

such Limited Partner consents, with respect to itself, to the release of such Carried Interest Distributions to the General Partner.

3.4 Timing and Method of Distributions.

(a) *Timing of Portfolio Investment Distributions.* Except as otherwise provided in Section 3.3 (Amounts and Priority of Distributions), Portfolio Investment Distributions shall be made (i) in the case of cash received by the Partnership in connection with a Portfolio Investment, within 30 days following the receipt of such cash, and (ii) in the case of any Portfolio Investment that consists of Marketable Securities that the General Partner determines to distribute to the Partners pursuant to Section 3.3 (Amounts and Priority of Distributions), at such time as the General Partner shall determine.

(b) *Timing of Other Distributions.* Other Distributions shall be made no less frequently than quarterly, within 30 days after the end of each calendar quarter.

(c) *Distributions In Kind.* Prior to the Winding Up Period, distributions pursuant to Section 3.3 (Amounts and Priority of Distributions) shall be made only in cash or Marketable Securities in the discretion of the General Partner, unless otherwise approved by the Advisory Board. In the case of distributions of Marketable Securities (before or during the Winding Up Period), such Securities shall be valued for purposes of Section 3.3 (Amounts and Priority of Distributions) on the basis of the average of their closing sale price on the principal securities exchange on which they are traded on each Business Day during the 21-day period commencing ten days prior to the date of such distribution and ending ten days following the date of such distribution, or if the principal market for such Securities is, or is deemed to be, in the over-the-counter market, their published average opening "bid" and "asked" prices on each Business Day during such period, or if such price is not so published, the average mean between their opening "bid" and "asked" prices, if available, on each Business Day during such period, which prices may be obtained from any reputable broker or dealer. Distributions of Marketable Securities and, upon winding up in accordance with Section 9.2 (Winding Up and Termination), distributions of any Securities or other property, shall be made, to the extent practicable, so that the relative proportion of such Securities and other property (as well as any cash distributed therewith) shall be the same for all Partners.

(d) *Special Provisions Relating to Distributions In Kind.*

(i) The General Partner shall give at least ten Business Days' prior notice to the Limited Partners of any proposed distribution of Securities pursuant to Section 3.4(c) (Distributions In Kind) and the date of such proposed distribution.

(ii) The General Partner shall offer to each Limited Partner at such Limited Partner's election the right either to (A) receive a distribution of Securities or (B) to have the Partnership dispose of all or any portion of Securities that otherwise would have been distributed to such Limited Partner for the account of such Limited Partner so that such Limited Partner receives the proceeds from such disposition. Any Limited Partner that fails to respond to such notice within five Business Days following receipt thereof shall receive the distribution in kind. Upon an election not to receive a distribution in kind, the Partnership shall cause the distribution of such Securities to be made into a securities brokerage account opened by the General Partner (the "Securities Account") in the name and for the benefit of the Limited Partner. The Limited Partner hereby grants the General Partner a power of attorney (if permissible under any laws or regulations applicable to such Limited Partner) to open such Securities Account for such limited purpose and to execute routine documentation in connection therewith.

(iii) In the event that two or more Limited Partners request the disposition of Securities, the General Partner may in its discretion cause the disposition of such Securities in one or more sales so that the relative proportion of such disposed of Securities shall to the extent practicable be the same for all such Limited Partners, and the expenses related to such sales shall be borne by such Limited Partners on a *pro rata* basis.

(iv) In the event of a proposed distribution of Securities of an issuer subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, the General Partner shall in its discretion cause the distribution of all of such Securities into Securities Accounts for each Limited Partner and cause the disposition of such Securities for all of the Limited Partners electing to have the General Partner dispose of such Securities (and may be directed by a broker or pursuant to a 10b5-1 plan), which disposition shall occur within 120 days of the date of the proposed distribution. Thereafter, all Securities remaining shall be distributed from the Securities Account to the Limited Partners.

(e) *Legal, Regulatory or Contractual Restrictions Relating to Distributions In Kind.* If any Partner would otherwise be distributed an amount of any Securities that would cause such Partner to own or control in excess of the amount of such Securities that it may lawfully own or control, would subject such Partner to any material regulatory filing or would raise material contractual or regulatory issues for such Partner, the General Partner may, in its discretion (i) cause the Partnership, as agent for such Partner, to Dispose Of all or any portion of such Securities distributed to such Partner on behalf of such Partner, and/or (ii) deposit such Securities in a trust established by the General Partner for the benefit and at the expense of such Partner (with voting control and other terms that are satisfactory to the applicable Limited Partner).

(f) *Nonconforming Distributions.* In the event a distribution is made to a Partner that is determined not to be in conformity with Section 3.3 (Amounts

and Priority of Distributions), such Partner agrees to reimburse the Partnership for the amount of such nonconforming distribution.

(g) *Distributions to Persons on Partnership Records.* Any distribution by the Partnership pursuant to the terms of Section 3.3 (Amounts and Priority of Distributions) or Article 9 (Dissolution; Winding Up; Termination) to the Person shown on the Partnership's records as a Partner or to its legal representatives, or to the transferee of the right to receive such distributions as provided herein, shall acquit the Partnership and the General Partner of all liability to any other Person who may be interested in such distribution by reason of any Transfer of such Partner's interest for any reason (including a Transfer thereof by reason of death, incompetence, bankruptcy or liquidation of such Partner).

(h) *Non-U.S. Withholding Taxes.* The amount of any non-U.S. taxes paid by or withheld (directly or indirectly) from receipts of the Partnership which are allocated to a Partner from a Portfolio Investment shall be deemed to have been distributed to such Partner as Portfolio Investment Distributions to the extent that the payment or withholding of such non-U.S. taxes reduced Portfolio Investment Distributions, as the case may be, otherwise distributable to such Partner as provided herein.

3.5 Allocations.

(a) *Net Income and Net Loss.* Except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Partnership shall be allocated among the Partners in a manner such that, after giving effect to the special allocations set forth in Sections 3.3(f)(vii), 3.5(b), 3.5(c), 3.5(d) and 3.6, the Capital Account of each Partner, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Partners pursuant to Section 3.3 if the Partnership were dissolved, its affairs wound up and its assets sold for cash equal to their Carrying Value, all Partnership liabilities were satisfied (limited with respect to each nonrecourse liability to the Carrying Value of the assets securing such liability), and the net assets of the Partnership were distributed in accordance with Section 3.3 to the Partners immediately after making such allocation, minus (ii) such Partner's share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets minus (iii) in the case of the General Partner, any obligation of the General Partner to make a capital contribution to the Partnership pursuant to Section 3.3(d) if the Partnership were dissolved at such time plus (iv) in the case of each Limited Partner, such Limited Partner's share of the amount of the capital contributions of the General Partner referred to in clause (iii) hereof (as if it had been made at such time); provided, that, solely for purposes of this Section 3.5(a), Capital Account balances and amounts deemed distributable under Section 3.3 shall be calculated without regard to Investments that have not been Disposed Of (or treated as Disposed Of), that is, as if such Investments had not been made; and provided, further, that, for purposes of this Section 3.5(a), the

Carrying Value of such assets shall not be adjusted to fair market value solely by reason of a deemed dissolution referred to in clause (i) of this Section 3.5(a).

(b) *Deductions of Management Fees.* Deductions of the Partnership related to Management Fees shall be allocated to the Limited Partners for each Fiscal Year (or portion thereof) in proportion to their respective shares thereof as determined pursuant to Section 2.7 (Management Fees).

(c) *Debit of Placement Fees, Start-Up Costs and Excess Start-Up Costs.* Each Limited Partner's Capital Account shall be debited by an amount equal to such Limited Partner's *pro rata* share (which *pro rata* share shall, to the maximum extent permitted under Section 706(d) of the Code and the Regulations promulgated thereunder, be based on Original Available Capital) of Placement Fees, Start-Up Costs and Excess Start-Up Costs paid by the Partnership.

(d) *Deductions of Interest Expense on Borrowings.* Deductions of the Partnership related to interest expense incurred with respect to amounts borrowed by the Partnership that are described in subclause (B) of the first proviso of Section 2.1(a)(xi) (Rights and Duties of the General Partner) shall be allocated among those Limited Partners who have not made Special Contributions to the Partnership in respect of the borrowings to which such interest expense relates in proportion to their respective shares of such borrowings.

(e) *Tax Allocations.* For United States federal, state and local income tax purposes, items of income, gain, loss, deduction and credit shall be allocated to the Partners in accordance with the allocations of the corresponding items for Capital Account purposes under Sections 3.5 (Allocations) and 3.6 (Regulatory Allocations), except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with section 704(c) of the Code, the Regulations thereunder and Regulation section 1.704-1(b)(4)(i).

3.6 Regulatory Allocations.

(a) *Regulatory Compliance.* The provisions of Section 3.2 (Capital Accounts), Section 3.3 (Amounts and Priority of Distributions), Section 3.5 (Allocations) and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulation. In furtherance of the foregoing, Section 704 of the Code and the Regulations issued thereunder, including but not limited to the provisions of such Regulations addressing qualified income offset, minimum gain chargeback requirements and allocations of deductions attributable to nonrecourse debt and partner nonrecourse debt (as defined in Regulation Section 1.704-2(b)(4)), are hereby incorporated by reference. If, as a result of the provisions of Section 704 of the Code and such Regulations, items of Net Income or Net Loss are allocated to the Partners in a manner that is inconsistent with the manner in which the Partners intend to allocate such items as reflected in Section 3.5 (Allocations), to the

extent permitted under such Regulations, items of future income and loss shall be allocated among the Partners so as to prevent such allocations from distorting the manner in which Partnership distributions will be divided among the Partners pursuant to this Agreement. The General Partner shall be authorized to make appropriate amendments to the allocations of items pursuant to Section 3.5 (Allocations) if necessary in order to comply with Section 704 of the Code or applicable Regulations thereunder; provided, that, no such change shall affect any amount distributable to any Partner pursuant to this Agreement.

(b) *No Negative Balance in Capital Accounts.* Notwithstanding any provision set forth in Section 3.5 (Allocations), no item of deduction or loss shall be allocated to a Partner to the extent the allocation would cause a negative balance in such Partner's Capital Account (after taking into account the adjustments, allocations and distributions described in Regulation sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)) that exceeds the amount that such Partner would be required to reimburse the Partnership pursuant to this Agreement or under applicable law. In the event some but not all of the Partners would otherwise have such excess Capital Account deficits as a consequence of such an allocation of loss or deduction, the limitation set forth in this Section 3.6(b) shall be applied on a Partner by Partner basis so as to allocate the maximum permissible deduction or loss to each Partner under Regulation section 1.704-1(b)(2)(ii)(d). All deductions and losses in excess of the limitations set forth in this Section 3.6(b) shall be allocated to the General Partner. In the event any loss or deduction shall be specially allocated to a Partner pursuant to either of the two preceding sentences, an equal amount of income of the Partnership shall be specially allocated to such Partner prior to any allocation pursuant to Section 3.5.

(c) *Curative Allocations.* The allocations set forth in Sections 3.6(a) and (b) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. Notwithstanding the other provisions of this Article 3, the General Partner shall be authorized to make, in its discretion, appropriate amendments to the allocations of items pursuant to this Agreement (i) in order to comply with Section 704 of the Code or applicable Regulations or as the General Partner may deem appropriate in its discretion, (ii) to properly allocate items of income, gain, loss, deduction, and credit to those Partners who bear the economic burden or benefit associated therewith or (iii) to otherwise cause the Partners to achieve the economic objectives underlying this Agreement as reasonably determined by the General Partner. Notwithstanding the foregoing, in the event that there are any changes after the date of this Agreement in applicable tax law, regulations or interpretation, or any errors, ambiguities, inconsistencies or omissions in this Agreement with respect to allocations to be made to Capital Accounts which would, individually or in the aggregate, cause the Partners not to achieve in any material respect the economic objectives underlying this Agreement, the General Partner may in its discretion make appropriate adjustments to such allocations in order to achieve or approximate such economic objectives.

(d) *Adjustments of Capital Accounts.* The Capital Accounts of the Partners may, at the discretion of the General Partner, be adjusted in accordance with

Regulation section 1.704-1(b)(2)(iv)(f), and thereafter maintained in accordance with Regulation section 1.704-1(b)(2)(iv)(g), to reflect the fair market value of Partnership property whenever an interest in the Partnership is relinquished to the Partnership, whenever an Additional Limited Partner is admitted to the Partnership or a Limited Partner increases its Original Available Capital and the amount of capital contributed by such Partner upon its admission or increase, as the case may be, is more than *de minimis* and reflects changes in the value of Partnership assets in accordance with Section 3.1(c)(i) (Make-Up Contributions by Subsequent Closing Partners), upon a liquidation of the Partnership, and shall be adjusted in accordance with Regulation section 1.704-1(b)(2)(iv)(e) in the case of a distribution of more than a *de minimis* amount of property (other than cash).

3.7 Tax Withholding; Withholding Advances.

(a) *Tax Withholding.*

(i) If requested by the General Partner, each Partner shall, if able to do so, deliver to the General Partner: (A) an affidavit in form satisfactory to the General Partner that the applicable Partner (or its partners, as the case may be) is not subject to withholding under the provisions of any federal, state, local, foreign or other law; (B) any certificate that the General Partner may reasonably request with respect to any such laws; and/or (C) any other form or instrument reasonably requested by the General Partner relating to any Partner's status under such law. In the event that a Partner fails or is unable to deliver to the General Partner an affidavit described in subclause (A) of this clause (i), the General Partner may withhold amounts from such Partner in accordance with Section 3.7(b) (Withholding Advances — General). Each Partner shall reasonably cooperate with the General Partner in connection with any tax audit of the Partnership or any existing or former Investment.

(ii) After receipt of a written request of any Limited Partner, the General Partner shall provide such information to such Limited Partner and take such other action as may be reasonably necessary to assist such Limited Partner in making any necessary filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding imposed by any foreign taxing authority with respect to amounts distributable or items of income allocable to such Limited Partner hereunder to the extent not adverse to the Partnership or any Partner. In addition, the General Partner shall, at the request of any Limited Partner, make or cause to be made (or cause the Partnership to make) any such filings, applications or elections; provided, that, any such requesting Limited Partner shall cooperate with the General Partner or the Partnership, as the case may be, with respect to any such filing, application or election to the extent reasonably determined by the General Partner and that any filing fees, taxes or other out-of-pocket expenses reasonably incurred and related thereto shall be paid and borne by such requesting Limited Partner or, if there is more than one requesting Limited Partner, by such requesting Limited Partners *pro rata* based on their Original Available Capital.

(iii) The General Partner agrees to file or cause to be filed on behalf of any Limited Partner any foreign tax return that any Limited Partner is required to file solely by reason of the fact that it is a Limited Partner of the Partnership and that relates solely to income earned through the Partnership.

(b) *Withholding Advances — General.* To the extent the Partnership is required by law to withhold or to make tax payments on behalf of or with respect to any Partner (e.g., backup withholding) ("Withholding Advances"), the General Partner may withhold such amounts and make such tax payments as so required.

(c) *Repayment of Withholding Advances.* All Withholding Advances made on behalf of a Partner, plus interest thereon at a rate equal to the Prime Rate as of the date of such Withholding Advances plus 2.0% per annum, shall (i) be paid on demand by the Partner on whose behalf such Withholding Advances were made (it being understood that no such payment shall reduce such Partner's Available Capital or increase such Partner's Capital Contribution and any such payment shall be payable without regard to such Partner's Available Capital and notwithstanding the termination of the Commitment Period), or (ii) with the consent of the General Partner, in its discretion, be repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Partner or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Partner. Whenever repayment of a Withholding Advance by a Partner is made as described in clause (ii) above, for all other purposes of this Agreement such Partner shall be treated as having received all distributions (whether before or upon Termination) unreduced by the amount of such Withholding Advance and interest thereon.

(d) *Withholding Advances — Reimbursement of Liabilities.* Each Partner hereby agrees to reimburse the Partnership and the General Partner for any liability with respect to Withholding Advances (including interest thereon) required or made on behalf of or with respect to such Partner (including penalties imposed with respect thereto); provided, that, for the avoidance of doubt, each Partner shall only be required to reimburse the Partnership and the General Partner solely to the extent of such Partner's liability.

ARTICLE 4

EXCUSE AND EXCLUSION PROCEDURES

4.1 Limited Partner Right to Be Excused. Any Limited Partner may be excused from participation in any Investment if, not later than five Business Days (or such later time as the General Partner shall in its discretion determine) after the date of delivery of a written notice of a Call Amount for an Investment (or a proposed Investment), the General Partner shall have received notice from such Limited Partner and a written opinion (in form and substance reasonably satisfactory to the General Partner) of counsel reasonably satisfactory to the General Partner (which opinion of

counsel may be waived by the General Partner), each to the effect that there is a material likelihood that (a) participation in such Investment by such Limited Partner could reasonably be expected to result in a material violation of any material law or regulation of the United States or any state thereof or of any law or regulation of any foreign country or any political subdivision thereof, in any such case applicable to such Limited Partner or all or substantially all of the shareholders of a foreign corporation that is a Limited Partner or to the Partnership or (b) in the case of an ERISA Partner or Governmental Plan Partner, participation by such ERISA Partner or Governmental Plan Partner in such Investment could reasonably be expected to result in any assets of the Partnership constituting or being deemed to constitute "plan assets" within the meaning of ERISA, applicable Department of Labor regulations or applicable state laws, regulations and administrative policies that are similar in purpose and intent to ERISA. Such notice and such opinion shall describe the violation of law or regulation in reasonable detail and shall also indicate whether (and, if so, at what reduced amount) such Limited Partner could participate to a lesser extent in such Investment that would not result in a violation of any such law or regulation. The Limited Partner also agrees to provide, as promptly as reasonably practicable, such other information concerning the violation of such law or regulation as the General Partner may reasonably request.

4.2 General Partner's Right to Exclude a Limited Partner. Any Limited Partner may be excluded in whole or in part with respect to any Investment if the General Partner delivers a written notice to such Limited Partner that such participation, or participation to such extent, as the case may be, would have a material adverse effect on the Partnership, a Portfolio Company or any Partner or its Affiliates as determined by the General Partner in its reasonable discretion based on a written opinion of counsel (which counsel shall be reasonably satisfactory to such Limited Partner). Such material adverse effect may include, without limitation, the risk that such participation, or participation to such extent, as the case may be, would: (a) result in a material violation of any material law or regulation of the United States or any state thereof or of any law or regulation of any foreign country or any political subdivision thereof, in any such case applicable to such Limited Partner or all or substantially all of the shareholders of a foreign corporation that is a Limited Partner or to the Partnership; (b) result in a material increase in the risk or difficulty to the Partnership of consummating an Investment; or (c) impose any material filing, regulatory or other requirements to which the Partnership, a Portfolio Company or any Partner or its Affiliates would not otherwise be subject or materially increase the burden of complying with such filing or other requirements beyond what it would otherwise have been.

4.3 Election of the General Partner Not to Pursue or to Pursue an Investment. In the event that one or more Limited Partners are excused or excluded pursuant to this Article 4 from an Investment, the General Partner may elect: that the Partnership will not make the Investment; that the Investment will be restructured in order to facilitate the participation of an excused Limited Partner (in which case the General Partner shall re-deliver the written notice of the Call Amount for the

Investment); or that the Partnership will make the Investment without the participation of such Limited Partner(s).

4.4 Open Call Amounts of Excused or Excluded Limited Partner. If any Limited Partner is excused or excluded from making a contribution of all or a portion of any Call Amount pursuant to this Article 4 and the General Partner elects to make an Investment without such Limited Partner or with such Limited Partner's reduced Call Amount, the General Partner may, in its discretion: (a) increase the Call Amounts with respect to such Investment from the other Partners in proportion to their Original Available Capital (but not in excess of their Available Capital) to the extent necessary to fund the amount that is excused or excluded (and in connection therewith give notice to such other Partners of such increase) (provided, that, no Limited Partner shall be required to contribute in excess of 125% of the Call Amount set forth in its applicable Call Notice); (b) offer such other Partners as the General Partner shall determine the opportunity to co-invest in their individual capacities an aggregate amount equal to the amount that is excused or excluded, on terms to be determined by the General Partner in its discretion; and/or (c) reduce such Limited Partner's Original Available Capital or otherwise affect such Limited Partner's obligation to make future Capital Contributions by such Call Amount. Except as provided in clause (c) above, any Call Amount as to which a Limited Partner is excused or excluded shall not reduce such Limited Partner's Original Available Capital or otherwise affect such Limited Partner's obligation to make future Capital Contributions.

ARTICLE 5

LIABILITY; INDEMNIFICATION

5.1 Liability of Partners.

(a) *Limited Liability of Limited Partners.* The liability of the Limited Partners shall be limited as provided in the Delaware Act and as set forth in this Agreement. Neither the General Partner nor any Limited Partner shall be obligated to restore by way of capital contribution or otherwise any deficits in its Capital Account or the Capital Account of any other Partner (if such deficits occur).

(b) *Return of Previously Distributed Amounts.* In accordance with the Delaware Act, a limited partner of a partnership may, under certain circumstances, be required to return to such partnership, for the benefit of partnership creditors, amounts previously distributed to such partner. To the extent that a Limited Partner may be required to return capital to the Partnership under the Delaware Act, it is the intent of the General Partner that any obligation to return any such distributions pursuant to Section 3.3 (Amounts and Priority of Distributions) or Article 9 (Dissolution; Winding Up; Termination) shall be deemed to be compromised by the consent of all Partners and the Limited Partner to whom any money or property is distributed shall not be required to return any such money or property to the Partnership or any creditor of the

Partnership. However, if any court of competent jurisdiction or regulatory body with jurisdiction over the matter holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to return to the Partnership any amounts previously distributed to such Limited Partner, such obligation shall be the obligation of such Limited Partner and not of the General Partner.

(c) *Special Provision Relating to Return of Previously Distributed Amounts.*

(i) At any time prior to the Termination of the Partnership, the General Partner may, upon ten Business Days prior written notice, require a Limited Partner to return distributions made to such Limited Partner pursuant to Section 3.3 (Amounts and Priority of Distributions) or Article 9 (Dissolution; Winding Up; Termination) for the purpose of satisfying such Limited Partner's *pro rata* share of Partnership Expenses (it being understood that the General Partner shall use its reasonable efforts to reserve for expected Partnership Expenses) and the Partnership's indemnification obligations under Section 5.4 (Indemnification)) in an amount up to 10% of such Limited Partner's Original Available Capital; provided, however, that, no Limited Partner shall be required to return a distribution until its Available Capital is reduced to zero; and, provided, further, that, any such return of distributions shall be taken into account in calculating the General Partner Giveback. Any repayment made by such Limited Partner shall be treated as a Capital Contribution for the payment of Partnership Expenses.

(ii) In the event distributions are recalled pursuant to Section 5.1(c)(i), the obligation shall be borne 0.2% by the General Partner and 99.8% by the Partners (A) *first*, to the extent of cumulative distributions made to the Partners pursuant to Section 3.3(a)(iii)(D) (80/20 Split) in proportion to distributions made thereunder to each of the Partners, (B) *second*, to the extent of cumulative distributions made to the Partners pursuant to Section 3.3(a)(iii)(C) (GP Catch-Up) in proportion to distributions made thereunder to each of the Partners, (C) *third*, to the extent of cumulative distributions made to the Partners pursuant to Section 3.3(a)(iii)(B) (Preferred Return) in proportion to distributions made thereunder to each of the Partners, and (D) *finally* to the extent of cumulative distributions made to the Partners pursuant to Section 3.3(a)(iii)(A) (Return of Capital, Expenses and Allocable Fees and Expenses) in proportion to distributions made thereunder to each of the Partners; provided, that, the amounts attributable to the General Partner in clauses (A) and (B) above shall not exceed the excess of the Carried Interest Distributions over the Deemed Cumulative Tax Liability with respect to Carried Interest Distributions; and provided, further, that, such amounts shall be adjusted to take into account any Investment giving to an obligation to return distributions pursuant to this Section 5.1(c).

(iii) For purposes of this Agreement, the failure (whether in whole or in part) of a Limited Partner for any reason to return

distributions for the purpose of satisfying such Partner's share of Partnership Expenses and of the Partnership's indemnification under Section 5.4 (Indemnification) pursuant to this Section 5.1(c) shall be treated in the same manner as a Default, and the General Partner, in its sole discretion, may take any one or more of the remedial actions set forth in Section 3.1(e) (Defaults) with respect to such Partner.

5.2 Qualification. The General Partner shall use its best efforts to qualify the Partnership to do business or become licensed in each jurisdiction where the activities of the Partnership make such qualification or licensing necessary or where failure to so qualify or become licensed would have an adverse effect on the limited liability of the Limited Partners.

5.3 Liability to Partners. No Protected Person shall be liable to the Partnership or any Partner for (a) any action taken or omitted to be taken by it or by any other Partner or other Person with respect to the Partnership, a Portfolio Company or any Subsidiary thereof, including, without limitation, any negligent act or failure to act, except in the case of a liability resulting from such Protected Person's own fraud, gross negligence, willful malfeasance, intentional and material breach of this Agreement or conduct that is the subject of a criminal proceeding (where such Protected Person has a reasonable cause to believe that such conduct was unlawful), or (b) losses due to the negligence of brokers or other agents of the Partnership unless such Protected Person was responsible for the selection of such broker or other agent and such Protected Person acted in such election with gross negligence. Any Protected Person may consult with legal counsel and accountants with respect to Partnership affairs (including interpretations of this Agreement) and shall be fully protected and justified in any action or inaction which is taken or omitted in good faith, in reliance upon and in accordance with the opinion or advice of such counsel or accountants. In determining whether a Protected Person acted with the requisite degree of care or in compliance with this Agreement, such Protected Person shall be entitled to rely on written or oral reports, opinions, certificates and other statements of the directors, officers, employees, consultants, attorneys, accountants and professional advisors of a Portfolio Company or the General Partner selected and monitored with reasonable care; provided, that, no such Protected Person may rely upon such statements if it believed that such statements were materially false.

5.4 Indemnification.

(a) *Indemnification of Protected Persons.* To the fullest extent permitted by law, the Partnership shall indemnify, hold harmless, protect and defend each Protected Person against any losses, claims, damages or liabilities, including without limitation reasonable legal fees or other expenses actually incurred in investigating or defending against any such losses, claims, damages or liabilities, and any amounts expended in settlement of any claims approved by the General Partner (collectively, "Liabilities"), to which any Protected Person may become subject:

(i) by reason of any act or omission or alleged act or omission (even if negligent) performed or omitted to be performed in connection with the activities of the Partnership;

(ii) by reason of the fact that it is or was acting in connection with the activities of the Partnership in any capacity or that it is or was serving at the request of the Partnership as a partner, stockholder, member, director, officer, employee or Specified Agent of any Person including any Portfolio Company; or

(iii) by reason of any other act or omission or alleged act or omission (even if negligent) arising out of or in connection with the activities of the Partnership;

unless, in each case, (x) with respect to a Protected Person other than a member of the Advisory Board, such Liability results from such Protected Person's own fraud, gross negligence, willful malfeasance, intentional and material breach of this Agreement or conduct that is the subject of a criminal proceeding (where such Protected Person has a reasonable cause to believe that such conduct was unlawful) or arises solely out of internal disputes between or among Protected Persons and (y) with respect to a Protected Person that is acting in its capacity as a member of the Advisory Board, such Liability results from such Protected Person's own fraud, gross negligence, willful malfeasance, intentional and material breach of this Agreement or conduct that is the subject of a criminal proceeding (where such Protected Person has a reasonable cause to believe that such conduct was unlawful) and bad faith or arises solely out of internal disputes between or among Protected Persons. Any amounts expended in settlement of any indemnification claims approved by the General Partner shall be disclosed to the Advisory Board.

(b) *Reimbursement of Expenses.* The Partnership shall promptly reimburse (and/or advance to the extent reasonably required) each Protected Person for reasonable legal or other expenses (as incurred) of each Protected Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Liabilities for which the Protected Person may be indemnified pursuant to this Section 5.4; provided, that, such Protected Person executes a written undertaking to repay the Partnership for such reimbursed or advanced expenses if it is finally judicially determined that such Protected Person is not entitled to the indemnification provided by this Section 5.4; and, provided, further, that, the Partnership shall not advance legal or other expenses to any Protected Person (other than a member of the Advisory Board and the Limited Partners and their respective officers, directors and affiliates who appoint such members to serve as their representatives) in connection with any claim, lawsuit or other proceeding that has been brought against such Protected Person by at least a majority in Interest of the Limited Partners.

(c) *Survival of Protection.* The provisions of this Section 5.4 shall continue to afford protection to each Protected Person regardless of whether such

Protected Person remains in the position or capacity pursuant to which such Protected Person became entitled to indemnification under this Section 5.4 and regardless of any subsequent amendment to this Agreement; provided, that, no such amendment 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.

(d) *Insurance and Recovery.* To the extent available on commercially reasonable terms, the General Partner or the Manager may purchase, at the Partnership's expense, insurance (including without limitation, liability insurance policies and errors and omissions policies) to cover Liabilities covered by the foregoing indemnification provisions and to otherwise cover Liabilities for any breach or alleged breach by any Protected Person of its duties in such amount and with such deductibles as the General Partner or the Manager may determine in its discretion; the failure to obtain such insurance shall not affect the right to indemnification of any Protected Person under the indemnification provisions contained herein. Any such insurance may extend beyond the Termination of the Partnership for a commercially reasonable period. The General Partner agrees to use its reasonable efforts to pursue other third party sources of indemnification in respect of any Liabilities for which it or any Protected Person may require indemnification in accordance with this Section 5.4. If any Protected Person recovers any amounts in respect of any Liabilities from a Portfolio Company, insurance coverage or any third party source, then such Protected Person shall, to the extent that such recovery is duplicative, reimburse the Partnership for any amounts previously paid to it by the Partnership in respect of such Liabilities.

(e) *Reserves.* If deemed appropriate or necessary by the General Partner, the Partnership may establish reasonable reserves, escrow accounts or similar accounts to fund its obligations under this Section 5.4.

(f) *Indemnification of Limited Partners.* The Partnership shall, to the fullest extent permitted by law, indemnify, protect, hold harmless and defend any Limited Partner and its partners, members, stockholders, directors, officers, employees, Representatives and Affiliates against any losses, damages, liabilities or expenses for which such Person has not otherwise been reimbursed, actually incurred by such Person in connection with claims (including, without limitation, legal fees or other expenses reasonably incurred in investigating or defending against any such losses, claims, damages or liabilities), other than claims made on behalf of the Partnership or the General Partner with respect to a breach by such Limited Partner of its obligations under this Agreement, arising out of such Limited Partner's status or capacity as a Partner. Each Limited Partner by execution of this Agreement represents and warrants to every other Partner and to the Partnership that such Limited Partner will not take any action not provided for herein that would cause any Limited Partner to become liable for the obligations of the Partnership or otherwise cause any other Person to reasonably believe that any such Limited Partner is a general partner of the Partnership. Any Limited Partner that takes any such action described in the preceding sentence shall not be entitled to the indemnification provided by this Section 5.4.

(g) *Indemnification by Parallel Partnerships.* The General Partner hereby covenants and agrees that the terms of the Parallel Partnerships shall include provisions applicable to the Parallel Partnerships substantially similar to the provisions of this Section 5.4, and the Partners hereby acknowledge and agree that the Partnership shall bear its *pro rata* share (based on the total Original Available Capital of the Partners and the total original available capital of the partners of the Parallel Partnerships) of any indemnification obligation to cover the Liabilities of any Protected Person arising out of or in connection with the activities of the Partnership and the Parallel Partnerships.

ARTICLE 6

CONSENTS; VOTING; MEETINGS

6.1 Method of Giving Consent. Any approval required by this Agreement may be given as follows:

(a) *Written Approval.* By a written approval given by the Partner whose approval is solicited and obtained (the "Consenting Partner") upon, prior to or after the doing of the act or thing for which the approval is solicited; or

(b) *Approval at Meeting.* By the affirmative vote of the Consenting Partner to the doing of the act or thing for which the approval is solicited or obtained at any meeting called and held to consider the doing of such act or thing; provided, that, if a proxy is obtained from a Consenting Partner prior to any meeting, such proxy may be revoked prior to or at a meeting held to consider the doing of such act or thing.

6.2 Meetings.

(a) *Meetings and Record Date.* Any meeting of Partners shall be held not fewer than five Business Days nor more than 60 days after notice thereof shall have been given by the General Partner to all Partners. The General Partner may set in advance a record date for determining the Partners entitled to notice of and to vote at any meeting and to give any approval.

(b) *Notice of Meetings.* Notice of the meetings of the Partners (i) may be given by the General Partner, in its discretion, at any time, and (ii) shall be given by the General Partner within 30 days after receipt by the General Partner of a request for such a meeting made by more than 50% in Interest of the Limited Partners. Any such notice shall state briefly the purpose, time, and place of the meeting.

(c) *Annual Meetings.* The General Partner shall cause a meeting of the Partners to be held not less often than once every Fiscal Year; provided, that, no annual meeting of the Partnership shall be required to be held in (i) the Partnership's first Fiscal Year or (ii) any Fiscal Year in which the General Partner and

more than 50% in Interest of the Limited Partners agree by written consent or otherwise not to hold a meeting during such Fiscal Year.

(d) *Means, Place and Expenses of Meetings.* Meetings of the Limited Partners may be held by telephone or other electronic device. All such meetings shall be held at such reasonable place as the General Partner shall designate and during normal business hours. All expenses of attending the meetings shall be borne by the Partners attending the same.

(e) *Consultation with General Partner.* A Limited Partner shall have the right to consult with the General Partner at any time.

6.3 Restriction on Voting. If, pursuant to any provision of this Agreement, any Limited Partner is not entitled to cast a vote, give a consent or provide or withhold any approval by this Agreement or otherwise, the determination as to whether the matter under consideration has been approved or consented to shall be made without regard to the Interest, Capital Contribution or Original Available Capital of such Limited Partner in counting the necessary votes, consents or approvals.

ARTICLE 7

REPORTS TO PARTNERS; CONFIDENTIALITY

7.1 Books of Account. Appropriate records and books of account of the Partnership shall be kept by the Partnership at the principal place of business of the General Partner for the Partnership, and each Partner and its representatives shall have access to the records and books of account and the right to receive copies thereof under such reasonable conditions and restrictions as the General Partner may prescribe.

7.2 Audit and Report.

(a) *Audit and Annual Report.* The books and records of the Partnership shall be audited as of the end of each Fiscal Year by any firm of independent certified public accountants of national recognition and standing selected by the General Partner. Within 90 days after the end of each Fiscal Year, the General Partner shall cause to be prepared and mailed to each Limited Partner a report of such accountants, setting forth as at the end of such Fiscal Year:

- (i) a balance sheet of the Partnership;
- (ii) a statement of the net income or net loss of the Partnership for such year;
- (iii) a statement of changes in financial position or a cash flow statement of the Partnership; and

(iv) a supplemental statement of such Partner's Capital Account, including such Partner's allocations and share of Net Income, Net Loss, regulatory allocations pursuant to Section 3.6 (Regulatory Allocations), Management Fees and Placement Fees for such year.

Each of the items described in clauses (i) through (iii) above shall be prepared in accordance with U.S. generally accepted accounting principles consistently applied.

(b) *Tax Information.* Within 90 days after the end of such Fiscal Year, or as soon as reasonably practicable thereafter, the General Partner shall furnish to each Partner such information regarding the amount of such Partner's share in the Partnership's taxable income or loss for such year, in sufficient detail to enable such Partner to prepare its United States federal, state and other tax returns; provided, that, the General Partner shall, at a minimum, provide each Partner with an estimate of such tax amount by June 15 after the end of such Fiscal Year.

(c) *Quarterly Report.* Within 45 days after the end of each of the first three quarters of each Fiscal Year, the General Partner shall cause to be prepared and mailed to each Limited Partner: (i) a summary review of activities and developments with respect to each of the Portfolio Companies, subject in all cases to applicable confidentiality and securities law restrictions; (ii) unaudited financial information for the Partnership and each Portfolio Company; (iii) a statement of such Partner's Capital Account and changes thereto for such quarter; and (iv) information regarding such Partner's share of UBTI for such quarter, if any or available.

(d) *Limited Partner Information.* Upon the reasonable request of the General Partner, each Limited Partner agrees to provide the Partnership with such non-confidential information concerning the Limited Partner and its business so that the Partnership can comply, or determine its compliance, with any laws or regulations applicable to it (including, without limitation, the Investment Company Act).

(e) *Website-Based Reporting.* The General Partner shall be entitled, in its discretion, to transmit the reports and statements described in this Section 7.2 (the "Partnership Reports") to one or more Limited Partners solely by means of granting such Limited Partners access to a database or other forum hosted on a website designated by the General Partner (the "Reporting Site"), with such parameters regarding access and availability of information for review as the General Partner deems reasonably necessary to protect the confidentiality and proprietary nature of the information contained therein (including, without limitation, establishing password protections for access to the Reporting Site, preventing the Partnership Reports posted on the Reporting Site from being copied or printed and having such Partnership Reports available for review for a restricted period of time (but in no event less than thirty (30) days from the first date such Partnership Reports are posted on the Reporting Site)). The General Partner shall notify such Limited Partners that (i) such Partnership Reports are available for viewing on the Reporting Site and (ii) the length of time such Partnership Reports will be available for viewing on the Reporting Site (provided, that, each Partnership Report

shall be available for viewing on the Reporting Site until the next quarterly or annual Partnership Report is available for viewing on the Reporting Site). Any Limited Partner shall have the right to obtain upon request written copies of the Partnership Reports contained on the Reporting Site. Unless the General Partner exercises its discretion pursuant to and in compliance with Section 7.3 (Confidentiality) to restrict access to certain Confidential Information that may be included in a Partnership Report posted on the Reporting Site, the Partnership Reports posted on the Reporting Site shall contain all of the material information included in those Partnership Reports transmitted to Limited Partners other than pursuant to this Section 7.2(e). The Partnership Reports shall be posted on the Reporting Site within the same number of days after the end of the applicable fiscal quarter or Fiscal Year as is required pursuant to this Section 7.2.

(f) *Right to Limit Information of Public Fund Partners.*

Notwithstanding anything in this Agreement or the Delaware Act to the contrary, including any requirement to provide lists of investments and valuation information or to allow the inspection of the Partnership's books, any information provided or disclosed to a Limited Partner may be adjusted, in the General Partner's discretion, so that any financial information, valuation or other confidential information (other than the name of a Portfolio Company and the cost basis of the investment) relating to the Partnership's current, past or prospective Portfolio Companies (collectively, "Portfolio Company Information") is not disclosed to any Limited Partner that is directly or indirectly subject to either (i) Section 552(a) of Title 5, United States Code (commonly known as the "Freedom of Information Act") or (ii) similar public disclosure law whether currently in force or enacted in the future (a "Public Fund Partner"). The provisions of this Section 7.2(f) shall also apply to any Limited Partner that is acting as an agent or trustee for a Public Fund Partner where Portfolio Company Information could at any time become available to the Public Fund Partner.

7.3 Confidentiality.

(a) *Confidentiality.* Each of the Partners shall, and shall direct those of its directors, officers, partners, members, employees, attorneys, accountants, trustees, consultants, trustees, affiliates and advisors (the "Representatives") who have access to Confidential Information to, keep confidential and not disclose any Confidential Information without the express consent, in the case of Confidential Information acquired from the Partnership, of the Partnership or, in the case of Confidential Information acquired from another Partner, such other Partner, unless:

(i) such disclosure shall be required by applicable law, governmental rule or regulation, court order, administrative or arbitral proceeding or by any bank or insurance regulatory authority having jurisdiction over such Limited Partner or to the National Association of Insurance Commissioners or a successor organization;

(ii) such disclosure is reasonably required in connection with any tax audit involving the Partnership or any Partner;

(iii) such disclosure is reasonably required in connection with any litigation against or involving the Partnership or any Partner; or

(iv) such disclosure is reasonably required in connection with any proposed assignment, sale or other disposition of all or any part of a Limited Partner's interest or a participation in the Partnership (a "Proposed Transfer"); provided, that, with respect to the use of any Confidential Information in any Proposed Transfer referred to in this clause (iv), reasonable advance notice shall be given to the General Partner so that it may require any Proposed Transferee to enter into a confidentiality agreement with terms substantially similar to the terms of this Section 7.3 prior to the disclosure of such Confidential Information.

Notwithstanding the foregoing, the General Partner may disclose the identity of the Partners to the extent reasonably calculated to advance or protect the interests of the Partnership and any Limited Partner may disclose to other Persons the amount of its investment in the Partnership. Confidential Information may be used by a Partner and its Representatives only in connection with Partnership matters and in connection with the maintenance of its interest in the Partnership.

(b) *Confidential Information.* "Confidential Information" shall mean any information related to the activities of the Partnership, the General Partner, the Manager, a Partner and their respective Affiliates that a Partner may acquire from the Partnership, the General Partner, the Manager, any Portfolio Company or any other Partner, other than information that (i) is already available through publicly available sources of information (other than as a result of disclosure by such Partner), (ii) was available to a Partner on a non-confidential basis prior to its disclosure to such Partner by the Partnership, or (iii) becomes available to a Partner on a non-confidential basis from a third party, provided such third party is not known by such Partner to be bound by this Agreement or another confidentiality agreement with the Partnership or any Portfolio Company. Such Confidential Information may include, without limitation, information that pertains or relates to (A) the business and affairs of any other Partner, (B) any Investments or proposed Investments, or (C) any other Partnership matters.

(c) *Disclosure of Confidential Information.*

(i) If any Partner or any Representative of such Partner is required to disclose any of the Confidential Information, such Partner will use commercially reasonable efforts to provide the Partnership with prompt written notice so that the Partnership, the Partner or any Portfolio Company may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and such Partner will use commercially reasonable efforts to cooperate with the Partnership, the Partner or any Portfolio Company in any effort any such Person undertakes to obtain a protective order or other remedy. If such protective order or other remedy is not obtained or the Partnership or the Partner waives compliance with the provisions of this

Section 7.3, such Partner and its Representatives will furnish only that portion of the Confidential Information that is required and will exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information will be accorded confidential treatment.

(ii) In addition to the foregoing clause (i), each Public Fund Partner who receives a request for public disclosure of any information provided to the Public Fund Partner by the General Partner or the Partnership shall provide the Partnership with prompt written notice of such disclosure request and shall provide an opportunity to consult with the General Partner regarding the appropriate response to such disclosure request. Each Public Fund Partner further agrees that it shall not release Portfolio Company Information unless such Public Fund Partner shall have received an opinion of legal counsel that it is required to do so by law.

(d) *Waiver.* The General Partner may agree to waive, in its discretion, any or all of the provisions of this Section 7.3.

ARTICLE 8

ADDITIONAL PARTNERS AND ORIGINAL AVAILABLE CAPITAL; TRANSFER; WITHDRAWAL

8.1 Additional Partners and Original Available Capital. In addition to the authority of the General Partner described elsewhere herein, the General Partner shall have the full power and authority to admit in its discretion Additional Limited Partners to the Partnership or to permit existing Partners to increase their Original Available Capital subject to the following terms and conditions:

(a) *Final Closing and Size.* Except as provided in Section 3.1(e)(ii) (Defaults), Additional Limited Partners may be admitted to the Partnership, and existing Partners may be permitted to increase their Original Available Capital, only until the date that is 365 days after the Initial Closing Date (the final Subsequent Closing Date being the "Final Closing"). The sum of the total Original Available Capital of the Partners and the total original available capital of the partners of the Parallel Partnerships shall in the aggregate not exceed \$2,500,000,000, without the unanimous consent of the Limited Partners.

(b) *Execution of Necessary Instruments.* Each such Subsequent Closing Partner shall execute such instruments as the General Partner may reasonably deem necessary or desirable to increase such Partner's Original Available Capital or to admit such party as an Additional Limited Partner, including a Subscription Agreement and counterpart of, or an appropriate supplement to, this Agreement, pursuant to which such Subsequent Closing Partner shall agree to be bound by and comply with all of the terms and provisions hereof.

(c) *Capital Contributions.* Each such Subsequent Closing Partner shall be required to contribute cash to the capital of the Partnership as provided in Section 3.1(c) (Subsequent Closing Dates).

(d) *No Preemptive Rights.* No Limited Partner shall have any preemptive rights whatsoever to subscribe for any additional limited partnership interests subsequently issued by the Partnership.

(e) *Registration and Reporting Requirements.* No Additional Limited Partner shall be admitted to the Partnership if the admission thereof would require the Partnership to register as an “investment company” under the Investment Company Act or otherwise subject the Partnership to the reporting requirements of such Act.

Each of the Partners hereby agrees and irrevocably consents to the admission of Additional Limited Partners or the increases in the Original Available Capital of existing Partners pursuant to this Section 8.1, to the amendment of this Agreement to reflect such admission or increase, if necessary, and to any filings and other acts that may be necessary or desirable to give effect to such admission or increase.

8.2 Transfer.

(a) *Conditions to Transfer.*

(i) No sale, exchange, transfer, assignment or other disposition (collectively referred to as a “Transfer”) of all or any fraction of a Limited Partner’s interest in the Partnership may be made without the written consent of the General Partner, which consent shall not be unreasonably withheld taking into account the best interests of the Partnership; provided, that, upon satisfaction of the conditions of Section 8.2(a)(ii), the General Partner shall consent to the Transfer of all or any fraction of a Feeder Limited Partner’s interest in the Partnership to one or more direct or indirect beneficial owners of such Feeder Limited Partner; and, provided, further, that, upon satisfaction of the conditions in Section 8.2(a)(ii), the General Partner shall not unreasonably withhold its consent to any Transfer by a Limited Partner of all or part of its interest to an Affiliate of such Limited Partner of a similar credit worthiness.

(ii) In any event, the consent of the General Partner shall be withheld unless: (A) the transaction (I) complies with federal and any applicable state securities laws, (II) complies with all other applicable federal, state or foreign laws, (III) will not subject the Partnership to the registration or reporting requirements of the Investment Company Act, (IV) will not subject the Partnership, any Partner, the General Partner or any Affiliate of any of them to additional regulatory requirements, (V) will not cause a Dissolution Event or, unless the General Partner determines it to be immaterial, a termination of the Partnership pursuant to Section 708 of the Code, and (VI) will not cause all or any portion of the assets of the Partnership to constitute “plan assets” under ERISA or the Code; (B) such proposed Transfer, alone or together with other Transfers,

will not cause the Partnership to be treated as a corporation for United States federal income tax purposes; and (C) such Limited Partner shall have delivered to the General Partner an opinion of counsel, in form and substance reasonably satisfactory to the General Partner, that such transaction complies with the conditions set forth in clause (A) above and such other matters as the General Partner may reasonably request with regard to the determination to be made under clause (B) or otherwise; provided, that, the General Partner in its discretion may waive all or any part of the opinion required by clause (C) above if it has a reasonable basis on which to conclude that the requirements set forth in clauses (A) and (B) above, as to which the opinion is waived, are or will be satisfied. The General Partner may also request officer certificates and representations and warranties from the transferee and transferor as to the matters set forth in clauses (A) and (B) above and such other factual matters as the General Partner may reasonably request.

(b) *Conditions to Succession to Capital Accounts.* If the General Partner consents to a Transfer upon compliance with Section 8.2(a) (Conditions to Transfer), the transferee shall become a substituted Limited Partner and shall succeed proportionately to the Capital Account of its transferor (and its transferor shall be relieved of further obligations under this Agreement) only upon compliance with the following additional conditions: (i) the General Partner shall have consented to such substitution, which consent shall not be unreasonably withheld taking into account the best interests of the Partnership; (ii) the proposed transferee shall have executed an amendment, counterpart or supplement to this Agreement, and shall have executed such other instruments as the General Partner may reasonably deem necessary or desirable to admit such transferee as a substituted Limited Partner and to evidence such substituted Limited Partner's agreement to be bound by and to comply with the terms and provisions hereof; and (iii) the transferor shall have paid or caused to have been paid to the Partnership all of the Partnership's reasonable out-of-pocket expenses connected with such Transfer and substitution (including, but not limited to, the reasonable legal and accounting expenses incurred by the Partnership).

(c) *Liability for Original Available Capital Upon Transfer.* Any Person that acquires all or any part of the interest of a Limited Partner in the Partnership in a Transfer permitted under this Section 8.2 shall pay to the Partnership the appropriate portion of any amounts thereafter becoming due in respect of the Original Available Capital committed to be made by its predecessor in interest and shall assume any other obligations to the Partnership of its predecessor in interest. Unless the General Partner agrees otherwise, each Limited Partner agrees that, notwithstanding the Transfer of all or any part of its interest in the Partnership, it will remain liable for its Original Available Capital and for all Capital Contributions required to be made by it (without taking into account the Transfer of all or a part of such interest in the Partnership), in each case prior to the time, if any, when the transferee of such interest in the Partnership (or portion thereof) is admitted as a substituted Limited Partner. Any substituted Limited Partner admitted to the Partnership in compliance with this Section 8.2 shall succeed to

all the rights and be subject to all the obligations of a Limited Partner in respect of the interest in the Partnership as to which it was substituted.

(d) *No Transfer by General Partner.* The General Partner may not Transfer all or any part of its interest in the Partnership or in this Agreement. In addition, there shall be no change in ownership of the General Partner such that more than 50% of the direct or indirect interests in the General Partner (including economic rights) held by the direct or indirect current partners or members or their Affiliates are transferred; provided, however, that, transfers of direct or indirect interests in the General Partner between or among a partner or member and/or such partner's or member's Affiliates shall not constitute a transfer for the purpose of this Section 8.2(d); and provided, further, that, transfers shall not alter the obligation of the General Partner to satisfy the General Partner Giveback. For the purpose of this Section 8.2(d), Affiliates shall include family members, family trusts and other estate planning vehicles for the benefit of the family members of the direct or indirect partner or member of the General Partner.

(e) *Null and Void Transfer.* Unless waived by the General Partner, any purported Transfer by any Limited Partner (including transferees thereof or substituted partners therefor) of any interest in the Partnership not made strictly in accordance with the provisions of this Section 8.2 or otherwise not permitted by this Agreement shall be entirely null and void. Any purported Transfer by the General Partner (including any transferees thereof or substituted partners thereof) of its interest in the Partnership in violation of this Agreement shall be entirely null and void.

(f) *Recognition of Limited Partners.* Unless named in this Agreement, or unless admitted to the Partnership as a Partner as provided in this Agreement, no person shall be considered a Partner. The Partnership and the General Partner shall not be required to recognize any Person as a Limited Partner or otherwise merely because of the transfer of all or part of a Partner's interest in the Partnership to such Person, unless such transfer is made in accordance with Section 8.2(a) (Conditions to Transfer).

(g) *Plan Assignments.* Notwithstanding Section 8.2(a) (Conditions to Transfer), and subject to obtaining the opinion described in Section 8.2(a)(ii) (Conditions to Transfer) and the fulfillment of the requirements set forth in Section 8.2(b) (Conditions to Succession to Capital Accounts), the General Partner shall be deemed to consent to the assignment by any Limited Partner that is a trust organized pursuant to one or more employee benefit plans (as defined in Section 3(3) of ERISA) or governmental plans (as defined in Section 3(32) of ERISA), whether or not subject to Title I of ERISA, to one or more successor or underlying trusts or fiduciaries of such Limited Partner, of all or any fraction of such Limited Partner's right to receive all or part of the share of the profits, losses, distributions and returns of Capital Contributions to which such Limited Partner would otherwise be entitled. Following the reconstitution of, or substitution of the fiduciary for, any such employee

benefit plan or governmental plan, such plan shall be deemed to be a successor or underlying trust or fiduciary within the meaning of the preceding sentence.

(h) *Effective Date of Transfer.* In the event of the Transfer of a Partner's interest in the Partnership at any time other than the end of a Fiscal Year, the various items of Partnership income, gain, deduction, loss, credit and allowance as computed for United States federal income tax purposes shall be allocated between the transferor and the transferee in the ratio of the number of days in the Fiscal Year before and after the Transfer, unless the transferor and the transferee shall (i) have given the Partnership written notice, on or before the January 15 following the year in which such Transfer occurred, stating their agreement that such allocation shall be made on some other proper basis and (ii) agree to reimburse the Partnership for any incidental accounting fees and other expenses incurred by the Partnership in making such allocation.

8.3 Death, Incompetence, Bankruptcy or Liquidation of a Limited Partner. In the event of the death, incompetence or bankruptcy of a Limited Partner, or the bankruptcy, termination, liquidation or dissolution of any partnership, trust, corporation or other entity which is a Limited Partner, (a) no Dissolution Event and Winding Up Period of the Partnership shall be effected thereby and the Partnership and its business shall be continued until the Termination as provided for in this Agreement, and (b) upon satisfaction of the conditions of Sections 8.2(a) (Conditions to Transfer) and 8.2(b) (Conditions to Succession to Capital Accounts), the estate or successor in interest in the Partnership of such deceased, incompetent, bankrupt, terminated, liquidated or dissolved Limited Partner shall succeed to the interest of such Limited Partner and shall be deemed a Partner for any and all purposes hereunder.

8.4 Withdrawals. Prior to the Termination of the Partnership, except in connection with a Transfer permitted by Section 8.2 (Transfer) or a withdrawal permitted by Section 8.5 (Withdrawal by Certain Limited Partners) or Section 8.6 (Withdrawal or Removal of the General Partner), no Partner may withdraw from the Partnership. Withdrawals by the General Partner or any Limited Partner of its Capital Account or any portion thereof shall not be permitted, except as provided in Section 8.5 (Withdrawal by Certain Limited Partners) or in the event of a replacement of the General Partner as provided in Section 8.6 (Withdrawal or Removal of the General Partner).

8.5 Withdrawal by Certain Limited Partners.

(a) *Withdrawal by ERISA and Governmental Plan Partner.* Subject to the provisions of Section 8.5(b) (Actions Upon Withdrawal), at any time prior to the Termination of the Partnership, any ERISA Partner or Governmental Plan Partner may elect to withdraw from the Partnership and the General Partner may cause any ERISA Partner or Governmental Plan Partner to withdraw from the Partnership at the time and in the manner hereinafter provided if any ERISA Partner or Governmental Plan Partner or the General Partner shall obtain an opinion (which counsel and opinion shall be reasonably satisfactory to the General Partner) addressed to the General Partner to the

effect that, as a result of: (i) the manner in which the activities of the Partnership are conducted or the terms upon which any Investment of the Partnership is made or held; (ii) the relative Capital Contributions of all Limited Partners; or (iii) ERISA, the Plan Asset Regulations, the rules or regulations or case law or judicial or Department of Labor interpretation thereof, the assets of the Partnership will more likely than not constitute "plan assets" of any such ERISA Partner or Governmental Plan Partner under ERISA, the Code or similar state laws, regulations, and administrative policies that are similar in purpose and intent to ERISA and the Plan Asset Regulations. Notwithstanding the foregoing, an ERISA Partner or Governmental Plan Partner electing to withdraw from the Partnership shall not be required to obtain an opinion of counsel if the General Partner has failed to deliver, in the manner specified under Section 2.4(d)(ii) (ERISA and Governmental Plan Partners), a certificate stating that the Partnership satisfies one of the statements set forth in Section 2.1(b)(v) (Investment Limitations).

(b) *Actions Upon Withdrawal.* A copy of any such opinion of counsel described in Section 8.5(a) (Withdrawal by ERISA and Governmental Plan Partner) obtained or received by the General Partner shall be provided to all ERISA Partners and Governmental Plan Partners, together with a copy of the written notice of the election of the ERISA Partner or Governmental Plan Partner to withdraw, if applicable. The General Partner may, in its discretion, within 90 calendar days following a failure to deliver the certificate under Section 2.4(d)(ii) (ERISA and Governmental Plan Partners) or receipt of such opinion of counsel, take any of the following actions:

(i) amend the Agreement to cure any such illegality or other adverse consequences to the Partnership; provided, that, any such amendment is not reasonably expected to have a material adverse effect on any Limited Partner;

(ii) amend or terminate any then existing or contemplated arrangements (other than this Agreement) with any other party; provided, that, any such amendment or termination is not reasonably expected to have a material adverse effect on the Partnership or any Limited Partner;

(iii) require each of the ERISA Partners and Governmental Plan Partners to sell, or at their election, withdraw with respect to, a *pro rata* portion of their interest in the Partnership relative to other ERISA Partners and Governmental Plan Partners such that investment in the Partnership by "benefit plan investors" shall cease to be "significant" (each as defined in the Plan Asset Regulations); or

(iv) cause a Dissolution Event to occur and commence the Winding Up Period in accordance with the provisions of this Agreement if, but only if, such illegality or other material adverse consequence to the Partnership cannot be cured pursuant to clauses (i), (ii) or (iii) above.

If within 90 calendar days after receipt of such opinion or failure to deliver the certificate under Section 2.4(d)(ii) (ERISA and Governmental Plan Partners), the General Partner has not delivered to each ERISA Partner and Governmental Plan Partner an opinion of counsel (which counsel and opinion shall be reasonably satisfactory to each such ERISA Partner and Governmental Plan Partner), or such other evidence as may be reasonably satisfactory to each such ERISA Partner and Governmental Plan Partner, that the assets of the Partnership do not constitute "plan assets" under ERISA or the Code, then any ERISA Partner or Governmental Plan Partner shall have the right to withdraw, or the General Partner shall have the right to require such ERISA Partner or Governmental Plan Partner to withdraw, as the case may be, from the Partnership as of the earlier of (x) the last calendar day of the fiscal quarter during which the election or demand for withdrawal is made, or (y) such date for withdrawal as may be recommended by counsel in such opinion.

(c) *Distributions to Withdrawing ERISA and Governmental Plan Partner.* An ERISA Partner or Governmental Plan Partner withdrawing pursuant to Section 8.5(a) (Withdrawal by ERISA and Governmental Plan Partner) shall be entitled to receive a distribution equal to any amounts it would have been entitled to receive had the Partnership, in accordance with the provisions hereof, dissolved, liquidated and distributed all the proceeds of such liquidation or Partnership assets as of the date of withdrawal of the ERISA Partner or Governmental Plan Partner. Notwithstanding the foregoing, a withdrawing ERISA Partner or Governmental Plan Partner may elect to have the value of its interest determined by an independent appraiser reasonably acceptable to both the ERISA Partner or Governmental Plan Partner and the General Partner. Such distribution shall be made in cash, in kind (in accordance with Section 3.4(d) (Special Provisions Relating to Distributions In Kind)) or by a note, in the following priority: in cash, to the extent available or it can be made available without a material adverse impact on the Partnership; and, if a sufficient amount of cash is not available to make such distribution without causing a material adverse impact on the Partnership, in kind within 30 calendar days (or as soon thereafter as practicable, but no later than 90 calendar days) after such withdrawal or by a note. The Partnership shall be permitted to and authorized to borrow as necessary to make any such cash payment to the withdrawn ERISA Partner or Governmental Plan Partner under this Section 8.5. The withdrawal of an ERISA Partner or Governmental Plan Partner hereby shall not cause a Dissolution Event.

(d) *Notice by ERISA and Governmental Plan Partner.* Each ERISA Partner and Governmental Plan Partner agrees to notify promptly the General Partner, and the General Partner agrees to provide a copy of such notice promptly to each ERISA Partner and Governmental Plan Partner, in writing of any change in applicable law or regulations or other event coming to its attention that it believes may constitute cause for withdrawal under the provisions of Section 8.5(a) (Withdrawal by ERISA and Governmental Plan Partner); provided, however, that, the failure to so notify the General Partner shall not deprive any ERISA Partner or Governmental Plan Partner of any of its rights under this Agreement and shall not constitute a default by such ERISA Partner or Governmental Plan Partner of its obligations under this Agreement.

8.6 Withdrawal or Removal of the General Partner.

(a) *Withdrawal and Replacement of General Partner.* Upon the occurrence of any of the events set forth in Section 9.1(c) (Dissolution) with respect to the General Partner ("Bankruptcy") or in the event of the dissolution of the General Partner or the occurrence of any other circumstance constituting an event of withdrawal of the General Partner under the Delaware Act, a Dissolution Event shall occur and the Partnership's affairs shall be wound up pursuant to Section 9.2(a) (Winding Up); provided, however, that, a Dissolution Event shall not occur and the Partnership shall not be required to be wound up by reason of the General Partner's Bankruptcy, dissolution or other withdrawal if, within 90 days after the date of any such occurrence, at least 66 2/3% in Interest of the Limited Partners (or such higher percentage in Interest of the Limited Partners as may be required under the Delaware Act) agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of withdrawal of the General Partner, of one or more new general partners. Except as provided in this Section 8.6(a), the General Partner may not voluntarily withdraw from the Partnership or dissolve and liquidate.

(b) *Removal of General Partner.*

(i) A majority in Interest of the Limited Partners (excluding any Affiliate of the General Partner and Keystone or any Affiliate thereof that is a Limited Partner) may, at any time following a determination of Cause and a failure of the General Partner to cure such Cause within 90 days after a determination that such event constitutes Cause, either (x) (A) require the removal, effective as of the date not less than 15 days from the date of notice to the General Partner of such removal, of the General Partner from the Partnership and (B) if approved by at least 66 2/3% in Interest of the Limited Partners, continue the Partnership and appoint one or more new general partners of the Partnership or (y) cause a Dissolution Event effective as of the date not less than 30 days from the date of notice to the General Partner of such dissolution; provided that, the General Partner shall be deemed to have cured any determination 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 Partnership whole for any actual financial loss which such conduct had caused the Partnership. Upon the removal of the General Partner in accordance with clause (x) above, it shall be treated as a Limited Partner for all purposes of this Agreement and no further Management Fees or other fees will be payable to the then existing Manager (other than fees owed to the then existing Manager in respect of any period prior to such removal).

(ii) Any new general partner appointed pursuant to Section 8.6(b)(i) shall be required to purchase for cash the General Partner's right to receive distributions under clauses (C) and (D) of Section 3.3(a)(iii) (Portfolio Investment Distributions) for a purchase price equal to the amount which would be distributed pursuant to such clauses as of the date of the removal of the General Partner determined on the assumption that the Investments were sold for their Fair Values and the proceeds

therefrom and any other assets of the Partnership, reduced by liabilities of the Partnership, in each case determined in accordance with generally accepted accounting principles were distributed to the Partners in accordance with this Agreement.

(iii) For purposes of this Section 8.6(b), "Cause" means (A) a determination by a court of competent jurisdiction that the General Partner has committed (or that a Managing Principal has been found to have caused the General Partner to commit) an intentional and material breach of its duties under this Agreement which has a material adverse effect on the business of the Partnership or the ability of the General Partner to perform its duties under this Agreement or (B) a determination by a court of competent jurisdiction that the General Partner has committed (or that a Managing Principal has been found to have caused the General Partner to commit) fraud, bad faith or willful malfeasance in connection with the performance of its duties under the terms of this Agreement which has a material adverse effect on the business of the Partnership or the ability of the General Partner to perform its duties under this Agreement.

(c) *Liability of General Partner.* Upon the occurrence of any circumstance constituting an event of withdrawal of the General Partner described in Section 8.6(a) (Withdrawal and Replacement of General Partner) or removal of the General Partner described in Section 8.6(b) (Removal of General Partner), the General Partner nonetheless shall remain liable for obligations and liabilities incurred by it as General Partner prior to the time of such withdrawal or removal (including the General Partner Giveback), but, from and after the time of such withdrawal or removal, it shall be free of any obligation or liability incurred on account of the activities of the Partnership.

ARTICLE 9

DISSOLUTION; WINDING UP; TERMINATION

9.1 Dissolution. The Partnership shall commence its winding up upon the first to occur of the following (the "Dissolution Event"):

(a) upon the end of the tenth anniversary of the Initial Closing Date, or if extended for up to three consecutive additional one-year periods from and after such date by the General Partner, upon the end of such extension(s);

(b) subject to Section 8.6 (Withdrawal or Removal of the General Partner), upon the dissolution or withdrawal of the General Partner;

(c) (i) upon the commencement by the General Partner of any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or

(B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets; (ii) upon the General Partner making a general assignment for the benefit of its creditors; (iii) at such time as any case, proceeding or other action of a nature referred to in clause (i) above against the General Partner, results in the entry of an order for relief or any such adjudication or appointment, or remains undismissed, undischarged or unbonded for a period of 120 days; (iv) at such time as any case, proceeding or other action seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of the General Partner's assets, results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 120 days from the entry thereof; (v) upon the General Partner's consent to, approval of, or acquiescence in, any of the acts or relief described in clause (i), (ii), (iii) or (iv) above; or (vi) upon the General Partner generally not paying, or being unable to pay, or admitting in writing its inability to pay, its debts as they become due;

(d) at any time upon the election of the General Partner upon the Disposition by the Partnership of all or substantially all of the Investments it then owns; provided, that (x) all or substantially all of the Original Available Capital of the Partners has been contributed to the Partnership or (y) the Commitment Period shall have terminated;

(e) upon the vote of a majority in Interest of the Limited Partners (excluding any Affiliate of the General Partner and Keystone or any Affiliate thereof that is a Limited Partner) following a determination of Cause as described in Section 8.6(b)(i) (Removal of General Partner); or

(f) at any time upon the vote of more than 85% in Interest of the Limited Partners (which vote shall exclude any Affiliate of the General Partner and Keystone or any Affiliate thereof that is a Limited Partner).

The Dissolution Event shall be effective on the day on which such event occurs and immediately thereafter the Partnership shall commence the Winding Up Period during which its affairs shall be wound up in accordance with Sections 9.2 (Winding Up and Termination) and 9.3 (Assets Reserved and Pending Claims).

9.2 Winding Up and Termination.

(a) *Winding Up.* Upon the occurrence of the Dissolution Event, the property and business of the Partnership shall be wound up by the General Partner, or, in the event of the unavailability of the General Partner, by a Person designated as a liquidating trustee by more than 50% in Interest of the Limited Partners. Subject to the requirements of applicable law and the further provisions of this Section 9.2, the General Partner (or any other Person conducting the winding up of the Partnership's affairs) shall have discretion in determining whether to sell or otherwise dispose of Partnership assets or to distribute the same in kind and the timing and manner of such disposition or distribution. While the Partnership continues to hold assets, the

General Partner shall as a general matter seek to maximize the value of such assets and may in its discretion expend funds, acquire additional assets and borrow funds. The General Partner may also authorize the payment of fees and expenses reasonably required in connection with the winding up of the Partnership.

(b) *Distributions Upon Winding Up.* Within a reasonable period of time following the occurrence of the Dissolution Event, after allocating all Net Income and Net Loss and other items of income, gain, loss or deduction pursuant to Sections 3.5 (Allocations) and 3.6 (Regulatory Allocations) (such allocations to be determined as if distributions were to be made pursuant to Section 3.3 (Amounts and Priority of Distributions) rather than this Section 9.2), the Partnership's assets (except for assets reserved pursuant to Section 9.3 (Assets Reserved and Pending Claims)) shall be applied and distributed in accordance with Section 3.3 (Amounts and Priority of Distributions); provided, that, upon the Disposition of the last remaining Investment, distributions from the Partnership shall be applied and distributed in the following manner and order of priority:

(i) the claims of all creditors of the Partnership (including Partners except to the extent not permitted by law) shall be paid and discharged other than liabilities for which reasonable provision for payment has been made;

(ii) to the Partners, other than a Defaulting Partner, in accordance with the positive balances of their respective Capital Accounts; provided, that, notwithstanding the foregoing, such liquidating distributions shall be made in the same manner as distributions under Section 3.3 if the distributions would result in the Partners receiving a different amount than would have been received pursuant to a liquidating distribution based on Capital Account balances;

(iii) to the Defaulting Partners in accordance with Section 3.1(e)(Defaults); and

(iv) thereafter, to the Partners, other than a Defaulting Partner, in the same manner as distributions under Section 3.3 (Amounts and Priority of Distributions).

(c) *Distributions In Kind Upon Winding Up.* The General Partner shall allocate Securities for distribution in kind to the Limited Partners in a manner consistent with Section 3.4(d) (Special Provisions Relating to Distributions In Kind) and 3.4(e) (Legal, Regulatory or Contractual Restrictions Relating to Distributions In Kind). The General Partner shall not allocate any Securities relating to any Investment to any Partner who was excused or excluded from such Investment pursuant to Article 4 (Excuse and Exclusion Procedures). Notwithstanding any other provision of this Agreement, the amount by which the Fair Value of any property to be distributed in kind to the Partners (including property distributed in liquidation, and property distributed pursuant to Section 3.3 (Amounts and Priority of Distributions)) exceeds or is less than

the adjusted basis of such property shall, to the extent not otherwise recognized by the Partnership, be taken into account in computing income, gains and losses of the Partnership for purposes of crediting or charging the Capital Accounts of, and distributing proceeds to, the Partners, pursuant to this Agreement.

(d) *Termination.* When the General Partner or a liquidating trustee appointed pursuant to Section 9.2(a) (Winding Up) has completed the winding up described in this Section 9.2, the General Partner or the liquidating trustee shall cause the Termination of the Partnership.

9.3 Assets Reserved and Pending Claims.

(a) *Assets Reserved.* If, upon a Dissolution Event, there are any assets that, in the judgment of the General Partner, cannot be sold or distributed in kind without sacrificing a significant portion of the value thereof or where such sale or distribution is otherwise impractical at the time of the Dissolution Event, such assets may be retained by the Partnership if the General Partner determines that the retention of such assets is in the best interests of the Limited Partners and such assets shall not be considered for purposes of computing Capital Accounts upon winding up and amounts distributable pursuant to Section 9.2(b) (Distributions Upon Winding Up). Upon the sale of such assets or a determination by the General Partner that circumstances no longer require their retention (but in no event more than two years after the Dissolution Event), such assets (at their Fair Value) or the proceeds of their sale shall be taken into account in computing Capital Accounts on winding up and amounts distributable pursuant to Section 9.2(b) (Distributions Upon Winding Up), and distributed in accordance with such value.

(b) *Pending Claims.* If there are any claims or potential claims (including potential Partnership Expenses in connection therewith) against the Partnership (either directly or indirectly, including potential claims for which the Partnership might have an indemnification obligation) for which the possible loss cannot, in the judgment of the General Partner, be definitively ascertained, then such claims shall initially be taken into account in computing Capital Accounts upon winding up and distributions pursuant to Section 9.2(b) (Distributions Upon Winding Up) at an amount estimated by the General Partner to be sufficient to cover any potential loss or liability on account of such claims (including such potential Partnership Expenses), and the Partnership shall retain funds (or assets) determined by the General Partner in its discretion as a reserve against such potential losses and liabilities, including expenses associated therewith. The General Partner may in its discretion obtain insurance or create escrow accounts or make other similar arrangements with respect to such losses and liabilities. Upon final settlement of such claims (including such potential Partnership Expenses) or a determination by the General Partner that the probable loss therefrom can be definitively ascertained, such claims (including such potential Partnership Expenses) shall be taken into account in the amount at which they were settled or in the amount of the probable loss therefrom in computing Capital Accounts on winding up and amounts

distributable pursuant to Section 9.2(b) (Distributions Upon Winding Up), and any excess funds retained shall be distributed.

ARTICLE 10

AMENDMENTS; WAIVER; POWER OF ATTORNEY

10.1 Amendments; Waiver.

(a) *Amendment or Waiver by General Partner and Limited Partners.* Except as otherwise expressly provided in this Agreement, any provision of this Agreement (other than this Section 10.1) may be amended or waived by an instrument in writing executed by the General Partner and more than 50% in Interest of the Limited Partners; provided, however, that:

(i) any amendment to or waiver of any provision of this Agreement that would increase or reduce the Original Available Capital, or the aggregate Call Amounts payable after the Commitment Period, or otherwise increase the liabilities or obligations of any Limited Partner shall require the written consent of such Limited Partner;

(ii) any amendment to or waiver of any provision that would alter the allocations to Capital Accounts, the distributions from the Partnership, the amount of Management Fees and Start-Up Costs payable by the Partnership or the treatment of Transaction Fees shall require the written consent of each Limited Partner who would be adversely affected by such amendment;

(iii) any amendment to or waiver of any provision which would discriminate against any Limited Partner in relation to the other Limited Partners shall require the written consent of such Limited Partner;

(iv) any amendment to or waiver of any provision requiring the approval of the Limited Partners shall require the approval of the requisite majority in Interest of the Limited Partners specified therein;

(v) any amendment or waiver of any provision related to ERISA Partners and Governmental Plan Partners, including without limitation Sections 1.1 (Definitions), 2.1(b)(v) (Investment Limitations), 2.4(d) (ERISA and Governmental Plan Partners), 2.5(a) (Formation of Advisory Board), 3.1(b)(ii) (Initial Capital Contribution), 4.1 (Limited Partner Right to Be Excused), 8.2(g) (Plan Assignments) and 8.5 (Withdrawal by Certain Limited Partners) and Article 4 (Excuse and Exclusion Procedures), shall require the specific written consent of each ERISA Partner and Governmental Plan Partner;

(vi) without the specific written consent of 66 2/3% in Interest of the BHC Partners, no such modification or amendment shall modify or

amend any provision related to BHC Partners, including without limitation the definition of BHC Partner, the provisions of Sections 1.1 (Definitions), 2.4(b) (BHC Partners), 3.4(e) (Legal, Regulatory or Contractual Restrictions Relating to Distributions In Kind), or Article 4 (Excuse and Exclusion Procedures) to the extent that such provisions are applicable to BHC Partners; and

(vii) without the written consent of 66 2/3% in Interest of the Tax-Exempt Partners, Section 892 Partners or Non-U.S. Partners, respectively, no such modification or amendment shall modify or amend the definitions of Tax-Exempt Partner, Section 892 Partner or Non-U.S. Partner, as applicable, or the provisions of Section 2.1(c) (UBTI/ECI Covenants) to the extent that such provisions are applicable to such Limited Partners;

provided, that, notwithstanding the foregoing, the written consent of any Limited Partner with an Original Available Capital of \$2,000,000 or less for any amendment or waiver shall not be required if the written consent of 90% or more in Interest of the Limited Partners is obtained for such amendment or waiver.

(b) *Amendment or Waiver by the General Partner.* Notwithstanding the foregoing, the General Partner, without the consent of any Limited Partner, may amend or waive any provision of this Agreement (unless such amendment or waiver would have an adverse effect on any of the Limited Partners) to reflect:

(i) a change in the name of the Partnership or the location of the principal place of business or the registered office of the Partnership;

(ii) the admission, substitution or withdrawal of Partners or a change in the Original Available Capital of any Partner in accordance with this Agreement;

(iii) a change that is necessary to qualify the Partnership as a limited partnership in which the Limited Partners have limited liability under the laws of any jurisdiction or that is necessary or advisable in the opinion of the General Partner to ensure that the Partnership will not be taxable other than as a partnership under the Code and Regulations;

(iv) a change that is (x) of an inconsequential nature or (y) necessary or desirable to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any United States federal or state agency or contained in any United States federal or state statute;

(v) a change in any provision of this Agreement that requires any action to be taken by or on behalf of the General Partner or the Partnership pursuant to the requirements of the Delaware Act if the provisions of

the Delaware Act are amended, modified or revoked so that the taking of such action is no longer required;

(vi) a change that is necessary or desirable in connection with an Investment or potential Investment to implement (for regulatory, tax or similar reasons on advice of counsel) an alternative investment vehicle structure;

(vii) a change to add to the duties or obligations of the General Partner;

(viii) a change that benefits any Limited Partner and is not detrimental to any other Limited Partner;

(ix) a change that is necessary in connection with the issuance of additional limited partnership interests pursuant to Section 8.1 (Additional Partners and Original Available Capital);

(x) a change clarifying any ambiguity, defect or inconsistency in this Agreement; and

(xi) a change to the provisions relating to the Fee Waiver Amount, Fee Waiver Funding Obligation and Fee Waiver Interest Percentage that is necessary or desirable based on the advice of tax counsel in order to ensure compliance with the Code and the Regulations promulgated thereunder.

Within a reasonable period after any change or amendment or waiver in accordance with the preceding sentence, the General Partner shall send a written notice to each Limited Partner describing such change or amendment or waiver in reasonable detail. Any amendment to this Section 10.1 shall require the written consent of all of the Limited Partners.

10.2 Power of Attorney.

(a) *Appointment of Attorney.* Each Limited Partner by its execution of the Subscription Agreement of the Partnership irrevocably makes, constitutes and appoints the General Partner as its true and lawful agent and attorney-in-fact, with full power of substitution to its Affiliates and full power and authority in its name, place and stead, to make, execute, sign, acknowledge, swear to, record and file: (i) any amendment or waiver of any provision of this Agreement that has been adopted or made as herein provided; (ii) all certificates and other instruments deemed advisable by the General Partner to comply with the provisions of this Agreement and applicable law or to permit the Partnership to become or to continue as a limited partnership or other entity wherein the Limited Partners have limited liability in each jurisdiction where the Partnership may be doing business; (iii) all instruments that the General Partner deems appropriate to reflect a change or modification of this Agreement or the Partnership in

accordance with this Agreement; (iv) all documents that the General Partner deems appropriate with respect to Alternative Investment Vehicles; (v) all conveyances and other instruments or papers deemed advisable by the General Partner, to effect the dissolution and termination of the Partnership pursuant to the provisions of this Agreement; (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Partnership; and (vii) all other instruments or papers not inconsistent with the terms of this Agreement which may be required by law to be filed on behalf of the Partnership.

(b) *Nature and Exercise of Power of Attorney.* With respect to each Limited Partner and each Additional Limited Partner, the foregoing power of attorney:

(i) is coupled with an interest, shall be irrevocable and shall survive the incapacity or Bankruptcy of such Limited Partner;

(ii) may be exercised by the General Partner either by signing separately as attorney-in-fact for such Limited Partner or, after listing all of the Limited Partners executing an instrument, by a single signature of the General Partner acting as attorney-in-fact for all of them; and

(iii) shall survive the delivery of an assignment by such Limited Partner of the whole or any fraction of its interest; except that, where the assignee of the whole of such Limited Partner's interest has been approved by the General Partner for admission to the Partnership as a Substituted Limited Partner, the power of attorney of the assignor shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution.

ARTICLE 11

MISCELLANEOUS

11.1 Successors and Assigns. This Agreement shall inure to the benefit of, and shall be binding upon, the successors and permitted assigns of the Partners.

11.2 No Waiver. The failure of any Partner to seek redress for violation, or to insist on strict performance, of any covenant or condition of this Agreement shall not prevent a subsequent act which would have constituted a violation from having the effect of an original violation.

11.3 Survival of Certain Provisions. Each of the Partners agrees that the covenants and agreements set forth in Sections 3.1(e)(vi) and (vii) (Defaults), 3.3(d)

(General Partner Giveback), 5.1 (Liability of Partners), 5.3 (Liability to Partners), and 5.4 (Indemnification) shall survive the Termination of the Partnership.

11.4 Notices. All notices hereunder shall be in writing and shall be given by personal delivery, mailed by Federal Express, U.S. overnight mail or international air courier service, or sent by telecopy or other electronic means, and addressed: if to the Partnership, at its principal office and, if to a Partner, to such Partner at its last known address as disclosed on the records of the Partnership. Notices shall be deemed to have been given as of the date delivered (upon confirmed receipt by the delivery service) or telecopied (upon confirmed receipt). The Partnership and any Partner may change the address for notices by delivering or mailing as aforesaid, a notice stating the change and setting forth the changed address.

11.5 Severability. In case any provision in this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired hereby.

11.6 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

11.7 Headings, Etc. The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

11.8 Gender. As used herein, masculine pronouns shall include the feminine and neuter, neuter pronouns shall include the masculine and the feminine, and the singular shall be deemed to include the plural.

11.9 No Right to Partition. The Partners, on behalf of themselves and their shareholders, partners, successors and assigns, if any, hereby specifically renounce, waive and forfeit all rights, whether arising under contract or statute or by operation of law, except as otherwise expressly provided in this Agreement, to seek, bring or maintain any action in any court of law or equity for partition of the Partnership or any asset of the Partnership, or any interest which is considered to be Partnership property, regardless of the manner in which title to such property may be held.

11.10 No Third Party Rights. Except for the Protected Persons and the Persons identified in Section 5.4(f) (Indemnification of Limited Partners) and the rights of such parties expressly created hereby, this Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto.

11.11 Letter Agreements. This Agreement, the Letter Agreements (as defined below), and the other agreements referred to herein constitute the entire agreement among the Partners with respect to the subject matter hereof and supersede any prior agreement or understanding among or between them with respect to such

subject matter. Subject to Section 10.1 (Amendments; Waiver) to the extent it affects other Limited Partners, the Partners hereby acknowledge and agree that the Partnership, the Parallel Partnerships and/or the General Partner, without the approval of any Limited Partner, may enter into side letters or similar written agreements with Limited Partners or limited partners of the Parallel Partnerships that have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement (each, a "Letter Agreement" and collectively, the "Letter Agreements"). The Partners hereby acknowledge and agree that any rights established, or any terms of this Agreement altered or supplemented, in a Letter Agreement with a Limited Partner shall govern with respect to such Limited Partner. Upon request, the General Partner shall promptly furnish to any requesting Limited Partner copies of all Letter Agreements who may elect in writing to receive the benefit of the Letter Agreements (or any terms therein), except for any Letter Agreements (or any terms therein) relating to: (a) the appointment of a member of the Advisory Board (or observer status thereto) pursuant to Section 2.5(a) (Formation of the Advisory Board), (b) any regulatory requirements imposed on, or special United States federal income tax provisions applicable to, the Limited Partner or limited partner of the Parallel Partnerships party thereto (unless such Person is subject to the same or similar regulatory requirements); and (c) granted to any limited partners of the Management Partnership considered by the General Partner to be strategic relationships of the General Partner or the Manager and whose aggregate commitments to the Management Partnership do not exceed \$30,000,000.

11.12 Rule of Construction. The general rule of construction for interpreting a contract, which provides that the provisions of a contract should be construed against the party preparing the contract, is waived by the parties hereto. Each party acknowledges that such party was represented by separate legal counsel in this matter who participated in the preparation of this Agreement or such party had the opportunity to retain counsel to participate in the preparation of this Agreement but elected not to do so.

11.13 Authority. Whenever in this Agreement or elsewhere it is provided that consent is required of, or a demand shall be made by, or an act or thing shall be done by or at the direction of, the Partnership, or whenever any words of like import are used, all such consents, demands, acts and things are to be made, given or done by the consent of the General Partner or Person acting under the authority of the General Partner, unless a contrary intention is expressly indicated.

11.14 Reliance. No Person dealing with the Partnership, or its assets, whether as lender, assignee, purchaser, lessee, grantee, or otherwise, shall be required to investigate the authority of the General Partner in dealing with the Partnership or any of its assets, nor shall any Person entering into a contract with the Partnership or relying on any such contract or agreement be required to inquire as to whether such contract or agreement was properly approved by the General Partner. Any such Person may conclusively rely on a certificate of authority signed by the General Partner and may

conclusively rely on the due authorization of any instrument signed by the General Partner in the name and on behalf of the Partnership or the General Partner.

11.15 Legal Counsel.

(a) Each Limited Partner hereby acknowledges and agrees that the law firm retained by the General Partner in connection with the formation and organization of the Partnership, the offering of interests in the Partnership, the management and operation of the Partnership or any dispute that may arise between any Limited Partner, on the one hand, and the General Partner or the Partnership, on the other hand (any such matter, a "Partnership Legal Matter"), (i) does not and will not represent the Limited Partners in connection with any Partnership Legal Matter, (ii) does not owe any duty to such Limited Partner or to the Limited Partners as a group, and (iii) may further represent the Partnership in connection with the acquisition, maintenance or disposition of any Investments.

(b) Each Limited Partner further acknowledges and agrees that neither this Agreement nor the transactions contemplated hereby relating to the management and operation of the Partnership are intended to create an attorney/client or any other relationship between the law firm retained by the General Partner for itself and/or the Partnership, on the one hand, and such Limited Partner, on the other hand, pursuant to which such Limited Partner (acting other than in the name of the Partnership) would have a right to object to such law firm's representation of any Person under any circumstances.

11.16 Applicable Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

11.17 Jurisdiction and Venue.

(a) ANY ACTION OR PROCEEDING AGAINST THE PARTIES RELATING IN ANY WAY TO THIS AGREEMENT SHALL BE BROUGHT AND ENFORCED IN THE COURTS OF THE STATE OF DELAWARE OR (TO THE EXTENT SUBJECT MATTER JURISDICTION EXISTS THEREFOR) OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, AND THE PARTIES IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

(b) THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION OR PROCEEDING IN THE COURTS OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

AND ANY CLAIM THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN
ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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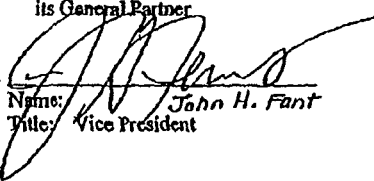
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written.

[Signature Page Follows]

GENERAL PARTNER:

OHCP GENPAR II, L.P.

By: **OHCP MGP II, LLC,**
its General Partner

By: 
Name: John H. Fant
Title: Vice President

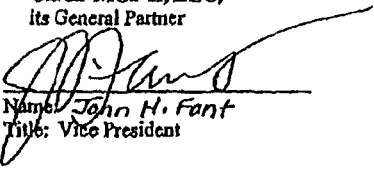
WITHDRAWING LIMITED PARTNER:

John R. Monsky
(Only to reflect his withdrawal)

LIMITED PARTNERS:

By: **OHCP GENPAR II, L.P.,**
as Attorney-in-Fact for the
Limited Partners

By: **OHCP MGP II, LLC,**
its General Partner

By: 
Name: John H. Fant
Title: Vice President

MANAGER:

OAK HILL CAPITAL MANAGEMENT, LLC

By: _____
Name: _____
Title: Vice President


GENERAL PARTNER:

OHCP GENPAR II, L.P.

By: OHCP MGP II, LLC,
its General Partner

By: _____
Name:
Title:

WITHDRAWING LIMITED PARTNER:



John R. Monsky
(Only to reflect his withdrawal)

LIMITED PARTNERS:

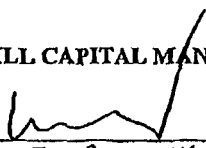
By: OHCP GENPAR II, L.P.,
as Attorney-in-Fact for the
Limited Partners

By: OHCP MGP II, LLC,
its General Partner

By: _____
Name:
Title:

MANAGER:

OAK HILL CAPITAL MANAGEMENT, LLC

By: 

Name: John R. Monsky
Title: Vice President

OAK HILL CAPITAL PARTNERS II, L.P.

**Amendment No. 1 to the
Amended and Restated Agreement of Limited Partnership**

THIS AMENDMENT No. 1 (this "Amendment") to the AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of December 17, 2004 (the "Partnership Agreement") of OAK HILL CAPITAL PARTNERS II, L.P. (the "Partnership") is made as of September 8, 2005, by OHCP GenPar II, L.P., a Delaware limited partnership, as the general partner (the "General Partner") of the Partnership. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Partnership Agreement.

WHEREAS, pursuant to Section 10.2(b) of the Partnership Agreement, the General Partner wishes to amend each Limited Partner's Exhibit A to the Partnership Agreement in accordance with of the Partnership Agreement to reflect the admission of Additional Limited Partners to the Partnership by the General Partner in accordance with Section 8.1 of the Partnership Agreement.

NOW, THEREFORE, the Partnership Agreement is hereby amended as follows:

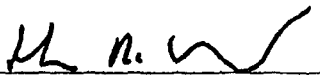
1. Amendment to Exhibit A. The Partnership Agreement is hereby amended by deleting each Limited Partner's Exhibit A to the Partnership Agreement in its entirety and by substituting in lieu of said exhibit the exhibit attached to this Amendment as Exhibit A with respect to such Limited Partner.
2. Ratification of the Partnership Agreement. Except as otherwise expressly provided herein, all of the terms and conditions of the Partnership Agreement are ratified and shall remain unchanged and continue in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first above written.

GENERAL PARTNER:

OHCP GENPAR II, L.P.

By: OHCP MGP II, LLC,
its General Partner

By: 
Name: John R. Monsky
Title: Vice President

Doc#: NY7: 80712.1

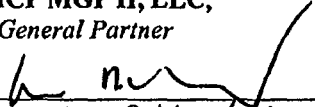
IN WITNESS WHEREOF, this Amendment No. 2 has been executed as
of the date first above written.

GENERAL PARTNER:

OHCP GENPAR II, L.P.

By: **OHCP MGP II, LLC,**
its General Partner

By:


Name: *John R. Monstey*
Title: *Vice President*

LIMITED PARTNER:

Name of Limited Partner
(Please type or print)

By:

Name:
Title:

OAK HILL CAPITAL PARTNERS II, L.P.

**Amendment No. 1 to the
Amended and Restated Agreement of Limited Partnership**

THIS AMENDMENT No. 1 (this "Amendment") to the AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP dated as of December 17, 2004 (the "Partnership Agreement") of OAK HILL CAPITAL PARTNERS II, L.P. (the "Partnership") is made as of September 8, 2005, by OHCP GenPar II, L.P., a Delaware limited partnership, as the general partner (the "General Partner") of the Partnership. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Partnership Agreement.

WHEREAS, pursuant to Section 10.2(b) of the Partnership Agreement, the General Partner wishes to amend each Limited Partner's Exhibit A to the Partnership Agreement in accordance with of the Partnership Agreement to reflect the admission of Additional Limited Partners to the Partnership by the General Partner in accordance with Section 8.1 of the Partnership Agreement.

NOW, THEREFORE, the Partnership Agreement is hereby amended as follows:

1. Amendment to Exhibit A. The Partnership Agreement is hereby amended by deleting each Limited Partner's Exhibit A to the Partnership Agreement in its entirety and by substituting in lieu of said exhibit the exhibit attached to this Amendment as Exhibit A with respect to such Limited Partner.

2. Ratification of the Partnership Agreement. Except as otherwise expressly provided herein, all of the terms and conditions of the Partnership Agreement are ratified and shall remain unchanged and continue in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first above written.

GENERAL PARTNER:

OHCP GENPAR II, L.P.

By: OHCP MGP II, LLC,
its General Partner

By: 

Name: John R. Monsky
Title: Vice President

Doc#: NY7: 80712.1

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