



**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM  
PENNSYLVANIA MUNICIPAL RETIREMENT SYSTEM**

Office of Chief Counsel  
Facsimile: (717) 783-8010  
Direct Dial: (717) 720-4908

September 19, 2003

Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064

Attn: Marco V. Masotti

RE: Avenue Asia Special Situations Fund III (Parallel), L.P.

Dear Mr. Masotti:

Enclosed are the fully executed Amended and Restated Agreement of Limited Partnership and the Subscription Agreement for the above-referenced partnership. Please call me if I can be of further assistance.

Sincerely,

*Sharon M. Wentz*  
Sharon M. Wentz  
Administrative Assistant

Enclosure

cc: Charles J. Spiller

The limited partnership interests evidenced by this Agreement have not been registered under the United States Securities Act of 1933, as amended, and may not be sold or transferred without compliance with applicable federal, state or foreign securities laws. In addition, transfer or other disposition of the interests is restricted as provided in this Agreement.

**AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**AVENUE ASIA SPECIAL SITUATIONS FUND III (PARALLEL), L.P.**

**Dated as of**

**September 11, 2003**

## TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1 THE LIMITED PARTNERSHIP .....</b>	<b>1</b>
1.1 Formation of Partnership.....	1
1.2 Certificate of Limited Partnership .....	1
1.3 Name .....	1
1.4 Purposes and Powers.....	2
1.5 Term.....	3
1.6 Registered Office; Agent for Service of Process.....	3
1.7 Principal Offices .....	4
1.8 Fiscal Year; Fiscal Quarters; Fiscal Periods.....	4
1.9 Admission Of Limited Partners .....	4
<b>ARTICLE 2 DEFINITIONS.....</b>	<b>5</b>
2.1 Definitions .....	5
2.2 Other Definitions .....	16
2.3 Cross-References .....	16
<b>ARTICLE 3 CAPITAL CONTRIBUTIONS .....</b>	<b>16</b>
3.1 Equity Commitments of and Capital Contributions by Partners .....	16
3.2 Payment of Capital Contributions.....	17
3.3 Withdrawals.....	19
3.4 Limited Liability of Limited Partners .....	19
3.5 Defaults .....	19
<b>ARTICLE 4 EXPENSES AND FEES .....</b>	<b>20</b>
4.1 Partnership Expenses .....	20
4.2 Allocation of Expenses.....	21
4.3 Management Fees .....	21
<b>ARTICLE 5 MAKING OF INVESTMENTS .....</b>	<b>22</b>
5.1 Investment Limitations.....	22
5.2 Reinvestment of Proceeds. ....	22
<b>ARTICLE 6 ALLOCATION OF PROFITS AND LOSSES .....</b>	<b>23</b>
6.1 Allocations of Profit or Loss .....	23
6.2 Tax Allocations; Certain Book/Tax Differences .....	23
6.3 Special Allocations .....	24
<b>ARTICLE 7 DISTRIBUTIONS .....</b>	<b>25</b>
7.1 Distributions From Investments .....	25
7.2 Amounts and Priority of Distributions.....	25
7.3 Reserves.....	28
7.4 No Duplicate Fees or Distributions.....	28

	<u>Page</u>
<b>ARTICLE 8 [INTENTIONALLY OMITTED]</b> .....	28
<b>ARTICLE 9 MANAGEMENT</b> .....	28
9.1 Management Generally .....	28
9.2 Powers of the General Partner .....	29
9.3 General Partner Permitted to Hold Partnership Property .....	30
9.4 Restrictions on General Partner's Authority .....	31
9.5 Investment Opportunities; Other Activities .....	31
9.6 [Intentionally Omitted].....	33
9.7 Liability to Partners; Indemnification .....	33
9.8 Co-investment.....	35
9.9 Transactions with Associated Persons; Advisory Committee.....	36
9.10 Unrelated Business Taxable Income.....	37
9.11 Parallel Partnerships.....	38
<b>ARTICLE 10 ACCOUNTS; TAX RETURNS; REPORTS TO PARTNERS</b> .....	38
10.1 Books of Account; Access .....	38
10.2 Independent Auditors .....	38
10.3 Filing of Tax Returns .....	38
10.4 Reports to Limited Partners.....	39
10.5 Tax Controversies .....	40
10.6 Accounting Methods; Elections.....	40
10.7 Confidentiality .....	40
10.8 Acknowledgement of PSERS as a Tax Exempt Entity.....	42
<b>ARTICLE 11 TRANSFERS</b> .....	42
11.1 General Partner .....	42
11.2 Transfer of a Limited Partner's Interest .....	43
11.3 Substituted Limited Partner .....	44
11.4 Assignee's Rights.....	44
11.5 Distributions Subsequent to Assignment .....	44
11.6 Bankruptcy or Dissolution of a Limited Partner.....	45
<b>ARTICLE 12 DISSOLUTION; REMOVAL OF THE GENERAL PARTNER; WINDING UP</b> .....	45
12.1 Events of Dissolution .....	45
12.2 Liquidation and Winding Up.....	46
12.3 Final and Interim Accountings .....	47
12.4 Cancellation of Certificate.....	47
12.5 Liability of Partnership .....	47
<b>ARTICLE 13 POWER OF ATTORNEY</b> .....	47
13.1 Appointment of General Partner .....	47
13.2 Duration of Power.....	48
<b>ARTICLE 14 AMENDMENTS TO AGREEMENT</b> .....	48
14.1 Amendments .....	48

	<u>Page</u>
<b>ARTICLE 15 MEETINGS OF THE PARTNERS .....</b>	<b>49</b>
15.1 Meetings .....	49
15.2 Proxy .....	49
15.3 Action by Limited Partners .....	49
15.4 Written Consents.....	49
15.5 Limitation on Consents .....	49
<b>ARTICLE 16 NOTICES .....</b>	<b>50</b>
16.1 Method for Notices .....	50
16.2 Other Communications .....	51
16.3 Computation of Time .....	51
<b>ARTICLE 17 REPRESENTATIONS .....</b>	<b>51</b>
17.1 Investment Purpose.....	51
17.2 Investment Restriction .....	52
17.3 Due Authorization of Limited Partners.....	52
17.4 Representations of General Partner .....	52
17.5 Investment Knowledge.....	53
<b>ARTICLE 18 WITHHOLDING.....</b>	<b>53</b>
18.1 Withholding .....	53
<b>ARTICLE 19 GENERAL PROVISIONS .....</b>	<b>53</b>
19.1 Insulated Partners.....	53
19.2 Entire Agreement.....	55
19.3 Governing Law .....	55
19.4 Binding Effect.....	55
19.5 Preservation of Sovereign Immunity .....	55
19.6 Board of Claims .....	55
19.7 Limitation of PSERS' Liability .....	55
19.8 Preservation of Records .....	56
19.9 Side Letters.....	56
19.10 Counterparts.....	56
19.11 Separability.....	56
19.12 Headings.....	56
19.13 Gender and Number .....	56
19.14 Waiver of Partition and Accounting .....	57
19.15 Parties in Interest .....	57

Schedule A: Partners' Equity Commitments

Schedule B: Asian Countries

Exhibit A: Investment Management Agreement

**AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**AVENUE ASIA SPECIAL SITUATIONS FUND III (PARALLEL), L.P.**

This AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP ("Agreement") of AVENUE ASIA SPECIAL SITUATIONS FUND III (PARALLEL), L.P., a Delaware limited partnership (the "Partnership"), is entered into as of September 17, 2003, by and among AVENUE ASIA CAPITAL PARTNERS III, LLC, a Delaware limited liability company, as general partner of the Partnership (the "General Partner"), the Withdrawing Limited Partner (as hereinafter defined) and each Person (as hereinafter defined) whose name is identified on Schedule A hereto under the heading "Limited Partners" (each, a "Limited Partner" and, collectively, the "Limited Partners"). The General Partner and the Limited Partners shall be referred to herein collectively as the "Partners."

NOW, WHEREFORE, in consideration of the mutual covenants herein contained, the parties hereto hereby agree as follows:

**ARTICLE 1**

**THE LIMITED PARTNERSHIP**

1.1 Formation of Partnership. The Partnership has heretofore been formed as a limited partnership under and pursuant to the Act (as hereinafter defined) and, in connection therewith, the General Partner has executed and caused to be filed in accordance with the Act the Certificate of Limited Partnership of the Partnership (the "Certificate") in the office of the Secretary of State of the State of Delaware on July 21, 2003. The General Partner and the Withdrawing Limited Partner have entered into an Agreement of Limited Partnership, dated as of July 21, 2003 which agreement is hereby amended and restated in its entirety.

1.2 Certificate of Limited Partnership. The Partners, acting directly or through an attorney-in-fact, hereby ratify the filing by the General Partner of the Certificate and, in order to comply with all requirements of law for the continuation and operation of a limited partnership among the Partners pursuant to the laws of the State of Delaware and all other jurisdictions where the Partnership may elect to conduct its operations, hereby further authorize the General Partner from time to time to execute any amendment to the Certificate and any other appropriate documents, and take any other necessary or appropriate action in connection therewith, including the making and filing with the office of the Secretary of State of the State of Delaware of such amendments to the Certificate.

1.3 Name. The name of the Partnership is "AVENUE ASIA SPECIAL SITUATIONS FUND III (PARALLEL), L.P." The business of the

Partnership may be conducted under any other name designated by the General Partner. The General Partner may change the name of the Partnership from time to time, in which event the General Partner shall promptly notify the Limited Partners of such name change.

#### 1.4 Purposes and Powers.

(a) The Partnership is a financial institution and shall have as its purposes: (i) investing, directly or indirectly through other Persons, in Investments (as defined in Section 1.4(b)); (ii) managing, supervising and disposing of the Investments; (iii) sharing the profits and losses therefrom and engaging in such activities as are incidental or ancillary to any of the foregoing; and (iv) engaging in any other lawful acts or activities consistent with the foregoing for which limited partnerships may be organized under the Act.

(b) Subject to Section 5.1, the Partnership is authorized to make, acquire and dispose of investments in:

(i) voting common shares, non-voting common shares, preferred equity shares, reorganization certificates and subscriptions, warrants, options, trust receipts, partnership interests, limited liability company member or manager interests, convertible debt securities and other equity and equity-related securities, and any debt security or other evidence of indebtedness or debt obligation (or participations therein), including high yield bonds and Trade Claims (as hereinafter defined), issued by any Person based in any of the countries set forth on Schedule B hereto (the "Asian Countries") that, in the determination of the General Partner, is:

(A) undergoing, or recently underwent, financial distress, including, without limitation, any company that is undergoing, is considered likely to undergo, or recently underwent reorganization under bankruptcy laws or similar laws or that is engaged in, is considered likely to engage in or recently engaged in a restructuring of its outstanding debt obligations, a reorganization or a liquidation, whether such transaction occurs (or occurred) under the jurisdiction of a bankruptcy court or in similar legal proceedings, or under the supervision of a trustee or liquidator or out-of-court (a "Distressed Company");

(B) undergoing, or likely to undergo in the near future, a turnaround in business operations, prospects, profitability, or attractiveness within the investment community (a "Turnaround Company"); or

(C) undervalued because of a discrete, extraordinary event (an "Extraordinary Event Company");

(ii) Derivatives Transactions (as hereinafter defined);

(iii) Other Investments (as hereinafter defined); and

(iv) Temporary Investments (as hereinafter defined) or to hold such funds as working capital or in reserve (any such investment or asset in the preceding clauses (i), (ii) or (iii) above and this clause (iv) being referred to herein as an "Investment" and, collectively, as the "Investments").

(c) The purposes and powers of the Partnership may be carried out through activities conducted by the Partnership or through shares or partner or member interests in any Person, directly or through one or more other Persons, whether or not the Partnership directly or indirectly controls or participates with others in such Person and whether or not such interests are readily marketable.

(d) The Partnership shall have full power to transfer, mortgage, pledge, sell or otherwise deal with its Investments and property and to exercise all rights, powers, privileges and other incidents of ownership or possession with respect thereto.

(e) The Partnership may maintain one or more offices and engage personnel for the conduct of the Partnership's activities. The Partnership may enter into, make and perform contracts, agreements and undertakings of all kinds as may be necessary, advisable or incident to the carrying out of its purposes. In addition to the powers specified in this Section 1.4, the Partnership shall have the power to do all things and everything necessary, appropriate or advisable for the accomplishment of or in furtherance of any of the purposes set forth herein, and to do every other thing or things incidental or appurtenant to or arising from or connected with any of such purposes; provided, however, that nothing set forth herein shall be construed as authorizing the Partnership to possess any purpose or power, or to do any act or thing, forbidden by law to be possessed or done by a limited partnership organized under the laws of the State of Delaware.

1.5 Term. The regular business activities of the Partnership shall begin on July \_\_, 2003, and shall continue in effect until the fifth anniversary of the Initial Closing Date, unless sooner dissolved in accordance with the provisions of Article 12 (the "Term"). The General Partner may, by notice to the Limited Partners given not less than 30 days prior to the end of the then extant term of the Partnership, extend such term for up to two consecutive one-year periods. After any extensions by the General Partner in accordance with the immediately preceding sentence, the General Partner may, with the written consent of Limited Partners representing a majority of the aggregate Participation Percentages at such time (excluding the Participation Percentages of Defaulting Limited Partners) received not less than 30 days prior to the end of the then extant term of the Partnership, extend such term for up to two consecutive additional one-year periods.

1.6 Registered Office; Agent for Service of Process. The address of the Partnership's registered office in the State of Delaware shall be 615 DuPont Highway, Dover, DE 19901, and the name of the registered agent for service of process on the Partnership shall be National Corporate Research, Ltd.



1.7 Principal Offices. The location of the principal offices of the Partnership shall be at 535 Madison Avenue, 7th Floor, New York, New York 10022, or at such other location as may be selected from time to time by the General Partner. If the General Partner changes the location of the principal offices of the Partnership, the Limited Partners shall be notified promptly thereafter. The Partnership may maintain such other offices at such other places as the General Partner deems advisable.

1.8 Fiscal Year; Fiscal Quarters; Fiscal Periods. The fiscal year of the Partnership shall be the same as the taxable year of the Partnership for federal income tax purposes (the "Partnership Year"). The taxable year of the Partnership for federal income tax purposes shall be selected, and may be changed, by the General Partner, in its sole discretion, in accordance with the rules contained in Section 706 of the Code and the Treasury Regulations promulgated thereunder. Unless otherwise required by Section 706(b) of the Code, the Partnership Year shall end on December 31 of each year, and the fiscal quarters of the Partnership shall end on March 31, June 30, September 30 and December 31 of each year; provided, however, that (a) the Partnership's initial Partnership Year shall begin on the date the Partnership commences operations and end on December 31, 2003; and (b) the Partnership's final Partnership Year shall end on the date of termination of the Partnership pursuant to Article 12. The General Partner shall promptly notify each Partner of any change in the Partnership Year, and the fiscal quarters of the Partnership thereafter shall end on the last day of the third, sixth, ninth and twelfth month of such changed Partnership Year.

1.9 Admission Of Limited Partners.

(a) Initial Closing Date. Each Person whose name is set forth on Schedule A hereto on the date of this Agreement under the heading "Limited Partners" is being admitted to the Partnership as a Limited Partner pursuant to this Agreement. Such Person shall be shown as a Limited Partner as of the date of this Agreement, on the books and records of the Partnership, and the Equity Commitment of such Person shall be as set forth on Schedule A hereto. The General Partner may choose to establish the Partnership with aggregate Equity Commitments of Limited Partners and equity commitments of limited partners of the Parallel Partnership (the "Aggregate Limited Partner Commitments") of at least \$100 million, with staged or subsequent closings for the acceptance of subsequent Equity Commitments held pursuant to Section 1.9(b).

(b) Additional Closing Dates.

(i) At any time after the Initial Closing Date until the date that is 270 days thereafter (the "Final Closing Date"), the General Partner may, in its sole discretion, cause the Partnership to admit any Person as an additional Limited Partner, without the approval of any Limited Partner.

(ii) At any time on which an additional Limited Partner is admitted to the Partnership, any Person that is a Limited Partner as of the Initial Closing Date may, in its sole discretion, make additional Equity Commitments to the Partnership.

(iii) Schedule A hereto shall be amended by the General Partner upon the admission of any additional Limited Partner or upon the making by a Limited Partner of an additional Equity Commitment pursuant to this Section 1.9(b) to set forth the name and business address, date of admission, and amount of new or additional Equity Commitments of such Person.

(c) *Capital Contribution Requirements.* Each Partner admitted to the Partnership shall be required to make Capital Contributions to the Partnership pursuant to this Agreement commencing on the Closing Date on which such Partner is admitted to the Partnership in accordance with Article 3.

## ARTICLE 2

### DEFINITIONS

2.1 Definitions. The following terms when used in this Agreement shall have the respective meanings specified below.

“Act” shall mean the Delaware Revised Uniform Limited Partnership Act (6 Del. C. 17-101, et seq.), as amended from time to time, and any successor statute.

“Adjusted Capital Account Deficit” shall mean, with respect to any Partner for any Partnership Year, the deficit balance, if any, in such Partner’s Capital Account as of the end of such Partnership Year after giving effect to the following adjustments: (a) crediting to such Capital Account any amounts that such Partner is obligated to restore as described in the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and (b) debiting to such Capital Account the items described in Treasury Regulation Sections 1.704-1 (b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of “Adjusted Capital Account Deficit” is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Administrative Borrowings” shall mean borrowings for a period of up to 90 days in lieu of drawing down Equity Commitments, which shall be applied to subsequent drawdowns of Equity Commitments to repay such borrowings and applicable interest thereon; provided, that any such borrowings shall not exceed 10% of the Aggregate Limited Partner Commitments.

“Advisory Committee” shall have the meaning set forth in Section 9.9(c).

“Affiliate” of a Person shall mean any Person directly or indirectly controlling, controlled by, or under common control with, such other Person, it being understood that each of the Principals and Amroc shall be deemed to be an Affiliate of the General Partner, the Investment Manager and the Partnership.

“Aggregate Limited Partner Commitments” shall have the meaning set forth in Section 1.9(a).

"Agreement" shall mean this Amended and Restated Agreement of Limited Partnership of the Partnership, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Amroc" shall have the meaning set forth in Section 9.5(e).

"Asian Countries" shall have the meaning set forth in Section 1.4(b).

"Associated Person" shall have the meaning set forth in Section 9.9(a).

"Attribution Rules" shall mean the ownership attribution rules of the FCC, including, without limitation, 47 C.F.R. §§ 21.912, Note 1; 24.101(b), (c); 24.709; 24.720; 26.101(b), (c); 73.3555, Note 2(g); and 76.501, Note 2(g); 76.503(f); 76.504(h); Attribution Reconsideration Order, 58 Radio Regulation 2d 604 (1985); Further Attribution Reconsideration Order, 1 FCC Red 802 (1986), and Report and Order, 14 FCC Red 12559 (1999); and Report and Order, 14 FCC Red 19014 (1999), all as the same may be amended or supplemented from time to time.

"Bankruptcy" shall mean, with respect to a Person, (a) the filing by such Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code or any other federal or state insolvency law, or such Person's filing an answer consenting to or acquiescing in any such petition, (b) the making by such Person of any assignment for the benefit of its creditors, or (c) the expiration of 60 days after the filing of an involuntary petition under Title 11 of the United States Code, an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other federal or state insolvency law, provided that the same shall not have been vacated, set aside or stayed within such 60-day period.

"Base Rate" shall mean the annual rate of interest publicly announced from time to time by The Chase Manhattan Bank, N.A. (or its successor) as its prime rate in effect at its principal office in New York City; each change in the Base Rate shall be effective from and including the date such change is publicly announced as being effective.

"Book Basis" shall mean, with respect to any asset, such asset's adjusted basis for federal income tax purposes; provided, however, that if the Capital Accounts of the Partnership are adjusted pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) to reflect the fair market value of the Partnership's assets, the Book Basis of such asset shall be adjusted to equal its fair market value as of the time of such adjustment in accordance with such Treasury Regulation.

"Borrowing" shall have the meaning set forth in Section 9.10(b).

"Business Day" shall mean any day that is not a Saturday, Sunday or holiday on which banks operating in New York City are required or permitted to be closed.

"Capital Account" shall mean, with respect to each Partner, the account established for such Partner on the books of the Partnership which shall be (a) increased by (i) the total amount of money contributed to the Partnership by such Partner, and (ii) the amount of Partnership income and gain attributable to and allocated to such Partner pursuant to this Agreement, and (b) decreased by (x) the amount of cash and the Fair Market Value of property distributed by the Partnership to such Partner (net of any liability secured by such property that the Partner is considered to assume or take subject to Section 752 of the Code) pursuant to Articles 7 and 12 hereof, and (y) the amount of Partnership losses and deductions allocated to such Partner pursuant to this Agreement. Each Partner's Capital Account shall be maintained and adjusted in accordance with Treasury Regulation Sections 1.704-1(b) and 1.704-2.

"Capital Contribution" shall mean, with respect to any Partner, the excess of (a) the total amount of money (other than interest or appreciation paid pursuant to Section 3.2(b)) contributed to the Partnership by, on behalf of, or for the account of, such Partner over (b) the aggregate amount, if any, refunded to such Partner pursuant to Section 3.2(c), other than amounts refunded in respect of interest or appreciation paid pursuant to Section 3.2(c).

"Cause" shall mean (i) the General Partner has committed an intentional and material breach of its duties under this Agreement that 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 (ii) the General Partner has committed fraud, bad faith or willful malfeasance in connection with the performance of its duties under the terms of this Agreement that 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.

"Certificate" shall have the meaning set forth in Section 1.1.

"Closing Date" shall mean any date (including the Initial Closing Date and Final Closing Date) established in accordance with Section 1.9 for the admission to the Partnership of a Limited Partner (other than the admission of a substituted Limited Partner pursuant to Article 11).

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"Commitment Period" shall mean the period commencing on the Initial Closing Date and expiring on the earlier of: (i) the third anniversary of the Initial Closing Date; (ii) at the election of the General Partner, the date on which at least 75% of the Equity Commitments are invested or committed to be invested by the Partnership in Investments; (iii) the affirmative vote of holders of 75% of the unaffiliated Aggregate Limited Partner Commitments at such time (excluding the Equity Commitments of Defaulting Limited Partners and the equity commitments of defaulting limited partners in the Parallel Partnership); and (iv) the occurrence of the events described in Section 3.1(c).

(1) Deleted  
per AMERS H now OCT. 8 2006

"Confidential Information" shall have the meaning set forth in Section 10.7(b).

"Default Amount" shall have the meaning set forth in Section 3.5(a).

"Defaulting Limited Partner" shall have the meaning set forth in Section 3.5(a).

"Derivatives Transaction" shall mean any and all options (including puts, calls and warrants), forward purchase and sale contracts, swap contracts, exchange agreements and cap and collar protection arrangements relating to any equity securities, bonds, loans, indebtedness, foreign currency or interest rates or any index thereon, as the same may be amended or modified and in effect from time to time, and any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing; provided, that the Partnership shall not engage in any transactions involving commodity futures contracts (and related options) until, to the extent required by applicable regulations, the General Partner registers as a commodity pool operator with the Commodity Futures Trading Commission and the National Futures Association, and in connection therewith obtains an exemption with respect to the Partnership from certain of the disclosure, reporting and record keeping requirements under the Commodity Exchange Act, or until the General Partner qualifies for an exemption from such registration under the rules of the Commodity Futures Trading Commission.

"Distressed Company" shall have the meaning set forth in Section 1.4(b)(i)(A).

"Distributable Proceeds" shall have the meaning set forth in Section 7.1.

"Eligible Investment" shall have the meaning set forth in Section 9.5(d).

"Equity Commitment" shall mean the commitment by each Partner to make Capital Contributions (including, without limitation, for the payment of Management Fees) to the Partnership for the purposes specified in this Agreement. The amount of each Partner's Equity Commitment is set forth on Schedule A hereto, which Schedule may be revised from time to time to reflect the admission of additional Limited Partners to the Partnership, the increase by existing Limited Partners of such Partners' commitments to make Capital Contributions to the Partnership pursuant to Section 1.9(b) or any other increase expressly provided in this Agreement.

"Event of Withdrawal" shall have the meaning set forth in Section 12.1(a).

"Exculpee" shall have the meaning set forth in Section 9.7.

"Extraordinary Event Company" shall have the meaning set forth in Section 1.4(b)(i)(C).

"Fair Market Value" shall mean the amount at which property would change hands between a willing buyer and a willing seller, neither being under any

compulsion to buy or sell and where both parties are able, as well as willing, to engage in the transaction, and are well-informed about the property and the market for the property. In the context of tax-related provisions used herein and when in the lower case form, "fair market value" shall have the meaning assigned it under the various provisions of the Code or Treasury Regulations, as the context requires.

"FCC" shall mean the Federal Communications Commission.

"FCC Rules" shall mean the Attribution Rules and Ownership Rules.

"Final Closing Date" shall have the meaning set forth in Section 1.9(b).

"Funding Notice" shall have the meaning set forth in Section 3.2 (a).

"General Partner" shall have the meaning set forth in the first paragraph of this Agreement. The General Partner shall also serve as the general partner of the Parallel Partnership.

"Initial Closing Date" shall mean the earlier of the date of this Agreement and the initial closing date of the Parallel Partnership.

"Investments" shall have the meaning set forth in Section 1.4(b).

"Investment Expenses" shall mean, with respect to any Investment, any costs or expenses incurred by the Partnership, the General Partner or the Investment Manager (excluding ordinary administrative and overhead expenses such as rent, salaries and benefits) on behalf of the Partnership, in connection with the acquisition, holding or disposition of an Investment (including, without limitation, financing fees and the cost of legal counsel, accountants, investment bankers or financial advisors or other experts incurred in the negotiation, documentation or due diligence efforts pertaining to the acquisition or disposition of an Investment, brokerage fees or registration fees on the purchase or sale of securities and any Litigation Expenses directly attributable to such Investment (as may be reasonably determined by the General Partner)).

"Investment Management Agreement" shall mean the Investment Management Agreement, dated as of the date of this Agreement, by and between the Partnership and the Investment Manager, as such agreement may be amended, supplemented or otherwise modified from time to time, substantially in the form attached as Exhibit A hereto.

"Investment Manager" shall mean Avenue Asia Capital Management, LLC, a Delaware limited liability company, and any successor thereto.

"Investment Transactions" shall mean all transactions pursuant to which the Partnership makes Investments.

"IRR" shall mean a percentage rate of return such that (x) the sum of the separate present values of each specified distribution to the Limited Partner, discounted at

such rate from the date of each such distribution, equals (y) the sum of the separate present values of each Capital Contribution made by the Limited Partner, discounted at such rate from the date of each such Capital Contribution.

"Lead Principals" shall mean Marc Lasry and Sonia E. Gardner, for so long as each is actively involved in the affairs of the Partnership, the General Partner and the Investment Manager.

"Limited Partner" shall have the meaning set forth in the first paragraph of this Agreement.

"Limited Partner Affiliate" shall have the meaning set forth in Section 19.1(b).

"Liquidator" shall have the meaning set forth in Section 12.2(a).

"Litigation Expenses" shall mean all costs and expenses (including fees and disbursements of legal counsel or other experts and court costs) incurred by the Partnership, the General Partner or the Investment Manager (excluding ordinary administrative and overhead expenses such as rent, salaries and benefits) on behalf of the Partnership, in connection with any litigation or governmental or regulatory investigation or proceeding involving the Partnership or its activities, including any incurred in any settlement thereof and any payments made in settlement of any litigation. Litigation Expenses shall include the costs and expenses of litigation relating to unconsummated or aborted Investment Transactions (including, without limitation, amounts payable pursuant to the Investment Management Agreement to fund the costs of such litigation), and amounts paid pursuant to Section 9.7 for costs and expenses which, if paid directly by the Partnership, would be Litigation Expenses.

"Make-Up Contributions" shall have the meaning set forth in Section 3.2(b).

"Make-Up Payment" shall have the meaning set forth in Section 3.2(b).

"Management Fees" shall have the meaning set forth in Section 4.3.

"Marketable Securities" shall mean securities that are either registered under the Securities Act or otherwise are, or in the hands of a Partner would be, unrestricted from public offering or sale by the Partnership, or any Partner, pursuant to an available exemption from registration under, or the inapplicability of, the Securities Act. "Marketable Securities" shall not include securities that are subject to contractual sales restrictions or securities which are not listed on a domestic or foreign securities exchange or traded on the National Association of Securities Dealers Automated Quotation System.

"Media Enterprises" shall mean any Person that, directly or indirectly, owns, controls or operates a broadcast radio or television station, a cable television system, a "daily newspaper" (as such term is defined in 47 C.F.R. § 73.3555 of the Ownership Rules), a multipoint multichannel distribution system, a commercial mobile

radio service or any other communications facility the ownership of which is subject to regulation by the FCC under: (i) the Communications Act of 1934, as amended; (ii) the Attribution Rules; and (iii) the Ownership Rules.

"New Fund" shall have the meaning set forth in Section 9.5(b).

"Nonrecourse Deductions" shall have the meaning set forth in Treasury Regulation Section 1.704-2(b)(1).

"Other Avenue Asia Funds" shall have the meaning set forth in Section 9.5(a).

"Other Investments" shall mean Investments in issuers (other than a Distressed Company, Extraordinary Event Company or Turnaround Company), including Investments in leveraged vehicles structured as collateralized debt obligations known as "CDOs"; provided, that, Derivative Transactions that are solely intended to protect against risk in respect of any Investments shall be deemed to be an "Other Investment".

"Ownership Rules" shall mean the multiple and cross-ownership rules of the FCC including, without limitation, 47 C.F.R. §§ 21.912; 24.101(a); 24.709; 24.720; 26.101(a); 73.3555; 74.93(h); 76.501; 76.503; 76.504; and any other regulations or written policies of the FCC which limit or restrict ownership in Media Enterprises, all as the same may be amended or supplemented from time to time.

"Parallel Partnership" shall have the meaning set forth in Section 9.11 (Parallel Partnerships).

"Participation Percentage" shall mean, at any time, with respect to any Partner, the percentage obtained by dividing (a) the aggregate amount of Capital Contributions made by such Partner, by (b) the aggregate amount of Capital Contributions made by all Partners.

"Partner Minimum Gain" shall mean a Partner's share of Partnership Minimum Gain as set forth in Treasury Regulation Sections 1.704-2(g) and (i).

"Partner Nonrecourse Debt" shall have the meaning set forth in Treasury Regulation Section 1.704-2(b)(4).

"Partner Nonrecourse Debt Minimum Gain" shall mean an amount, with respect to each Partner Nonrecourse Debt, equal to Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a nonrecourse liability, determined in accordance with Treasury Regulation Section 1.704-2(i)(3).

"Partner Nonrecourse Deductions" shall have the meaning set forth in Treasury Regulation Section 1.704-2(i).

"Partners" shall have the meaning set forth in the first paragraph of this Agreement.



"Partnership" shall have the meaning set forth in the first paragraph of this Agreement.

"Partnership Expenses" shall mean any costs or expenses incurred by the Partnership, the General Partner or the Investment Manager (excluding their ordinary administrative and overhead expenses such as rent, salaries and benefits) on behalf of the Partnership, in respect of the following: (a) audit fees and other out-of-pocket expenses incurred in the preparation of audited financial statements for the Partnership or any Portfolio Company or with respect to any Investment and audit compliance; (b) out-of-pocket expenses incurred in the preparation of tax returns and reports for the Partnership (including Schedules K-1 for Partners) and tax compliance; (c) taxes and other governmental charges levied against the Partnership; (d) any and all expenses (including legal fees and expenses) incurred to comply with any law or regulation related to the activities of the Partnership (including regulatory expenses of the General Partner and the Investment Manager) or otherwise incurred in connection with any litigation or governmental inquiry related to the activities of the Partnership, including filing and registration fees; (e) expenses incurred in connection with the dissolution, winding up and termination of the Partnership; (f) expenses relating to defaults by Partners in the payment of any Capital Contributions; (g) expenses incurred in connection with any restructuring or amendments to the constituent documents of the Partnership; (h) expenses incurred in connection with distributions to the Partners and in connection with any meetings with Partners called by the General Partner; (i) the Partnership's allocable share of costs and expenses incurred in respect of any proposed Investment Transactions that are not consummated and that were not intended by the General Partner to support any Investment previously made by the Partnership such that the General Partner determines that such expenses should be considered Investment Expenses with respect to such Investment previously made, including as such costs and expenses, without limitation, fees and expenses incurred to obtain financing commitments and fees and expenses paid to legal counsel, accountants or experts retained to negotiate or document a proposed Investment Transaction or to conduct due diligence reviews, in each case to the extent that with respect to any such proposed Investment Transaction (i) such costs and expenses are not otherwise reimbursed by an unaffiliated third party or by the subject of the proposed Investment Transaction, and (ii) the proposed Investment Transaction is not consummated by an Affiliate of the Partnership nor does any such Affiliate receive any material amount of compensation in connection with the consummation of such proposed Investment Transaction from any Person other than the Partnership; (j) Litigation Expenses, except to the extent constituting Investment Expenses or reimbursed by third parties (including any insurance carrier); (k) premiums and other costs and expenses attributable to obtaining insurance for the Partnership, including without limitation, reasonable liability insurance covering the General Partner, to the extent provided in Section 9.7(h); (l) out-of-pocket fees and expenses incurred in connection with the formation and organization of the Partnership (not including any Placement Fees) up to an amount equal to \$1,000,000; (m) other out-of-pocket expenses relating to the Partnership's activities, including, without limitation, brokerage commissions, fees and expenses of custodians, outside counsel and accountants, and any taxes, fees, or other governmental charges levied against the Partnership;

(n) Management Fees; and (o) other extraordinary expenses relating to the Partnership and its activities that are not Investment Expenses.

"Partnership Minimum Gain" shall have the meaning set forth in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"Partnership Year" shall have the meaning set forth in Section 1.8.

"Pass-Thru Partner" shall have the meaning set forth in Section 10.5(b).

"Person" shall mean a corporation, an association, a partnership (whether general or limited), a limited liability company, a limited liability partnership, a business trust, an organization, or other legal entity, an individual, a government or political subdivision thereof or a governmental agency.

"Placement Fees" shall mean all fees and expenses of all placement agents employed in connection with the offering and sale of limited partnership interests in the Partnership, and any Parallel Partnership.

"Portfolio Company" shall mean the business enterprise that is the issuer of an Investment owned by the Partnership, including any affiliate of such issuer. "Portfolio Company" shall also include any Person through which an Investment is indirectly owned by the Partnership.

"Principal" shall mean each of the Lead Principals and any other Person employed by the Investment Manager identified in writing to the Limited Partners, for so long as each is actively involved in the affairs of the Partnership, the General Partner or the Investment Manager.

"Profit or Loss" shall mean, for each Partnership Year or portion thereof, an amount equal to the Partnership's taxable income or loss for such Partnership Year or portion thereof, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss) with the following adjustments:

(i) any income of the Partnership that is attributable to an Investment and that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" or "Losses" shall be added to such taxable income or loss;

(ii) any expenditures of the Partnership that are described in Section 705(a)(2)(B) of the Code or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" or "Losses," shall be subtracted from such taxable income or loss;

(iii) gain or loss resulting from any disposition of an Investment with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Basis of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Basis;

(iv) any increase or decrease to Investments as a result of any adjustment to the Book Basis of Partnership assets pursuant to Treasury Regulation Section 1.7041(b)(2)(iv)(f) shall be added to or subtracted from, as the case may be, such taxable income or loss;

(v) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account depreciation for such Partnership Year or portion thereof, computed in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(g), if applicable; and

(vi) any items specially allocated pursuant to Sections 6.2(b) and 6.3 hereof shall not be considered in determining Profit or Loss.

If such Profit or Loss as calculated hereby is a positive number, it shall sometimes be referred to herein as "Profit," and if such Profit or Loss as calculated hereby is a negative number, it shall sometimes be referred to herein as "Loss."

"PSERS" shall mean the Commonwealth of Pennsylvania, Public School Employees' Retirement System.

"Referred Person" shall have the meaning set forth in Section 9.8(b).

"Representatives" shall have the meaning set forth in Section 10.7(a).

"Restricted Persons" shall have the meaning set forth in Section 9.5(a).

"Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder, and any successor statute.

"Side Letters" shall have the meaning set forth in Section 19.9.

"Similar Funds" shall have the meaning set forth in Section 9.5(a).

"Subscription Agreement" shall mean each Subscription Agreement between the Partnership and each of the Limited Partners pursuant to which the Limited Partners acquired their interests in the Partnership.

"Subsequent Closing Date" shall mean any Closing Date, other than the Initial Closing Date.

3.2(b). "Subsequent Closing Partner" shall have the meaning set forth in Section

"Tax Distributions" shall have the meaning set forth in Section 7.2(b).

"Tax Matters Partners" shall have the meaning set forth in Section 10.5(a).

"Tax Rate" shall have the meaning set forth in Section 7.2(b).

"Temporary Investments" shall mean: (i) negotiable instruments, securities and other obligations (whether certificated or uncertificated) that are: (A) debt obligations of or fully guaranteed as to principal and interest by the United States of America or any agency thereof for which the full faith and credit of the United States of America is pledged, (B) time deposits in, or bankers' acceptances or certificates of deposit issued by, any depository institution or trust company organized under the laws of the United States of America or any state thereof, subject to supervision and examination by United States or state banking or depository institution regulatory authorities and having, to the extent of the knowledge of the General Partner or the Investment Manager at the time such investment is made or committed to, reported capital and surplus in excess of \$1,000,000,000, (C) commercial paper having, at the time of the investment or commitment to invest therein, a rating from Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Group ("Standard & Poor's") of P-1 or A-1, respectively and (D) investments in money market funds in the highest investment category by Moody's or Standard & Poor's at the time of the investment or commitment to invest therein; (ii) demand deposits in any depository institution or trust company referred to in clause (i)(B) of this sentence; and (iii) repurchase or reverse repurchase agreements with respect to and fully secured by obligations referred to in clause (i) of this sentence.

"Term" shall mean the term of the Partnership described in Section 1.5.

"Trade Claims" shall mean interests in the unsecured debt owed by Persons, including Persons in an insolvency, reorganization, bankruptcy or similar proceeding or for which such a proceeding is imminent or expected, including, without limitation, unsecured debt owed by such Persons to trade vendors, to landlords for rejected leases and to rejected contract holders.

"Treasury Regulation" shall mean the income tax regulations promulgated under the Code.

"Turnaround Company" has the meaning set forth in Section 1.4(b)(i)(B).

"Unpaid Preferred Return Amount" shall mean, at any time, and with respect to any Partner, the amount necessary to be paid so that such Partner realizes an 8% rate of return (compounded annually) through such time on the amount of such Partner's unreturned Capital Contributions from time to time.

"Withdrawing Limited Partner" shall mean Marco V. Masotti, in his capacity as the withdrawing limited partner of the Partnership.

2.2 Other Definitions. Certain other terms used in this Agreement shall have the meanings specified throughout this Agreement.

2.3 Cross-References. All references herein to "Sections," "Articles" or "Schedules" shall refer to Sections, Articles or Schedules of this Agreement, as the same from time to time may be amended, except as otherwise explicitly provided; "herein," "hereof," "hereby" and similar terms shall refer to this Agreement in its entirety, as the same from time to time may be amended, except as otherwise explicitly provided.

### ARTICLE 3

#### CAPITAL CONTRIBUTIONS

3.1 Equity Commitments of and Capital Contributions by Partners.

(a) *Equity Commitment.* Each Partner shall be required to make Capital Contributions to the Partnership up to the aggregate amount of its Equity Commitment. No Partner shall be required to make any Capital Contribution to the Partnership if the aggregate Capital Contributions made by such Partner at or prior to the date of determination exceed such Partner's Equity Commitment; provided, that, each Partner shall be required to return to the Partnership distributions made to such Partner by the Partnership to the extent and in the aggregate amounts required by Section 3.4(b). Except as provided in this Agreement, at the end of the Commitment Period, all Partners shall be released from any further obligation to make Capital Contributions in connection with the making of an Investment by the Partnership, except to the extent necessary (i) to cover all Partnership Expenses, including Management Fees payable pursuant to Section 4.3 and indemnification obligations due under Section 9.7 and (ii) to fund Investments and Partnership Expenses related to Investments that are in process or under active consideration prior to the end of the Commitment Period (provided, that, the General Partner shall provide a list of such Investments to the Limited Partners on the date of the end of the Commitment Period).

(b) *General Partner's Equity Commitment.* Notwithstanding anything to the contrary elsewhere contained in this Agreement, on any Closing Date, the General Partner's Equity Commitment shall at all times equal at least \$10,000,000. In addition the sum of its Equity Commitment and the equity commitment to the Parallel Partnership shall at all times equal at least five percent (5%) of the sum of the aggregate Equity Commitments and the aggregate equity commitments to the Parallel Partnership.

(c) *Early Termination of Commitment Period.*

(i) If at any time Marc Lasry shall cease to participate actively in the affairs of the Partnership, the General Partner or the Investment Manager, the General Partner shall deliver a written notice to PSERS as promptly as practicable following such event. Upon receipt of such written notice PSERS

may, within 60 days following the date of receipt of such notice, elect to terminate the Commitment Period.

(ii) If at any time Malcolm Robinson shall cease to participate actively in the affairs of the Partnership, the General Partner, or the Investment Manager, the General Partner shall deliver a written notice to the Limited Partners as promptly as practicable following such event. Upon receipt of such written notice, Limited Partners holding more than fifty percent (50%) of the unaffiliated Aggregate Limited Partner Commitments may, within 60 days following the date of receipt of such notice, elect to terminate the Commitment Period.

(iii) If at any time prior to the end of the Commitment Period, the Partnership incurs liabilities that give rise to two indemnification obligations pursuant to Section 9.7 that, in each case, exceeds \$500,000, the General Partner shall deliver a written notice of such events to PSERS. Within 60 days following the date of such written notice, notwithstanding anything to the contrary in this Agreement, PSERS may elect to terminate the Commitment Period; provided, that the 60 day notice period shall recommence on the occurrence of a subsequent indemnification obligation that exceeds \$500,000.

(iv) PSERS may, at any time following an event that constitutes Cause, within 30 days of such event, elect to terminate the Commitment Period.

### 3.2 Payment of Capital Contributions.

(a) All Capital Contributions by a Partner to the Partnership shall be made in U.S. dollars by wire transfer of immediately available funds to an account designated by the General Partner. Such portion of a Partner's Equity Commitment as shall be determined by the General Partner shall be contributed to the Partnership on the Closing Date (or reasonably soon thereafter) on which such Partner is admitted to the Partnership, and the balance of such Partner's Equity Commitment shall be contributed to the Partnership at such time or times after such Closing Date as the General Partner shall determine; provided, that, on each such date PSERS shall not be required to fund an amount equal to more than 10% of its Equity Commitment. The contributions of each Partner shall be made pro rata according to the aggregate Equity Commitments of all Partners. The General Partner shall give each Limited Partner at least 10 Business Days' prior written notice (the "Funding Notice"), of the date of a required Capital Contribution in accordance with this Section 3.2 and the Limited Partners shall make their required Capital Contributions to the Partnership in an amount and on the date specified in the Funding Notice. Each Funding Notice shall specify the portion of the Capital Contribution anticipated to be used to make Investments and the portions, if any, anticipated to be used to pay Partnership Expenses. On a monthly basis, the General Partner intends to provide PSERS with a description of the use of any Capital Contributions of PSERS during the immediately preceding month.

(b) On each Subsequent Closing Date, each Partner that is accepted by the Partnership or is increasing its Equity Commitment (such Partners, "Subsequent Closing Partners") shall contribute to the Partnership as its initial Capital Contribution or additional Capital Contribution, as the case may be, an amount equal to the excess of (i) the aggregate amount of Capital Contributions that would have previously been required of such Partner in respect of its newly accepted Equity Commitment had it been a Partner in respect of such Equity Commitment as of the Initial Closing Date, over (ii) its proportionate share of Partnership distributions that it would have received in respect of its newly accepted Equity Commitment had it been a Partner in respect of such Equity Commitment as of the Initial Closing Date ("Make-Up Contributions"). In addition to the Make-Up Contributions, each such Partner shall make a payment to the Partnership in an amount computed in the same manner as interest at a rate equal to the Base Rate plus 2.0% per annum on aggregate Make-Up Contributions computed through such Subsequent Closing Date ("Make-Up Payment"). The Make-Up Payment shall not constitute a Capital Contribution (and, consequently, shall not reduce such Partner's unfunded Equity Commitment or increase such Partner's Capital Account). Amounts contributed by each Subsequent Closing Partner as Make-Up Contributions shall be applied by the Partnership (including, without limitation, by refund to existing Partners, payment of Management Fees and payment of Placement Fees) in a manner so that the Partners (including, for this purpose, the Subsequent Closing Partners) are, to the extent possible, in the same position in relation to the Partnership as they would have been had the Subsequent Closing Partners been Partners in respect of their Equity Commitment as of the Initial Closing Date. Make-Up Payments shall be applied by the Partnership in the same manner as the particular Make-Up Contributions to which they relate are applied according to the immediately preceding sentence. Make-Up Contributions and Make-Up Payments shall be treated solely for purposes of this Agreement (including the tax treatment of such Make-Up Contributions and Make-Up Payments) as though paid directly to the relevant Partner by the payor (and, consequently, shall not constitute a distribution of Distributable Proceeds by the Partnership in accordance with, nor affect calculations under Articles 7 and 12). Notwithstanding the foregoing, if, at the time of any Subsequent Closing Date, the Partnership has made one or more Investments and if, in the opinion of the General Partner, in its sole discretion, there has been a significant change or event relating to any Investment that would justify a change in the Book Basis of any such Investment since the date such Investment was made, the Make-Up Contribution required pursuant to this Section 3.2(b) (and the corresponding Make-Up Payment) may be appropriately adjusted. The General Partner shall in its sole discretion make all determinations under this Section 3.2(b) and make such other adjustments required under this Agreement by reason of the operation of this Section 3.2(b) in such reasonable manner as the General Partner deems equitable to all Partners and the Partnership.

(c) The amount contributed by a Limited Partner pursuant to Section 3.2(b) (including the Make-Up Payment) shall be refunded to the existing Partners *pro rata* according to drawn and unreturned Equity Commitments (such refunded amounts shall not constitute a distribution of Distributable Proceeds by the Partnership in accordance with, nor affect calculations under Articles 7 and 12). Each Partner's portion of these refunds, excluding the Make-Up Payment, shall be added to its

unfunded Equity Commitment and shall be subject to recall; provided, that at the time of any such refund, the General Partner shall notify the Limited Partner that such refund is recallable and the reason therefor.

(d) On any Subsequent Closing Date, on which an additional limited partner is admitted to the Partnership or the Parallel Partnership or any date on which a Limited Partner makes an additional equity commitment to the Partnership or the Parallel Partnership, the General Partner shall allocate Investments between the Partnership and the Parallel Partnership as are necessary so that, after giving effect to such admissions or additional equity commitment, such Investments are allocated between the Partnership and the Parallel Partnership in proportion to the aggregate equity commitment of each, including by way of transferring portions of Investments between the Partnership and the Parallel Partnership. The transfer or subparticipation of any portion of any Investment between the Partnership and the Parallel Partnership pursuant to this Section 3.2(d) shall be effected at a price (paid by the transferee entity to the transferor entity) determined by taking into account the contributions made in accordance with Section 3.2(b).

3.3 Withdrawals. Except as specifically provided in this Agreement, no Partner shall have the right to withdraw from the Partnership or to demand a return of all or any part of its Capital Contributions during the Term. Subject to Section 3.2, no interest shall be paid on Capital Contributions.

3.4 Limited Liability of Limited Partners. Pursuant to the Act, a Limited Partner, as such, shall not be liable for any losses, debts or obligations of the Partnership, except that: (a) a Limited Partner shall be liable to the Partnership for the Capital Contributions to the Partnership it is required to fund pursuant to this Agreement and its share of the assets and undistributed net profits of the Partnership shall be subject to the claims of creditors of the Partnership; and (b) the Partnership may recover any money or other property wrongfully distributed to such Limited Partner pursuant to Section 17-607 of the Act.

3.5 Defaults.

(a) Each Limited Partner agrees that payment of its Capital Contributions when due in accordance with Section 3.2 is of the essence, that any default by any Limited Partner in the payment thereof would cause injury to the Partnership and to the other Partners and that the amount of damages caused by any such injury would be extremely difficult to calculate. Accordingly, if at any time a Limited Partner shall fail to make a required Capital Contribution to the Partnership as and when due (a "Defaulting Limited Partner"), the amount of such default shall accrue interest commencing on the date such Capital Contribution was due to the date the Partnership receives payment thereof at the lesser of (i) the Base Rate (per annum) plus 8% or (ii) the maximum rate permitted by applicable law, and such Defaulting Limited Partner shall be liable for any expenses (including fees and disbursements of legal counsel) reasonably incurred by the Partnership in attempting to collect the required but unpaid Capital Contribution plus interest on the amount of such expenses, which shall accrue at the same rate of interest as



accrues on such required but unpaid Capital Contribution (such default amount plus expense reimbursement plus interest from time to time owed being the "Default Amount"). Upon the occurrence of such a default, the General Partner shall promptly notify in writing the Limited Partner who committed such default.

(b) In addition to any other rights or remedies available at law, the General Partner, in its sole discretion, may: (i) cause the Defaulting Limited Partner to forfeit any distributions thereafter made with respect to Investments made prior to such default, and credit such amounts against the Default Amount, which amount, however, shall be treated for purposes of Article 7 as though it was distributed to the Defaulting Limited Partner, whereupon once such Defaulting Limited Partner shall have forfeited distributions equal to the Default Amount, it shall be relieved of liability for the Default Amount; (ii) cause the Defaulting Limited Partner to be excluded from participating in future Investments, whereupon any recovery by the Partnership of the Default Amount shall be held by the Partnership and invested in Temporary Investments or applied to Partnership Expenses to the extent such expenses are allocated to the Defaulting Limited Partner in accordance with Article 6 until dissolution and completion of the winding up of the Partnership or such earlier time as the General Partner shall determine, in its sole discretion, to distribute such funds to the Defaulting Limited Partners; (iii) cause the Defaulting Limited Partner's Capital Account to be immediately reduced by 50% of the amount thereof; (iv) admit to the Partnership an additional Limited Partner (or Partners) for the sole purpose of assuming all or a portion of the Equity Commitment of the Defaulting Limited Partner (to the extent of the Defaulted Amount) and all or a portion of the balance of the unfunded Equity Commitment of such Defaulting Limited Partner; and/or (v) institute proceedings to recover the Default Amount (except to the extent recouped by the Partnership as provided by clauses (i) or (ii) of this sentence).

(c) The General Partner, in its sole discretion, may require the non-defaulting Limited Partners to make additional Capital Contributions to the Partnership to make up any shortfall in Capital Contributions resulting from the failure of the Defaulting Limited Partner to fund its required amount; provided, however, that in no event shall any Limited Partner be required to make any Capital Contribution pursuant to this Section 3.5(c) in an amount in excess of the amount of such Limited Partner's unfunded Equity Commitment. If the non-defaulting Limited Partners are required to make additional Capital Contributions pursuant to this Section 3.5(c), the General Partner shall deliver to such Limited Partners an additional Funding Notice.

## ARTICLE 4

### EXPENSES AND FEES

4.1 Partnership Expenses. The Partnership shall be responsible for and shall pay all Partnership Expenses. Any Partnership Expenses incurred by the General Partner or the Investment Manager on behalf of (or attributable to) the Partnership and any Investment Expenses shall be reimbursed by the Partnership. The Partnership shall be responsible for and shall pay all organizational and offering expenses incurred in the formation of the Partnership by the General Partner up to an amount equal to \$1,000,000.

The General Partner shall be responsible for and shall pay all organizational and offering expenses in excess of such amount.

4.2 Allocation of Expenses. To the extent that any Parallel Partnership or alternative investment vehicle controlled by the General Partner, the Investment Manager or an Affiliate thereof is participating in any Investment or potential Investment, any and all Partnership Expenses not paid by a Portfolio Company or other Person shall be borne by the Partnership, the Parallel Partnership or such alternative investment vehicle to the extent applicable, *pro rata* to the amount of funds to be invested by each of the foregoing, unless the General Partner reasonably determines for equitable reasons that such costs shall be borne in different proportions.

4.3 Management Fees.

(a) For rendering services pursuant to the terms of this Agreement, the Investment Manager shall be entitled to be paid semi-annually in advance a fee (the "Management Fees"), calculated as follows:

(i) During the Commitment Period, a fee that accrues on each January 1 and July 1 equal to 0.75% of the aggregate Equity Commitments as of each such date; and

(ii) After the Commitment Period, a fee that accrues on each January 1 and July 1 equal to 0.75% of aggregate unreturned Capital Contributions as of each such date.

(b) The Management Fees shall commence as of the Initial Closing Date regardless of when a Limited Partner is actually admitted to the Partnership, and a Limited Partner participating in a subsequent closing shall pay to the Partnership for the benefit of the Investment Manager an amount of Management Fees with respect to its Equity Commitment determined in accordance with Sections 3.2(b) and 4.3(a). In this regard, the Management Fees may be payable out of Distributable Proceeds or from Capital Contributions.

(c) The Management Fees shall be reduced by the aggregate amount of any management, investment banking or other fees paid to the Investment Manager, the General Partner, any members thereof or any of their respective relatives or family trusts by the issuer of any Investment held by the Partnership or any affiliate of such issuer. If the Management Fees in any six-month period are insufficient to offset the full amount of such management, investment banking or other fees, the remaining amount shall be carried forward to the next succeeding six-month period(s) and shall be offset first from any fees payable hereunder for such succeeding six-month(s).

(d) The fee payable under this Agreement shall be prorated for any partial six-month period of the Partnership, and may be payable out of proceeds received from Investments or Capital Contributions to the Partnership.

(e) An amount equal to 100% of all Placement Fees shall reduce the Management Fees on the date of, or in the periods following, payment of such fees by the Partnership by an identical amount.

(f) Any amounts drawn down from Equity Commitments to pay Management Fees may, to the extent Limited Partners receive subsequent distributions pursuant to Section 7.2(a), be added to such Limited Partners' unfunded Equity Commitment and be subject to recall by the General Partner; provided, that the aggregate amount subject to recall shall not exceed 20% of the aggregate distributions received by such Limited Partner and no such amounts shall be recallable following the second anniversary of the dissolution of the Partnership.

## ARTICLE 5

### MAKING OF INVESTMENTS

#### 5.1 Investment Limitations

(a) Without the consent of the Advisory Committee, the Partnership shall not invest more than the percentage specified for each country listed on Schedule B hereto of the aggregate Equity Commitments of the Partners in Investments in Portfolio Companies headquartered in each such country.

(b) Without the consent of the Advisory Committee, the Partnership shall not invest more than 15% of the aggregate Equity Commitments of the Partners in any single Portfolio Company.

(c) Without the consent of the Advisory Committee, the Partnership shall not invest more than 20% of the aggregate Equity Commitments of the Partners in Other Investments; provided, that without the consent of the Advisory Committee, the Partnership shall not invest more than 10% of the aggregate Equity Commitments of the Partners in CDOs.

The Partnership shall not make any Investment after the expiration of the Commitment Period, except for Investments that are in process or under active consideration prior to the end of the Commitment Period. At the end of the Commitment Period, the General Partner shall provide a list of such Investments to the Limited Partners.

#### 5.2 Reinvestment of Proceeds.

(a) The General Partner may in its discretion reinvest all or a portion of any proceeds or ordinary income received by the Partnership from or with respect to any Investment in new Investments made in accordance with the provisions of this Agreement; provided, however, that such reinvestment of proceeds or income shall have been committed prior to the expiration of the Commitment Period.

(b) To the extent that the General Partner elects to distribute to the Partners the proceeds from any wholly or partially realized Investment during the

Commitment Period, the amount distributed that constitutes a return of Capital Contributions pursuant to Section 7.2(a)(i) (Distributions) shall be added to the unfunded Equity Commitments and shall be subject to recall by the Partnership; provided, that at the time of any such distribution, the General Partner shall notify each Limited Partner that such distribution is recallable and the reason therefor.

## ARTICLE 6

### ALLOCATION OF PROFITS AND LOSSES

#### 6.1 Allocations of Profit or Loss

(a) *Profits.* The Partnership shall establish for each Partner on the books of the Partnership a Capital Account. For each Partnership Year or portion thereof, Profits shall be allocated among the Partners (after giving effect to the allocations contained in Sections 6.2 and 6.3) first to the extent that Losses have been allocated to the Partners pursuant to Section 6.1(b) and thereafter as nearly as possible in the manner that distributions would be made pursuant to Section 7.2 (other than returns of capital) if Section 7.2(b) were not a part of this Agreement.

(b) *Losses.* The Partnership shall allocate Losses first, to offset previous allocations of Profit in respect of income that has not yet been distributed, and then, among the Partners in accordance with their respective Participation Percentages.

#### 6.2 Tax Allocations; Certain Book/Tax Differences.

(a) All items of income, gain, loss, deduction and credit shall be allocated in the manner that the corresponding item of Profit or Loss was allocated pursuant to Section 6.1.

(b) In accordance with Section 704(c) of the Code and the applicable Treasury Regulations thereunder, income, gain, loss, deduction and tax depreciation with respect to any property contributed to the capital of the Partnership or otherwise revalued on the books of the Partnership shall, solely for income tax purposes, be allocated among the Partners so as to take into account any variation between the adjusted tax basis of such property to the Partnership and the fair market value of such property as determined at the time of the contribution or revaluation. In addition, the General Partner, in its sole discretion, may make, or not make, "curative" or "remedial" allocations (within the meaning of the Treasury Regulations under Section 704(c) of the Code) in any manner that reasonably reflects the purpose and intention of this Agreement, including (i) "curative" allocations which offset the effect of the "ceiling rule" for a prior taxable year (within the meaning of Treasury Regulation Section 1.704-3(c)(3)(ii)) and (ii) "curative" allocations from the disposition of contributed property (within the meaning of Treasury Regulation Section 1.704-3(c)(3)(iii)(B)). The foregoing allocations made pursuant to this Section 6.2(b) shall be as determined by the General Partner in accordance with any permissible method under Section 704(c) of the Code and any applicable Treasury Regulations thereunder.

6.3 Special Allocations. The following special allocations shall be made in the following order of priority:

(a) *Minimum Gain Chargeback*. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), notwithstanding any other provision of this Article 6, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Partner shall be specially allocated items of Partnership income and gain for such period in proportion to, and to the extent of, an amount equal to the portion of such Partner's share of the net decrease in Partnership Minimum Gain, determined in accordance with Treasury Regulations Sections 1.704-2(f) and 2(g). The items so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.3(a) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704(f) and shall be interpreted consistently therewith.

(b) *Qualified Income Offset*. If any Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulation Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of such Partner as quickly as possible, provided that an allocation pursuant to this Section 6.3(b) shall be made only if and to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 6 have been tentatively made as if this Section 6.3(b) were not in this Agreement. This Section 6.3(b) is intended to comply with the "qualified income offset" provision of such Treasury Regulation Section and shall be interpreted consistently therewith.

(c) *Special Income Allocation*. In the event any Partner has a deficit Capital Account balance at the end of any Partnership Year or portion thereof that is in excess of the amount such Partner is obligated to restore pursuant to Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), each such Partner shall be specially allocated items of Partnership income and gain in the amount of such excess as quickly as possible; provided that an allocation pursuant to this Section 6.3(c) shall be made only if and to the extent that such Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Agreement have been tentatively made as if this Section 6.3(c) were not in this Agreement.

(d) *Nonrecourse Deductions*. Nonrecourse Deductions for any Partnership Year or portion thereof shall be allocated (as nearly as possible) under Treasury Regulation Section 1.704-2 among the Partners in accordance with their relative Participation Percentages.

(e) *Partner Nonrecourse Deductions*. Any Partner Nonrecourse Deductions for any Partnership Year or other period shall be allocated to the Partner that potentially bears an economic risk of loss with respect to the Partner

Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with the principles set forth in Treasury Regulation Section 1.704-2(i).

(f) *Partner Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulation Section 1.704-2(i), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Year or portion thereof, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Treasury Regulation Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such Partnership Year (and if necessary, subsequent Partnership Years) in an amount equal to such Partner's share of the net decrease in Partner Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.3(f) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

## ARTICLE 7

### DISTRIBUTIONS

7.1 Distributions From Investments. All dividends, interest and other receipts from Investments and any proceeds or Marketable Securities received by the Partnership in exchange for or with respect to an Investment (including from earnings such as partnership distributions or from the proceeds of sale or refinancing or taking any other form) shall first be applied to Investment Expenses relating to such Investment or to Partnership Expenses or to any reserves that the General Partner reasonably determines should be funded and the balance shall, except as provided in Section 5.2, be distributed to the Partners pursuant to the provisions of this Article 7. Amounts that may be distributed pursuant to this section are sometimes hereinafter referred to as "Distributable Proceeds." After the Commitment Period, Distributable Proceeds shall be distributed to the Partners no less frequently than once each calendar year, and such distribution shall be made within 30 days after the end of each such year.

7.2 Amounts and Priority of Distributions. Distributable Proceeds, shall be distributed to the Partners in accordance with the following provisions:

(a) *Distributions.* Subject to the further provisions of this Section 7.2, Distributable Proceeds shall be distributed or applied as follows:

(i) First, 100% to the Limited Partners, in proportion to their respective unreturned portions of their respective aggregate Capital Contributions as of such distribution date, until each such Limited Partner has received an amount equal to the unreturned portion of such Limited Partner's respective aggregate Capital Contributions through such date;

(ii) Next, 100% to the General Partner until the General Partner has received an amount equal to the unreturned portion of the General Partner's aggregate Capital Contributions through such date;

(iii) Next, (A) first to the Limited Partners, in proportion to their respective Unpaid Preferred Return Amounts, until each Limited Partner has received an amount equal to its Unpaid Preferred Return Amount, and (B) second to the General Partner until it has received an amount equal to its Unpaid Preferred Return Amount;

(iv) Next, the remaining Distributable Proceeds shall for computational purposes be divided among the Partners in proportion to their respective Participation Percentages and distributed or applied as follows:

(A) The amount so allocated to the General Partner shall be distributed to the General Partner;

(B) The amount so allocated to each Limited Partner shall be divided between such Limited Partner and the General Partner and distributed as follows:

(I) First, to the General Partner until the cumulative distributions to the General Partner pursuant to this Section 7.2(a)(iv)(B)(I) are equal to 15% of the sum of the distributions made to such Limited Partner under Section 7.2(a)(iii) and this Section 7.2(a)(iv)(B)(I);

(II) Second, 85% to such Limited Partner and 15% to the General Partner, until cumulative distributions to such Limited Partner (other than pursuant to clause (III) below) provide such Limited Partner with an IRR of 25% through the date of such distribution; and

(III) Thereafter, 82% to such Limited Partner and 18% to the General Partner.

(b) *Tax Distributions.* Notwithstanding anything to the contrary in Section 7.2(a), following the end of each fiscal year of the Partnership during the Commitment Period, the General Partner shall cause the Partnership to distribute to the General Partner an amount equal to the sum (the "Tax Distributions") of the following: (i) the product of the portion of the Partnership's taxable income (excluding long-term capital gain) allocable to the General Partner pursuant to Article 6 multiplied by the Tax Rate at the time of the distribution; and (ii) the Partnership's long-term capital gain allocable to the General Partner pursuant to Article 6 multiplied by the Tax Rate at the time of the distribution. In computing the amount of cash to be distributed pursuant to this Section 7.2(b), the General Partner shall estimate in good faith the General Partner's share of the Partnership's income and gain for the period. The "Tax Rate" shall be the highest combined federal, state and local tax rate (taking into account the

deductibility of any of such rates) applicable to income of the type derived by an individual resident in New York City. The amount distributed to the Partners pursuant to Section 7.2(a) shall be reduced by an amount that allows the Tax Distribution to be made in full. The Tax Distribution shall be deducted from amounts otherwise distributable to each Limited Partner as determined by the General Partner in its discretion and repaid to such Limited Partners pursuant to Section 7.2(c).

(c) *Reduction.* Notwithstanding anything to the contrary in Section 7.2(a) above, the aggregate amount otherwise distributable to the General Partner on any date pursuant to Section 7.2(a)(iv)(B)(I), (II) and (III) shall be reduced by an amount equal to the excess, if any, of (x) the aggregate amount distributed to the General Partner pursuant to Section 7.2(b) prior to such distribution date, over (y) the aggregate amount of all prior reductions pursuant to this Section 7.2(c), and the amount to be distributed to the Limited Partners pursuant to Section 7.2(a) shall, in the aggregate, be increased by the amount of any such reduction in proportion to the aggregate amount by which the distributions to each such Limited Partner pursuant to Section 7.2(a) for all prior Fiscal Years, or portions thereof, ending before such date were reduced pursuant to Section 7.2(b).

(d) *Distributions In Kind.* Prior to the dissolution of the Partnership in accordance with Section 12.1, distributions made pursuant to Sections 7.1 and 7.2 shall be made only in cash or Marketable Securities in the discretion of the General Partner. Distributions of Marketable Securities and, upon dissolution in accordance with Section 12.2, 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. 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. If upon the dissolution of the Partnership there shall be any securities or other property available for distribution, then in lieu of distributing to the Limited Partners their respective shares of such securities, the General Partner shall use its reasonable best efforts to dispose of such securities. In the event the General Partner is unable to dispose of such securities or other property within a reasonable period of time, the General Partner shall give the Limited Partners at least ten Business Days prior written notice of its intention to make a distribution of such securities or other property to the Limited Partners. The Limited Partners may within such notice period elect, by written notice to the General Partner or liquidating trustee, as applicable, to decline the receipt of such distribution of securities or other property. In the event that the Limited Partners elect to decline the receipt of the proposed distribution, such distribution shall be made by depositing such securities or other property in a liquidating trust established by the General Partner in the name, for the benefit and at the expense of such Limited Partners (which expense shall be limited to



out-of-pocket expenses). In addition, the General Partner may in its discretion establish reasonable procedures with respect to the making of any distribution of securities or other property.

7.3 Reserves. The General Partner may establish reasonable reserves for anticipated expenses and working capital, unmatured obligations and contingent liabilities or with respect to any distribution to be made to a former Partner pursuant to this Article 7 or Article 12. If any amount otherwise distributable to a former Limited Partner is held in reserve as provided in this Section 7.3, a separate reserve account shall be maintained on the books of the Partnership. The balance in such account shall be equal to the amount held in reserve as of the date of distribution as adjusted to reflect interest thereon or any application of all or a portion of such former Limited Partner's proportionate share of the expense and liability amounts referred to in the first sentence of this Section 7.3, which are allocable to such former Limited Partner. The amounts held in a former Limited Partner's reserve account will be distributed to such former Limited Partner in the sole discretion of the General Partner.

7.4 No Duplicate Fees or Distributions. In the event that the Partnership invests in another Person pursuant to Section 1.4(a), the General Partner will take such action as may be necessary to ensure that the General Partner will not receive duplicate fees or distributions as a result of such investment.

## ARTICLE 8

[INTENTIONALLY OMITTED]

## ARTICLE 9

### MANAGEMENT

#### 9.1 Management Generally.

(a) The General Partner shall conduct or direct the business and affairs of the Partnership, and shall have full and complete authority and responsibility therefor, and the management and control of the Partnership's operations shall rest exclusively with the General Partner, subject to the terms and conditions of this Agreement; provided, that the General Partner hereby delegates authority for the day-to-day management and control of Partnership operations to the Investment Manager pursuant to the terms of the Investment Management Agreement; provided, further, that, except as otherwise expressly provided in the Agreement, the foregoing delegation shall not deprive the General Partner of its overall authority to manage and control the Partnership nor relieve the General Partner of its fiduciary and other obligations to the Partnership to the extent such duties are required under this Agreement or under the Act. Without limiting the generality of the foregoing sentence, and subject to the terms and conditions specifically set forth in this Agreement, the rights and powers of the General Partner with respect to the management and control of the Partnership shall include the rights and powers to cause the Partnership to purchase and sell, dispose of or otherwise

transfer Investments and exercise any voting rights, appraisal rights or other rights accorded the Partnership on account of the Partnership's ownership of any securities. The General Partner shall make such filings and keep such records with respect to the Partnership as are required by the Act.

(b) The General Partner and the Principals shall be required to devote such time and attention to the conduct of the operations of the Partnership as shall be necessary to accomplish the purposes and to conduct properly the operations of the Partnership.

(c) The Partners hereby acknowledge and agree that the Lead Principals are authorized to act for and bind the Partnership.

(d) The General Partner shall have responsibility, as a fiduciary for the Partnership, for the safekeeping and use of all funds and assets (including records) of the Partnership, whether or not in its immediate possession or control, and the General Partner shall not employ, or permit another to employ, such funds or assets in any manner except for the benefit of the Partnership.

(e) Without limiting the generality of the foregoing, the Limited Partners shall not participate in the control, management, direction or operation of the activities or affairs of the Partnership and shall have no power to act for or bind the Partnership.

9.2 Powers of the General Partner. The General Partner shall have the power on behalf and in the name of the Partnership to carry out any and all of the purposes of the Partnership set forth in Section 1.4 and to perform all acts and enter into and perform all contracts and other undertakings which it may deem necessary or advisable or incidental thereto solely to the extent consistent with the terms and conditions of this Agreement, including, without limitation, the power to:

(a) open, maintain and close accounts with brokers, which power shall include the authority to issue all instructions and authorizations to brokers regarding securities and money therein and to pay, or authorize the payment and reimbursement of, brokerage commissions;

(b) open, maintain and close bank accounts and draw checks or other orders for the payment of monies;

(c) form, participate and invest in corporations, partnerships, limited liability companies or other entities, in each instance, for the purpose of, or to facilitate, making, holding or financing Investments;

(d) borrow funds in accordance with Section 9.4(e) (including Administrative Borrowings), and expend the capital and revenues of the Partnership in furtherance of the Partnership's purposes, and pay, in accordance with the provisions of this Agreement, all debts and obligations of the Partnership to the extent that funds of the Partnership are available therefor;

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

(f) subject to Section 9.7(h), purchase, at the expense of the Partnership, liability, casualty and other insurance and bonds to protect the Partnership's properties and operations;

(g) employ consultants, accountants, attorneys, brokers, engineers, escrow agents and others, and the Investment Manager pursuant to the Investment Management Agreement, and terminate such employments; provided, however, that if any Affiliate of the General Partner is so employed, such employment shall be on terms and conditions complying with Section 9.9;

(h) execute and deliver any and all agreements, documents and other instruments necessary or incidental to the conduct of the operations of the Partnership;

(i) dissolve, wind up and terminate the Partnership in accordance with Section 12.1;

(j) enter into, and cause the Partnership to perform its obligations under, the Investment Management Agreement; and

(k) permit an assignment or other transfer in whole or in part of a Limited Partner's interest in the Partnership and admit any assignee thereof as a substituted limited partner of the Partnership, pursuant to and subject to the limitations of Article 11.

The General Partner, acting through a duly authorized director, officer, employee or other agent, may execute and deliver all agreements, deeds or other documents on the Partnership's behalf so as to bind the Partnership to the terms thereof.

**9.3 General Partner Permitted to Hold Partnership Property.** To the extent that the General Partner determines that it is required by law, rule or regulation to do so, or that it is customary practice in a jurisdiction to do so or it is otherwise in the best interests of the Partnership, the General Partner may acquire, hold or transfer, or cause to be acquired, held or transferred, any property of the Partnership in the name of the General Partner or a nominee, agent or trustee for the Partnership (including the General Partner acting as such) and enter into, or cause to be entered into, agreements or transactions for and on behalf of the Partnership, in the name of the General Partner or such nominee, agent or trustee; provided, however, that the General Partner or such nominee, agent or trustee, in so acting, shall act solely as agent for, and on behalf of, the Partnership and shall use its reasonable best efforts to conduct the operations of the Partnership so as to ensure that each party to any such agreement or transaction will be given actual notice that the entire beneficial interest in such agreement or transaction (including, without limitation, any assets covered thereby) is in the Partnership, rather

than the General Partner or any such other Person. All title to property beneficially owned by the Partnership and held by the General Partner or such nominee, agent or trustee shall be held in the name of the latter solely as nominee, agent or trustee for, and on behalf of, the Partnership.

9.4 Restrictions on General Partner's Authority. The General Partner shall not, without the unanimous written consent or ratification of the Limited Partners (other than Defaulting Limited Partners), do any of the following:

- (a) any act in contravention of this Agreement (as it may be amended from time to time) or the Certificate;
- (b) any act that would make it impossible to carry on the ordinary operations of the Partnership, except as otherwise provided in this Agreement;
- (c) confess a judgment against the Partnership;
- (d) possess Partnership property, or assign any rights in specific Partnership property, for other than a Partnership purpose;
- (e) except for Administrative Borrowings, cause the Partnership to borrow funds; or
- (f) transfer its interest as General Partner of the Partnership, except as otherwise provided in Article 11.

9.5 Investment Opportunities; Other Activities.

(a) Subject to Section 9.5(b), (d) and (e), until the earlier of the end of the Commitment Period and the date on which at least 75% of the Equity Commitments are invested or committed to be invested by the Partnership in Investments, the General Partner, the Investment Manager, the Principals or any of their respective Affiliates (together, the "Restricted Persons") shall not organize, manage or control any pooled investment fund or similar entity with overall investment parameters substantially similar to those of the Partnership (excluding the Partnership and any Parallel Partnership, collectively the "Similar Funds") and that acquires for its own account or the account of any other Restricted Person any Eligible Investment (as defined in Section 9.5(d)) the acquisition of which would be substantially within the Partnership's capacity to make; provided, however, that any Restricted Person may (i) make investments through, and/or manage, any pooled investment fund organized and existing on or before the Initial Closing Date, it being understood that the General Partner shall cause Avenue Asia Special Situations Fund II, L.P., Asia Investments, L.P., Avenue Asia International, Ltd. and Avenue Asia Capital Partners, L.P. (together, the "Other Avenue Asia Funds") to participate with the Partnership in all investment opportunities generated during the Commitment Period pro rata according to the amount of funds each such investment fund then has available for investment and under management (provided, that such investment opportunities may be available other than on a pro rata basis where the General Partner determines in an equitable manner it is appropriate in light of the

investment objectives, liquidity, diversification and other similar factors applicable to the Partnership and the Other Avenue Asia Funds) and (ii) make investments permitted by Section 9.8 or form and/or manage any investment partnership or other investment fund permitted by Section 9.8. The Partnership or any of the Other Avenue Asia Funds may also serve as a nominee or hold securities as a nominee for the Partnership, or any of the Other Avenue Asia Funds or other Similar Funds. Except for sales or other dispositions of assets by any of the Other Avenue Asia Funds that are necessitated by the obligation of such fund to redeem the interests of an investor in such fund, any sale of all or a portion of an interest owned by an Avenue Asia Fund in any Investment that is also held by the Partnership shall require a simultaneous sale of the *pro rata* portion of such Investment owned by the Partnership on the same terms and conditions (provided, that any such sale of the Investment may be made other than on a *pro rata* basis where the General Partner determines in an equitable manner it is appropriate in light of the investment objectives, liquidity, diversification, country limitations and other similar factors applicable to the Partnership and the Other Avenue Asia Funds). In addition, the Partnership shall not purchase any Investment from or sell any Investment to any Other Avenue Asia Fund.

(b) Subject to its obligations and duties under this Agreement, during and after the Commitment Period, a Restricted Person may sponsor, organize, manage or advise, and make investments in and through, one or more investment funds that are not Similar Funds, including without limitation Avenue Special Situations Fund III, L.P., Avenue Special Situations Fund III (Parallel), L.P., Avenue Special Situations Fund II, L.P., Avenue Special Situations Fund II (Parallel), L.P., Avenue Investments, L.P. and Avenue International, Ltd. (each, a "New Fund") that includes investors that are, or are not, Partners in the Partnership. A Limited Partner shall have no right to any investments made through any such New Fund, or the income or profits derived therefrom, except to the extent of its participation, if any, in any such New Fund.

(c) Subject to its obligations and duties under this Agreement, any Partner (including the General Partner), any Principal, the Investment Manager and any Affiliate of any thereof may form and/or manage other partnerships or other entities for the purpose of making investments, may invest in, engage in or possess an interest in any business venture of any nature or description, independently or with others, whether presently existing or hereafter created (provided, that no such investment or interest shall conflict with any Partnership Investment or interest), and neither the Partnership nor any Partner (including the General Partner) shall have any rights pursuant to this Agreement in or to any such investment or business ventures or the income or profits derived therefrom.

(d) For purposes of this Agreement, "Eligible Investment" shall mean Investments (other than Temporary Investments); provided, however, that (i) any equity or debt security that is registered under Section 12 or Section 15 of the Securities Exchange Act of 1934, as amended or as the same may be amended, or any successor statute, or that is traded on any foreign securities exchange or market, shall not be deemed an Eligible Investment except for any such debt security that at the time constitutes a Trade Claim and except where, upon acquiring such an equity security, the General Partner, the Investment Manager, any Principal, any investment partnership or

fund controlled by any of them and any Affiliate thereof, collectively, would beneficially own more than 10% of such class of equity security outstanding, in which case any additional acquisition of such equity security shall be considered the acquisition of an Eligible Investment and (ii) any investment partnership or other investment fund or account that is sponsored by one or more Persons who is not a Restricted Person and for which a Restricted Person does not supply management or advisory services shall not be deemed an Eligible Investment even if such investment fund, partnership or account invests in Eligible Investments.

(e) Notwithstanding Section 9.5(a) and (d), the Principals and their respective Affiliates, including (without limitation) Amroc Investments, LLC and any subsidiary thereof or successor thereto ("Amroc"), shall be permitted to acquire any Eligible Investment for their own account or accounts if such Eligible Investment is acquired by Amroc in the ordinary course of its brokerage business (but in such event not for the benefit of Amroc, the Principals or their respective Affiliates).

(f) Any and all Partnership Expenses shall be borne by the Partnership, Parallel Partnerships and the Other Avenue Asia Funds, to the extent applicable, *pro rata* based on the amount of their respective investments, unless the General Partner reasonably determines for equitable reasons that such costs shall be borne in different proportions.

9.6 [Intentionally Omitted].

9.7 Liability to Partners; Indemnification.

(a) None of the General Partner, the Investment Manager, the Principals or any of their respective Affiliates (each an "Exculpee" and collectively the "Exculpees") shall be liable to any Partner for any action taken or omitted to be taken by such Exculpee or for any action taken or omitted to be taken by any other Partner or other Person with respect to the Partnership, except in the following cases:

(i) An Exculpee materially violates any law, including but not limited to, violation of any federal or state securities laws;

(ii) An Exculpee materially breaches this Agreement, the Investment Management Agreement, or any other agreement between the Partnership and the General Partner, the Investment Manager or their respective Affiliates;

(iii) An Exculpee engages in self-dealing, bad faith or willful misconduct; or

(iv) An Exculpee fails to exercise the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of a venture capital enterprise with similar investment objectives and risks.

An Exculpee that is a voting member of the Advisory Committee shall only be liable in the event of such Exculpee's own fraud or gross negligence.

(b) The Partnership shall indemnify and hold harmless the Exculpees, to the extent permitted by applicable law, from any and all reasonable costs and expenses and any and all damages and claims that may be incurred or asserted against such Persons or entities by reason of any action taken or omitted to be taken on behalf of the Partnership unless such cost, expense, damage, or claim arises out of a case described in clauses (i) through (iv) of Section 9.7(a).

(c) If any Exculpee seeks indemnification from the Partnership pursuant to this Section 9.7, it shall so notify the Partnership and Advisory Committee and shall present to the Advisory Committee any proposed settlement arrangement giving rise to the indemnification obligation under this Section 9.7 for the approval of the Advisory Committee, which approval shall not be unreasonably withheld. If the Advisory Committee shall determine that such Exculpee shall be entitled to indemnification under Section 9.7, such determination shall be binding on the Partners and the Partnership.

(d) Subject to Section 9.7(e), expenses incurred by any Person or entity entitled to indemnification under Section 9.7(b) in respect of any costs, expenses, damages and claims, may be paid by the Partnership in advance of the final disposition of any such claim or action in the discretion of the General Partner upon the receipt of an undertaking by or on behalf of such person to repay the amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Partnership as authorized by this Section 9.7; provided, however, that at such time as such expenses for any Person exceed \$500,000 any additional expense reimbursement shall require the approval of the Advisory Committee.

(e) Notwithstanding any other provision of this Section 9.7, no advance payment pursuant to Section 9.7(d) shall be made with respect to any action brought by a majority in interest of the Limited Partners and no payment shall be made if such Limited Partners substantially prevails on the merits in such suit.

(f) The Partnership shall not make any capital call for the purpose of making an Investment in any Portfolio Company if the General Partner has actual knowledge or reason to believe that such Portfolio Company intends to use the proceeds from such Investment to indemnify any Exculpee.

(g) If a Limited Partner shall default in respect of its obligation to contribute capital to the Partnership, the Partnership shall not make a call for capital to be contributed by the non-Defaulting Limited Partners to satisfy a claim for indemnification under this Section 9.7 in excess of the amount that such non-Defaulting Limited Partners would have contributed to the Partnership had the Defaulting Limited Partners made its Capital Contribution.

(h) The General Partner shall use commercially reasonable efforts to obtain the funds needed to satisfy the Partnership's indemnification obligations under this Section 9.7 from Persons other than the Partners or the Partnership (for example, pursuant to insurance policies that provide primary coverage or Portfolio Company indemnification arrangements) before causing the Partnership to make payments pursuant to this Section 9.7. Notwithstanding anything to the contrary elsewhere contained in this Agreement, the Partnership shall not pay for insurance to cover acts that are not indemnifiable under this Agreement or applicable law.

#### 9.8 Co-investment.

(a) During the Commitment Period, each Limited Partner agrees and acknowledges that, in the case of any Investment that the General Partner or Investment Manager has determined to acquire for the Partnership except that the capital required for such Investment is beyond the capacity of the Partnership or the Other Avenue Asia Funds or would require a greater commitment of funds by the Partnership or the Other Avenue Asia Funds than the General Partner or Investment Manager determines to be prudent for the Partnership, the General Partner may offer to the Limited Partners (that are not Defaulting Limited Partners) the opportunity to co-invest in such Investment pro rata in accordance with each Limited Partner's Participation Percentage to the extent of the additional capital required for such Investment upon five days prior written notice. Consequently, if all of the Limited Partners do not elect to participate within such time period and in the manner required by the General Partner in order to accomplish such co-investment, the Limited Partners that choose to so participate shall be permitted to make up any shortfall in such co-investment up to an amount for each such Limited Partner pro rata as the Participation Percentage of such Partner bears to the aggregate Participation Percentages of all Limited Partners that are participating in such co-investment. If such shortfall is not eliminated by the co-investment of the Limited Partners, the General Partner may permit any other Person approved by the General Partner to co-invest. Notwithstanding the foregoing, if in the reasonable opinion of the General Partner, either (i) requirements of law, (ii) the terms of a prior agreement (such as a confidentiality agreement), (iii) the existence of a conflict of interest relating to a Limited Partner or (iv) time constraints make it impractical or impossible for the General Partner to effect the co-investment in the manner contemplated above, then the General Partner may effect the co-investment in a manner that it believes to be in the best interests of the Partnership. All co-investments shall be on the same terms as the investment by the Partnership except to the extent that the General Partner has determined that any variation reflects different tax or regulatory considerations applicable to the Partnership and a co-investor. For the avoidance of doubt, to the extent that a Limited Partner chooses to co-invest in an Investment, such Limited Partner's co-investment shall not be subject to Management Fees or carried interest and such Limited Partner shall only incur out-of-pocket expenses relating to such co-investment. Notwithstanding the foregoing, if no Limited Partner or any other Person accepts an offer to co-invest with respect to an Investment, the General Partner shall not offer any Person the opportunity to co-invest in such Investment on more favorable terms without first offering the Limited Partners the opportunity to make such co-investment pursuant to this paragraph on such terms.



(b) During the Commitment Period, if an investment opportunity produced by the Investment Manager leads to a potential larger non-passive investment opportunity (e.g., an opportunity which is not consistent with the investment strategy of the Partnership), then notwithstanding any other provision hereof to the contrary, the Investment Manager or the General Partner, as the case may be, may forward such investment opportunity to Amroc or any Affiliate thereof (a "Referred Person"), provided that the Referred Person grants the Partners co-investment rights on a side-by-side basis in such opportunity up to an amount equal to 20% of the total investment by the Referred Person in such investment opportunity. Any such investment shall be made through a new Person organized by the General Partner (or an Affiliate thereof) and shall be on economic terms similar to those applicable to the limited partners of, or investors in, the Referred Person except that the Partners will bear no more than a 10% carried interest payable to the General Partner or its Affiliate.

#### 9.9 Transactions with Associated Persons; Advisory Committee.

(a) Transactions between the Partnership, on the one hand, and the General Partner or the Investment Manager or their respective Affiliates or any other Person in any way associated with the General Partner or the Investment Manager, including any director, officer, employee, partner, stockholder or member thereof or any member of the family of any such Person (an "Associated Person"), acting in and for its own account, on the other hand, shall be precluded unless approved by the Advisory Committee or as expressly provided in this Agreement; provided, that any services performed by any Associated Person are services that the General Partner or the Investment Manager believes in good faith, at the time of requesting such services, to be needed in the best interests of the Partnership; and provided, further, that the terms of any such transaction shall be no less advantageous to the Partnership than are available for similar services in arm's-length transactions between unrelated parties.

(b) Each Limited Partner hereby (i) specifically approves the terms of the Investment Management Agreement and (ii) acknowledges and agrees that the Partnership's Investment Transactions may be, and are expected to be, effected through Amroc (which is an Associated Person) or Affiliates thereof, on an agency basis, at commission rates consistent with its past practice that do not exceed: (A) 1.00% of the face amount of any bank debt or Trade Claim and (B) 10.00% of the total premium received with respect to any receivable put contract. Notwithstanding the foregoing, in any case where the Partnership is one of a number of clients that are not Affiliates of Amroc purchasing such bank debt, Trade Claims or put contracts, the Partnership shall pay a commission rate that does not exceed the commission rate paid by such other clients of such firms in the transaction that are not Affiliates of such firms.

(c) The General Partner shall establish an advisory committee (the "Advisory Committee") comprised of not more than seven representatives (and their successors) of PSERS and other limited partners of the Partnership and any Parallel Partnership. The Advisory Committee shall meet with the General Partner in person or by telephone conference call at such times as requested by the General Partner upon reasonable notice to the members of the Advisory Committee. Any Investment

Transaction involving a material conflict of interest for the General Partner or its Affiliates or any other consent expressly required by this Agreement (including, without limitation, Section 9.7) shall require the prior approval of a majority of the members of the Advisory Committee present at the meeting thereof; provided, that any consent of the Advisory Committee in accordance with Section 5.1(a) shall require the prior approval of 66% of the members of the Advisory Committee present at the meeting thereof. In addition, the Advisory Committee shall review and approve the methodology adopted by the General Partner to value the assets of the Partnership. At the request of the General Partner, the Advisory Committee shall also provide general advice with respect to the Partnership's investment activities. Any expenses associated with such a meeting incurred by a member of the Advisory Committee shall be paid by the Partnership. The Advisory Committee shall have the right to retain counsel or other service providers (which service providers shall be acceptable to the General Partner) at the expense of the Partnership in order to discharge its functions described in this Agreement. The protections afforded by the exculpation and indemnification provisions of Section 9.7, shall extend to each member of the Advisory Committee and, with respect to the actions of such member, to the Limited Partner that is being represented by such member and to the Affiliates of such Limited Partners. Neither the members of the Advisory Committee nor the Limited Partners on behalf of whom such members act as representatives shall owe any duty (fiduciary or otherwise) to any other Limited Partner or to the Partnership in respect of the activities of the Advisory Committee.

#### 9.10 Unrelated Business Taxable Income.

(a) The General Partner shall use reasonable best efforts to avoid generating income that would cause a tax-exempt Limited Partner to recognize "unrelated business taxable income" under Section 512 or, except with respect to borrowings approved pursuant to Section 9.2(d), "debt-financed income" under Section 514 of the Code; provided, that, the General Partner shall not be deemed to violate its obligations under this Section 9.10 in connection with any Administrative Borrowing. In an effort to avoid generating "unrelated business taxable income," the General Partner shall not purchase securities on margin.

(b) The General Partner shall be required to give each Limited Partner who has previously requested in writing that the General Partner do so and who is not then in default on any obligation to make Capital Contributions, at least three (3) Business Days' notice prior to any borrowing or other direct leverage, including any Administrative Borrowing ("Borrowing"). The written notice shall state the dollar amount of the Limited Partner's proportionate share of the Borrowing and the proposed date of the Borrowing. The Partnership agrees that, if it receives (by the method prescribed in the notice) from a Limited Partner such dollar amount on or before the proposed date of the Borrowing, the amount borrowed or other leverage described in the notice shall be reduced by a corresponding amount, none of the amount borrowed or other leverage, any refinancing thereof, or any interest, discounts, or fees associated therewith shall be allocated to such Limited Partner, and such Limited Partner would be allocated its allocable share of the income from the amounts transferred by such Limited Partner to the Partnership and would not be allocated any income from the amounts

borrowed by or other leverage of the Partnership or any interest, discount, or fees associated therewith. Any amount so advanced by a Limited Partner shall not have any effect on such Limited Partner's Equity Commitment or Capital Contribution and shall be returned to such Limited Partner upon repayment of the related Borrowing.

9.11 Parallel Partnerships. Notwithstanding any other provision of this Agreement, the General Partner reserves the right to establish one or more separate entities for legal, regulatory, tax or other reasons, including Avenue Asia Special Situations Fund III, L.P. (each, a "Parallel Partnership"), which will co-invest *pro rata* with the Partnership in each of the Partnership's Investments on the basis of equity committed to the Parallel Partnership. As a result of the formation of a Parallel Partnership: (i) a portion of the equity commitments that would otherwise be made to the Partnership by the General Partner or any of its Affiliates may instead be made to such Parallel Partnership; (ii) all Investments, including the purchase price paid for such Investments, acquired in any transaction by the Partnership shall be acquired on substantially the same economic terms by the Parallel Partnership; (iii) any fees received and all other items of expense, income, gain, loss, deduction and credit shall be allocated between the Partnership and a Parallel Partnership on the basis of capital committed or to be committed by each to such transaction or proposed transaction; (iv) a Parallel Partnership shall dispose of its investments (or a proportionate share thereof) at the same time and on the same economic terms as the Partnership (provided, that, a Parallel Partnership shall not be obligated to distribute to its partners, and may continue to hold in the Parallel Partnership, any Investment that is distributed in-kind to the Partners); and (v) all Partnership Expenses shall be allocated between the Partnership and a Parallel Partnership on the basis of the aggregate equity commitments of the partners of each.

## ARTICLE 10

### ACCOUNTS; TAX RETURNS; REPORTS TO PARTNERS

10.1 Books of Account; Access. The General Partner shall maintain complete and accurate books of account of the Partnership's affairs at the Partnership's office, including a list of the names and addresses of all Partners, each Partner's Equity Commitment and the aggregate Capital Contributions of each Partner. Each Limited Partner shall have the right to inspect the Partnership's books and records upon reasonable request to the General Partner.

10.2 Independent Auditors. The books of account and records of the Partnership shall be audited by and reported upon as of the end of each Partnership Year by a firm of independent certified public accountants selected by the General Partner in accordance with U.S. generally accepted accounting principles.

10.3 Filing of Tax Returns. The General Partner shall prepare and file, or cause the accountants referred to in Section 10.2 to prepare and file, and shall provide to a Partner, upon reasonable request, a copy of any tax return required to be filed under applicable tax laws and regulations.

#### 10.4 Reports to Limited Partners.

(a) Within 90 days after the end of each Partnership Year, the General Partner shall cause to be prepared and mailed to each Limited Partner a Form K-1 with respect to such year and a report for such year setting forth:

- (i) an audited balance sheet or statement of assets and liabilities setting forth the net assets of the Partnership at the beginning and the end of such Partnership Year;
- (ii) an audited income statement or statement of operations for such Partnership Year;
- (iii) a statement of Partners' Capital Accounts;
- (iv) a statement of distributions to each Partner;
- (v) a report containing a summary of the Partnership's investment activities;
- (vi) a statement describing the services provided and the fees paid to the General Partner and its Affiliates, including Amroc; and
- (vii) a statement listing all Partnership Expenses.

(b) The following information shall be provided to each Partner on a quarterly basis within 45 days after the end of the fiscal quarter:

- (i) unaudited financial statements;
- (ii) a summary of the Partnership's investment activities;
- (iii) a statement of the total amount of unrelated business taxable income generated by the Partnership during the period then ended and an estimate of the amount allocable to each Partner;
- (iv) a summary of trading activity during the quarter;
- (v) a summary showing the asset allocation of the Partnership;
- (vi) Pricing trends and other matters of specific interest in the market, changes (if any) in short term and long term investment strategy since the last quarterly report, and brief background information on major positions taken since the last quarterly report.

(c) The General Partner shall provide to any Limited Partner any additional information regarding the Partnership and its Investments as such Limited Partner may reasonably request.

#### 10.5 Tax Controversies.

(a) The General Partner is hereby designated the "Tax Matters Partner" (as defined in Section 6231 of the Code) and is authorized and required to represent the Partnership (at the Partnership's expense) in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings; provided, however, that the General Partner shall promptly inform each Limited Partner of any tax deficiencies assessed or proposed to be assessed (of which the General Partner is actually aware) by any taxing authority against the Partnership or such Limited Partner.

(b) Each Person (herein called a "Pass-Thru Partner"), that holds or controls an interest as a Limited Partner on behalf of, or for the benefit of another person or persons, or which Pass-Thru Partner is beneficially owned (directed or indirectly) by another person or persons shall, within 30 days following receipt from the Tax Matters Partner of any notice, demand, request for information or similar document, convey such notice or other document in writing to all holders of beneficial interests in the Partnership holding such interests through such Pass-Thru Partner.

10.6 Accounting Methods; Elections. The General Partner shall determine the accounting methods and conventions to be used in the preparation of the Partnership's tax returns and shall make any and all elections under the tax laws of the United States and any other relevant jurisdictions as to the treatment of items of income, gain, loss, deduction and credit of the Partnership, or any other method or procedure related to the preparation of the Partnership's tax returns. The General Partner may (but need not), in its sole discretion, make any elections under the Code (including, but not limited to, the election under Section 754 of the Code); provided, however, without the unanimous approval of the Limited Partners (other than Defaulting Limited Partners), the General Partner shall not make any election under the Code, which election would have the effect of causing the Partnership to lose its status as a partnership for tax purposes.

#### 10.7 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;

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

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

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 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, that, 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.* Except in connection with Section 10.7(a)(i) (Confidentiality), in the event that 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 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 or any Portfolio Company in any effort any such Person undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the Partnership waives compliance with the provisions of this Section 10.7, such Partner and its Representatives will furnish only that portion of the Confidential Information which is required and will exercise all reasonable efforts to obtain reasonably reliable assurance that the Confidential Information will be accorded confidential treatment.

(d) *Waiver.* The General Partner may agree to waive, in its discretion, any or all of the provisions of this Section 10.7.

(e) *Exceptions to Confidentiality.* Notwithstanding anything herein to the contrary in this Agreement, any party to this Agreement (and each employee, representative or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement, and all materials of any kind (including opinions or other tax analysis) related to such tax treatment and tax structure; provided, that, except as otherwise expressly provided in this Agreement, this sentence shall not permit any person to disclose the name of, or other information that would identify, any party to such transactions or to disclose confidential commercial information regarding such transactions.

10.8 Acknowledgement of PSERS as a Tax Exempt Entity. The General Partner acknowledges that PSERS is an administrative agency of the Commonwealth of Pennsylvania and claims an exemption from federal, state and local taxes. Accordingly, the General Partner shall not withhold taxes from income distributable to PSERS. In the event that a taxing authority makes a claim for taxes attributable to PSERS' income, the General Partner shall notify PSERS in advance of making the required tax payments and provide PSERS with a reasonable opportunity to establish its tax exempt status.

## ARTICLE 11

### TRANSFERS

#### 11.1 General Partner.

(a) The General Partner shall not voluntarily withdraw from the Partnership or sell, assign, mortgage, hypothecate, pledge, create a security interest in or lien upon, encumber, give, place in trust, or otherwise voluntarily or involuntarily dispose of or transfer all or any portion of its interest as a General Partner without the written consent of those Limited Partners which are not Affiliates of the General Partner and which represent at least 75% of the aggregate Limited Partners' Equity Commitments at such time (excluding Equity Commitments of Defaulting Limited Partners), except for such transfers to a successor entity as occur by operation of law and by which the transferee assumes all of the General Partner's interest in and obligations to the Partnership; provided, however, that the foregoing provisions of this Section 11.1(a) shall not prevent the General Partner from dissolving the Partnership in accordance with Section 12.1(a)(ii).

(b) Notwithstanding Section 11.1(a), the General Partner may, upon the vote of the unaffiliated Limited Partners having a majority of the aggregate Limited Partner Equity Commitments (excluding Equity Commitments of Defaulting Limited Partners), beneficially assign its rights to receive distributions of cash or other property from the Partnership for the sole purpose of carrying out the estate planning strategies of the Principals; provided, however, that for all other purposes of this Agreement, the amounts of such distributions so assigned shall be treated as actually made to and received by the General Partner; and, provided, further, that the General

Partner shall at all times maintain (i) at least a 0.10% interest in each material item of Partnership income, gain, loss, deduction and credit, and (ii) at least a 0.10% interest in the capital of the Partnership. The General Partner shall provide written notice of any such assignment to the Limited Partners. A beneficial assignee or transferee of a portion of the interest of the General Partner pursuant to this Section 11.1(b) shall not become a substituted general partner of the Partnership or in any way be deemed to have assumed any of the General Partner's duties or obligations hereunder, which shall remain duties and obligations of the General Partner.

#### 11.2 Transfer of a Limited Partner's Interest.

(a) Except as otherwise provided in this Agreement, no Limited Partner shall (i) withdraw or resign from the Partnership or (ii) other than an assignment to a successor pension trust or trustee, sell, assign, mortgage, hypothecate, pledge, create a security interest in or lien upon, encumber, give, place in trust, or otherwise voluntarily or involuntarily dispose of or transfer all or any portion of its interest in the Partnership without the prior written consent of the General Partner, which consent may be granted or withheld in its sole discretion.

(b) In any event, the consent of the General Partner shall be withheld unless (i) the transaction (A) complies with federal and any applicable state securities laws, (B) complies with all other applicable federal, state or foreign laws, (C) will not subject the Partnership to the registration or reporting requirements of the Investment Company Act of 1940, as amended, (D) will not subject the Partnership, any Partner, the General Partner, the Investment Manager, or any Affiliate of any of them to additional regulatory requirements, and (E) will not cause the Partnership to be dissolved or to be classified as a publicly traded partnership or otherwise as a corporation for United States federal income tax purposes or, unless the General Partner determines it to be immaterial, a termination of the Partnership pursuant to Section 708 of the Code, and (ii) 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 clauses (i)(A), (B), (C), (D), and (E) above and such other matters as the General Partner may reasonably request; provided, that the General Partner in its discretion may waive all or any part of the opinion required by clause (ii) above if it has a reasonable basis on which to conclude that the requirements set forth in clause (i) above, as to which the opinion is waived, are 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 (i)(A) through (E) above and such other factual matters as the General Partner may reasonably request.

(c) In the event that a Limited Partner initiates a claim against one or more Exculpees to recover any losses suffered by such Limited Partner as a result of such Exculpee's liability pursuant to Section 9.6, the General Partner or its Affiliates shall have the right to purchase or arrange for the purchase of such Limited Partner's interest in the Partnership for a price equal to the excess of (i) the aggregate Capital Contributions of such Limited Partner over (ii) the sum of the amount of aggregate



distributions to such Limited Partner from the Partnership. Upon the purchase of such Limited Partner's interest in the Partnership pursuant to the preceding sentence, such Limited Partner shall withdraw its claim against such Exculpees.

11.3 Substituted Limited Partner. Any Person that is an assignee of any portion of a Limited Partner's interest in the Partnership pursuant to Section 11.2 shall only become a limited partner of the Partnership with the prior written consent of the General Partner (which consent may be granted or withheld in its sole discretion and which need not be given in the case of an assignment to a successor pension trust) and upon such Person accepting and agreeing to be bound by this Agreement in writing and having executed, acknowledged and delivered to the General Partner a special power of attorney for the purposes set forth in Article 13 and paid, or made provision acceptable to the General Partner to pay, all legal and other fees, administrative charges and filing costs reasonably incurred by the Partnership in connection with such assignee's admission as a limited partner of the Partnership. Unless and until an assignee of an interest in the Partnership is admitted as a limited partner of the Partnership, such assignee shall not be entitled to exercise any vote with respect to such interest. The General Partner shall amend Schedule A hereto to reflect the admission to the Partnership of a substituted Limited Partner.

11.4 Assignee's Rights. All assignments and other transfers of the interest of a Partner in the Partnership, or of rights attributable to the interest of a Partner, shall be effectuated by written instrument delivered to the Partnership and reasonably satisfactory in form to the General Partner. Any purported assignment or other transfer of an interest, or rights attributable to the interest, of any Partner in the Partnership which is not in compliance with this Agreement shall be null and void and of no force and effect whatsoever. The Partnership, the General Partner and the Investment Manager shall be entitled to treat the purported transferor of an interest, or rights attributable to an interest, of any Partner in the Partnership as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such time as a written assignment that conforms to the requirements of this Article 11 has been received by and recorded on the books of the Partnership. A permitted assignee or transferee of any interest or rights attributable to the interest of any Partner in the Partnership, upon recording of such assignment on the books of the Partnership, shall be entitled to receive the distributions of cash or other property from the Partnership attributable to the interest so assigned.

11.5 Distributions Subsequent to Assignment. An assignment of a Limited Partner's interest in the Partnership as described in Section 11.2 shall be effective as of the date determined by the General Partner. All profits and losses of the Partnership attributable to any portion of a Limited Partner's interest in the Partnership with respect to an assignment shall be allocated between the assignor and the assignee in accordance with Section 706 of the Code and the Treasury Regulations promulgated thereunder. Distributions made after the effective date of the assignment shall be made to the assignee.

11.6 Bankruptcy or Dissolution of a Limited Partner. Notwithstanding anything to the contrary in Section 11.2, the Bankruptcy of a Limited Partner, the death or adjudicated incapacity of Limited Partner who is a natural person or the dissolution under the supervision of a court of competent jurisdiction of a Limited Partner that is a company or other entity shall not cause a dissolution of the Partnership, but all the rights of such Limited Partner in the Partnership, including the right to receive distributions and to assign its interest in the Partnership pursuant to Section 11.2, and all of the obligations to the Partnership of such Limited Partner, shall, on the happening of such an event, devolve on its estate or executor, administrator, guardian, insolvency trustee or other legal representative appointed for the purpose of settling its estate or administering its property, subject to the terms and conditions of this Agreement, and the Partnership shall continue as a limited partnership. Such legal representative shall, upon compliance with Section 11.4, be considered a permitted assignee of such Limited Partner and may be admitted as a limited partner of the Partnership as, and only as, provided in Section 11.3.

## ARTICLE 12

### DISSOLUTION; REMOVAL OF THE GENERAL PARTNER; WINDING UP

#### 12.1 Events of Dissolution.

(a) The Partnership shall continue until the end of the Term, whereupon it shall dissolve, unless sooner dissolved upon the earliest to occur of the following events:

(i) the removal under Section 12.2 or the Bankruptcy of, or permitted transfer of its entire interest in the Partnership by the General Partner (an "Event of Withdrawal") (subject to the right of the Limited Partners to continue the Partnership pursuant to the proviso below);

(ii) a determination, at any time, by the General Partner in its sole discretion; or

(iii) the entry of a decree of judicial dissolution under the Act;

provided, however, that, upon the occurrence of an Event of Withdrawal of the General Partner, the Partnership may be continued by action of all the Limited Partners as provided in Section 12.1(b). The General Partner shall provide the Limited Partners with at least 30 days' prior written notice of a dissolution of the Partnership.

(b) Upon the occurrence of an Event of Withdrawal of the General Partner, all of the Limited Partners (other than Defaulting Limited Partners) may elect to continue the Partnership on the terms provided by this Agreement by electing one or more successor general partners, effective as of the date of the Event of Withdrawal, such action to be taken within 90 days after such Event of Withdrawal and notice thereof to be given promptly to the General Partner. In the event of the continuation of the

Partnership upon the occurrence of an Event of Withdrawal of the General Partner as herein provided, the successor general partner(s) will exercise the rights and powers and fulfill the obligations hereunder of the General Partner (excluding (i) the obligation of the General Partner to contribute capital to the Partnership pursuant to Article 3 as required from and after the date of the Event of Withdrawal (but the successor general partner(s) shall be required to contribute to the capital of the Partnership such amounts, if any, as may have been agreed between the successor general partner(s) and all of the Limited Partners (other than Defaulting Limited Partners) and (ii) any obligations of the General Partner to the Partnership or the Partners occasioned by the General Partner's wrongful withdrawal as the general partner of the Partnership), and, subject to Article 7 hereof, shall have such interest in the Limited Partners' profits, losses and distributions as shall be agreed upon by the successor general partner(s) and the Limited Partners (other than Defaulting Limited Partners), upon execution and delivery to the General Partner and the Limited Partners (other than Defaulting Limited Partners) by the successor general partner(s) of a written acceptance of this Agreement.

#### 12.2 Liquidation and Winding Up.

(a) Upon the dissolution of the Partnership, unless the Partnership is continued as provided in Section 12.1(b), the General Partner or, if the General Partner has withdrawn from the Partnership, dissolved or become Bankrupt, a Person selected by Limited Partners (other than Defaulting Limited Partners) representing at least a majority of the Aggregate Limited Partner Commitments at such time (who may be one of the Limited Partners), shall act as liquidator (the General Partner or such Person, as the case may be, the "Liquidator") of the Partnership to wind up its affairs. The Liquidator shall have full power and authority to sell, assign and encumber any or all of the Partnership's assets, to pay, settle, compromise and resolve the Partnership's obligations and to wind up the affairs of the Partnership in an orderly and businesslike manner.

(b) Except to the extent the Liquidator determines to distribute assets in kind as hereinafter provided, the Liquidator shall sell or otherwise dispose of all the Partnership's assets as soon as practicable consistent with good business practice and obtaining the fair value thereof, but in all events within one year of the dissolution of the Partnership unless Limited Partners (other than Defaulting Limited Partners) representing two-thirds of the Aggregate Limited Partner Commitments consent to a longer period. The Profits and Losses resulting therefrom shall be allocated among the Partners in accordance with Article 6 hereof. All proceeds from liquidation shall be distributed in the following order of priority:

(i) first, to the payment of the debts and liabilities of the Partnership and expenses of liquidation;

(ii) second, to the setting up of such reserves as the Liquidator may reasonably consider necessary or appropriate to provide for any unmatured or contingent liability of the Partnership; and

(iii) third, to the Partners in the same manner in which non-liquidating distributions are made pursuant to Article 7.

In lieu of making liquidating distributions to Partners in cash, the Liquidator may, in its discretion, make such distributions in restricted securities or other assets of the Partnership, in which event the Liquidator (or the Investment Manager, if retained by the Liquidator to assist in the liquidation) shall hire an independent investment banking firm or other appropriate independent expert to determine the Fair Market Value of such assets at such time and such assets shall be deemed sold at such value and profits and losses resulting therefrom shall be allocated in accordance with Article 6. The Liquidator shall not discriminate among the Partners in making any such distribution in kind, and shall in any such distribution (i) distribute to each of the Partners entitled to such distribution property of the same type and in the same proportions and (ii) if cash and property are to be distributed simultaneously, distribute the cash and property in the same proportion to each such Partner entitled to such distribution.

12.3 Final and Interim Accountings. Upon the dissolution of the Partnership, unless the Partnership is to be continued as provided in Section 12.1(b), a proper accounting shall be made by the Partnership's independent public accountants as described in Section 10.2 hereof from the date of the last previous accounting to the date of dissolution and, if winding up of the Partnership takes more than one year, annually.

12.4 Cancellation of Certificate. Upon the completion of the winding up of the Partnership's affairs and the distribution of Partnership assets as provided in Section 12.2, the Partnership shall be terminated and the person acting as Liquidator shall cause the cancellation of the Certificate and shall take such other actions as may be necessary or appropriate to terminate the Partnership.

12.5 Liability of Partnership. Except as otherwise provided in this Agreement, each Limited Partner, by its acceptance of this Agreement, agrees that liability for the return of its Capital Contribution is limited to the Partnership and the Partnership's assets. Except as otherwise specifically provided in this Agreement, each Partner shall look solely to the assets of the Partnership for all distributions with respect to the Partnership and its Capital Contribution thereto.

## ARTICLE 13

### POWER OF ATTORNEY

13.1 Appointment of General Partner. The Limited Partners, by the execution of the Subscription Agreement, do irrevocably constitute and appoint the General Partner and its officers, with full power of substitution, as their true and lawful attorney, in their name, place and stead, to execute, acknowledge, swear to, deliver, record and file, as appropriate (a) any clarifying or conforming amendments to this Agreement or other amendments to this Agreement that are of an inconsequential nature and do not adversely affect any rights of a Limited Partner in any respect, (b) all certificates and other instruments deemed necessary or advisable by the General Partner

to carry out the provisions of this Agreement or to qualify or continue the Partnership as a limited partnership or partnership wherein the Limited Partners have limited liability in the states where the Partnership may be conducting its operations, (c) 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, including, without limitation, the substitution of assignees as substituted limited partners pursuant to Section 11.3, (d) all conveyances and other instruments deemed necessary or advisable by the General Partner to effect the dissolution and termination of the Partnership, (e) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Partnership and (f) all other instruments or papers which may be required or permitted by law to be filed on behalf of the Partnership.

13.2 Duration of Power. The power of attorney granted pursuant to Section 13.1 (a) is coupled with an interest and shall be irrevocable and survive the Bankruptcy or dissolution of the grantor (provided, that such power of attorney shall terminate upon the occurrence of an Event of Withdrawal of the General Partner), (b) may be exercised by the General Partner either by signing separately as attorney-in-fact for the Limited Partners or, after listing the Limited Partners executing an instrument, by signature of the General Partner acting as attorney-in-fact for all of them, and (c) shall survive the delivery of an assignment by a Limited Partner of the whole or any fraction of its interest in the Partnership, except that, where the assignee of the whole of such Limited Partner's interest in the Partnership 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, acknowledge, swear to, deliver, record and file any instrument necessary or appropriate to effect such substitution. In the event of any conflict between this Agreement and any document, instrument, conveyance or certificate executed or filed by the General Partner pursuant to such power of attorney, this Agreement shall control.

## ARTICLE 14

### AMENDMENTS TO AGREEMENT

14.1 Amendments. This Agreement and the Investment Management Agreement may not be amended without the written consent of the General Partner and the Limited Partners (excluding Equity Commitments of Defaulting Limited Partners and other than an amendment of Schedule A hereto solely to reflect the admission of an additional or substituted limited partner to the Partnership or the making of an additional Equity Commitment pursuant to Sections 1.9(b) or 11.3, respectively); provided, however, that amendments may be made with the consent of the Limited Partners provided by the General Partner acting pursuant to the power of attorney contained in Article 13 hereof as permitted by said Article. The General Partner shall furnish a copy of any amendment of this Agreement or the Investment Management Agreement to all Partners promptly after such amendment has become effective, other than an amendment of Schedule A hereto solely to reflect the admission of an additional or substituted limited

partner to the Partnership or the making of an additional Equity Commitment pursuant to Sections 1.9(b) or 11.3 hereof, respectively.

## ARTICLE 15

### MEETINGS OF THE PARTNERS

15.1 Meetings. Meetings of the Partners, for any purpose, may be called by the General Partner from time to time, in its discretion, and at any time by Limited Partners representing at least two-thirds of the aggregate Limited Partners Equity Commitments (determined, for this purpose, without reference to the Equity Commitments of Defaulting Limited Partners) at such time. In addition, an annual meeting of the Partners shall be held each year at such date and time and at such place as the General Partner reasonably shall determine to offer the Limited Partners the opportunity to review and discuss the Partnership's investment activities. Such meetings shall be held at the principal office of the Partnership, or at such other place as may reasonably be designated by the General Partner or the Limited Partners who have called the meeting. Notice of any such meeting shall be delivered to all Partners in the manner prescribed in Article 16 not fewer than 30 days nor more than 60 days before the date of such meeting.

15.2 Proxy. A Limited Partner may authorize any Person or Persons to act for it by proxy in all matters in which the Limited Partner is entitled to participate. Every proxy must be signed by a Limited Partner or its attorney-in-fact (other than the General Partner). No proxy shall be valid after the expiration of six months from the date thereof. Every proxy shall be revocable by the Limited Partner executing it.

15.3 Action by Limited Partners. Except as otherwise specifically provided herein, to the extent any consent or approval is required or any action may be taken by the Limited Partners hereunder, such consent or approval shall be obtained upon, or such action may be taken by, the consent or approval of Limited Partners representing at least a majority of the aggregate Limited Partners' Equity Commitments (determined, for this purpose, without reference to the Equity Commitments of Defaulting Limited Partners) at such time. For these purposes, the interest of any Limited Partner that is in default hereunder shall not be counted in either the numerator or the denominator.

15.4 Written Consents. Whenever Partners are required or permitted to take any action by vote or at a meeting, such action may be taken without a meeting, without prior notice and without a vote, if a written consent setting forth the action so taken is signed by Limited Partners owning not less than the minimum interest that would be necessary to authorize or take such action by vote or at a meeting. Notice of any action so taken by written consent shall be given by the General Partner to all Partners, in the manner prescribed in Article 16, promptly after the taking of such action.

15.5 Limitation on Consents. Notwithstanding anything to the contrary elsewhere contained in this Agreement, any matters requiring the consent of the Limited

Partners in this Agreement shall not include or require the consent of any Limited Partner that is an Affiliate of the General Partner.

## ARTICLE 16

### NOTICES

16.1 Method for Notices. Whenever it is provided herein that any notice, demand, request, consent, approval, declaration, agreement or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration, agreement or other communication shall be in writing and shall be deemed given when delivered in person with receipt acknowledged or overnight when sent by a nationally recognized overnight courier service, or telecopied with receipt acknowledged, addressed to the addresses set forth in clauses (a)(i), (b) and (c)(i):

(a) If to the General Partner at:

- (i) AVENUE ASIA CAPITAL PARTNERS II, LLC  
535 Madison Avenue, 15th Floor  
New York, New York 10022  
Attention: Malcolm Robinson  
Telecopy No.: (212) 850-7519

with a copy to:

- (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Marco V. Masotti  
Telecopy No.: (212) 757-3990

(b) If to a Limited Partner at the address indicated on such Limited Partner's signature page to this Agreement.

(c) If to the Partnership at:

- (i) AVENUE ASIA SPECIAL SITUATIONS FUND  
III (PARALLEL), L.P.  
535 Madison Avenue, 15th Floor  
New York, New York 10022  
Attention: Alexa Kim  
Telecopy No.: (212) 878-3528  
Telephone No.: (212) 878-3585

with a copy to:

- (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attention: Marco V. Masotti  
Telecopy No.: (212) 757-3990

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration, agreement or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration, agreement or other communication. Except as otherwise specifically provided in this Agreement, any consent or notice required to be given or provided by a Limited Partner shall be given or provided to the Partnership.

16.2 Other Communications. Notwithstanding the provisions of Section 16.1, routine communications such as financial statements of the Partnership may be sent by first-class mail, postage prepaid. Distributions to the Partners provided for in this Agreement shall be made by wire transfer of immediately available funds to a bank account designated by each Partner.

16.3 Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

## ARTICLE 17

### REPRESENTATIONS

17.1 Investment Purpose. Each Limited Partner represents and warrants to the General Partner that it has acquired its interest in the Partnership for its own account, for investment purposes only and not with a view to the resale or distribution thereof. Each Limited Partner recognizes that an investment in the Partnership is speculative and involves certain risks. Each Limited Partner further represents and warrants that the General Partner has not made any guaranty or representation upon which such Limited Partner has relied concerning the possibility or probability of profit or the realization of any tax benefits as a result of its acquisition of an interest in the Partnership, and such Limited Partner recognizes that there is no guaranty that the Partnership will be profitable or that such Limited Partner's capital will be returned in full.



17.2 Investment Restriction. Each Limited Partner recognizes that (a) the interest in the Partnership has not been registered under the Securities Act, in reliance upon an exemption from such registration, and agrees that it will not sell, offer for sale, transfer, pledge or hypothecate its interest in the Partnership in the absence of an effective registration statement covering such interest in the Partnership under the Securities Act (which the General Partner and the Partnership are under no obligation, and on the date hereof do not expect, to cause to occur), unless such sale, offer of sale, transfer, pledge or hypothecation is exempt from registration and (b) the restrictions on transfer of interests may severely affect the liquidity of its investment in the Partnership.

17.3 Due Authorization of Limited Partners. Each Limited Partner represents and warrants to the General Partner that (a) if it is a corporation, partnership, limited liability company, trust, association or other company, it is authorized, and has all requisite power and authority, under its charter and bylaws or other articles or agreements of organization and the laws of the jurisdiction where it is incorporated or otherwise organized, to become a Limited Partner, (b) this Agreement has been duly and validly executed by such Limited Partner and constitutes a valid and binding obligation of such Limited Partner, subject to applicable bankruptcy, insolvency, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a court of law or equity), (c) to the best of such Limited Partner's knowledge, the execution and delivery of this Agreement complies with all laws applicable to such Limited Partner or to which it is subject and (d) such Limited Partner has obtained all consents or approvals, if any, of governmental bodies having jurisdiction over it necessary in connection with its execution, delivery and performance of this Agreement.

17.4 Representations of General Partner. The General Partner represents, warrants and covenants to the Limited Partners that:

(a) The General Partner is a limited liability company duly formed and validly existing in good standing under the laws of the State of Delaware with all requisite limited liability company power and authority to enter into this Agreement, to carry out the provisions and conditions hereof and to consummate the transactions contemplated hereby;

(b) The Partnership is a limited partnership duly formed and validly existing in good standing under the laws of the State of Delaware with all requisite partnership power and authority to conduct its business as described in this Agreement and the confidential private placement memorandum of the Partnership and to consummate the transactions contemplated hereby; and

(c) The execution, delivery and performance by the General Partner of this Agreement have been authorized by all necessary limited liability company action on behalf of the General Partner, and this Agreement is a legal, valid and binding agreement of the General Partner, enforceable against the General Partner in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and

remedies generally and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

17.5 Investment Knowledge. Each Limited Partner represents and warrants to the General Partner that its knowledge and experience in financial and business matters are such that it is capable of evaluating, and has evaluated, or it, together with its advisers who have such knowledge and experience, are capable of evaluating, and have evaluated, the risks of making the Equity Commitments and Capital Contributions hereby contemplated and the risks of the purchase of the Investments by the Partnership.

## ARTICLE 18

### WITHHOLDING

18.1 Withholding. If the Partnership or any Affiliate thereof is required by law to make and does make any payment on behalf of a Partner, then such Partner shall promptly on demand reimburse the Partnership, each such Affiliate, and each of their respective officers, directors, employees, shareholders, members, partners and agents (each of which shall be a third party beneficiary of this Agreement solely for purposes of Section 9.7 and this Section 18.1) for the entire amount of such payment (including interest and penalties thereon and expenses related thereto). Distributions to which a Partner is otherwise entitled pursuant to Articles 7 or 12 may be offset against such Partner's obligation to reimburse the Partnership pursuant to this Section 18.1.

## ARTICLE 19

### GENERAL PROVISIONS

#### 19.1 Insulated Partners.

(a) At least ten days before investing in and directly or indirectly holding an ownership or other interest in a Media Enterprise, the General Partner shall provide to the Limited Partners an opinion of special outside counsel to the Partnership on FCC matters, advising that such holding will not be attributable under the rules and regulations of the FCC to the Limited Partners who comply with Section 19.1(b).

(b) For so long as, and only during periods from time to time in which the Partnership shall directly or indirectly hold (or otherwise be attributed with) an ownership or other interest in a Media Enterprise that is "attributed" to the Partnership under the FCC Rules, no provision of this Agreement shall be construed to permit any Limited Partner, or any Person that is a director, officer, equivalent non-corporate official, partner, employee, or 5% or greater shareholder or other direct or indirect owner of a Limited Partner, such that the ownership interests of the Limited Partner are

“attributed” to such owner, director, officer, equivalent non-corporate official, partner or employee (a “Limited Partner Affiliate”), to do any of the following:

- (i) act as an employee of the Partnership if such Limited Partner’s or Limited Partner Affiliate’s functions, directly or indirectly, relate to such Media Enterprise;
- (ii) serve, in any material capacity, as an independent contractor or agent of the Partnership with respect to such Media Enterprise;
- (iii) communicate with on matters pertaining to the day-to-day operations of any Media Enterprise with (A) any officer, director, partner, agent, representative or employee of such Media Enterprise or (B) the General Partner;
- (iv) vote to admit any additional General Partner to the Partnership unless such addition is subject to the veto of the General Partner;
- (v) vote to replace the General Partner except where the General Partner is subject to bankruptcy proceedings, is adjudicated incompetent by a court of competent jurisdiction or is found to have been engaged in malfeasance, criminal conduct, or wanton or willful neglect, as determined by a neutral arbitor;
- (vi) vote to amend or modify this section of the Agreement;
- (vii) perform any services for the Partnership materially relating to any Media Enterprise, with the exception of making loans to, or acting as a surety for, such Media Enterprise or the Partnership; or
- (viii) become actively involved in the management or operation of any Media Enterprise.

(c) A Limited Partner may, upon five days’ prior written notice to the General Partner, relinquish its status as an “insulated” Limited Partner, in which case the provisions of Section 19.1(b) shall no longer apply to such Limited Partner; provided, that such relinquishment shall not be effective unless and until (A) the General Partner has received an opinion of special counsel to the Partnership on FCC matters, who shall be reasonably acceptable to the Limited Partner, stating that such relinquishment will not (1) cause the Partnership or any of its Affiliates to violate any law, regulation, rule or policy applicable to matters currently subject to FCC jurisdiction or (2) in any way limit or restrict the activities of the Partnership or any of its Affiliates; and (B) to the extent that such relinquishment requires the filing of any notices with the FCC or the issuance of any approvals by the FCC, that such notices have been filed, or such approvals have been granted and have become final. The General Partner and the Limited Partner seeking to relinquish its insulated status shall reasonably cooperate in making any such filing or obtaining any such approval, and the General Partner shall seek

the opinion of special counsel to the Partnership on FCC matters with respect to the making of any such filing or the obtaining of any such approval.

(d) For purposes of Section 19.1(b)(v), the "bankruptcy" of the General Partner shall be deemed to have occurred upon the happening of any of the following: (1) the filing of an application by the General Partner for, or a consent to, the appointment of a trustee of its assets; (2) the filing by the General Partner of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due; (3) the making by the General Partner of a general assignment for the benefit of creditors; (4) the filing by the General Partner of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a bankruptcy petition filed against it in any bankruptcy proceeding; or (5) the expiration of 60 days following the entry or an order, judgment or decree by any court of competent jurisdiction adjudicating the General Partner a bankrupt or appointing a trustee of its assets.

19.2 Entire Agreement. This Agreement and the Investment Management Agreement constitute the entire agreement among the parties hereto with respect to the subject matter hereof, and supersede any prior agreement or understanding among the parties hereto with respect to the subject matter hereof.

19.3 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to the provisions, policies or principles thereof relating to choice or conflict of laws.

19.4 Binding Effect. Except as provided otherwise herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

19.5 Preservation of Sovereign Immunity. PSERS reserves all immunities, defenses, rights or actions arising out of its status as a sovereign state entity, including those under the Eleventh Amendment to the United States Constitution. No provision of this Agreement or the Subscription Agreement shall be construed as a waiver or limitation of such immunities, defenses, rights or actions.

19.6 Board of Claims. Any contract claim asserted against PSERS, as a Limited Partner, arising out of this Agreement or the Subscription Agreement may only be brought before and subject to the exclusive jurisdiction of the Board of Claims of the Commonwealth of Pennsylvania pursuant to §§ 4651-1 et seq. of Title 72 Pa. Statutes, and shall be governed by the substantive and procedural rules and laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of law.

19.7 Limitation of PSERS' Liability. This Agreement and the Subscription Agreement shall not impose any personal indemnification obligations on PSERS and shall not be applied or construed to require PSERS to provide indemnification directly to any person or entity thereunder. PSERS agrees, however, to acknowledge that it is obligated as a limited partner to make capital contributions as

called pursuant to the terms of this Agreement. In no event shall the liability of PSERS under this Agreement or the Subscription Agreement exceed the sum of PSERS' Capital Contributions.

19.8 Preservation of Records. The General Partner hereby agrees to preserve all financial and accounting records pertaining to the Partnership during the term of the Partnership and for four (4) years thereafter, and during such period, PSERS or any other department or representatives of the Commonwealth of Pennsylvania, upon reasonable notice, shall have the right to audit such records in regard thereto to the fullest extent permitted by law. The General Partner shall have the right to preserve all records and accounts in original form or on microfilm, magnetic tape, or any similar process.

19.9 Side Letters. In connection with the formation and operation of the Partnership, the General Partner may enter into letters, agreements, undertakings or other documents with one or more Limited Partners which amend, supplement, interpret or otherwise relate to the Partnership Agreement of the Partnership or which set forth certain other agreements between the General Partner and such Limited Partners (collectively, the "Side Letters"). The General Partner shall provide copies of all such Side Letters to PSERS. PSERS shall be entitled to the identical rights and benefits granted under any Side Letter, unless: (a) PSERS promptly notifies the General Partner to the contrary; (b) such rights or benefits cannot be granted to PSERS because of legal requirements relating to such rights and benefits; (c) such rights or benefits were granted to The New York Life Insurance Company in connection with the formation of the Partnership; or (d) there is a regulatory, tax or other similar basis for distinguishing among Limited Partners or such rights or benefits were granted based on the size of a Limited Partner's Equity Commitment to the Fund.

19.10 Counterparts. This Agreement may be executed by any party, either directly or by an attorney-in-fact, in any number of counterparts and by execution of the signature pages hereof with instructions to attach them to complete copies hereof, and each such counterpart shall be considered an original but all of them together shall be considered one and the same agreement.

19.11 Separability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

19.12 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

19.13 Gender and Number. Whenever required by the context hereof, the singular shall include the plural and the plural shall include the singular. The neuter gender shall include the feminine and masculine genders.

19.14 Waiver of Partition and Accounting. Each Partner hereby irrevocably waives, during the term of the Partnership, any right that it may have to maintain any action for partition with respect to any Partnership property and, to the fullest extent permitted by law, any right to an accounting that the Partner may otherwise have in the event of a dispute respecting the Partnership, except as provided by Article 10 or Section 12.4.

19.15 Parties in Interest. Except as specifically set forth in Sections 9.7 and 18.1, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto, and nothing in this Agreement, express or implied is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.


[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement, either directly or by an attorney-in-fact, to be effective as of the day and year first above written.


GENERAL PARTNER:

AVENUE ASIA CAPITAL PARTNERS III, LLC

By: GLS ASIA PARTNERS III, LLC,  
*its Managing Member*

By:   
Name:  
Title:

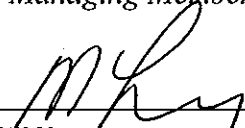
WITHDRAWING LIMITED PARTNER:

  
Marco V. Masotti


LIMITED PARTNERS:

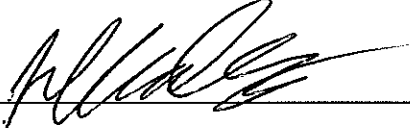
By: AVENUE ASIA CAPITAL PARTNERS III, LLC,  
As Attorney-in-Fact for the Limited Partners  
on Schedule A

By: GLS ASIA PARTNERS III, LLC,  
*its Managing Member*

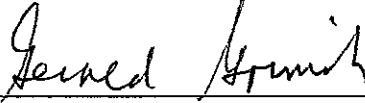
By:   
Name:  
Title:

COMMONWEALTH OF PENNSYLVANIA PUBLIC  
SCHOOL EMPLOYEES RETIREMENT SYSTEM

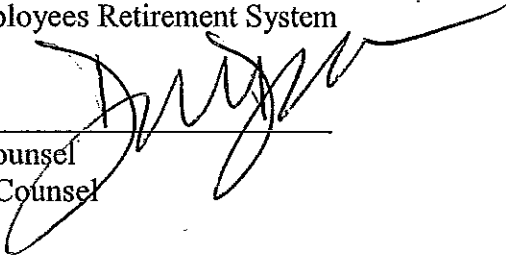
By:   
Name:  
Title: Chief Investment Officer

By:   
Name:  
Title: Interim Executive Director

Approved for form and legality:



\_\_\_\_\_  
Gerald Gornish, Chief Counsel  
Public School Employees Retirement System

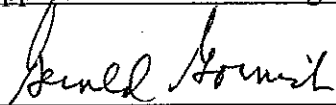


\_\_\_\_\_  
Deputy General Counsel  
Office of General Counsel

\_\_\_\_\_  
Chief Deputy Attorney General  
Office of Attorney General



Approved for form and legality:



---

Gerald Gornish, Chief Counsel  
Public School Employees Retirement System

---

Deputy General Counsel  
Office of General Counsel




---

Chief Deputy Attorney General  
Office of Attorney General

Accepted and Agreed:

AVENUE ASIA CAPITAL MANAGEMENT, LLC.

By:  \_\_\_\_\_  
Name:  
Title:

Schedule A  
(As of September \_\_, 2003)

PARTNERS' EQUITY COMMITMENTS

<u>Name</u>	<u>Equity Commitment</u>	<u>Commitment Percentage Interest</u>
<u>General Partner:</u>		
Avenue Asia Capital Partners III, LLC	\$ 10,000,000	9%
<u>Limited Partners:</u>		
Commonwealth of Pennsylvania Public School Employees' Retirement System	\$ 100,000,000	91%
 Total Equity Commitments	 <u>\$ 110,000,000</u>	 <u>100%</u>

Schedule B

ASIAN COUNTRIES

35% Countries

Singapore  
Australia  
New Zealand  
Hong Kong  
People's Republic of  
China  
Taiwan  
Korea  
Thailand  
Malaysia  
Philippines  
Indonesia

15% Country

India

5% Countries

Pakistan  
Sri Lanka  
Cambodia  
Laos  
Papua, New Guinea  
Former Republics of the  
USSR  
Nepal