership to be changed so that it does not include the word "New Mountain" or any variation thereof, and to make any filings and any necessary amendments to this Agreement and the Certificate of Limited Partnership related thereto.

ARTICLE XI

DISSOLUTION AND TERMINATION OF THE FUND

11.1 Dissolution Events. There will be a dissolution of the Fund and its affairs shall be wound up upon the first to occur of any of the following events (each an "Event of Dissolution"):

(a) the dissolution of the Fund as provided in Section 1.4; or

(b) the last Business Day of the first Fiscal Year following the end of the Investment Period in which all Portfolio Investments acquired or agreed to be acquired by the Fund have been sold or otherwise disposed of; or

(c) the withdrawal, removal (unless a successor general partner is admitted to the Fund in accordance with Section 10.3), bankruptcy or dissolution and commencement of winding up of the General Partner, or the assignment by

the General Partner of its entire interest in the Fund (unless the transferee is admitted as a replacement general partner of the Fund pursuant to Section 10.1(f)), or the occurrence of any other event that causes the General Partner to cease to be a general partner of the Fund under the Partnership Law in each case except as expressly permitted hereby, *unless* (*i*) at the time of the occurrence of such event there is at least one remaining general partner of the Fund that is hereby authorized to and does (unanimously in the case of more than one general partner) elect to continue the investment and other activities of the Fund without dissolution or (*ii*) within 90 days after the occurrence of such event a Majority in Interest of the Combined Limited Partners agrees in writing or votes to continue the investment and other activities of the Fund and to the appointment, effective as of the date of such event, if required, of one or more additional general partners of the Fund; or

(d) the determination by the General Partner to dissolve the Fund because it has determined that there is a substantial likelihood that due to a change in the text, application or interpretation of the provisions of the U.S. federal securities laws (including the Securities Act, the Investment Company Act and the Advisers Act) or the provisions of ERISA (including the applicable DOL Regulations), section 4975 of the Code or any other applicable statute, regulation, case law, administrative ruling or other similar authority (including changes that result in the Fund being taxable as a corporation under U.S. federal income tax law), the Fund cannot operate effectively in the manner contemplated herein (including with respect to the General Partner's ability to receive the amounts distributable to it with respect to any Limited Partner pursuant to Sections 6.3 and 11.2), after the General Partner has used commercially reasonable efforts to remedy the circumstances resulting in the General Partner's determination pursuant to this Section 11.1(d); or

(e) the entry of a decree of judicial dissolution pursuant to section 17-802 of the Partnership Law; or

(f) the determination by the General Partner to dissolve the Fund pursuant to Section 3.4(b), clause (E); or

(g) at such time as there are no Limited Partners, unless the investment and other activities of the Fund are continued in accordance with the Partnership Law; or

(h) upon the vote of 66• % in Interest of the Combined Limited Partners, as provided in Section 5.6(a); or

(i) upon the vote of 80% in Interest of the Combined Limited Partners at any time for any reason.

For the avoidance of doubt, subject to the provisions of Sections 5.2 and 5.4, the obligation of Partners to make Capital Contributions for Portfolio Investments with respect to which the Fund (or the General Partner or one or more of its Affiliates on behalf of the Fund) has entered into a legally binding obligation to invest prior to an Event of Dissolution shall survive such Event of Dissolution.

11.2 Winding Up.

(a) Liquidation of Assets. Upon the dissolution of the Fund, the General Partner (or, if dissolution of the Fund should occur by reason of Section 11.1(c) or 11.1(h) or the General Partner is unable to act as liquidator, a liquidating trustee of the Fund or other representative designated by a Majority in Interest of the Combined Limited Partners) shall use its commercially reasonable efforts to liquidate all of the assets of the Fund in an orderly manner; *provided* that if in the judgment of the General Partner (or such liquidating trustee or other representative) an asset of the Fund should not be liquidated, the General Partner (or such liquidating trustee or other representative) shall allocate, on the basis of the Value of any assets of the Fund not sold or otherwise disposed of, any unrealized gain or loss based on such Value to the Partners' Capital Accounts as though the assets in question had been sold on the date of such allocation and, promptly after giving effect to any such adjustment, distribute such assets in accordance with Section 11.2(b); and *provided, further*, that the General Partner (or such liquidating trustee or other representative) shall attempt to liquidate sufficient assets of the Fund to satisfy in cash (or make reasonable provision in cash for) the debts and liabilities referred to in clauses (i) and (ii) of Section 11.2(b).

(b) Application and Distribution of Proceeds and Remaining Assets. The General Partner (or the liquidating trustee or other representative referred to in Section 11.2(a)) shall apply the proceeds of the liquidation referred to in Section 11.2(a) and any remaining Fund assets, and shall, within ninety (90) days of receipt thereof by the Fund, distribute any such proceeds and assets, as follows and in the following order of priority:

(i) First, to creditors in satisfaction of the debts and liabilities of the Fund, to the extent otherwise permitted by law, whether by payment thereof or the making of reasonable provision for payment thereof and to the expenses of liquidation, whether by payment thereof or the making of reasonable provision for payment thereof, and to the establishment of any reasonable reserves (which may be funded by a liquidating trust) to be established by the General Partner (or liquidating trustee or other representative) in amounts determined by it to be necessary for the payment of the Fund's expenses, liabilities and other obligations (whether fixed or contingent); and

(ii) Second, to the Partners in accordance with Article VI.

If the General Partner has received a prior written notice that a distribution of Securities to be made pursuant to clause (ii) of the preceding sentence of this Section 11.2(b) would cause a Adverse Consequence with respect to any Limited Partner, the General Partner shall distribute such Securities to a third Person designated in such notice by the requesting Limited Partner.

11.3 Clawback. Subject to Section 9.1, if, after giving effect to all distributions made pursuant to Article VI and Section 11.2, but before giving effect to this Section 11.3, either

(a) the General Partner has received distributions pursuant to Section 6.3(a) (or Section 11.2 determined with reference to Section 6.3(a)) attributable to any Limited Partner (other than a Defaulting Partner or an Affiliated Partner) that exceed 20% of the excess of (*i*) Distributable Cash attributable to Portfolio Investments (other than Bridge Investments) apportioned to such Limited Partner pursuant to Section 6.3(a) over (*ii*) the Capital Contributions and Direct Payments of such Limited Partner used to fund the acquisition cost of Portfolio Investments (other than Bridge Investments), Organizational Expenses or Fund Expenses; or

(b) the distributions received by such Limited Partner pursuant to Section 6.3(a) are not sufficient to provide such Limited Partner with an amount equal to interest to 8% per annum, compounded annually, on such Capital Contributions and Direct Payments (after giving effect to any distributions returned), together with a return of such Capital Contributions and Direct Payments,

then the General Partner shall contribute to the Fund the lesser of

(i) the greater of the amount of the excess of such distributions over such 20% described in clause (a) and the amount of the shortfall described in clause (b), and

(ii) the amount equal to (A) the amount of distributions received by the General Partner pursuant to Section 6.3(a) attributable to such Limited Partner, minus (B) the sum of (*I*) the amount of distributions that were made or that could have been made (determined using the tax rate applicable to individuals) to the General Partner pursuant to Section 6.5, (*II*) the amount that would or could have been distributed to the General Partner pursuant to Section 6.5 if each Security distributed in kind had been sold by the Fund as of the date of distribution and the proceeds were distributed instead of the Security, and (*III*) the amount of any

payment made by, or distributions deemed to have been distributed to, the General Partner pursuant to Section 6.12, in the case of each of subclauses (I), (II) and (III) with respect to distributions received by the General Partner pursuant to Section 6.3(a) attributable to such Limited Partner,

and the Fund shall, subject to Section 6.12 and applicable law, distribute such amount to such Limited Partner. Payments pursuant to this Section 11.3 shall be made by or on behalf of the General Partner either in cash or, at the election of the General Partner, by the return of Securities previously distributed to the General Partner by the Fund valued at their Value at the time returned to the Fund; *provided* that such Securities shall be Marketable Securities in the hands of a Limited Partner (assuming such Limited Partner has no other interest in the Portfolio Company to which such Marketable Securities relate). Each present and future member of the General Partner that may be entitled to receive a portion of the distributions to which the General Partner is entitled pursuant to Section 6.3(a) (or Section 11.2 determined with reference to Section 6.3(a)) shall execute a several guarantee in the form attached hereto as Exhibit A (the "Guarantee") for its *pro rata* share of the General Partner's obligations hereunder, if any. If any such member of the General Partner does not execute the Guarantee, the General Partner shall cause one or more other members of the General Partner to agree to be responsible for such non-executing member's obligation under the Guarantee.

11.4 Time for Liquidation, etc. A reasonable time period shall be allowed for the orderly winding up and liquidation of the assets of the Fund and the discharge of liabilities to creditors so as to enable the General Partner to seek to minimize potential losses upon such liquidation; *provided* that the General Partner (or the liquidating trustee or other representative referred to in Section 11.2(a)) shall use its best efforts to effect the orderly winding up and liquidation of the assets of the Fund and the discharge of liabilities to creditors within 12 months of the dissolution of the Fund unless the Advisory Committee or a Majority in Interest of the Combined Limited Partners consents to an extension of such time period. The provisions of this Agreement shall remain in full force and effect during the period of winding up and until the filing of a certificate of cancellation of the Fund with the Secretary of State of the State of Delaware.

11.5 Cancellation. Upon completion of the foregoing provisions of this Article XI, the General Partner (or the liquidating trustee or other representative referred to in Section 11.2(a)) shall execute, acknowledge and cause to be filed a certificate of cancellation of the Certificate of Limited Partnership of the Fund with the Secretary of State of the State of Delaware.

ARTICLE XII

AMENDMENTS; POWER OF ATTORNEY

12.1 Amendments.

(a) General. Any modifications of or amendments to this Agreement duly adopted in accordance with the terms of this Agreement may be executed in accordance with Section 12.2. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of the General Partner and a Majority in Interest of the Combined Limited Partners; *provided* that the General Partner may, without the consent of any of the Limited Partners:

(i) enter into agreements with Persons that are Transferees pursuant to the terms of this Agreement, providing in substance that such Transferees will be bound by this Agreement and will become Substitute Partners, and agreements referred to in the third sentence of Section 13.13;

(ii) amend this Agreement as may be required to implement Transfers of Interests of Limited Partners as contemplated by Section 10.1 and/or the admission of any Substitute Partner or any Subsequent Closing Partner, and any related changes in Capital Commitments, as contemplated by Section 3.4(c), 3.5(c), 3.7(e), 5.4(c), 5.5(c), 10.1(d) or 10.2;

(iii) amend this Agreement (*A*) to satisfy any requirements, conditions, guidelines or opinions contained in any opinion, no-action letter, directive, order, ruling or regulation of the Securities and Exchange Commission, the Internal Revenue Service or any other U.S. federal or state or non-U.S. governmental agency, or in any U.S. federal or state or non-U.S. statute, compliance with which the General Partner deems to be in or not opposed to the best interests of the Fund, or (*B*) to change the name of the Fund;

(iv) amend this Agreement to cure any ambiguity or correct or supplement any provision hereof that may be incomplete or inconsistent with any other provision hereof, so long as such amendment under this clause (iv) does not adversely affect the interests of the Limited Partners;

(v) amend this Agreement in accordance with Sections 4.6, 5.4, 5.5, 10.2, 10.3(g) and 12.1(c);

(vi) amend this Agreement to make changes negotiated with Limited Partners admitted at Closings subsequent to Initial Closing so long as the changes do not materially adversely affect the rights and obligations of any existing Limited Partner and the amendment is not objected to by Limited Partners

representing 20% or more of the Fund's Capital Commitments within ten (10) Business Days of being given notice thereof; and

(vii) amend this Agreement to ensure to the extent possible that Limited Partners will be insulated from attribution of any interest by the Fund in an FCC Regulated Entity.

(b) Certain Amendments Requiring Special Consent. Notwithstanding the provisions of Section 12.1(a), no modification of or amendment to this Agreement shall be made that will:

(i) change the definition of "ERISA Partner" or modify or amend Section 3.4, 4.3, 4.4, 5.2(a), 5.4, 10.1(a) or 10.1(h) in a manner adverse to the ERISA Partners, without the written consent of non-defaulting ERISA Partners having Capital Commitments aggregating more than 66• % of the Capital Commitments of all Combined Limited Partners who are non-defaulting ERISA Partners,

(ii) change the definition of "Public Plan Partner" or modify or amend Section 3.4, 4.3, 4.4, 5.2(a), 5.4 or 10.1(h) in a manner adverse to the Public Plan Partners, without the written consent of non-defaulting Public Plan Partners having Capital Commitments aggregating more than 66• % of the Capital Commitments of all Combined Limited Partners who are non-defaulting Public Plan Partners,

(iii) modify or amend Section 4.4 in a manner adverse to the Tax-Exempt Partners without the written consent of Tax-Exempt Partners having Capital Commitments aggregating more than 66• % of the Capital Commitments of all Combined Limited Partners who are Tax-Exempt Partners,

(iv) change the definition of "BHC Limited Partner" or modify or amend Section 3.6 in a manner adverse to the BHC Limited Partners without the written consent of BHC Partners having Capital Commitments aggregating more than 75% of the Capital Commitments of all Combined Limited Partners who are BHC Partners,

(v) modify or amend Section 3.7 in a manner adverse to the Foundation Partners without the written consent of Foundation Partners having Capital Commitments aggregating more than 66• % of the Capital Commitments of all Combined Limited Partners who are Foundation Partners,

(vi) change the definition of "Non-U.S. Limited Partner" or modify or amend Section 4.4 or 4.6(d)(iv) in a manner adverse to the Non-U.S. Limited Partners without the written consent of Non-U.S. Limited Partners having Capital

Commitments aggregating more than 66• % of the Capital Commitments of all Combined Limited Partners who are Non-U.S. Limited Partners,

(vii) modify or amend the provisions of Article VI in a manner that would alter the amount or timing of distributions or the allocations of items of income, gain, loss and deduction, or the provisions of Article VII, in each case a manner adverse to the Combined Limited Partners in each case without the written consent of 80% in Interest of the Combined Limited Partners,

(viii) materially and adversely affect the rights of a Limited Partner in a manner that discriminates against such Limited Partner vis-à-vis the other Limited Partners without the written consent of such Limited Partner,

(ix) increase any Limited Partner's Capital Commitment or adversely affect the limited liability of a Limited Partner, without the written consent of each Limited Partner so affected,

(x) modify or amend the requirement in any provision of this Agreement calling for the consent, vote or approval of a Majority in Interest or other specified percentage in Interest of the Limited Partners (or of the Combined Limited Partners, as applicable), without the written consent of a Majority in Interest or such other specified percentage in Interest, as the case may be, of the Limited Partners (or of the Combined Limited Partners, as applicable) to such modification or amendment, or

(xi) change the substantive provisions of this Article XII in a manner adverse to a Limited Partner without the consent of such Limited Partner.

(c) The General Partner shall have the right, on or before the effective date of final regulations, to amend, as determined by the General Partner in good faith, this Agreement to provide for (i) the election of a safe harbor under United States Treasury Regulations Section 1.83-3(1) (or any similar provision) under which the fair market value of an Interest that is transferred in connection with the performance of services is treated as being equal to the liquidation value of that Interest, (ii) an agreement by the Fund and all of its Partners to comply with the requirements set forth in such regulations and Internal Revenue Service Notice 2005-43 (and any other guidance provided by the Internal Revenue Service with respect to such election) with respect to all Interests transferred in connection with the performance of services while the election remains effective, and (iii) any other amendments reasonably related thereto or reasonably required in connection therewith.

(d) Notices of Amendments. Within a reasonable period of time after the adoption of any material amendment in accordance with this Section 12.1, other than an

amendment to the books and records of the Fund made in accordance with the terms hereof, the General Partner shall send to each Limited Partner a copy of such amendment or a written notice describing such amendment.

(e) Amendments Affecting FCC Insulation. Notwithstanding any other provision of this Agreement, for so long as the Fund holds an interest in one or more FCC Regulated Entities, the General Partner shall not consent to any amendment to this Agreement that would add to, detract from, or otherwise affect the powers of the Limited Partners unless it shall have first received advice from legal counsel that such amendment would not cause the Limited Partners to be considered non-insulated limited partners under the FCC Insulation Policies or is necessary to ensure that the Limited Partners would be considered insulated partners under the FCC Insulation Policies.

12.2 Power of Attorney. Each Limited Partner does hereby irrevocably constitute and appoint the General Partner, or the successor thereof as general partner of the Fund, with full power of substitution, the true and lawful attorney-in-fact and agent of such Partner, to execute, acknowledge, verify, swear to, deliver, record and file, in its or its assignee's name, place and stead, all instruments, documents and certificates that may from time to time be required by the laws of the United States, the State of Delaware, the State of New York, any other jurisdiction in which the Fund conducts or plans to conduct business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid existence and investment and other activities of the Fund, including the power and authority to execute, verify, swear to, acknowledge, deliver, record and file:

(a) all certificates and other instruments, including any amendments to this Agreement or to the Certificate of Limited Partnership of the Fund, that the General Partner determines to be appropriate to (*i*) form, qualify or continue the Fund as a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and all other jurisdictions in which the Fund conducts or plans to conduct business and (*ii*) admit such Partner as a Limited Partner in the Fund;

(b) all instruments that the General Partner determines to be appropriate to reflect any amendment to this Agreement or the Certificate of Limited Partnership of the Fund (*i*) to satisfy any requirements, conditions, guidelines or opinions contained in any opinion, no-action letter, directive, order, ruling or regulation of the Securities and Exchange Commission, the Internal Revenue Service, or any other U.S. federal or state or non-U.S. governmental agency, or in any U.S. federal or state or non-U.S. statute, compliance with which the General Partner deems to be in or not opposed to the best interests of the Fund, (*ii*) to change the name of the Fund or (*iii*) to cure any ambiguity or correct or supplement any provision hereof that may be incomplete or inconsistent with

any other provision herein contained so long as such amendment under this clause (iii) does not adversely affect the interests of the Limited Partners;

(c) all instruments that the General Partner determines to be appropriate in connection with the formation or operation of, and admission of certain or all of the Limited Partners to, any Parallel Fund, Alternative Investment Vehicle or Corporation;

(d) all conveyances and other instruments that the General Partner determines to be appropriate to reflect and effect the dissolution, winding up and liquidation of the Fund in accordance with the terms of this Agreement, including the filing of a certificate of cancellation as provided for in Article XI;

(e) all instruments relating to (*i*) Transfers of Interests in the Fund or the admission of Substitute Partners or Subsequent Closing Partners, (*ii*) the treatment of a Defaulting Partner or an Excused Partner or (*iii*) any change in the Capital Commitment of any Limited Partner, all in accordance with the terms of this Agreement;

(f) all amendments to this Agreement duly approved and adopted in accordance with Section 12.1;

(g) certificates of assumed name and such other certificates and instruments as may be necessary under the fictitious or assumed name statutes from time to time in effect in all jurisdictions in which the Fund conducts or plans to conduct business;

(h) all instruments and agreements relating to the establishment of the escrow account pursuant to Section 5.2(a); *provided* that such instruments and agreements are substantially in the form previously provided to the ERISA Partners and the Public Plan Partners on behalf of which such power of attorney is exercised; and

(i) any other instruments determined by the General Partner to be necessary or appropriate in connection with the proper conduct of the business of the Fund and that do not adversely affect the interest of any Limited Partner.

Such attorney-in-fact and agent shall not, however, have the right, power or authority to amend or modify this Agreement, when acting in such capacities, except to the extent authorized herein. This power of attorney shall not be affected by the subsequent disability, incapacity or incompetence of the principal. To the fullest extent permitted by law, this power of attorney shall be deemed to be coupled with an interest, shall be irrevocable, shall survive and not be affected by the dissolution, bankruptcy or legal disability of any Limited Partner and shall extend to such Limited Partner's successors

and assigns. This power of attorney may be exercised by such attorney-in-fact and agent for all Limited Partners (or any of them) by a single signature of the General Partner acting as attorney-in-fact with or without listing all of the Limited Partners executing an instrument. Any Person dealing with the Fund may conclusively presume and rely upon the fact that any instrument referred to above, executed by such attorney-in-fact and agent, is authorized and binding, without further inquiry. If required, each Limited Partner shall execute and deliver to the General Partner, within five Business Days after receipt of a request therefor, such further designations, powers of attorney or other instruments as the General Partner shall determine to be necessary for the purposes hereof consistent with the provisions of this Agreement.

ARTICLE XIII

MISCELLANEOUS

13.1 Notices.

(a) All notices, reports, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) mailed, registered mail, first-class postage paid, (ii) sent by overnight mail or courier, (iii) transmitted via telegram, telex or facsimile, (iv) posted on the Fund's intranet website in accordance with Section 13.1(b) or (v) delivered by hand, if to any Limited Partner, at such Limited Partner's address, or to such Limited Partner's facsimile number, as set forth in such Limited Partner's Subscription Agreement, and if to the Fund or to the General Partner, to the General Partner at its address set forth in the first sentence of Section 1.2(b), with a copy to Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attention: Thomas H. Bell, Esq., or to such other Person or address as any Partner shall have last designated by notice to the Fund, and in the case of a change in address by the General Partner, by notice to the Limited Partners. Any notice, report, request, demand and other communication will be deemed received (i) if sent by certified or registered mail, return receipt requested, when actually received, (ii) if sent by overnight mail or courier, when actually received, (iii) if sent by telegram or telex or facsimile transmission, on the date sent provided confirmatory notice is sent by first-class mail, postage prepaid, (iv) if posted on the Fund's intranet website in accordance with Section 13.1(b), on the day an e-mail is sent to the Limited Partner instructing it that a notice has been posted (*provided* that if such e-mail is sent after 5:00 pm Eastern Standard Time or on a day that is not a Business Day, such notice shall be deemed received on the next succeeding Business Day) and (v) if delivered by hand, on the date of receipt. On or prior to the date of each Limited Partner's admission to the Fund, the General Partner shall furnish each Limited Partner with the address of the Fund's intranet website and a password permitting access thereto.

(b) The General Partner may, in its discretion, provide any notice, report, request, demand, consent or other communication to a Limited Partner by posting such notice on the Fund's intranet website and sending an e-mail to such Limited Partner notifying it of such posting unless such Limited Partner has elected not to receive notices, reports, requests, demands or other communications via the Fund's intranet website in its Subscription Agreement.

13.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement.

13.3 Table of Contents and Headings. The table of contents and the headings of the articles, sections and subsections of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute a part hereof or affect the interpretation hereof.

13.4 Successors and Assigns. This Agreement shall inure to the benefit of the Partners, the Initial Limited Partner and the Covered Persons, and shall be binding upon the parties, and, subject to Section 10.1, their respective successors, permitted assigns and, in the case of individual Covered Persons, heirs and legal representatives.

13.5 Severability. Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision will be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

13.6 Further Actions. Each Limited Partner shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be requested by the General Partner in connection with the formation of the Fund and the achievement of its purposes and are not inconsistent with the terms and provisions of this Agreement, including any documents that the General Partner determines to be necessary or appropriate to form, qualify or continue the Fund as a limited partnership in all jurisdictions in which the Fund conducts or plans to conduct its investment and other activities and all such agreements, certificates, tax statements and other documents as may be required to be filed by or on behalf of the Fund.

13.7 Interpretation. Notwithstanding any other provision if this Agreement or otherwise applicable provision of law or equity, whenever in this Agreement a Person is permitted or required to make a decision (*i*) in its "sole discretion," "sole and absolute discretion" or "discretion", the Person shall be entitled to consider any interests and factors as it desires, including its own interests (it being agreed, however, that this clause (*i*) shall not apply to the reference in Section 2.1 to the "discretion" of the General

Partner and to the reference in Section 7.1 to the 'discretionary authority' of the Manager) or (*ii*) in its "good faith" or under another express standard, the Person shall act under such express standard and shall not be subject to any other or different standards.

13.8 Non-Waiver. No provision of this Agreement shall be deemed to have been waived except if the giving of such waiver is contained in a writing, and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the party or parties in whose favor the waiver was given.

13.9 Applicable Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED WHOLLY WITHIN THAT JURISDICTION.

13.10 Confidentiality.

(a) Each Limited Partner shall not disclose without the prior written consent of the General Partner (other than to such Limited Partner's employees, auditors or counsel) any information with respect to the Fund or any Portfolio Company; *provided* that a Limited Partner may disclose any such information (*a*) as has become generally available to the public other than as a result of the breach of this Section 13.10 by such Limited Partner or any agent or Affiliate of such Limited Partner, (*b*) as may be required or as may be appropriate to be included in any report, statement or testimony required or requested to be submitted to any municipal, state or national regulatory body having jurisdiction over such Limited Partner, (*c*) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation, (*d*) to the extent necessary in order to comply with any law, order, regulation, ruling or governmental request applicable to such Limited Partner, (*e*) to its professional advisors, including for an ERISA Partner such Persons as are necessary for the proper administration of the ERISA plan, and (*f*) as may be required in connection with an audit by any taxing authority. Notwithstanding anything in this Agreement to the contrary, the General Partner shall have the right to keep confidential from Limited Partners for such period of time as the General Partner determines is reasonable *(i)* any information that the General Partner reasonably believes to be in the nature of trade secrets and *(ii)* other information *(A)* the disclosure of which the General Partner in good faith believes is not in the best interests of the Fund or could damage the Fund or its investments or *(B)* that the Fund is required by law or by agreement with a third Person to keep confidential.

(b) In order to preserve the confidentiality, and to prevent the disclosure by a Limited Partner which disclosure the General Partner determines in good faith is reasonably likely to occur, of certain information disseminated by the General Partner or the Fund under this Agreement that such Limited Partner is entitled to receive pursuant to

the provisions of this Agreement, including, but not limited to, quarterly, annual and other reports (other than U.S. Internal Revenue Service Schedule K-1s), information provided to the Advisory Committee (or any Advisory Committee observers), and information provided at the Fund's informational meetings, the General Partner may (i) provide any of the foregoing information to such Limited Partner by means of access on the Fund's website in password protected, non-downloadable, non-printable format, (ii) require such Limited Partner to return any copies of any of the foregoing information provided to it by the General Partner or the Fund, (iii) provide to such Limited Partner access to any of the foregoing information only at the Fund's (or its counsel's) office or (iv) withhold all or any part of the foregoing information otherwise to be provided to such Limited Partner other than the fund-level, aggregate performance information specified in Section 13.13(c)(iii) below and the U.S. Internal Revenue Service Schedule K-1s; *provided* that the General Partner shall not withhold any information pursuant to this to clause (iv) if a Limited Partner confirms in writing to the General Partner that compliance with the procedures provided for in clauses (i), (ii) or (iii) above or other means mutually agreeable to the General Partner and the relevant Limited Partner would be legally sufficient to prevent such potential disclosure.

(c) To the extent that the Freedom of Information Act, 5 U.S.C. § 552, ("FOIA"), any state public records access law, any state or other jurisdiction's laws similar in intent or effect to FOIA, or any other similar statutory or regulatory requirement would potentially cause a Limited Partner or any of its Affiliates to disclose information relating to the Fund, its Affiliates and/or any Portfolio Company, such Limited Partner hereby agrees to notify the General Partner promptly in writing of any such potential disclosure and to take commercially reasonable steps to oppose and prevent the requested disclosure unless (i) a court order to disclose such information has been issued by a court of competent jurisdiction or such Limited Partner is advised by counsel (which in the case of a Limited Partner that is an institutional investor may be staff counsel regularly employed by such institutional investor) that there exists no reasonable basis on which to oppose such disclosure, (ii) the General Partner does not object in writing to such disclosure within ten (10) days (or such lesser time period as stipulated by the applicable law) of such notice or (iii) such disclosure relates solely to fund-level, aggregate performance information (i.e., aggregate cash flows, overall "IRRs", the year of formation of the Fund, and such Limited Partner's own Capital Commitment and Remaining Capital Commitment) and does not include (A) any information relating to individual Portfolio Companies, (B) copies of this Agreement and related documents or (C) any other information not referred to in clause (iii) above.

(d) Notwithstanding the provisions of Section 13.10(a) above, the General Partner agrees that each Limited Partner that (i) itself is an investment partnership or other collective investment vehicle having reporting obligations to its limited partners or other investors and (ii) has prior to the closing of its subscription for Interests notified the General Partner in writing that it is electing the benefits of this Section 13.10(d) may, in

order to satisfy each of their respective reporting obligations, provide on a confidential basis the following information to such Persons regarding the Fund and any Portfolio Companies: (i) the cost of the Fund's investment in a Portfolio Company and the percentage interest of the Portfolio Company acquired by the Fund, (ii) a description of the business of the Portfolio Company and information regarding the industry and geographic location of the Portfolio Company, (iii) the book value or current Value (as reported by the General Partner) of a Portfolio Company on the last day of the quarter, (iv) a brief description of the investment strategy of the Fund, (v) the names of the Principals, (vi) the name and address of the Fund, (vii) the net asset value of the Limited Partner's Interest in the Fund taken as a whole, (viii) the amount of distributions to and Capital Contributions from such Limited Partner, (ix) the ratio of net asset value of the Limited Partner's Interest in the Fund taken as a whole plus distributions to such Limited Partner to Capital Contributions made by such Limited Partner, (x) such Limited Partner's internal rate of return with respect to its investment in the Fund taken as a whole, and (xi) any information regarding the Fund the disclosure of which is permitted pursuant to clause (iii) of Section 13.10(c) above; *provided* that a Limited Partner authorized to make the disclosures permitted by this sentence may also disclose the information specified in items (vi) through (xi) thereof to its prospective investors if provided on a confidential basis. Notwithstanding the foregoing, to the fullest extent permitted by applicable law, in no event may any such Limited Partner disclose any other confidential information regarding the Fund, the General Partner, the Manager or any of their Affiliates or any information regarding the Fund's pending acquisition or pending disposition of a Portfolio Company or proposed Portfolio Company without the prior written consent of the General Partner.

(e) Notwithstanding anything in this Agreement to the contrary, to comply with Treas. Reg. Section 1.6011-4(b)(3)(i), each Limited Partner (and any employee, representative, or other agent of such Limited Partner) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax treatment and tax structure of the Fund or any transactions contemplated by the Fund, it being understood and agreed, for this purpose (i) the name of, or any other identifying information regarding, (A) the Fund or any existing or future investor (or any Affiliate thereof) in the Fund, or (B) any investment or transaction entered into by the Fund, (ii) any performance information relating to the Fund or its investments, or (iii) any performance or other information relating to Fund I, Fund II or investments sponsored by the General Partner, the Manager or their Affiliates, does not constitute such tax treatment or structure information.

(f) A Partner may by giving written notice to the General Partner elect not to receive copies of any document, report or other information that such Partner would otherwise be entitled to receive pursuant to this Agreement and is not required by applicable law to be delivered. The General Partner agrees that it shall make any such documents available to such Partner at the General Partner's offices (or, at the request of such Partner, the offices of Fund Counsel).

(g) Any obligation of a Limited Partner pursuant to this Section 13.10 may be waived by the General Partner in its sole discretion.

13.11 Survival of Certain Provisions. The obligations of each Partner pursuant to Section 6.12 and Article IX and the obligations of the General Partner pursuant to Section 11.3 shall survive the termination or expiration of this Agreement and the dissolution, winding up and liquidation of the Fund.

13.12 Waiver of Partition. Except as may otherwise be provided by law in connection with the dissolution, winding up and liquidation of the Fund, each Partner hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the Fund's property.

13.13 Entire Agreement; Most Favored Nations Provision. This Agreement and the Subscription Agreements constitute the entire agreement among the Partners and between the Partners and the Initial Limited Partner with respect to the subject matter hereof, and supersede any prior agreement or understanding among them with respect to such subject matter. The representations and warranties of the Fund, the General Partner and the Limited Partners in and the other provisions of the Subscription Agreements shall survive the execution and delivery of this Agreement. Notwithstanding the provisions of this Agreement, including Section 12.1, or of any Subscription Agreement, it is hereby acknowledged and agreed that the General Partner on its own behalf or on behalf of the Fund without the approval of any Limited Partner or any other Person may enter into a side letter or similar agreement to or with a Limited Partner which has the effect of establishing rights under, or altering or supplementing the terms hereof or of any Subscription Agreement. The parties hereto agree that any terms contained in a side letter or similar agreement to or with a Limited Partner shall govern with respect to such Limited Partner (but not with respect to any of such Limited Partner's assignees or Transferees unless so specified in such side letter or similar agreement) notwithstanding the provisions of this Agreement or of any Subscription Agreement. Except for any arrangements disclosed in the Confidential Private Placement Memorandum of the Fund, dated May 2007, as supplemented to date, (the "Memorandum"), if the General Partner has entered into any such side letter or other agreement prior to the date hereof or enters into any such side letter or other agreement on or after the date hereof to or with any Limited Partner or any limited partner in a Parallel Fund (other than an Affiliated Partner) that establishes rights or benefits in favor of such Limited Partner or limited partner in a Parallel Fund that are more favorable in any material respect to such Limited Partner or limited partner in a Parallel Fund than the rights and benefits established in favor of the Limited Partners as of the date hereof and any other then existing Limited Partners, the General Partner shall offer to each Limited Partner as of the date hereof and any other then existing Limited Partner, within 30 days after the Admission Date of such Limited Partner or limited partner in a Parallel Fund, the opportunity to elect within 30 days after receipt of such offer to receive such rights and benefits established by such side letter or

other agreement to the extent reasonably applicable to the Limited Partners as of the date hereof and any other then existing Limited Partner, and in connection with such offer shall provide a copy of such side letter or other agreement to each Limited Partner as of the date hereof and any other then existing Limited Partner. The provisions of the foregoing sentence, however, shall not apply to (*i*) any agreement to appoint any representative of a Limited Partner to serve as a member of the Advisory Committee or (*ii*) any rights or benefits established in favor of another Limited Partner or investor in a Parallel Fund, as the case may be, by reason of the fact that such other Limited Partner or investor in a Parallel Fund is subject to any laws, rules, regulations or policies to which the Investor is not also subject.

13.14 Fund Counsel. Counsel to the Fund may also be counsel to the General Partner, the Manager and their respective Affiliates. The General Partner may execute on behalf of the Fund and the Partners any consent to the representation of the Fund that counsel may request pursuant to the New York Rules of Professional Conduct or similar rules in any other jurisdiction ("Rules"). The Fund has initially selected Simpson Thacher & Bartlett LLP (the "Fund Counsel") as legal counsel to the Fund. Each Limited Partner acknowledges that the Fund Counsel does not represent any Limited Partner in the absence of a clear and explicit agreement to such effect between the Limited Partner and the Fund Counsel (and that only to the extent specifically set forth in that agreement), and that in the absence of any such agreement the Fund Counsel shall owe no duties directly to a Limited Partner. In the event any dispute or controversy arises between any Limited Partner and the Fund, or between any Limited Partner or the Fund, on the one hand, and the General Partner (or an Affiliate thereof) that the Fund Counsel represents, on the other hand, then each Limited Partner agrees that the Fund Counsel may represent either the Fund or the General Partner (or its Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Limited Partner hereby consents to such representation. Each Limited Partner further acknowledges that, whether or not the Fund Counsel has in the past represented such Limited Partner with respect to other matters, the Fund Counsel has not represented the interests of any Limited Partner in the preparation and negotiation of this Agreement.

13.15 Compliance with Anti-Money Laundering Requirements. Notwithstanding any other provision of this Agreement to the contrary, the General Partner, in its own name and on behalf of the Fund, shall be authorized without the consent of any Person, including any other Partner, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by the Subscription Agreements.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

GENERAL PARTNER:

NEW MOUNTAIN INVESTMENTS III, L.L.C.

By: _____
Steven B. Klinsky
Managing Member

LIMITED PARTNERS:

All Limited Partners now and hereafter admitted pursuant to powers of attorney now and hereafter granted to the General Partner

By: NEW MOUNTAIN INVESTMENTS III, L.L.C., as Attorney-in-fact for the Limited Partners listed in the books and records of the Fund

By: _____
Steven B. Klinsky
Managing Member

INITIAL LIMITED PARTNER:

_____
Steven B. Klinsky, solely to reflect his withdrawal

The undersigned is hereby executing and delivering this Agreement solely for the purpose of agreeing to the provisions of Sections 2.3, 2.4, 2.5, 7.1 and 7.2, but shall not thereby become or be deemed a partner of the Fund.

MANAGER:

NEW MOUNTAIN CAPITAL, L.L.C.

By: _____
Steven B. Klinsky
Managing Member

Exhibit A

FORM OF GUARANTEE

GUARANTEE, dated as of May 25, 2007 by and among the undersigned guarantors (together with any Person who may hereafter agree to become a guarantor under this Guarantee by signing a written instrument expressly agreeing to be so bound, the "Guarantors"), for the benefit of New Mountain Partners III, L.P., a Delaware limited partnership (the "Fund") and the Limited Partners thereof. Capitalized terms used herein without definition shall have the same meanings set forth in the Amended and Restated Limited Partnership Agreement of the Fund, dated as of May 25, 2007 (as amended from time to time, the "Fund Agreement").

W I T N E S S E T H :

WHEREAS, New Mountain Investments III, L.L.C., a Delaware limited liability company (the "General Partner") is the sole general partner of the Fund and may be required, pursuant to Section 11.3 of the Fund Agreement, to contribute capital to the Fund, at such times and in such amounts as provided therein (the obligations of the General Partner under such Section 11.3, the "Obligations");

WHEREAS, the Guarantors are members of the General Partner and may be required, pursuant to the Limited Liability Company Agreement of the General Partner (as amended from time to time, the "General Partner Agreement"), to contribute capital to the General Partner, at such times and in such amounts as provided therein for the payment of the Obligations; and

WHEREAS, in consideration of the mutual benefits derived from the Guarantors' agreeing to be members of the General Partner, the Guarantors wish to guarantee the Obligations in accordance with and subject to the terms hereof.

NOW, THEREFORE, in consideration of the premises and the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Guarantee. (a) Each Guarantor hereby unconditionally and irrevocably guarantees to the Fund the prompt payment, when due, of a portion of each capital contribution or other payment required, pursuant to the Obligations, to be made to or for the account of the Fund calculated as follows. The portion of such contribution or other payment guaranteed by each Guarantor shall equal (*x*) the product of (*i*) the amount of such contribution or other payment, pursuant to the Obligations, and (*ii*) a fraction, the numerator of which is the total amount of such Guarantor's After-Tax Carry (as defined below) and the denominator of which is the total amount of the General Partner's After-Tax Carry (as defined below) minus (*y*) such Guarantor's interest in the total amounts paid by the General Partner in satisfaction of such obligations.

The "General Partner's After-Tax Carry" shall mean an amount equal to (*a*) the total amount of distributions received by the General Partner pursuant to Sections 6.3(a)(iii) and 6.3(a)(iv) of the Fund Agreement, minus (*b*) the sum of (*A*) the amount of distributions that were made or that could have been made to the General Partner pursuant to Section 6.5 of the Fund Agreement, (*B*) the amount that would or could have been distributed to the General Partner

pursuant to Section 6.5 of the Fund Agreement if each Security distributed in kind had been sold by the Fund as of the date of distribution and the proceeds were distributed instead of the Security and (*C*) the amount of any payment made by, or distributions deemed to have been distributed to, the General Partner pursuant to Section 6.12 of the Fund Agreement, in the case of each of subclauses (A), (B) and (C) with respect to distributions received by the General Partner pursuant to Sections 6.3(a)(iii) and 6.3(a)(iv).

A "Guarantor's After-Tax Carry" shall mean, with respect to any Limited Partner (other than an Affiliated Partner), an amount equal to (*a*) the total amount of distributions received by such Guarantor from the General Partner attributable to distributions received by the General Partner pursuant to Sections 6.3(a)(iii) and 6.3(a)(iv) of the Fund Agreement, minus (*b*) the sum of (*A*) the amount of distributions that were made or that could have been made to the General Partner pursuant to Section 6.5 of the Fund Agreement, (*B*) the amount that would or could have been distributed to the General Partner pursuant to Section 6.5 of the Fund Agreement if each Security distributed in kind had been sold by the Fund as of the date of distribution and the proceeds were distributed instead of the Security and (*C*) the amount of any payment made by, or distributions deemed to have been distributed to, the General Partner pursuant to Section 6.12 of the Fund Agreement, in the case of each of subclauses (A), (B) and (C) with respect to distributions received by the General Partner pursuant to Sections 6.3(a)(iii) and 6.3(a)(iv) and attributable to distributions received by such Guarantor from the General Partner.

Notwithstanding the foregoing, each Guarantor's liability under this Guarantee shall not exceed in the aggregate an amount equal to the aggregate of such Guarantor's After-Tax Carry. Notwithstanding any other provision of this Guarantee to the contrary, if a Guarantor creates a trust, limited partnership or other entity that is admitted as a member of the General Partner, such Guarantor shall be jointly and severally liable under this Guarantee for the obligations of such trust, limited partnership or other entity under this Guarantee.

(b) Except as provided in the last sentence of section 1(a), this Guarantee is a several, and not a joint, guarantee by each of the Guarantors of a portion of the Obligations as set forth herein. Nothing in this Guarantee, express or implied, is intended or shall be construed to require any Guarantor to bear any amount of the Obligations in excess of the portion guaranteed by such Guarantor pursuant to Section 1(a).

(c) When the Obligations become due and payable, the Fund shall first make demand upon the General Partner for the payment of the Obligations, and, if such payment has not been made within 30 days of such demand, the Fund may make demand upon any or all of the Guarantors for the payment of such Obligations by any Guarantor to the extent provided herein, and each Guarantor agrees to make such payment forthwith to the Fund upon such demand (net of any prior fundings to the General Partner from or on behalf of such Guarantor to pay such amount). This Guarantee is an absolute and continuing guarantee of the payment of the Obligations, and not a guarantee of collection.

2. Waiver of Notice, Presentment, etc. To the fullest extent permitted by law, each Guarantor hereby acknowledges that the Fund has relied and will rely on this Guarantee. To the fullest extent permitted by law, each Guarantor hereby expressly waives, to the fullest extent

permitted by law, presentment for payment; notice of presentment, nonperformance, nonpayment or breach; and protest and notice of protest of any of the Obligations.

3. Obligations Unconditional, etc. Except as provided herein, the obligations of each Guarantor under this Guarantee shall, to the fullest extent permitted by law, be unconditional and primary (as though each Guarantor were the maker of a portion of the Obligations), irrespective of the validity, regularity or enforceability of any Obligation, and shall not be affected by any action taken under the Obligations in the exercise of any right or remedy therein conferred, or by any failure or omission on the part of the Fund to enforce any right given thereunder or hereunder or any remedy conferred thereby or hereby, or by any waiver of any term, covenant, agreement or condition of the Obligations or this Guarantee (other than a waiver and release by the Fund of payment of the Obligations), or by any release of any security or any other guaranty at any time existing for the benefit of the Obligations, or by the merger or consolidation of the General Partner, or by sale, lease or transfer by the General Partner to any Person of any or all of its properties, or by any action of the Fund granting indulgence or extension to, or waiving or acquiescing in any default by the General Partner, or any successor to the General Partner or by any other party that shall have assumed its obligations, or by reason of any disability or other defense of the General Partner or any successor to the General Partner, or by any modification, alteration, or by any circumstance whatsoever (with or without notice to or knowledge of a Guarantor) that may or might in any manner or to any extent vary the risk of a Guarantor hereunder, it being the purpose and intent of each Guarantor that the obligations of such Guarantor hereunder shall not be discharged except by payment or performance or by release as herein provided, and then only to the extent of such payment, performance or release. Without limiting the generality of the foregoing and subject to the provisions of Section 1(a), each Guarantor shall be liable for any reasonable costs of collection with respect to the Obligations even though such costs of collection may not be enforceable against a party primarily liable because of the bankruptcy or insolvency of such party.

4. No Other Beneficiaries. The provisions of this Guarantee are solely for the benefit of the Fund and the Limited Partners of the Fund. The Guarantors hereby acknowledge that each Limited Partner of the Fund is a third-party beneficiary of, and may enforce directly, this Guarantee. Except as expressly provided in Section 5, nothing in this Guarantee, express or implied, is intended or shall be construed to give any other Person any legal or equitable right, remedy or claim under or in respect of this Guarantee or any provision contained herein.

5. Representations and Warranties. Each Guarantor represents and warrants to the Fund and to each Limited Partner that this Guarantee has been duly executed and delivered by such Guarantor and constitutes the legal, valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms (subject to the effects of applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

6. Governing Law, etc. THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

7. Binding Effect; Assignment; Amendments; Counterparts. This Guarantee shall be binding on the parties hereto and their respective successors and permitted assigns, and shall inure to the benefit of the Fund, the Limited Partners of the Fund and their successors and permitted assigns. No Guarantor may assign his or her obligations hereunder without the consent of a Majority in Interest of the Combined Limited Partners or the Advisory Committee. This Guarantee may not be amended except by an agreement in writing signed by each of the parties hereto and consented to by a Majority in Interest of the Combined Limited Partners; *provided, however*, that this Guarantee may be amended to reflect the addition of a Guarantor without the consent of any Combined Limited Partner or the Advisory Committee. This Guarantee may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8. Entire Agreement. This Guarantee constitutes the entire agreement of the parties with respect to the subject matter hereof.

9. Term. This Guarantee shall be effective as of the date first above written as to each original Guarantor on such date, and shall become effective as to any other Person who subsequently becomes a Guarantor as of the date that such Guarantor first becomes a member of the General Partner and signs the General Partner Agreement. This Guarantee shall remain in full force and effect until such time as the Obligations, if any, have been satisfied.

10. Severability. If a court of competent jurisdiction shall hold any provision of this Guarantee to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the date first above written.

GUARANTORS:

Schedule A

FUND III INVESTMENT TEAM MEMBERS

Mike Ajouz
Adam Collins
Michael Flaherman
Matt Holt
Steve Klinsky
Doug Londal
Mat Lori
Pete Masucci
Tom Morgan
Alok Singh
J. David Wargo