FRANKLIN CAPITAL ASSOCIATES III L.P.

(A Delaware Limited Partnership)

FIRST AMENDED AND RESTATED

LIMITED PARTNERSHIP AGREEMENT

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Limited Partnership Agreement

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Agreement (the "Agreement"), dated as of this 3rd day of March, 1995, by and among Franklin Ventures III L.P., a Delaware limited partnership, as general partner (such general partner being referred to herein as the "General Partner"); Daniel P. Finkelman ("Finkelman"), as the withdrawing limited partner; and those individuals, firms, corporations and other entities listed in Schedule A hereto as limited partners (such limited partners, and any additional limited partners admitted to the Partnership (as hereinafter defined) after the date of this Agreement, being referred to herein as the "Limited Partners"). The General Partner and Limited Partners are sometimes referred to herein collectively as the "Partners".

PRELIMINARY STATEMENT

The General Partner and Finkelman formed a limited partnership (the "Partnership") by executing the Limited Partnership Agreement of Franklin Capital Associates III L.P., dated as of August 12, 1994 (as the same may be amended from time to time and including the Schedules thereto, the "Partnership Agreement") and by filing with the Secretary of State of Delaware a Certificate of Limited Partnership on August 12, 1994.

Those persons designated as Limited Partners in Schedule A hereto who execute a counterpart of this Agreement desire to be admitted to the Partnership as Limited Partners.

The General Partner and the Limited Partners desire to amend the Partnership Agreement as hereinafter provided, and in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, agree as follows:

A. Finkelman shall hereby withdraw from the Partnership as a limited partner and his contribution to the Partnership's assets as a limited partner shall be returned.

B. Those Limited Partners listed in Schedule A who execute a counterpart of this Agreement shall hereby be admitted to the Partnership as Limited Partners.

C. The Partnership Agreement shall hereby be amended and restated in its entirety to read as follows:

The Partners agree to carry on a limited partnership subject to the terms of this Agreement in accordance with the provisions of the Delaware Revised Uniform Limited Partnership Act (the "Delaware Act").

1. Firm Name; Registered Office and Agent.

The name of the Partnership is Franklin Capital Associates III L.P. The initial address of the Partnership's registered office in Delaware is Corporation Trust Center, 1209 Orange Street, Wilmington, County of New Castle, and its initial registered agent at such address for service of process is The Corporation Trust Company.

2. Purposes; Powers.

(a) Purpose. The principal purpose of the Partnership is to achieve a favorable return on investment for its Partners by investing in and assisting privately-held, primarily early stage, growth-oriented businesses in the health care industry.

(b) Powers. Subject to all of the terms and provisions hereof, the Partnership shall have all the powers available to it as a limited partnership under the laws of the State of Delaware.

3. General Partner.

(a) Name; Address; Capital Contributions. The name and address of the General Partner, and its commitment to make contributions to the capital of the Partnership, are set forth in Schedule A. Schedule A shall be amended from time to time to reflect any additional commitment to make capital contributions by the General Partner.

(b) Control. The management, policies and control of the affairs of the Partnership shall be vested exclusively in the General Partner. The Partnership's Review Committee and Advisory Committee (established pursuant to Paragraphs 5 and 6, respectively) and the Limited Partners may, to the extent expressly provided in this

Agreement, possess or exercise any of the powers, or have or act in any of the capacities, permitted under Section 17-303(b) of the Delaware Act.

(c) Management Agreement. The Partnership entered into a Management Agreement of even date herewith, with Franklin Venture Capital Inc. (the "Management Company"), in the form attached hereto as Schedule B (as amended from time to time, the "Management Agreement"). The General Partner may delegate certain of its duties hereunder to the Management Company in accordance with the terms of the Management Agreement. The General Partner shall not permit the Management Agreement to be waived, modified, amended or terminated other than pursuant to Section 5 of the Management Agreement without the written consent of at least 66-2/3% in interest of the Limited Partners.

(d) Salary. The General Partner shall not receive a salary or other remuneration for services from the Partnership and, while the Management Agreement or a similar agreement providing for management services to the Partnership is in effect, the general partners of the General Partner shall not receive salaries or other remuneration for services from the Partnership.

(e) Preserving Limited Liability of Limited Partners. The General Partner shall file with the appropriate public authorities the Certificate of Limited Partnership of the Partnership and any amendments thereto and take all such other action as may be required to preserve the limited liability of the Limited Partners in any jurisdiction in which the Partnership shall conduct its affairs.

(f) Related Party Transactions. Except for transactions that are specifically permitted under the terms and provisions of this Agreement or as otherwise approved by the Review Committee, any transaction between the General Partner, any general partner of the General Partner or any other affiliate of the General Partner and the Partnership or any Partnership Portfolio Company (as such term is defined in Paragraph 3(i)(vii)) shall be on terms no less favorable to the Partnership or the Partnership Portfolio Company, as the case may be, than are generally afforded to unrelated third parties in comparable transactions.

(g) Guaranties. The Partnership shall not guarantee or agree in any other manner to become liable with respect to any indebtedness or obligation of any other person.

(h) Borrowing by Partnership. The Partnership shall not borrow money.

(i) Conduct of Business. Notwithstanding anything to the contrary in this Agreement, the General Partner shall conduct the affairs of the Partnership in accordance with the following requirements:

(i) The General Partner shall use best efforts to conduct the affairs of the Partnership in a manner that does not cause any Limited Partner or partner of any Limited Partner exempt from federal income taxation pursuant to the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as the "Code") to have any items of gross income that constitute "unrelated business taxable income", including without limitation any "unrelated debt-financed income" (as those terms are defined in Sections 512 and 514 of the Code).

(ii) The General Partner at all times shall use best efforts to conduct the affairs of the Partnership in such a way that the assets of the Partnership will not be deemed to constitute "plan assets" of any ERISA Partner or Deemed ERISA Partner (as such terms are defined in Paragraph 20).

(iii) The General Partner shall use reasonable efforts to avoid making investments in any corporation that at the time of the Partnership's investment is a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code. In the case of any transfer by a Foreign Controlled Partner (as defined in Paragraph 21) of its interest in the

Partnership, the General Partner, at the written request of such Foreign Controlled Partner, shall use its best efforts to provide a statement pursuant to Treasury Regulation §1.1445-11T(d)(2); in the case of any disposition of Investment Securities (as hereinafter defined) by the Partnership which may give rise to a United States tax pursuant to Section 897(a) of the Code, the General Partner, at the written request of any Foreign Controlled Partner, shall use its best efforts to obtain from the relevant Partnership Portfolio Company a statement described in Treasury Regulation §1.897-2(h) pursuant to Treasury Regulation §1.1445-5(b)(4)(iii). Securities intended to achieve the Partnership's investment objective are sometimes herein referred to as "Investment Securities".

(iv) The General Partner shall use its best efforts to conduct the affairs of the Partnership so that neither the Partnership nor any Limited Partner engages in any non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA (as defined in Paragraph 7(b)) or Section 4975(c) of the Code as a result of any activity of the Partnership.

(v) The General Partner shall use reasonable efforts to conduct the affairs of the Partnership so that no Foreign Limited Partner shall be deemed engaged in a "trade or business" for purposes of Section 872(a)(2), 875, 882 or 884(d)(1) of the Code by virtue of the activities or investments of the Partnership. For purposes of this Agreement, the term "Foreign Limited Partner" shall mean either (x) any Limited Partner which is a "nonresident alien" within the meaning of Section 7701(b)(1)(B) of the Code, a foreign

corporation or partnership within the meaning of Section 7701(a)(5) of the Code, or a foreign trust within the meaning of Section 7701(a)(31) of the Code, or (y) a partner or other beneficial owner of a Limited Partner which would be a Foreign Limited Partner under clause (x) of this sentence if it were a Limited Partner.

(vi) The General Partner shall use its best efforts to conduct the affairs of the Partnership so that no Limited Partner (nor any affiliate of any Limited Partner), as a result of its participation in the Partnership, is subject to or incurs a liability for any excise tax under Section 4941 or Sections 4943 through 4945 of the Code. In order to facilitate the General Partner's compliance with this Paragraph 3(i)(vi), and in particular to assist the General Partner in avoiding any investments which would constitute "excess business holdings" (within the meaning of Section 4943 of the Code) of any Limited Partner which is a "private foundation" (as defined in Section 509(a) of the Code) or a "charitable remainder unitrust" (as defined in Section 664(d)(2) of the Code) (collectively, a "Foundation Limited Partner"), each Foundation Limited Partner shall provide the General Partner with a list designating (A) the "disqualified persons" (as defined in Section 4946 of the Code) (such persons whose names have been provided to the General Partner being referred to herein as "Disqualified Persons") with respect to such Foundation Limited Partner, and (B) the other investment funds in which such Foundation Limited Partner has invested. Such Foundation Limited Partner shall promptly notify the General Partner in writing of any changes in

such list. The General Partner may rely on the accuracy and completeness of such list. Any failure or refusal by a Foundation Limited Partner to provide the General Partner with the foregoing list shall not cause such Foundation Limited Partner to be in breach of this Agreement or incur any liability to the Partnership or any other Partners; provided, however, that the General Partner's obligation to use best efforts under this Paragraph 3(i)(vi) shall be subject to and limited by the extent of the information provided to the General Partner by each Foundation Limited Partner.

(vii) The General Partner shall use its best efforts to invest the Reserves of the Partnership so as to avoid the realization of dividend income, including without limitation income attributable to corporate dividends and dividends from mutual funds (including money market mutual funds). For purposes of this Agreement, "Reserves" mean funds held by the Partnership in the form of cash, cash equivalents and short-term investments and not yet used to make investments in Partnership Portfolio Companies (as hereinafter defined), pay Partnership expenses or make distributions in accordance with the terms of this Agreement. An entity in which the Partnership has an investment in Investment Securities is sometimes herein referred to as a "Partnership Portfolio Company".

(j) Letter Agreement. Each of the persons who is a general partner of the General Partner on the date of this Agreement has executed and delivered (and any person who becomes such a general partner of the General Partner after the date of this Agreement

shall execute and deliver) to the Limited Partners a letter agreement in the form attached hereto as Schedule C (as amended from time to time, the "Letter Agreement").

(k) Withdrawal. The General Partner may not voluntarily withdraw from the Partnership.

(l) Borrowing and Lending by General Partner. Neither the General Partner nor any general partner of the General Partner shall be permitted to borrow money from or loan money to the Partnership.

(m) Investments in Related Portfolio Companies. The Partnership shall not purchase any Investment Securities issued by a Related Portfolio Company (as hereinafter defined) unless: (i) the Partnership purchased Investment Securities issued by such Related Portfolio Company before or on the same date on which the applicable Franklin Partnership (as hereinafter defined) made its initial investment in such Related Portfolio Company, provided that any such initial contemporaneous investment shall be on at least as favorable terms and conditions with respect to the Partnership as with respect to such Franklin Partnership or (ii) such purchase has been approved in advance by the Review Committee and an independent institutional investor makes a contemporaneous investment in such Related Portfolio Company on terms and conditions no more favorable to such investor than those applicable to the purchase by the Partnership. An entity in which any Franklin Partnership has an investment in securities intended to achieve such Franklin Partnership's investment objectives is sometimes referred to herein as a "Related Portfolio Company." Franklin Capital Associates L.P. and Franklin Capital Associates II L.P., and any future venture capital partnership controlled by the general partners of the General Partner (such control being evidenced by at least two of the general partners of the General Partner acting as general partners of such partnership or as general partners or senior officers of the entity serving as the sole general partner of such partnership) are herein sometimes referred to individually as a "Franklin Partnership" and collectively as the "Franklin Partnerships."

(n) Co-investments. The Partnership shall not make an investment in any prospective or existing Partnership Portfolio Company if any general partner of the General Partner or any account which such general partner controls directly or indirectly has an investment in such entity, except with the consent of the Review Committee. For the purposes of this Paragraph 3(n), the term "account" shall specifically exclude the Partnership and the Franklin Partnerships.

(o) Investment Limitations. The Partnership shall not invest in partnerships whose principal objective, at the time the investment is made, is stated to be the making of investments in other companies, and whose controlling persons are entitled to a disproportionate share of the profits of such entity. The Partnership shall not invest in any other partnership or non-corporate entity unless such partnership or non-corporate entity, as the case may be, is not engaged in a trade or business within the meaning of Section 513 of the Code at the time such investment is made, is subject to substantially similar restrictions as are applicable to the Partnership with respect to its realization of unrelated business taxable income, including without limitation unrelated debt-financed income, and makes representations to such effect in writing concurrent with the Partnership's investment. Furthermore, the Partnership shall not invest in any other partnership or non-corporate entity unless the General Partner determines that such partnership or non-corporate entity adequately provides for tax distributions to its partners or members to cover tax obligations arising out of each of its partner's or member's interest in such partnership or non-corporate entity. In addition, the amount that may be invested by the Partnership, for the purpose of achieving its investment objective, in all:

(i) Investment Securities issued by any one Partnership Portfolio Company (net of the proceeds to the Partnership of redemptions, repayments, sales and other dispositions (collectively, "Dispositions"), if any, with respect to such Investment Securities) may not, at the time any such investment is made, exceed in the

aggregate 10% of the aggregate Subscriptions (as defined in Paragraph 7(a)) of all Partners without the consent of the Review Committee;

(ii) Investment Securities issued by entities organized under the laws of jurisdictions other than the United States or its territories and possessions (net of the proceeds to the Partnership of Dispositions, if any, with respect to such Investment Securities) may not, at the time any such investment is made, exceed in the aggregate 10% of the aggregate Subscriptions of all Partners;

(iii) Investment Securities issued by Related Portfolio Companies (net of the proceeds to the Partnership of Dispositions, if any, with respect to such Investment Securities) may not, at the time any such investment is made, exceed in the aggregate 10% of the aggregate Subscriptions of all Partners; or

(iv) Investment Securities issued by Partnership Portfolio Companies (net of the proceeds to the Partnership of Dispositions, if any, with respect to all bridge and other temporary financing of Partnership Portfolio Companies) may not exceed in the aggregate 100% of the aggregate Subscriptions of all Partners without the consent of the Review Committee; and

without the consent of the Review Committee, the Partnership shall not invest in any Investment Securities that, at the time such investments are made, are either listed on a national securities exchange or carried on the NASDAQ system (excluding all investments in (A) any Partnership Portfolio Company if the initial investment by the Partnership in the Investment Securities of such Partnership Portfolio Company (or any predecessor thereof) occurred at a time when none of the securities of such entity was listed on a national securities exchange or carried on the NASDAQ system; provided, however, that the aggregate amount

that may be invested by the Partnership pursuant to the exception provided by this clause (A) may not exceed in the aggregate 20% of the aggregate Subscriptions of all Partners, (B) any entity if the investment is part of a plan by the General Partner to take such entity "private" and (C) any entity if the investment is part of a plan by the General Partner to have such entity merge with or acquire any Partnership Portfolio Company).

The Partnership shall not invest in, or invest in order to finance a tender offer for, a publicly-held company if such investment or tender offer is actively opposed by the Board of Directors of such company.

For purposes of this Paragraph 3(o), (Y) the amount invested by the Partnership shall be the price paid by the Partnership to acquire the security and (Z) the value of each distribution to the Partners in kind (determined at the time of the distribution and in the manner provided in Paragraph 11) of a security referred to in or contemplated by this Paragraph 3(o) shall be deemed to be proceeds to the Partnership of a Disposition of such security.

(p) Limitation on New Portfolio Company Investments. After the sixth anniversary of the date of this Agreement, the Partnership shall not invest in Investment Securities issued by any entity that was not a Partnership Portfolio Company (including as a Partnership Portfolio Company for such purpose, any predecessor of such entity) on such anniversary date, except with the prior approval of the Review Committee. In addition to the foregoing, if at any time either Larry H. Coleman or W. David Swenson is no longer actively involved in the management of the Partnership, Limited Partners constituting at least 66-2/3% in interest of the Limited Partners may, upon written notice to the General Partner, prohibit the Partnership from investing after the date such notice is given in Investment Securities issued by any entity that was not a Partnership Portfolio Company (including as a Partnership Portfolio Company for such purpose, any predecessor of such entity) on such date, except to the extent required under any agreement legally binding on the Partnership on such date.

4. Limited Partners; Limited Liability.

(a) Names; Addresses; Capital Contributions. The names and business or residence addresses of the Limited Partners, and their commitments to make contributions to the capital of the Partnership, are set forth in Schedule A. Schedule A shall be amended from time to time to reflect any additional commitments to make capital contributions by the Limited Partners, the withdrawal of any Limited Partners, the admission of any additional Limited Partners and the transfer of all or any part of the interest of any Limited Partner.

(b) Limited Liability. The liability of each of the Limited Partners to the Partnership under the Delaware Act shall be limited to (i) any unpaid capital contributions which he agreed to make to the Partnership, to the extent provided in Section 17-502(b) of the Delaware Act; and (ii) the amount of any distribution which he is required to return to the Partnership pursuant to Section 17-607(b) of the Delaware Act or pursuant to Paragraph 10(h) of this Agreement. None of the Limited Partners shall take any part in the control of the affairs of the Partnership, conduct any affairs of the Partnership, or have any power to sign for or to bind the Partnership.

5. Review Committee.

(a) General Provisions. The Partnership shall have a review committee (the "Review Committee") which shall consist of not fewer than three nor more than five members chosen by the General Partner from among persons associated with the Limited Partners. The members of the Review Committee may select a Chairman from among their membership. Any member of the Review Committee may be removed at any time, with or without cause, by action taken by the General Partner with the consent of a majority of the other members of the Review Committee.

(b) Functions. The functions of the Review Committee shall be (i) to resolve any questions relating to a potential conflict of interest between the Partnership and any of the Franklin Partnerships, between the Partnership and the General Partner or between the

Partnership and any general partner of the General Partner; (ii) to resolve any additional questions relating to a potential conflict of interest between the Partnership and any other person or entity that are presented to the Review Committee by the General Partner; (iii) to approve or disapprove certain valuations of Investment Securities owned by the Partnership which have been authorized or established by the General Partner; and (iv) such other functions as are provided for in this Agreement. All approvals, disapprovals and other actions taken by the Review Committee shall be authorized by a majority of the Committee members then holding office.

(c) Rules and Procedures. The Review Committee shall have the authority to adopt rules and procedures, not inconsistent with this Agreement, relating to the conduct of its affairs.

(d) Exculpation. The members of the Review Committee shall exercise their best judgment in carrying out their functions for the Partnership. No member of the Review Committee shall be liable to the Partnership or any Partner except to the extent that such member (i) did not act in good faith in the reasonable belief that his action was in the best interests of the Partnership, (ii) acted with willful misconduct, fraudulently or in violation of this Agreement, or (iii) acted in an unlawful manner and had reasonable cause to believe his action was unlawful. Each member of the Review Committee shall be fully protected and justified with respect to any action or omission taken or suffered by him in good faith if such action or omission is taken or suffered in reliance upon and in accordance with the opinion or advice as to matters of law of legal counsel, or as to matters of accounting of accountants, selected by him with reasonable care.

6. Advisory Committee.

The Partnership shall have an advisory committee (the "Advisory Committee") which shall consist of members selected by the General Partner. The function of the Advisory Committee will be to consult with and advise the General Partner on strategy, opportunities,

changes in the environment and technological breakthroughs with respect to investing in the health care industry. The Advisory Committee shall have the authority to adopt rules and procedures, not inconsistent with this Agreement, relating to the conduct of its affairs. The Advisory Committee will also serve on behalf of one or more of the Franklin Partnerships.

7. Capital of the Partnership; Admission of Additional Limited Partners.

(a) Capital Contributions. Each of the Partners shall, from time to time when called by the General Partner, contribute to the capital of the Partnership the amounts necessary to increase the aggregate amount of his contributions to the Partnership to an amount equal to, but not in excess of, the total amount set forth opposite his name under the column marked "Total Subscription" in Schedule A, as such amount may hereafter be adjusted in accordance with the terms of this Agreement (the "Subscription"), provided that no Partner shall be obligated to make any such capital contribution if (i) the amount of such capital contribution (other than the initial and final capital contributions hereunder) would be less than 5% of his Subscription or (ii) the sum of such capital contribution and all other capital contributions made by such Partner during the preceding 12 months would exceed 40% of his Subscription. Notwithstanding the foregoing, the Commonwealth of Pennsylvania Public School Employes' Retirement System (together with its permitted successors and assigns, "PSERS") shall not be obligated to contribute to the capital of the Partnership any amount to the extent that its Contributions Account established pursuant to Paragraph 8 would, after such contribution, exceed 25% of the sum of the Contributions Accounts of all Partners, and its Subscription shall be reduced accordingly. Not less than ten days' prior written notice shall be given to each Limited Partner by the General Partner as to the date for each capital contribution. The amount of capital required to be contributed by each Partner on each occasion of a capital contribution shall be computed by the General Partner so that each Partner contributes that portion of the aggregate capital contribution to be made by all Partners at such time which such Partner's Subscription bears to the total Subscriptions of all Partners. All

capital contributions shall be made in cash. Notwithstanding anything to the contrary contained in this Agreement, the General Partner may at any time, by written notice to the Partners, reduce on a pro rata basis or terminate all outstanding commitments of the Partners to make further capital contributions to the Partnership and, upon the giving of such notice, the obligation of the Partners to contribute additional capital to the Partnership shall be so reduced or terminated, as the case may be, and the amount of such Partner's Subscription shall be reduced accordingly.

(b) Defaults on Contributions. If a Partner does not make an additional capital contribution required by Paragraph 7(a) when due, notice of default shall be given to him by certified or registered mail. If the full amount of such contribution is not received by the Partnership within 30 days after the mailing of such notice, as liquidated and agreed damages to the non-defaulting Partners for such default (it being agreed that it would be difficult to fix the actual damages to such Partners), each of such defaulting Partner's Contributions Account and Capital Account established pursuant to Paragraph 8 shall be reduced by an amount equal to 75% of each such account, each of which 75% amount shall thereupon become unrestricted funds of the Partnership and shall be allocated, in the case of the Contributions Account amount, pro rata to and among the respective Contributions Accounts of the non-defaulting Partners in such proportion as the Contributions Account of each such non-defaulting Partner then bears to the sum of the Contributions Accounts of all non-defaulting Partners, and, in the case of the Capital Account amount, pro rata to and among the respective Capital Accounts of the non-defaulting Partners in such proportion as the Capital Account of each such non-defaulting Partner then bears to the sum of the Capital Accounts of all non-defaulting Partners.

The application of the aforesaid liquidated damages provisions with respect to any defaulting Partner shall not relieve such Partner of his obligation to make any required capital contribution when due or relieve such Partner from the application of the aforesaid liquidated damages provisions as to any such subsequent required capital contribution if he defaults with

respect thereto. Except as provided below, a Partner may not make less than the full amount of any required capital contribution. Notwithstanding the foregoing, if, at any time before a capital contribution required by Paragraph 7(a) becomes due, a Limited Partner shall obtain and deliver to the Partnership an opinion of counsel (which counsel shall be reasonably acceptable to the General Partner and, in the case of a Governmental Plan Partner (as defined in Paragraph 23), the opinion of the Attorney General of the jurisdiction in which such Governmental Plan Partner is established and maintained shall be deemed acceptable to the General Partner) to the effect that (A) the payment by such Limited Partner of any portion of any remaining capital contributions required by Paragraph 7(a) will be unlawful or that there is a material likelihood that such payment will be unlawful, (B) in the case of a Limited Partner who is an ERISA Partner, by reason of the payment of such portion, there is a material likelihood that either (i) such ERISA Partner (or any employee benefit plan (as defined below) which is a limited partner or other constituent of such ERISA Partner) or the Partnership would be in material violation of ERISA or (ii) the trustees or other fiduciaries of such Limited Partner (or any "employee benefit plan" within the meaning of, and subject to the provisions of, the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as "ERISA") which is a limited partner or other constituent of such Limited Partner) may be deemed under ERISA to have delegated investment discretion over "plan assets" under ERISA to any person (including, in the case of an employee benefit plan which is a limited partner or other constituent of such Limited Partner, to a general partner of such Limited Partner) that is not an "investment manager" within the meaning of Section 3(38) of ERISA, (C) in the case of a Limited Partner who is a Foreign Controlled Partner, it has been determined, in accordance with the provisions of Paragraph 21, that any portion of such Foreign Controlled Partner's income, gain or loss derived from the Partnership is effectively connected with the conduct of a trade or business for purposes of Sections 872(a)(2), 882(a) or 884 of the Code (determined without regard to Section 897 of the Code), (D) in the case of a

Limited Partner which is a Foundation Limited Partner, by reason of the payment of such portion, there is a material likelihood that such Foundation Limited Partner would be in material violation of any governmental statute, rule or regulation by which it is bound or would be subject to or would incur excise taxes on excess business holdings pursuant to Section 4943 of the Code, (E) in the case of a Limited Partner which is a Governmental Plan Partner, by reason of the payment of such portion, there is a material likelihood that such Governmental Plan Partner would be in material violation of any governmental statute, rule or regulation by which it is bound, or (F) in the case of a Bank Limited Partner (as defined in Paragraph 10(i)), by reason of the payment of such portion, there is a material likelihood that such Bank Limited Partner would be in material violation of the Holding Company Act (as defined in Paragraph 10(i)), then the General Partner shall have, in its sole discretion, a period of 45 days following receipt of such counsel's opinion to attempt to eliminate the necessity for the legal opinion described above to the reasonable satisfaction of such Limited Partner and the General Partner, whether by correction of the condition giving rise to the necessity for such opinion, by amendment of this Agreement, by effectuation of a transfer of such Limited Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such Limited Partner consents to such transfer) or otherwise. Until the earliest to occur of the (w) due elimination of the necessity for the legal opinion described above, (x) election in writing by the General Partner not to attempt so to cure, (y) election in writing by the General Partner to discontinue any attempt so to cure, and (z) expiration of the 45-day period described above, such Limited Partner shall not, by reason of his failure to pay such portion, be deemed or treated as a defaulting Partner for purposes of this Paragraph 7(b). Thereafter, if the necessity for the legal opinion described has not been eliminated, (a) such Limited Partner shall have no further right or obligation to pay such portion, (b) such Limited Partner's Subscription shall be reduced by an amount equal to such portion, and (c) such Limited Partner shall not, by reason of his failure to pay such portion, be deemed or treated as a defaulting Partner for purposes of this Paragraph 7(b). If the General Partner determines not

to attempt a cure or to discontinue any attempt to cure, it shall give the written notice thereof promptly after making such determination. Anything to the contrary herein notwithstanding, each Deemed ERISA Partner shall be treated as if it were an ERISA Partner and deemed to have complied with the requirements of the immediately preceding sentence if it shall obtain and deliver to the Partnership an opinion of such counsel to the effect that if it were subject to, or chose to comply with, ERISA (whether or not such is the case), then the payment by it of any portion of the remaining capital contributions required by Paragraph 7(a) would result in the situation set forth in clause (A) or (B) above.

Each Partner agrees that the aforesaid liquidated damages provisions constitute reasonable compensation to the Partnership and its non-defaulting Partners for the additional risks and damages sustained by them when and if any Partner shall default on an obligation to pay any capital contribution when due.

(c) Permissive Additional Admissions. Subject to the provisions of this Agreement, for a period of 120 days from the date of this Agreement, the General Partner is authorized, but not obligated, to accept additional subscriptions from the Partners and increase the amount of their respective Subscriptions accordingly, and to select and admit additional Limited Partners to the Partnership in the amounts of their respective Subscriptions. Any such additional subscriptions shall be accepted and any such additional Limited Partners shall be admitted to the Partnership only if:

(i) such Partner or additional Limited Partner contributes on the date of his additional subscription or admission the same percentage of his additional or initial subscription, as the case may be, as the percentage which each other Partner has been required to contribute of his Subscription prior to such date; and

(ii) the aggregate Subscriptions to the Partnership, including such additional subscriptions of Limited Partners and the initial subscriptions of such additional Limited Partners, but excluding

the initial subscription and any additional subscriptions of the General Partner, do not exceed $75 million.

(d) Consensual Additional Admissions. After the expiration of 120 days from the date of this Agreement, the General Partner, with the written consent of at least 66-2/3% in interest of the Limited Partners, is authorized to accept additional subscriptions from the Partners and increase the amount of their respective Subscriptions accordingly, and to select and admit additional Limited Partners to the Partnership in the amounts of their respective Subscriptions, if neither the General Partner nor any of its general partners or agents actively solicited such additional subscriptions or additional Limited Partners after the expiration of such 120-day period. The terms of such acceptance or admission shall be fixed by the General Partner at the time of acceptance or admission, as the case may be.

(e) Amendment and Effective Date. Each Partner who is to make an additional subscription to the Partnership and each person who is to be admitted as an additional Limited Partner shall execute, together with the General Partner, an amendment to this Agreement providing for such additional subscription or admission and the total amount of such Partner's Subscription effective upon such additional subscriptions or admission, as the case may be. The right and obligation of a Partner to make an additional subscription and the admission of additional Limited Partners to the Partnership shall be effective upon the date specified therefor in the amendment to this Agreement providing for such additional subscription or admission.

(f) Certain Limitations. Notwithstanding anything to the contrary contained in this Paragraph 7, (i) no additional subscription to the Partnership may be accepted from an ERISA Partner and no person who would qualify as an ERISA Partner may be admitted as an additional Partner if, by reason of such acceptance or admission, any of the assets of the Partnership would be deemed under ERISA to constitute "plan assets" of any ERISA Partner, (ii) no person who is a Disqualified Person identified to the Partnership by any Foundation Limited Partner may be admitted as an additional Partner, and (iii) no additional

subscription to the Partnership may be accepted from any Limited Partner and no person or entity may be admitted to the Partnership if, by reason of such acceptance or admission, (A) the Partnership would be deemed a "publicly traded partnership" within the meaning of Section 7704(b) of the Code, (B) the Partnership or the Management Company would be subject to additional regulation (including, without limitation, regulation under the Investment Advisors Act of 1940, as amended, or the Investment Company Act of 1940, as amended), (C) the Partnership would be in violation of applicable law, (D) the Partnership would become an association taxable as a corporation, or (E) the Partnership would be deemed terminated pursuant to Section 708 of the Code.

8. Accounts.

(a) Contributions Accounts. There shall be established on the books of the Partnership a capital contributions account ("Contributions Account") for each Partner which shall consist of all capital contributions by such Partner to the Partnership made pursuant to Paragraph 7, increased by any amounts from time to time credited to the Contributions Account of such Partner pursuant to Paragraph 7(b), and decreased by any amounts from time to time charged to the Contributions Account of such Partner pursuant to Paragraph 7(b).

(b) Capital Accounts. There shall also be established on the books of the Partnership a capital account ("Capital Account") for each Partner which shall consist of all capital contributions by such Partner to the Partnership made pursuant to Paragraph 7, (i) increased by (A) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 7(b), and (B) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 9, and (ii) decreased by (A) any distributions to such Partner, (B) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 7(b) and (C) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 9.

(c) Distributions in Kind. For purposes of maintaining and determining Capital Accounts, all property distributed in kind by the Partnership to a Partner, including but not limited to distributions made pursuant to Paragraphs 10, 20, 21, 22, 23 and 24, shall be charged to that Partner's Capital Account at the fair market value of such property on the date of distribution.

9. Allocations.

(a) General. Partnership income, gain, loss, deduction and expense shall be allocated to the Capital Accounts of the Partners in accordance with this Paragraph 9.

(b) Net Gain. As of the end of each fiscal year of the Partnership and after giving effect to the special allocations set forth in Paragraphs 9(d), (e), (f) and (g)(ii), the Net Gain (if any, and as defined in Paragraph 9(j)(iii)) of the Partnership for such fiscal year shall be allocated to the Capital Accounts of the Partners as follows:

(i) First, to all Partners, in proportion to the amounts of Net Loss (if any, and as defined in Paragraph 9(j)(iii)) previously allocated to each such Partner pursuant to Paragraph 9(c)(iii) and not offset by prior allocations of Net Gain made pursuant to this Paragraph 9(b)(i), an amount of Net Gain equal to the aggregate amount of such Net Loss.

(ii) Second, to the extent of any Net Gain remaining after allocations pursuant to Paragraph 9(b)(i):

(A) until the occurrence of 125% Recovery (as defined in Paragraph 10(c)), 100% to all Partners in proportion to their respective Contributions Accounts; and then

(B) on and after the occurrence of 125% Recovery, 100% to the General Partner until the General Partner has been allocated 20.8% (20% plus 1% of the remaining 80%) of the

excess, since the inception of the Partnership, of all Net Gain allocated to the Partners over all Net Loss and Loss Items (as defined in Paragraph 9(j)(ii)) allocated to the Partners.

(iii) Third, to the extent of any Net Gain remaining after allocations pursuant to Paragraphs 9(b)(i) and (ii), 80% to all Partners in proportion to their respective Contributions Accounts and 20% to the General Partner.

(c) Net Loss. As of the end of each fiscal year of the Partnership and after giving effect to the special allocations set forth in Paragraphs 9(d), (e), (f) and (g)(ii), the Net Loss (if any) of the Partnership for such fiscal year shall be allocated to the Capital Accounts of the Partners as follows:

(i) First, to all Partners, in proportion to the respective amounts of Net Gain (if any) previously allocated to each such Partner pursuant to Paragraph 9(b)(iii) and not offset by prior allocations of Net Loss made pursuant to this Paragraph 9(c)(i) or Loss Items pursuant to Paragraph 9(e)(ii), an amount of Net Loss equal to the aggregate amount of such Net Gain.

(ii) Second, to the extent of any Net Loss remaining after allocations pursuant to Paragraph 9(c)(i):

(A) to the General Partner, an amount of Net Loss equal to the aggregate amount of Net Gain (if any) previously allocated to the General Partner pursuant to Paragraph 9(b)(ii)(B) and not offset by prior allocations of Net Loss pursuant to this Paragraph 9(c)(ii)(A) or Loss Items pursuant to Paragraph 9(e)(ii); and then

(B) to all Partners, in proportion to the respective amounts of Net Gain (if any) previously allocated to each Partner pursuant to Paragraph 9(b)(ii)(A) and not offset by prior allocations of Net Loss made pursuant to this Paragraph 9(c)(ii)(B) or Loss Items pursuant to Paragraph 9(e)(ii), an amount of Net Loss equal to the aggregate amount of such Net Gain.

(iii) Third, to the extent of any Net Loss remaining after allocations pursuant to Paragraphs 9(c)(i) and (ii), to all Partners in proportion to their respective Contributions Accounts.

(d) Non-Portfolio Income. As of the end of each fiscal year of the Partnership, and prior to the allocation of any Net Gain or Loss of the Partnership for such fiscal year pursuant to Paragraphs 9(b) and (c), the Non-Portfolio Income (as defined in Paragraph 9(j)(iv)) of the Partnership for such fiscal year shall be allocated to and among the Capital Accounts of all Partners in proportion to the balances in their respective Contributions Accounts at the beginning of such fiscal year, subject to Paragraph 9(g)(ii) (dealing generally with adjustments attributable to the admission of additional Partners after the date of this Agreement) and the other provisions of this Paragraph 9.

(e) Operational Rules.

(i) Net Gain or Loss attributable to a distribution of Partnership property in kind shall be allocated, immediately prior to the time such distribution is made, to the Partners' Capital Accounts on the same basis as an equivalent amount of Net Gain or Loss would be allocated pursuant to Paragraphs 9(b) and (c) for a hypothetical fiscal year ending immediately prior to such distribution. For this purpose, there shall be taken into account any Net Gain or Loss attributable to distributions in kind

previously made during the fiscal year, but there shall not be taken into account other items of Partnership income, gain, loss, deduction or expense realized or incurred since the end of the prior fiscal year (such items being taken into account and allocated to Partners' Capital Accounts as Net Gain, Net Loss, Non-Portfolio Income or Loss Items only at the end of the fiscal year in which they are realized or incurred). If a distribution of cash in lieu of a distribution of securities is made to a Partner in accordance with the provisions of Paragraphs 10(i)(ii)-(v), 13(b)(ii)-(v), 20, 22, 23 or 24, then: such Partner's Capital Account shall be adjusted as if all securities to which such cash is attributable had been distributed to such Partner contemporaneously with the distributions of securities to other Partners; no Partner's Capital Account shall be further adjusted as a result of the subsequent sale or other disposition of such securities; and any items of income, gain, loss, deduction or expense realized or incurred by the Partnership in connection with the sale or other disposition of such securities shall be allocated for tax purposes solely to the Partner receiving such cash distribution.

(ii) If, for any fiscal period, 125% Recovery has been achieved, either before or during such fiscal period, and Net Gain is available to be allocated to the Partners but (A) an allocation of all of such Net Gain pursuant to Paragraph 9(b) for such fiscal period would not be sufficient to provide the General Partner with allocations, since the inception of the Partnership, equal in the aggregate to 20.8% of the excess of all Net Gain allocated to the Partners over all Net

Loss and Loss Items allocated to the Partners and (B) any allocation of Net Gain for any prior fiscal period has been made pursuant to Paragraph 9(b)(ii)(A) but not previously offset by allocations of Net Loss pursuant to Paragraph 9(c)(ii) or Loss Items pursuant to this Paragraph 9(e)(ii), then:

(1) Loss Items for such fiscal period shall be allocated (subject to the other provisions of this Paragraph 9) to all Partners, in proportion to the respective amounts of Net Gain previously allocated to each such Partner pursuant to Paragraph 9(b)(ii)(A) and not previously offset by allocations of Net Loss made pursuant to Paragraph 9(c)(ii) or Loss Items pursuant to this Paragraph 9(e)(ii), in an aggregate amount equal to the lesser of the aggregate amount of such Loss Items or the aggregate amount of such Net Gain, with such Loss Items allocated among the Partners to offset such allocations of Net Gain in the order in which such allocations of Net Gain previously were made; and

(2) the Net Gain of the Partnership for such fiscal period, determined solely for this purpose by excluding all Loss Items specially allocated pursuant to this Paragraph 9(e)(ii) with respect to such fiscal period, shall then be allocated pursuant to Paragraph 9(b).

(iii) If, for any fiscal period, the relative balances in the Contributions Accounts of the Partners differ from their relative Subscriptions (as the result of the imposition of a default charge or otherwise), the General Partner shall adjust the allocations provided for

under Paragraphs 9(b), (c) and (d) as necessary to ensure that, to the extent feasible, any allocations of Net Loss or Loss Items made in proportion to the relative balances in the Contributions Accounts of the Partners (e.g., pursuant to Paragraph 9(c)(iii)), and subsequently offset by allocations of Net Gain (e.g., pursuant to Paragraph 9(b)(i)), take into account, on a first-in, first-out basis, the manner in which such previously allocated Net Loss actually was allocated among the Partners, so that each such previous allocation of Net Loss is offset (to the extent feasible) by allocations of Net Gain in the order in which such Net Loss previously was allocated. Similarly, if any Net Gain is allocated in proportion to Contributions Account balances and subsequently offset by allocations of Net Loss or Loss Items, such allocations of Net Loss or Loss Items shall be adjusted in a manner consistent with the preceding sentence to take into account, on a first-in, first-out basis, the manner in which such previously-allocated Net Gain actually was allocated. Similar adjustments, and adjustments to the 20.8% figure set forth in Paragraphs 9(b)(ii)(B) and 9(e)(ii), shall be made if the Contributions Account of the General Partner has at any time a balance that is less than or greater than 1% of the aggregate balances in the Contributions Accounts of all Partners.

(iv) The allocations provided for in this Paragraph 9 are intended to ensure that Partnership income, gain, loss, deduction and expense are allocated among the Partners so that (A) tax distributions to the General Partner pursuant to Paragraph 10(a) prior to 125% Recovery are minimized (and 125% Recovery,

therefore, may occur sooner); (B) immediately prior to any distribution, each Limited Partner has a positive Capital Account balance equal to or in excess of the amount distributable to that Limited Partner; and (C) if, immediately before the Partnership's final liquidating distribution, the General Partner has an obligation to repay any amount to the Partnership pursuant to Paragraph 10(g), the General Partner has a negative Capital Account balance equal to the amount it is required to so return. This Agreement shall be interpreted and applied in all respects in a manner consistent with this intention.

(f) Regulatory Allocations. The following provisions are included in order to comply with certain tax rules set forth in the Code and Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

(i) If and to the extent that any allocation of Net Loss or Loss Items (or portion thereof) to any Partner would cause such Partner's Capital Account to be negative by an amount which exceeds such Partner's Restoration Amount (as defined in Paragraph 9(j)(vi), then such loss (or portion thereof) shall be allocated first to the Capital Accounts of the other Partners in proportion to the positive balances in their respective Capital Accounts until all such Capital Accounts are reduced to zero, then to the Capital Accounts of Partners with Restoration Amounts, in proportion to their respective Restoration Amounts, until each such Partner's Capital Account is negative by an amount equal to such Partner's Restoration Amount, and then to the Capital Account of the General Partner; provided that an allocation pursuant to this Paragraph 9(f)(i) shall be made only if and to the extent that the

deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations provided for in this Paragraph 9 have been made tentatively as if this Paragraph 9(f) were not included in this Agreement.

(ii) If any Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such adjustment, allocation or distribution otherwise would cause such Partner to have a deficit balance in such Partner's Capital Account or would further reduce a balance in such Partner's Capital Account that is already negative, there shall be allocated to such Partner items of income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income, and gain for such fiscal period) in an amount and manner sufficient to eliminate such Partner's deficit Capital Account balance, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), as quickly as possible, provided that an allocation pursuant to this Paragraph 9(f)(ii) shall be made only if and to the extent that the deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations provided for in this Paragraph 9 have been made tentatively as if this Paragraph 9(f)(ii) were not included in this Agreement. The foregoing sentence is intended to constitute a "qualified income offset" provision as described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d), and shall be interpreted and applied in all respects in accordance with that Section.

(iii) In the event that any Partner has a negative Capital Account at the end of any Partnership fiscal year that is in excess of such Partner's Restoration Amount, there shall be allocated to such Partner items of Partnership income (including gross income) and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Paragraph 9(f)(iii) shall be made only if and to the extent that the deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations provided for in this Paragraph 9 have been made tentatively as if Paragraph 9(f)(ii) hereof and this Paragraph 9(f)(iii) were not included in this Agreement.

(iv) To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

(v) The allocations set forth in Paragraphs 9(f)(i), (ii), (iii) and (iv) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations Section 1.704-1(b). Notwithstanding any other provisions of this Paragraph 9 (other

than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating subsequent Net Gain, Net Loss, Non-Portfolio Income, Loss Items and items of income, gain, loss, deduction and expense among the Partners so that, to the extent possible, the net amount of such allocations of subsequent Net Gain, Net Loss, Non-Portfolio Income, Loss Items and other items and the Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner pursuant to the provisions of this Paragraph 9 if the Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Paragraph 9(f)(v) shall be made with respect to allocations pursuant to Paragraph 9(f)(iv) only to the extent the General Partner reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners.

(g) Adjustments to Reflect Changes in Interests.

(i) Notwithstanding the foregoing but subject to Paragraph 9(g)(ii), with respect to any fiscal period during which any Partner's interest in the Partnership changes, whether by reason of the admission of a Partner, the withdrawal of a Partner, a non-pro rata contribution of capital to the Partnership or any other event described in Section 706(d)(1) of the Code, allocations of Net Gain, Net Loss and Loss Items shall be adjusted appropriately to take into account the varying interests of the Partners during such period. The General Partner shall consult with the Partnership's accountants and other advisors and shall select the method of

making such adjustments, which method shall be used consistently thereafter.

(ii) If any person is admitted to the Partnership (or the Subscription of any existing Partner is increased) after the date of this Agreement in accordance with the provisions of this Agreement, the General Partner shall adjust the allocations otherwise provided for in this Paragraph 9 of Net Gain, Net Loss and Loss Items (and items of Partnership income, gain, loss, deduction and expense) for the fiscal quarter in which such event occurs, and for subsequent fiscal quarters if necessary, so that after such adjustments have been made: (A) each Partner (including any Partners admitted after the date of this Agreement and all Partners whose Subscriptions have been increased after the date of this Agreement) shall have been allocated Partnership expenses, including Organizational Expenses (as defined in Paragraph 9(j)(v)), equal in amount to the aggregate amount of Partnership expenses such Partner would have been allocated if it had been admitted to the Partnership on the date of this Agreement with a Subscription equal to that set forth in Schedule A after such schedule has been amended to reflect such Partner's admission or the increase in its Subscription and (B) no Limited Partner has been allocated any item of Partnership gross income or gain attributable to short-term, temporary investments made by the Partnership prior to the date that is 120 days after the date of this Agreement with Partnership funds attributable to the paid-in capital contribution of any other Partner; provided, however, that (1) no item of income or gain realized (or deemed

to have been realized on a distribution in kind) before the admission of any new Partner shall be allocated to such Partner and (2) allocations to any existing Partner of items of income or gain realized (or deemed to have been realized on a distribution in kind) prior to the increase in the Subscription of such Partner shall be limited to those permitted by Section 706 of the Code.

(h) Tax Allocations. For Federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocations made pursuant to the provisions of this Paragraph 9 for all fiscal quarters included in such fiscal year (other than allocations of items which are not deductible or are excluded from taxable income), taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code.

(i) Timing of Allocations.

(i) The General Partner shall cause the Partnership to make the allocations described in this Paragraph 9 as of the date on which 125% Recovery occurs on the basis of an interim closing of the Partnership's books at such time. It is intended that this Paragraph 9(i), in conjunction with Paragraph 10(d)(ii), shall be interpreted so as to apportion Net Gain of the Partnership for the full fiscal period to be divided by such interim closing to the short fiscal period prior to the interim closing only to the extent necessary to provide each Partner with the allocations of Net Gain contemplated by Paragraph 9(b)(ii)(A), and that all remaining Net Gain for such full fiscal period shall be deemed to be attributable to the short fiscal period following such interim closing.

(ii) If any such interim closing occurs, each short fiscal period that results shall constitute a fiscal year for purposes of this Paragraph 9 other than Paragraph 9(h) hereof. Tax allocations pursuant to Paragraph 9(h) shall be made only as of the end of each fiscal year.

(j) Definitions.

(i) "Cost Basis" means, with respect to any Partnership asset, the Partnership's adjusted tax basis in that asset as determined for Federal income tax purposes; provided, however, that if the Partnership has made an election under Section 754 of the Code, such tax basis shall be determined after giving effect to adjustments made under Section 734 of the Code but (except as provided in Treasury Regulations Section 1.734-2(b)(1)) without regard to adjustments made under Section 743 of the Code.

(ii) "Loss Items" means, with respect to any fiscal year, items of gross Partnership loss, deduction or expense for such fiscal year.

(iii) "Net Gain or Loss" means, with respect to any fiscal year, the sum of the Partnership's (A) net gain or loss from the sale or exchange of the Partnership's capital assets during such fiscal year, (B) gain or loss deemed to have been realized by the Partnership, pursuant to Paragraph 9(e)(i), on a distribution in kind of its assets during such fiscal year, (C) interest and dividend income realized by the Partnership during such fiscal year and (D) other items of income, gain, loss, deduction and expense for such fiscal year that are not included in (A), (B) or (C), including any income which is exempt from Federal income tax, all Partnership losses and all expenses properly chargeable to the Partnership, whether

deductible or non-deductible and whether described in Section 705(a)(2)(B) of the Code, treated as so described pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), or otherwise, but specifically excluding all (1) items of Partnership income, gain, loss, deduction or expense for such fiscal year allocated pursuant to Paragraph 9(f) and (2) Non-Portfolio Income and all items of Partnership income, gain, loss, deduction and expense included in Non-Portfolio Income. Net Gain or Loss shall be determined in accordance with tax accounting principles rather than generally accepted accounting principles and any excess of Partnership expenses for a fiscal period (other than expenses taken into account in determining the Partnership's Cost Basis in securities of its Partnership Portfolio Companies) over the Partnership's income and gains for such period that are attributable to Reserves shall be included in determining Net Gain or Loss.

(iv) "Non-Portfolio Income" means, with respect to any fiscal year, (A) the Partnership's income, gains or losses for such fiscal year that are attributable to Reserves (including income exempt from Federal income tax and income or gain from the disposition of assets constituting Reserves) reduced, but not below zero, by (B) all expenses that are borne by the Partnership pursuant to this Agreement with respect to such fiscal year including, but not limited to, the management fee payable to the Management Company pursuant to the Management Agreement, Organizational Expenses borne by the Partnership, expenses directly attributable to the acquisition or disposition of assets

constituting Reserves, and all non-deductible expenses (whether described in Section 705(a)(2)(B) of the Code, treated as so described pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), or otherwise), other than expenses required to be capitalized for federal income tax purposes and included in the Partnership's Cost Basis in its securities of Partnership Portfolio Companies. Non-Portfolio Income shall be determined in accordance with tax accounting principles (rather than generally accepted accounting principles). To the extent that any expense items described in clause (B) of the preceding sentence are not fully taken into account in calculating Non-Portfolio Income, such items shall, to such extent, not be deemed Non-Portfolio Income and shall be included in determining the Partnership's Net Gain or Loss for such fiscal year.

(v) "Organizational Expenses" means, with respect to any fiscal year, any fees, costs or expenses incurred by the Partnership with respect to such fiscal year, but only to the extent that such items are attributable to the organization of the Partnership and the offer and sale of interests to the Limited Partners.

(vi) "Restoration Amount" means, with respect to any Partner and at any time, the sum of (A) such Partner's allocable share (as determined under Section 752 of the Code), if any, at such time of the recourse indebtedness of the Partnership, (B) any part of such Partner's Subscription that has not been paid to the Partnership in cash or terminated before such time (to the extent not taken into account in determining such Partner's share of the recourse indebtedness of the Partnership), and (C) solely with respect to

the General Partner, the aggregate amount of distributions (other than Tax Distributions (as defined in Paragraph 10(a)) received by the General Partner from the Partnership at or before such time, but only to the extent that such distributions (1) exceed the aggregate amount of distributions the General Partner would have received at or before such time if it had made all of its capital contributions to the Partnership as a Limited Partner and did not hold any interest as a General Partner, and (2) were not taken into account pursuant to clauses (A) or (B) above.

10. Distributions.

(a) Tax Distributions. During each fiscal year, the Partnership shall distribute in cash to each Partner an amount sufficient to enable such Partner to satisfy the Federal, state and local tax liabilities attributable to the items of income, gain, loss or deduction allocated to such Partner by the Partnership with respect to such fiscal year. The amount to be distributed shall be determined by the General Partner in consultation with the Partnership's independent public accountants and shall be computed for each Partner (including tax-exempt Partners) as if such Partner were subject to tax at the same rate and in the same manner as the domestic Partner who is subject to the highest proportionate tax burden for such fiscal year. Notwithstanding the foregoing, such distribution may be reduced or not made with respect to any fiscal year if and to the extent authorized by the General Partner in its discretion and approved by the Review Committee. Amounts distributed within 90 days after the end of a fiscal year may, at the option of the General Partner, be deemed to have been made during such fiscal year rather than during the fiscal year in which the distribution is actually made, solely to the extent necessary to satisfy the requirements of this Paragraph 10(a) and solely for such purpose. The distributions referred to in this Paragraph 10(a) are referred to as the "Tax Distributions".

(b) Discretionary Distributions - In General. The Partnership, at the discretion of the General Partner, may make, pursuant to this Paragraph 10, such additional distributions of Partnership assets other than Tax Distributions and distributions made pursuant to Paragraph 10(f) (such additional distributions being referred to as "Discretionary Distributions") as the General Partner deems appropriate, subject to the limitations set forth in the other provisions of this Paragraph 10.

(c) Discretionary Distributions Before 125% Recovery. Until the time when each Limited Partner (other than Limited Partners who have defaulted with respect to their obligations to make capital contributions) has recovered through distributions (including Tax Distributions but excluding distributions pursuant to Paragraph 10(f)) an aggregate amount (determined as of the date of distribution) equal to 125% of the sum of such Limited Partner's Subscription and any amounts from time to time credited to the Contributions Account of such Limited Partner pursuant to Paragraph 7(b) (such condition being referred to as "125% Recovery" and the time of occurrence thereof being referred to as the "Recovery Date"), all Discretionary Distributions shall be made to all Partners in proportion to their respective Contributions Accounts at the date of distribution.

(d) Discretionary Distributions After 125% Recovery.

(i) All Discretionary Distributions after 125% Recovery shall be made as follows:

(A) First, to the General Partner until such time as the General Partner shall have received aggregate distributions (including Tax Distributions but excluding distributions made pursuant to Paragraph 10(f)) equal to 20.8% (i.e., 20% plus 1% of the remaining 80%) of the excess of (1) aggregate distributions to all Partners since the inception of the Partnership (including Tax Distributions but excluding distributions made pursuant to

Paragraph 10(f)) over (2) the aggregate amount of all Partners' Subscriptions (such situation being referred to as "Pay-Back" and the date of Pay-Back being referred to as the "Pay-Back Date"); and

(B) Second, after the Pay-Back Date, 80% to all Partners in proportion to their respective Contributions Accounts and 20% to the General Partner; provided, however, that in no event shall a Discretionary Distribution be made to the General Partner to the extent that such distribution, when added to all other distributions (including Tax Distributions but excluding distributions made pursuant to Paragraph 10(f)) previously made to the General Partner, would cause the aggregate amounts distributed to the General Partner (including Tax Distributions but excluding distributions made pursuant to Paragraph 10(f))to be greater than 20.8% of the excess, if any, of (1) the aggregate amounts distributed by the Partnership to all Partners (including Tax Distributions but excluding distributions made pursuant to Paragraph 10(f)) over (2) the aggregate amount of all Partners' Subscriptions.

(C) Appropriate adjustments to the 20.8% figure set forth in this Paragraph 10(d)(i) shall be made if the Contributions Account of the General Partner has at any time a balance that is less than or greater than 1% of the aggregate balances in the Contributions Accounts of all Partners.

(ii) Any Discretionary Distribution pursuant to Paragraph 10(c) which causes the Recovery Date to occur shall be divided into two

portions: a pre-125% Recovery portion, constituting the amount which, when distributed, will cause 125% Recovery to occur (the "Pre-Recovery Portion"), and the excess (if any) over such portion (the "Post-Recovery Portion"). The Pre-Recovery Portion of such distribution shall be apportioned among the Partners pursuant to Paragraph 10(c), and the Post-Recovery Portion shall be apportioned among the Partners pursuant to Paragraph 10(d)(i).

(iii) Any Discretionary Distribution pursuant to Paragraph 10(d)(i)(A) which causes the Pay-Back Date to occur shall be divided into two portions and apportioned in a manner similar to that set forth in Paragraph 10(d)(ii).

(e) Form of Distributions. Except as otherwise authorized by the General Partner and approved by a majority in interest of the Limited Partners, all Discretionary Distributions to Limited Partners shall be made in cash or in Limited Partner Freely Tradable Securities (as defined in Paragraph 11(c)). Any distribution in kind to the Partners shall be deemed to have been sold by the Partnership and any net gain or loss deemed to have been realized by the Partnership shall be included in Net Gain or Loss for purposes of Paragraph 9. Each class of securities to be distributed in kind to both the General Partner and the Limited Partners shall be distributed to the Partners in proportion to their respective shares of the proposed distribution as provided in Paragraph 10(c) or (d)(i) except to the extent that a disproportionate distribution of such securities is necessary in order to avoid distributing fractional shares. For purposes of the preceding sentence, each lot of stock or other securities having a separately identifiable tax basis or holding period shall be treated as a separate class of securities. The valuation of securities distributed in kind shall be made in the manner provided in Paragraph 11, except (a) in the case of distributions of securities that are Freely Tradable (as defined in Paragraph 11(c)) or Limited Partner Freely Tradable Securities, the valuation thereof shall be determined by taking the average prices therefor for the 5 trading

days immediately preceding and including the date of distribution, and for purposes of Paragraphs 3(o) and 8(c), the fair market value as of the date of distribution shall in all cases mean such average price, and (b) in the case of distributions of securities that are not listed on a national securities exchange or carried on the NASDAQ system, the valuation thereof shall be subject to approval of the Review Committee.

(f) Distributions Upon Admission of New Partners. If any Limited Partner is admitted to the Partnership (or the Subscription of any Partner is increased) after the formation of the Partnership, the General Partner shall cause the Partnership to distribute to the persons who were Partners prior to such admission or increased Subscription and in proportion to such Partners' respective Contributions Accounts as of the time immediately prior to such admission or increased Subscription, the gross amounts earned by the Partnership before the date that is 120 days after the date of this Agreement on its short-term, temporary investments of contributed capital.

(g) Obligation of General Partner to Return Excess Distributions.

(i) If, after the Partnership has made its final liquidating distribution pursuant to Paragraph 13 the General Partner has received distributions from the Partnership (excluding distributions made pursuant to Paragraph 10(f)) in aggregate amounts exceeding the sum of (A) the balance in the General Partner's Contributions Account plus (B) 20.8% (i.e., 20% plus 1% of the remaining 80%) of the amount, if any, by which (1) the aggregate amount distributed by the Partnership to all Partners since its inception (excluding distributions made pursuant to Paragraph 10(f)) is greater than (2) the aggregate amount of all Partners' Subscriptions, the General Partner shall repay to the Partnership, in cash, an amount equal to the excess of such aggregate distributions received by the General Partner over such sum;

provided, however, that the amount which the General Partner otherwise would be required to repay to the Partnership pursuant to this Paragraph 10(g) shall not be greater than the excess, if any, of the aggregate amount actually distributed to the General Partner by the Partnership since its inception over (a) the aggregate amount of all Tax Distributions distributed to the General Partner by the Partnership since its inception, plus (b) the amount that would have been distributed to the General Partner by the Partnership since its inception if the General Partner had made all of its capital contributions to the Partnership as a Limited Partner and did not hold any interest as a General Partner (other than Tax Distributions on account of this clause (b)). If for any reason the General Partner's Contributions Account balance does not equal 1% of the aggregate Contributions Account balances of all Partners, the 20.8% figure set forth above shall be adjusted accordingly.

(ii) Any such repayment shall be made before the earlier of (A) the end of the Partnership's fiscal year in which the date of the liquidation of the Partnership occurs, or (B) 90 days after the date of the liquidation of the Partnership. For this purpose, (1) the date of the liquidation of the Partnership shall mean the date on which the Partnership has ceased to be a going concern; and (2) the Partnership shall not be deemed to have ceased to be a going concern until it has sold, distributed or otherwise disposed of all of its investments in Partnership Portfolio Companies. Amounts returned by the General Partner to the Partnership shall

be paid to creditors of the Partnership or distributed to other Partners in proportion to their respective Contributions Accounts.

(h) Tax Withholding. If the Partnership incurs a withholding tax obligation with respect to the share of Partnership income allocated to any Partner, (i) any amount which is actually withheld from a distribution that would otherwise have been made to such Partner and paid over to the Internal Revenue Service in satisfaction of such withholding tax obligation shall be treated for all purposes under this Agreement as if such amount had been distributed to such Partner; and (ii) any amount which is paid over to the Internal Revenue Service by the Partnership in satisfaction of a withholding tax obligation, but which exceeds the amount, if any, actually withheld from a distribution which would otherwise have been made to such Partner, shall be treated as if it had been loaned to such Partner and the General Partner immediately shall give written notice to such Partner and demand payment therefor within 30 days of the date of such withholding. Amounts treated as loaned to any Partner pursuant to this Paragraph 10(h) which are not repaid in full by such Partner to the Partnership within such 30-day period shall bear interest at a rate equal to the "prime rate" of The First National Bank of Boston, as in effect from time to time, plus 2% per annum until fully paid together with all accrued interest thereon. Further, the Partnership shall have authority to collect such unpaid amounts from any Partnership distributions that otherwise would be made to such Partner.

(i) Limitations on Distributions. Anything in this Paragraph 10 to the contrary notwithstanding, (i) no distribution shall be made to any Partner if and to the extent that such distribution would not be permitted under Section 17-607(a) of the Delaware Act, (ii) if an ERISA Partner or Deemed ERISA Partner notifies the Partnership in writing that the receipt by such ERISA Partner or Deemed ERISA Partner of securities in such distribution would create a material likelihood of a material violation of ERISA by such ERISA Partner or Deemed ERISA Partner, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such ERISA Partner or Deemed

ERISA Partner, as the case may be, and if such sale cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall use all reasonable efforts to distribute instead to such ERISA Partner or Deemed ERISA Partner an amount of cash and/or securities of substantially equal value that will not create such a material likelihood of a material violation of ERISA (an "Alternative ERISA Distribution"), (iii) if a Foundation Limited Partner notifies the Partnership in writing that there is a material likelihood that receipt of a distribution of securities would cause the Foundation Limited Partner to be in material violation of any governmental statute, rule or regulation by which it is bound or to be subject to or to incur excise taxes imposed by Chapter 42, Subchapter A of the Code (other than Sections 4940, 4947 and 4948 thereof), then the Partnership shall not make a distribution of securities to such Foundation Limited Partner but rather shall distribute an amount of cash equal to the value of the securities that would have been so distributed to such Foundation Limited Partner, (iv) if a Limited Partner subject to regulation under the Bank Holding Company Act of 1956, as amended (such Limited Partner being sometimes referred to herein as a "Bank Limited Partner" and such Act and the rules and regulations promulgated thereunder being referred to herein as the "Holding Company Act"), notifies the Partnership in writing that the receipt by such Bank Limited Partner of securities in such distribution would create a material likelihood of a material violation of the Holding Company Act by such Bank Limited Partner, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Bank Limited Partner, and if such sale cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall use all reasonable efforts to distribute instead to such Bank Limited Partner an amount of cash and/or securities of substantially equal value that will not create such a material likelihood of a material violation of the Holding Company Act (an "Alternative Holding Company Act Distribution"), (v) if a Governmental Plan Partner notifies the Partnership in writing that the receipt by such Governmental Plan Partner of securities in such distribution would create a material likelihood of a material violation of any governmental statute, rule or regulation by

which it is bound, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Governmental Plan Partner and if such sale cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall use reasonable efforts to distribute instead to such Governmental Plan Partner an amount of cash and/or securities of substantially equal value that will not create such a material likelihood of a material violation of any governmental statute, rule or regulation by which such Governmental Plan Partner is bound, and (vi) the General Partner, in its discretion, may waive any distribution (or portion thereof) that would otherwise be made to the General Partner, and cause such distribution to be made to the Limited Partners in proportion to their respective Contributions Accounts at the time of distribution.

(j) Sale Assistance on Distribution in Kind. If, within five days after a distribution of securities to a Limited Partner, such Limited Partner requests of the Partnership in writing that the Partnership arrange for the sale of such securities on behalf of and for the account of such Limited Partner, then the General Partner shall use reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Limited Partner.

11. Valuation of Partnership Assets.

(a) Valuation by General Partner. Whenever valuation of Partnership assets is required by this Agreement, the General Partner shall determine the fair market value thereof in good faith, subject, in the case of the Partnership's annual financial statements described in Paragraph 18(c) and in the case of the distribution of securities that are not listed on a national securities exchange or carried on the NASDAQ system, to approval by the Review Committee of valuations of Investment Securities owned by the Partnership.

(b) Fair Market Value. In general, but subject to the requirements of Paragraph 11(a), the fair market value of any security owned by the Partnership which is Freely Tradable shall be determined as of the close of trading on the date as of which the value is being determined by taking the last reported bid price of such security on such date on the

exchange where it is primarily traded, or, if such security is not traded on an exchange, such security shall be valued at the last reported bid price on such date on the NASDAQ National Market List, or, if such security is not reported on the NASDAQ National Market List, such security shall be valued at the closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities. The determination of the fair market value of all other assets of the Partnership shall be based upon all relevant factors, including, without limitation, such of the following factors as may be relevant: current financial position and current and historical operating results of the issuer; sales prices of recent public or private transactions in the same or similar securities, including transactions on any securities exchange on which such securities are listed or in the over-the-counter market; general level of interest rates; recent trading volume of the security; restrictions on transfer, including the Partnership's right, if any, to require registration of its securities by the issuer under the securities laws; significant recent events affecting the issuer, including pending mergers, acquisitions and sales of securities; the price paid by the Partnership to acquire the asset; the percentage of the issuer's outstanding securities that is owned by the Partnership; and all other factors affecting value. In making any such determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for good will or the name of the Partnership, the Partnership's office records, files and statistical data, or any other intangible assets of the Partnership.

(c) Freely Tradable Securities; Limited Partner Freely Tradable Securities. For purposes of this Agreement a security shall be deemed to be "Freely Tradable" if (i) the Partnership's entire holding of such security can be immediately sold by the Partnership to the general public without the necessity of any Federal, state or local government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act of 1933, as amended (the "Securities Act"), and (ii) such security is either listed on a national securities exchange or carried on the NASDAQ system and market quotations are readily available therefor. For purposes of this Agreement securities shall be

deemed to be "Limited Partner Freely Tradable Securities" if (i) upon the distribution thereof by the Partnership to the Limited Partners, all of the securities so received by the Limited Partners can be immediately sold by the Limited Partners to the general public without the necessity of any federal, state or local government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act), and (ii) such security is either listed on a national securities exchange or carried on the NASDAQ system and market quotations are readily available therefor, assuming that no Limited Partner has any relationship to or holdings in the securities of the issuer other than by virtue of such distribution by the Partnership.

(d) Disputed Valuations. If the General Partner determines a valuation for any Investment Securities held by the Partnership which is not approved by the Review Committee as provided in Paragraph 11(a), and if the Review Committee does not, within 45 days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted by the General Partner such valuation shall be determined by an independent chartered financial analyst selected by the General Partner and approved by the Review Committee, whose determination shall be binding upon all Partners.

12. Term of Partnership; Dissolution.

(a) Term of Partnership. The Partnership shall continue until the tenth anniversary of the date of this Agreement, unless sooner dissolved as provided in Paragraph 12(b) or (c) or by operation of law, or unless extended as provided in Paragraph 12(d).

(b) Dissolution. The Partnership shall be dissolved in the event of the occurrence with respect to the General Partner of any of the events stated in Section 17-402(a)(4), (5) or (8) of the Delaware Act.

(c) Action by Limited Partners. Limited Partners constituting in the aggregate at least 66-2/3% in interest of the Limited Partners may dissolve the Partnership at any time, as of the date they deliver written notice of such dissolution to the General Partner.

(d) Extensions of Term. The term of the Partnership may be extended for up to two one-year periods by the General Partner with the consent of 66-2/3% in interest of the Limited Partners. Any such extension shall be subject to the rights of the Limited Partners to dissolve the Partnership as provided in Paragraph 12(c).

13. Liquidation of Partnership Interests.

(a) General Provisions. At dissolution, the Partnership shall be liquidated in an orderly manner. The General Partner shall be the liquidator to wind up the affairs of the Partnership pursuant to this Agreement, provided that if there shall be no General Partner, the Review Committee may appoint one or more liquidators to act as the liquidators in carrying out such liquidation. Any such liquidator, other than the General Partner, shall be a "liquidating trustee" within the meaning of Section 17-101(9) of the Delaware Act.

(b) Liquidating Distributions. The liquidators shall pay or provide for the Partnership's liabilities and obligations to creditors. Any Net Gain or Loss incurred in connection with the liquidation of the Partnership shall be allocated to and among the Partners in the manner provided in Paragraph 9 and the remaining assets shall then be distributed among the Partners in cash or in kind in the manner required by Paragraph 10 (other than Paragraph 10(a)) (after allocating in the manner provided in Paragraph 9 any Net Gain or Loss deemed to have been realized in connection with a distribution in kind), provided that (i) the liquidators shall not need the authorization of the General Partner or the approval of the Limited Partners in connection therewith, (ii) if an ERISA Partner or Deemed ERISA Partner notifies the Partnership in writing that the receipt by such ERISA Partner or Deemed ERISA Partner of a distribution in kind pursuant to this sentence would create a material likelihood of a material violation of ERISA by such ERISA Partner or Deemed ERISA Partner, then the

Partnership shall use all reasonable efforts to arrange for the sale of the securities otherwise to be distributed to such ERISA Partner or Deemed ERISA Partner on behalf of and for the account of such ERISA Partner or Deemed ERISA Partner, as the case may be, and provided further that if such sale for the account of such ERISA Partner or Deemed ERISA Partner cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall instead use all reasonable efforts to make an Alternative ERISA Distribution to such ERISA Partner or Deemed ERISA Partner, (iii) if a Bank Limited Partner notifies the Partnership in writing that the receipt by such Bank Limited Partner of a distribution in kind pursuant to this sentence would create a material likelihood of a material violation of the Holding Company Act by such Bank Limited Partner, then the Partnership shall use all reasonable efforts to arrange for the sale of the securities otherwise to be distributed to such Bank Limited Partner on behalf of and for the account of such Bank Limited Partner, and provided further that if such sale for the account of such Bank Limited Partner cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall instead use all reasonable efforts to make an Alternative Holding Company Act Distribution to such Bank Limited Partner, (iv) if a Foundation Limited Partner notifies the Partnership in writing that there is a material likelihood that the receipt by such Foundation Limited Partner of a distribution in kind pursuant to this sentence would cause such Foundation Limited Partner to be in material violation of any governmental statute, rule or regulation by which it is bound or to be subject to or to incur excise taxes imposed by Chapter 42, Subchapter A of the Code (other than Sections 4940, 4947 and 4948 thereof), then the Partnership shall not make a distribution of securities to such Foundation Limited Partner but rather shall distribute an amount of cash equal to the value of the securities that would have been so distributed to such Foundation Limited Partner, (v) if a Governmental Plan Partner notifies the Partnership in writing that the receipt by such Governmental Plan Partner of securities in such distribution would create a material likelihood of a material violation of any governmental statute, rule or regulation by which it is bound, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the

account of such Governmental Plan Partner and if such sale cannot be arranged after all reasonable efforts by the Partnership, then the Partnership shall use all reasonable efforts to distribute instead to such Governmental Plan Partner an amount of cash and/or securities of substantially equal value that will not create such a material likelihood of a material violation of any governmental statute, rule or regulation by which such Governmental Plan Partner is bound, and (vi) if, within five days after a distribution of securities to a Limited Partner, such Limited Partner requests of the Partnership in writing that the Partnership arrange for the sale of such securities on behalf of and for the account of such Limited Partner, then the liquidators shall use reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Limited Partner. In performing their duties, the liquidators are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the liquidators shall determine to be in the best interest of the Partners.

(c) Expenses of Liquidators. The expenses incurred by the liquidators in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement and reasonable compensation for the services of the liquidators (which, in the case of any liquidator who is a general partner of the General Partner, shall be paid only if the Management Agreement or a similar agreement providing for management services to the Partnership is no longer in effect), shall be borne by the Partnership. Subject to the terms of the Management Agreement or any such similar agreement and provided such Management Agreement or similar agreement shall not have been terminated, the management fee payable to the Management Company shall be continued until the liquidation is completed, to permit the Management Company to assist the General Partner in the liquidation. If the General Partner is not the liquidator, the Partnership shall pay the Management Company reasonable compensation for assisting the liquidators in the liquidation if the Management Agreement or similar agreement is no longer in effect. The liquidators shall make final liquidating distributions from the Partnership before the earlier of (i) the end of the Partnership's fiscal year in which the date of the liquidation of the Partnership

occurs, or (ii) 90 days after the date of the liquidation of the Partnership. For this purpose, (x) the date of the liquidation of the Partnership shall mean the date on which the Partnership has ceased to be a going concern; and (y) the Partnership shall not be deemed to have ceased to be a going concern until it has sold, distributed or otherwise disposed of all of its investments in Partnership Portfolio Companies.

(d) No Liability for Return of Capital. It is recognized that decisions concerning investments or potential investments involve exercise of judgment and the risk of loss. The liquidators and the General Partner shall not be personally liable for the return of capital contributions of any Partners, and no Partner shall be obligated to restore to the Partnership the amount of any negative Capital Account, except for the General Partner to the extent required by Paragraph 10(g); provided, however, that this provision shall not affect the obligations of Partners to make their agreed-upon capital contributions or any obligations they may have under the Delaware Act.

(e) Post-Dissolution Investments. Anything to the contrary in this Paragraph 13 notwithstanding, the liquidators may, at any time or times after dissolution, make additional investments on behalf of the Partnership in entities which were Partnership Portfolio Companies at the date of dissolution (including any successors to such entities), if the liquidators believe that such additional investments are in the best interests of the Partners.

14. Limitation on Assignability of Interests of Limited Partners.

The prior written consent of the General Partner, in its sole and absolute discretion, shall be required for the assignment, pledge, mortgage, hypothecation, sale or other disposition or encumbrance (a "Transfer") by any Limited Partner of all or any part of its interest in the Partnership to any person or entity other than (i) an affiliate of such Limited Partner, including any partner of such Limited Partner, (ii) in the case of a limited partnership interest in the Partnership which is held in trust, (A) a successor trustee to the trustee of such trust or (B) the trustee of a trust which is a successor of such trust, or (iii) in the case of a Limited Partner

which is an employee benefit plan, a successor fiduciary to the fiduciary of such employee benefit plan. Additionally, any Transfer shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership or of other counsel reasonably satisfactory to the Partnership (which opinion shall be obtained at the expense of the transferor) that such Transfer will not result in (A) the Partnership, the General Partner or the Management Company being subjected to any additional regulatory requirements (including those of the Investment Company Act of 1940 and the Investment Advisers Act of 1940, as amended), (B) a violation of applicable law or this Agreement, (C) the Partnership being taxable as a corporation, (D) the Partnership being deemed terminated pursuant to Section 708 of the Code, (E) the Partnership becoming a "publicly traded partnership" within the meaning of Sections 469(k)(2) and 7704(b) of the Code, or (F) any of the assets of the Partnership being deemed under ERISA to constitute "plan assets" of any ERISA Partner; provided, however, that the General Partner may, in its reasonable discretion, waive in writing the requirement of a written opinion of counsel. No Transfer of any unit of a Limited Partner's interest shall be made if and to the extent such Transfer would require such unit to be subdivided for purposes of resale into units smaller than a unit the initial offering price of which would have been at least $20,000. Except in accordance with the provisions of this Paragraph 14, each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership. Without the aforesaid consent of the General Partner (except as to those transferees listed in clauses (i), (ii) and (iii) of this Paragraph 14) and the aforesaid written opinion of counsel (except if the requirement for such opinion is waived), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 14 (other than a transferee listed in clause (ii)(A) or (iii) of this Paragraph 14) shall be admitted as a substituted Limited Partner upon the date specified therefor in an amendment to this Agreement providing for such admission, which amendment shall be executed by the General Partner, the transferor of the Partnership interest transferred in accordance with the provisions

of this Paragraph 14 and the transferee of such interest. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 14 that is listed in clause (ii)(A) or (iii) of this Paragraph 14 shall be admitted as a substituted Limited Partner upon the receipt by the Partnership of written notice of the Transfer, which notice shall include the name, address and tax identification number of such transferee and shall be executed by the transferor Limited Partner and such transferee, provided that if such notice shall specify that the Transfer is to become effective at a later date, such transferee shall be admitted as a substituted Limited Partner upon the effective date of the Transfer, and the General Partner may unilaterally amend this Agreement to reflect the Transfer and the admission of such transferee. Upon admission to the Partnership, a transferee shall succeed to the rights and liabilities of the transferor Partner and the Contributions Account and Capital Account of the transferor shall become the Contributions Account and Capital Account of the transferee.

Each Partner, by its execution of this Agreement, agrees and consents to the admission of any substituted Limited Partner pursuant to the terms of this Paragraph 14. Any transferee of a Partnership interest shall execute such other documents as the General Partner may request to effectuate such Transfer and shall, by its admission as a substituted Limited Partner, be subject to all of the terms of this Agreement and be deemed to have executed a power-of-attorney as provided in Paragraph 25. Any attempted Transfer of a Limited Partner's interest without compliance with this Agreement shall be void. In the event of any Transfer which shall result in multiple ownership of any Limited Partner's interest in the Partnership, the General Partner may require one or more trustees or nominees to be designated as representing a portion of or the entire interest transferred for the purpose of receiving all notices which may be given, and all payments which may be made, under this Agreement and for the purpose of exercising all rights which the transferor as a Limited Partner has pursuant to the provisions of this Agreement. Every Transfer shall be subject to all of the terms, conditions, restrictions and obligations of this Agreement.

Notwithstanding anything to the contrary contained in this Paragraph 14, no Transfer of a Limited Partner's interest may be made to any person or entity (i) if, by reason of such Transfer, any of the assets of the Partnership would be deemed under ERISA to constitute "plan assets" of any ERISA Partner or (ii) who is a Disqualified Person identified to the Partnership by any Foundation Limited Partner.

15. Limitation on Assignability of Interest of General Partner.

The General Partner shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber all or any part of its interest as the General Partner. Any attempted transfer of the General Partner's interest shall be void.

16. Withdrawal of Partnership Interests.

Except as otherwise provided in Paragraphs 20, 21, 22, 23 and 24, no Partner shall have the right to withdraw its capital or profits from the Partnership.

17. Indemnification.

(a) Generally. To the full extent permitted under the Delaware Act or other applicable law and in accordance with the terms of this Agreement, the General Partner, the Tax Matters Partner (as hereinafter defined), each partner of the General Partner, each member of a Partnership committee (including, without limitation, members of the Review Committee and the Advisory Committee), each liquidator for the Partnership and each director, officer, employee or agent of the Management Company (herein referred to collectively as "Indemnified Persons" and singly as an "Indemnified Person") shall be indemnified and held harmless by the Partnership against any cost, expense (including attorneys' fees), judgment and/or liability incurred by or imposed upon such person in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency) to which such person may be made a party or otherwise involved or with which such person shall be threatened, by reason of being at the time the cause of action arose, the General

Partner, the Tax Matters Partner, a partner of the General Partner, a member of a Partnership committee, a liquidator for the Partnership, a director, officer, employee or agent of the Management Company (provided that such person was performing services on behalf of the Partnership) or a director, officer, employee or agent of any organization in which the Partnership owns an interest or of which the Partnership is a creditor, which other organization such person serves or has served as director, officer, employee or agent at the request of the Partnership (whether or not such person continues to be acting in such capacity with respect to the Partnership at the time such action, suit or proceeding is brought or threatened), except to the extent such person has been indemnified by another organization and except with respect to matters as to which the final, nonappealable adjudication or determination made as to such action, suit or proceeding contains a finding that such person (i) did not act in good faith in the reasonable belief that such person's action was in the best interests of the Partnership, (ii) acted with willful misconduct, fraudulently or in violation of this Agreement, (iii) acted with Negligent Conduct (as defined in Paragraph 17(b)) (provided, however, that this clause (iii) shall not apply to members of the Review Committee or the Advisory Committee), or (iv) with respect to any criminal action or proceeding, had reasonable cause to believe such person's conduct was unlawful. In the event of settlement of any action, suit or proceeding brought or threatened, indemnification shall apply to all matters covered by the settlement except for matters as to which the Partnership is advised by independent counsel (who may be counsel regularly retained by the Partnership) that the person seeking indemnification, in the opinion of counsel (i) did not act in good faith in the reasonable belief that such person's action was in the best interests of the Partnership, (ii) acted with willful misconduct, fraudulently or in violation of this Agreement, (iii) acted with Negligent Conduct (as defined in Paragraph 17 (b)) (provided, however, that this clause (iii) shall not apply to members of the Review Committee or the Advisory Committee), or (iv) with respect to any criminal action or proceeding, had reasonable cause to believe such person's conduct was unlawful. Any indemnification shall be provided solely from the assets of the Partnership and no Partner shall

be liable personally therefor. The foregoing right of indemnification shall be in addition to any rights to which any Indemnified Person otherwise may be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(b) Negligent Conduct. The term "Negligent Conduct" with respect to any person (other than a member of the Review Committee or the Advisory Committee) seeking indemnification from the Partnership under this Agreement shall mean any conscious and voluntary act or omission by such person which constitutes a failure to perform or exercise due care required with respect to such person's legal duties and obligations to the Partnership arising from such person's capacity, position and authority with respect to the Partnership, including dereliction of responsibilities, indifference or reckless disregard by such person towards such person's legal obligations and duties to the Partnership in light of circumstances which are likely to result in material liability to the Partnership as a whole, but shall not include acts or omissions which occur from common error, inadvertence or honest mistakes of judgment by a person exercising ordinary responsibility and care in good faith in the course of carrying out activities or supervising others on behalf of the Partnership. The determination of whether any such person acted with Negligent Conduct shall be made by the court, administrative or legislative body or agency, or such other authority outside the Partnership as shall have authority to make the final disposition of the action, suit or proceeding at issue. In the absence of such determination, then the Partnership, by action of either the General Partner or the Review Committee, shall be authorized to request the review and determination of such matter by legal counsel, which may be legal counsel to the Partnership, which counsel shall be approved by at least 66-2/3% in interest of the Limited Partners (other than any Limited Partner seeking indemnification).

(c) Advancement of Expenses. The Partnership may pay the expenses incurred by an Indemnified Person (and shall pay such expenses if the Indemnified Person is a member of the Review Committee or the Advisory Committee) in defending a pending or

threatened civil or criminal action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by such person or entity to repay such payment if such person shall be determined not to be entitled to indemnification therefor as provided herein; provided, however, that in such instance such person is not defending a civil action, suit or proceeding commenced against such person by the Partnership itself. The amount of expenses advanced by the Partnership under this Paragraph 17(c) shall not exceed $500,000 for any Indemnified Person at any one time or $250,000 for any Indemnified Person relating to any single pending or threatened action, suit or proceeding unless otherwise approved in advance by the Review Committee.

(d) Securities Laws Limitations. No Indemnified Person shall be indemnified for any cost, expense, judgment and/or liability paid in settlement of any claim arising from or out of an alleged violation of Federal or state securities laws unless (i) there has been final adjudication on the merits of each count involving alleged securities laws violations favorable to the Indemnified Person, (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the Indemnified Person or (iii) a court of competent jurisdiction approves a settlement of claims against the Indemnified Person. In any claim for indemnification for Federal or state securities laws violations, the Indemnified Person shall place before the court the positions of the United States Securities and Exchange Commission and any applicable state securities division with respect to the issue of indemnification for securities law violations.

(e) Partnership Portfolio Company Indemnification. In each instance in which a partner of the General Partner or a director, officer, employee or agent of the Management Company serves as an officer or director of a Partnership Portfolio Company, such person shall have an obligation to use his best efforts to ensure that such Partnership Portfolio Company (i) is empowered under its charter and/or By-laws (to the full extent permitted by law) to provide for indemnification of such person and (ii) if such Partnership Portfolio Company is publicly held, it obtains directors' and officers' liability insurance if

available at reasonable rates. Furthermore, such person shall use reasonable efforts to pursue any rights he may have for indemnification from such Partnership Portfolio Company and under such insurance (to the extent such indemnification or insurance may be provided and is available) before proceeding for indemnification by the Partnership.

18. Fiscal Year; Records and Reports; Accounting Method; Organizational Expenses.

(a) Fiscal Year. The fiscal year and the taxable year of the Partnership shall each be the calendar year.

(b) Partnership Records. At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership. Such books of account (which shall be kept on the accrual method of accounting), together with an executed copy of the Partnership Agreement and the Certificate of Limited Partnership (and any amendments thereto), shall at all times be maintained at the principal office of the Partnership, and shall be open to inspection by the Partners or their duly authorized representatives. At any time while the Partnership continues and until its affairs have been wound up (but only during reasonable business hours), each Partner (or the designee thereof) may fully examine and audit the Partnership's books, records, accounts and assets, including bank balances, and may make, or cause to be made, any examination or audit at such Partner's expense. Each of the Limited Partners (or the designee thereof) may, during normal business hours, examine, or request that the General Partner furnish, such information as is reasonably necessary or appropriate to enable the requesting Partner (or the designee thereof) to review the results of operations, or to evaluate the status of the investments, of the Partnership. Notwithstanding the foregoing, the General Partner shall have the right to keep confidential from the Limited Partners certain information, to the extent permitted under Section 17-305(b) of the Delaware Act, except to the extent such information is required by any ERISA Partner or Deemed ERISA Partner to determine its compliance with the

provisions of ERISA, provided that such ERISA Partner or Deemed ERISA Partner agrees in writing to keep such information confidential except as otherwise required by law.

(c) Annual Financial Statements. The General Partner shall transmit to each Partner within 90 days after the close of each fiscal year the financial statements of the Partnership for such fiscal year. Such financial statements shall include statements of assets and liabilities, net assets represented by Partners' capital, operations, changes in net assets, cash flows and changes in each Partner's capital, and shall be audited by a nationally recognized firm of independent public accountants. The General Partner shall also transmit to each Partner within 90 days after the close of each fiscal year, a report indicating such Partner's share of all items of income, gain, loss or deduction of the Partnership for such year for Federal income tax purposes and such additional information with respect to the Partnership as he may reasonably request to enable him to complete any tax return he is required to file or otherwise to comply with applicable law, provided that, in the case of such additional information, the Partnership is able to obtain such information without unreasonable effort or expense. For information purposes, the General Partner shall transmit to each Partner within 90 days after the close of each fiscal year, (i) a list of the Partnership's investments, valued at fair market value as determined in accordance with Paragraph 11, as of the end of such fiscal year, (ii) a brief narrative report as to status and operations of the Partnership, and (iii) a schedule of the Limited Partners of the Partnership, indicating the identity and capital contribution of each Limited Partner. The General Partner shall also transmit within 45 days, an updated report as described in the preceding clauses (i)-(iii) to any Limited Partner upon receipt of a written request therefor from such Limited Partner.

(d) Quarterly Financial Statements. Each Partner shall be furnished, within 45 days after the end of each of the first three quarters of each fiscal year of the Partnership, (i) an unaudited list of the Partnership's investments, valued at fair market value as determined in accordance with Paragraph 11, as of the end of such quarter, (ii) a brief narrative report as to status and operations of the Partnership, (iii) unaudited statements of assets and liabilities of

the Partnership and net assets represented by Partners' capital as of the end of such quarter and (iv) unaudited statements of operations and changes in each Partner's capital for the period from the beginning of such fiscal year through the quarter then ended.

(e) Annual Meeting. The Partnership shall hold annual meetings, and the General Partner may call special meetings, of the Limited Partners to discuss Partnership business and such other matters as determined by the General Partner. Such meetings shall be informational in nature.

(f) Independent Public Accountants. The Partnership's independent public accountants initially shall be the firm of Arthur Andersen & Co., but the General Partner may change accounting firms to another nationally recognized independent public accounting firm in the United States.

(g) Organizational Expenses. The organizational expenses of the Partnership shall be amortized over a 60-month period.

(h) Principal Office. The principal office of the Partnership initially shall be located in Franklin, Tennessee. The General Partner may change the location of the principal office of the Partnership at any time, upon written notice to all Partners indicating the new location of such principal office.

19. Amendment.

Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived, modified or amended only with the written consent of the General Partner and at least 66-2/3% in interest of the Limited Partners. No amendment shall, however, (i) enlarge the obligations of any Partner under this Agreement without the written consent of such Partner, (ii) dilute the relative interest of any Partner in the profits or capital of the Partnership or the allocation of distributions of profits or capital without the written consent of such Partner (except such dilution as may result from additional subscriptions from the Partners or the admission of new Limited Partners pursuant to the terms of this

Agreement), (iii) alter or waive the terms of Paragraph 3(i)(i) without the written consent of a majority in interest of the Limited Partners exempt from federal income taxation pursuant to the Code, (iv) alter or waive the terms of (A) Paragraph 3(i)(ii), (B) Paragraph 3(i)(iv), (C) Paragraph 10(i)(ii), (D) the ERISA-related provisions of Paragraph 7(f), the second sentence of Paragraph 13(b) or the last paragraph of Paragraph 14, (F) the last sentence of Paragraph 18(b), or (F) Paragraph 20 (other than the second and third sentences thereof) without the written consent of 66-2/3% in interest of the ERISA Partners and Deemed ERISA Partners taken together (no Partner being counted for this purpose as both an ERISA Partner and a Deemed ERISA Partner), (v) alter or waive the terms of (A) the last sentence of the second paragraph of Paragraph 7(b) or (B) the third sentence of Paragraph 20 without the written consent of each Deemed ERISA Partner, (vi) delete the name of any Limited Partner from the definition of "Deemed ERISA Partner" in the second sentence of Paragraph 20 without the written consent of such Limited Partner, (vii) alter or waive the terms of Paragraphs 3(i)(iii), 3(i)(v), 3(i)(vii) or 21 without the written consent of 66-2/3% in interest of the Foreign Controlled Partners, (viii) alter or waive the terms of (A) Paragraphs 3(i)(vi), 10(i)(iii) or 22 or (B) the Foundation Limited Partner-related provisions of Paragraph 7(f), the second sentence of Paragraph 13(b) or the last paragraph of Paragraph 14 without the written consent of 66-2/3% in interest of the Foundation Limited Partners, (ix) alter or waive the terms of the second sentence of Paragraph 7(a) without the written consent of PSERS, (x) alter or waive the terms of (A) the third, fourth, fifth or sixth sentences of the second paragraph of Paragraph 7(b) or (B) this Paragraph 19 without the written consent of each Partner, (xi) alter or waive the terms of (A) Paragraphs 10(i)(iv) or 24, or the second or third sentences of Paragraph 25(g) or (B) the Holding Company Act-related provision of the second sentence of Paragraph 13(b) without the written consent of 66-2/3% in interest of the Bank Limited Partners, (xii) alter or waive the terms of (A) Paragraphs 10(i)(v) or 23 or (B) the Governmental Plan Partner-related provisions of the second sentence of Paragraph 13(b) without the written consent of 66-2/3% in interest of the Governmental Plan Partners, or (xiii) alter or waive any other provision of this Agreement

which would adversely affect the rights and obligations under this Agreement of one class of Limited Partners and not all of the Limited Partners without the written consent of a majority in interest of the class of Limited Partners so affected. The General Partner shall promptly furnish copies of any amendments to this Agreement to all Partners.

20. ERISA Withdrawal.

Notwithstanding any provision in this Agreement to the contrary, any Limited Partner which is (a) an "employee benefit plan" within the meaning of, and subject to the provisions of, ERISA, (b) the nominee holder of a Limited Partner's interest in the Partnership, the beneficial owner of which interest is such an employee benefit plan or (c) a partnership or other entity any of the assets of which constitute "plan assets" of any employee benefit plan within the meaning of ERISA (each such Limited Partner being referred to herein as an "ERISA Partner") may elect, upon written notice of such election to the General Partner, to withdraw from the Partnership, or upon written demand by the General Partner shall withdraw from the Partnership, at the time and in the manner hereinafter provided, if either such ERISA Partner or the General Partner shall obtain and deliver to the other an opinion of counsel (which counsel shall be reasonably acceptable to both such ERISA Partner and the General Partner) to the effect that there is a material likelihood that (i) such ERISA Partner (or any employee benefit plan which is a limited partner or other constituent of such ERISA Partner) or the Partnership would be in material violation of ERISA if such ERISA Partner were to continue as a Limited Partner of the Partnership, or (ii) the trustees or other fiduciaries of such ERISA Partner (or any employee benefit plan which is a limited partner or other constituent of such ERISA Partner) may be deemed under ERISA to have delegated investment discretion over "plan assets" under ERISA to any person (including, in the case of an employee benefit plan which is a limited partner or other constituent of such ERISA Partner, to a general partner of such ERISA Partner) that is not an "investment manager" within the meaning of Section 3(38) of ERISA. For the purposes of this Agreement, a "Deemed ERISA Partner" shall mean each

Limited Partner hereafter admitted to the Partnership pursuant to Paragraph 7(c) or (d) who, at the time of such admission, notifies the Partnership of its status as a Deemed ERISA Partner. In the case of a Deemed ERISA Partner, such Deemed ERISA Partner shall be treated as if it were an ERISA Partner and the requirements of the first sentence of this Paragraph 20 shall be deemed to have been complied with if the aforesaid opinion of counsel is to the effect that if such Deemed ERISA Partner were subject to, or chose to comply with, ERISA (whether or not such is the case), then the situation set forth in clause (i) or (ii) above would occur. In the event of the issuance and delivery of such opinion of counsel, the General Partner shall promptly provide to each Partner a copy thereof, together with a copy of the written notice of the election of such ERISA Partner to withdraw or the written demand of the General Partner for withdrawal, as the case may be. The General Partner shall have, in its sole discretion, a period of 45 days following receipt of such counsel's opinion to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of such ERISA Partner and the General Partner, whether by correction of the condition giving rise to the necessity of such ERISA Partner's withdrawal, by amendment of this Agreement, by effectuation of a transfer of such ERISA Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such ERISA Partner consents to such transfer) or otherwise. If such cause for withdrawal is not cured within such 45-day period, then such ERISA Partner shall withdraw from the Partnership as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in such opinion (the earlier of (i) and (ii) being herein referred to as the "ERISA Withdrawal Date"). If the General Partner determines not to attempt a cure, it shall

give the written notice thereof promptly after making such determination. Effective upon the ERISA Withdrawal Date, such ERISA Partner shall cease to be a Partner of the Partnership for all purposes and, except for its right to receive payment for its Partnership interest as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement, including without limitation the right to receive allocations pursuant to Paragraph 9, the right to receive distributions during the term of the Partnership pursuant to Paragraph 10 and upon liquidation of the Partnership pursuant to Paragraph 13 and the right to vote on Partnership matters as provided in this Agreement.

As promptly as practicable following the ERISA Withdrawal Date, there shall be distributed to such ERISA Partner, in full payment and satisfaction of its interest in the Partnership, an amount equal to the amount which such ERISA Partner would have been entitled to receive pursuant to Paragraph 13 if the Partnership had been liquidated on and as of the ERISA Withdrawal Date. No approval of the Review Committee or of the Partners shall be required prior to the making of such distribution. For purposes of determining the amount of the distribution to be made to such ERISA Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with Paragraph 18 for the period ending on the ERISA Withdrawal Date shall be deemed to be conclusive, subject to the provisions of Paragraph 11(d). Such distribution to the withdrawing ERISA Partner shall be payable in cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets, with each such separate group of cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets (determined in a manner consistent with the penultimate sentence of Paragraph 10(e)) being distributed to the withdrawing ERISA Partner on a basis that is pro rata to such ERISA Partner's interest in the Partnership to the extent practicable, unless otherwise required by law or contract; provided, however, that if the withdrawing ERISA Partner notifies the Partnership in writing that the receipt by such ERISA Partner of the securities of any Partnership Portfolio Company would create a material likelihood of a material violation of ERISA by such ERISA Partner, then the

Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such ERISA Partner and, if unable to arrange for such sale after all reasonable efforts, shall instead use all reasonable efforts to make an Alternative ERISA Distribution to such ERISA Partner or Deemed ERISA Partner which has been approved by the Review Committee.

Upon the withdrawal of any ERISA Partner from the Partnership pursuant to this Paragraph 20, the Partners (including the withdrawing ERISA Partner) shall enter into an amendment to this Agreement reflecting such withdrawal and amending such provisions of this Agreement, including without limitation the provisions regarding allocations pursuant to Paragraph 9 and distributions during the term of the Partnership and upon its liquidation pursuant to Paragraphs 10 and 13, respectively, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account the withdrawal of such ERISA Partner.

21. Foreign Controlled Partner Withdrawal.

Notwithstanding any provision in this Agreement to the contrary, any Limited Partner which is: (a) a Foreign Limited Partner or (b) a United States partnership of which, on the date of such partnership's admission to the Partnership as a Limited Partner, more than 50% of the profits, interest and capital was held by one or more Foreign Limited Partners (each such Limited Partner being referred to herein as a "Foreign Controlled Partner") may elect, upon written notice of such election to the General Partner, to withdraw from the Partnership at the time and in the manner hereinafter provided, if such Foreign Controlled Partner shall obtain and deliver to the General Partner an opinion of counsel ("Foreign Partner's Counsel") (which counsel shall be reasonably acceptable to the General Partner) or a determination by the Commissioner of Internal Revenue (as evidenced by the issuance of a revenue agent's report) to the effect that as a result of the Partnership's activities, any portion of such Foreign Controlled Partner's income, gain or loss derived from the Partnership is effectively connected

with the conduct of a trade or business for purposes of Sections 872(a)(2), 882(a) or 884 of the Code (determined without regard to Section 897 of the Code). In the event of the issuance and delivery of such opinion of counsel or report, the General Partner shall promptly provide to each Partner a copy thereof, together with a copy of the written notice of the election of such Foreign Controlled Partner to withdraw. The General Partner shall have, in its sole discretion, a period of 45 days following receipt of such opinion or report to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of such Foreign Controlled Partner and the General Partner, whether by correction of the condition giving rise to the necessity of such Foreign Controlled Partner's withdrawal, by amendment of this Agreement, by effectuation of a transfer of such Foreign Controlled Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such Foreign Controlled Partner consents to such transfer) or otherwise. If such cause for withdrawal is not cured within such 45-day period, then such Foreign Controlled Partner shall be permitted to withdraw from the Partnership as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in an opinion of Foreign Partner's Counsel (the earlier of (i) and (ii) being herein referred to as the "Foreign Controlled Partner Withdrawal Date"). If the General Partner determines not to attempt a cure, it shall give the written notice thereof promptly after making such determination. Effective upon the Foreign Controlled Partner Withdrawal Date, such Foreign Controlled Partner shall cease to be a Partner of the Partnership for all purposes and, except for its right to receive payment for its Partnership interest as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement, including without

limitation the right to receive allocations pursuant to Paragraph 9, the right to receive distributions during the term of the Partnership pursuant to Paragraph 10 and upon liquidation of the Partnership pursuant to Paragraph 13 and the right to vote on Partnership matters as provided in this Agreement.

As promptly as practicable following the Foreign Controlled Partner Withdrawal Date, there shall be distributed to such Foreign Controlled Partner, in full payment and satisfaction of its interest in the Partnership, an amount equal to the amount which such Foreign Controlled Partner would have been entitled to receive pursuant to Paragraph 13 if the Partnership had been liquidated on and as of the Foreign Controlled Partner Withdrawal Date. No approval of the Review Committee or of the Partners shall be required prior to the making of such distribution. For purposes of determining the amount of the distribution to be made to such Foreign Controlled Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with Paragraph 18 for the period ending on the Foreign Controlled Partner Withdrawal Date shall be deemed to be conclusive, subject to the provisions of Paragraph 11(d). Such distribution to the withdrawing Foreign Controlled Partner shall be payable in cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets, with each such separate group of cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets (determined in a manner consistent with the penultimate sentence of Paragraph 10(e)) being distributed to the withdrawing Foreign Controlled Partner on a basis that is pro rata to such Foreign Controlled Partner's interest in the Partnership to the extent practicable, unless otherwise required by law or contract. Upon the withdrawal of any Foreign Controlled Partner from the Partnership pursuant to this Paragraph 21, the Partners (including the withdrawing Foreign Controlled Partner) shall enter into an amendment to this Agreement reflecting such withdrawal and amending such provisions of this Agreement, including without limitation the provisions regarding allocations pursuant to Paragraph 9 and distributions during the term of the Partnership and upon its liquidation pursuant to

Paragraphs 10 and 13, respectively, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account the withdrawal of such Foreign Controlled Partner.

22. Foundation Limited Partner Redemption.

Notwithstanding any provision in this Agreement to the contrary, any Limited Partner which is a Foundation Limited Partner may elect, upon written notice of such election to the General Partner, to reduce its interest in the Partnership by redemption of all or a portion of its interest in the Partnership (the determination of the amount of the interest of such Foundation Limited Partner in the Partnership to be so redeemed to be in the sole discretion of such Foundation Limited Partner) if such Foundation Limited Partner shall obtain and deliver to the General Partner an opinion of counsel (which opinion shall be reasonably acceptable to the General Partner) to the effect that (i) there is a material likelihood that such Foundation Limited Partner would be in material violation of any governmental statute, rule or regulation by which it is bound if such Foundation Limited Partner were to continue as a Limited Partner of the Partnership, or (ii) the aggregate direct and indirect holdings of any "business enterprise" by such Foundation Limited Partner and all of its Disqualified Persons would, absent such reduction of its interest in the Partnership, exceed 20% of the "voting stock", the "profits interest", or the "beneficial interest", as the case may be, in such business enterprise. In the event of the issuance and delivery of such opinion of counsel, the General Partner shall promptly provide to each Partner a copy thereof, together with a copy of the written notice of the election of such Foundation Limited Partner to reduce all or a portion of its interest in the Partnership by redemption. The General Partner shall have, in its sole discretion, a period of 45 days following receipt of such opinion to attempt to eliminate the necessity for such redemption to the reasonable satisfaction of such Foundation Limited Partner and the General Partner, whether by correction of the condition giving rise to the necessity of such Foundation

Limited Partner's redemption, by amendment of this Agreement, by effectuation of a transfer of all or a portion of such Foundation Limited Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such Foundation Limited Partner consents to such transfer) or otherwise. If such cause for redemption is not cured within such 45-day period, then all or a portion of such Foundation Limited Partner's interest in the Partnership (as determined by such Foundation Limited Partner) shall be redeemed in accordance with the remainder of this Paragraph 22. In the event that all of such Foundation Limited Partner's interest in the Partnership is redeemed, such Foundation Limited Partner shall withdraw from the Partnership as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in such opinion (the earlier of (i) and (ii) being herein referred to as the "Foundation Limited Partner Withdrawal Date"). In the event that less than all of such Foundation Limited Partner's interest is redeemed, such redemption shall occur as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in such opinion (the earlier of (i) and (ii) being herein referred to as the "Foundation Limited Partner Redemption Date"). If the General Partner determines not to attempt a cure, it shall

give the written notice thereof promptly after making such determination. Effective upon the Foundation Limited Partner Withdrawal Date (or Foundation Limited Partner Redemption Date, as the case may be), such Foundation Limited Partner shall cease to be a Partner of the Partnership for all purposes (or for purposes of the portion of its interest so redeemed, as the case may be) and, except for its right to receive payment for its Partnership interest (or portion thereof, as the case may be) as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement (or for purposes of the portion of its interest so redeemed, as the case may be), including without limitation the right to receive allocations pursuant to Paragraph 9, the right to receive distributions during the term of the Partnership pursuant to Paragraph 10 and upon liquidation of the Partnership pursuant to Paragraph 13 and the right to vote on Partnership matters as provided in this Agreement.

As promptly as practicable following the redemption of all or a portion of such Foundation Limited Partner's interest in the Partnership, there shall be distributed to such Foundation Limited Partner, in full payment and satisfaction of all or such portion of its interest in the Partnership, as the case may be, an amount equal to the amount which such Foundation Limited Partner would have been entitled to receive pursuant to Paragraph 13 if the Partnership had been liquidated on and as of the Foundation Limited Partner Withdrawal Date or the Foundation Limited Partner Redemption Date, as the case may be, which amount shall be reduced proportionately in the event of the redemption of less than all of such Foundation Limited Partner's interest. No approval of the Review Committee or of the Partners shall be required prior to the making of such distribution. For purposes of determining the amount of the distribution to be made to such Foundation Limited Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with Paragraph 18 for the period ending on such Foundation Limited Partner Withdrawal Date or Foreign Limited Partner Redemption Date, as the case may be, shall be deemed to be conclusive, subject to the provisions of Paragraph 11(d). Such distribution to the Foundation Limited Partner shall be

payable in cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets, with each such separate group of cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets (determined in a manner consistent with the penultimate sentence of Paragraph 10(e)) being distributed to such Foundation Limited Partner on a basis that is pro rata to such Foundation Limited Partner's redeemed interest in the Partnership to the extent practicable, unless otherwise required by law or contract; provided, however, that if such Foundation Limited Partner notifies the Partnership in writing that there is a material likelihood that receipt by such Foundation Limited Partner of the securities of any Partnership Portfolio Company would cause such Foundation Limited Partner to be in material violation of any governmental statute, rule or regulation by which it is bound or to be subject to or to incur excise taxes imposed by Chapter 42, Subchapter A of the Code (other than Sections 4940, 4947 and 4948 thereof), then the Partnership shall not make a distribution of securities to such Foundation Limited Partner but rather shall distribute an amount of cash equal to the value of the securities that would have been distributed to such Foundation Limited Partner. Upon the redemption of all or a portion of any Foundation Limited Partner's interest in the Partnership pursuant to this Paragraph 22, the Partners (including such Foundation Limited Partner) shall enter into an amendment to this Agreement reflecting such redemption and amending such provisions of this Agreement, including without limitation the provisions regarding allocations pursuant to Paragraph 9 and distributions during the term of the Partnership and upon its liquidation pursuant to Paragraphs 10 and 13, respectively, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account such redemption of such Foundation Limited Partner's interest.

23. Governmental Plan Partner Withdrawal.

Notwithstanding any provision in this Agreement to the contrary, any Limited Partner which is a "governmental plan" within the meaning of Section 3(32) of ERISA (each

such Limited Partner being referred to herein as a "Governmental Plan Partner") may elect, upon written notice of such election to the General Partner, to withdraw from the Partnership, or upon written demand by the General Partner shall withdraw from the Partnership, at the time and in the manner hereinafter provided, if either such Governmental Plan Partner or the General Partner shall obtain and deliver to the other an opinion of counsel (which counsel shall be reasonably acceptable to both such Governmental Plan Partner and the General Partner; the Attorney General of the jurisdiction in which a Governmental Plan Partner is established and maintained being deemed acceptable to the General Partner) to the effect that there is a material likelihood that such Governmental Plan Partner or the Partnership would be in material violation of any governmental statute, rule or regulation by which such Governmental Plan Partner is bound if such Governmental Plan Partner were to continue as a Limited Partner of the Partnership. In the event of the issuance and delivery of such opinion of counsel, the General Partner shall promptly provide to each Partner a copy thereof, together with a copy of the written notice of the election of such Governmental Plan Partner to withdraw or the written demand of the General Partner for withdrawal, as the case may be. The General Partner shall have, in its sole discretion, a period of 45 days following receipt of such counsel's opinion to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of such Governmental Plan Partner and the General Partner, whether by correction of the condition giving rise to the necessity of such Governmental Plan Partner's withdrawal, by amendment of this Agreement, by effectuation of a transfer of such Governmental Plan Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such Governmental Plan Partner consents to such transfer) or otherwise. If such cause for withdrawal is not cured within such 45-day period, then such Governmental Plan Partner shall withdraw from the Partnership as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt

a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in such opinion (the earlier of (i) and (ii) being herein referred to as the "Governmental Plan Partner Withdrawal Date"). If the General Partner determines not to attempt a cure, it shall give the written notice thereof promptly after making such determination. Effective upon the Governmental Plan Partner Withdrawal Date, such Governmental Plan Partner shall cease to be a Partner of the Partnership for all purposes and, except for its right to receive payment for its Partnership interest as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement, including without limitation the right to receive allocations pursuant to Paragraph 9, the right to receive distributions during the term of the Partnership pursuant to Paragraph 10 and upon liquidation of the Partnership pursuant to Paragraph 13 and the right to vote on Partnership matters as provided in this Agreement.

As promptly as practicable following the Governmental Plan Partner Withdrawal Date, there shall be distributed to such Governmental Plan Partner, in full payment and satisfaction of its interest in the Partnership, an amount equal to the amount which such Governmental Plan Partner would have been entitled to receive pursuant to Paragraph 13 if the Partnership had been liquidated on and as of the Governmental Plan Partner Withdrawal Date. No approval of the Review Committee or of the Partners shall be required prior to the making of such distribution. For purposes of determining the amount of the distribution to be made to such Governmental Plan Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with Paragraph 18 for the period ending on the Governmental Plan Partner Withdrawal Date shall be deemed to be conclusive, subject to the provisions of Paragraph 11(d). Such distribution to the withdrawing Governmental Plan Partner shall be payable in cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets, with

each such separate group of cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets (determined in a manner consistent with the penultimate sentence of Paragraph 10(e)) being distributed to the withdrawing Governmental Plan Partner on a basis that is pro rata to such Governmental Plan Partner's interest in the Partnership to the extent practicable, unless otherwise required by law or contract; provided, however, that if the withdrawing Governmental Plan Partner notifies the Partnership in writing that the receipt by such Governmental Plan Partner of the securities of any Partnership Portfolio Company would create a material likelihood of a material violation by such Governmental Plan Partner of any governmental statute, rule or regulation by which such Governmental Plan Partner is bound, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Governmental Plan Partner and, if unable to arrange for such sale after all reasonable efforts, shall instead use all reasonable efforts to distribute instead to such Governmental Plan Partner an amount of cash and/or securities of substantially equal value which has been approved by the Review Committee and which will not create such a material likelihood of a material violation of any governmental statute, rule or regulation by which such Governmental Plan Partner is bound.

Upon the withdrawal of any Governmental Plan Partner from the Partnership pursuant to this Paragraph 23, the Partners (including the withdrawing Governmental Plan Partner) shall enter into an amendment to this Agreement reflecting such withdrawal and amending such provisions of this Agreement, including without limitation the provisions regarding allocations pursuant to Paragraph 9 and distributions during the term of the Partnership and upon its liquidation pursuant to Paragraphs 10 and 13, respectively, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account the withdrawal of such Governmental Plan Partner.

24. Bank Limited Partner Withdrawal.

Notwithstanding any provision in this Agreement to the contrary, any Bank Limited Partner may elect, upon written notice of such election to the General Partner, to withdraw from the Partnership, at the time and in the manner hereinafter provided, if such Bank Limited Partner shall obtain and deliver to the General Partner an opinion of counsel (which counsel shall be reasonably acceptable to the General Partner) to the effect that there is a material likelihood that such Bank Limited Partner would be in material violation of the Holding Company Act if such Bank Limited Partner were to continue as a Limited Partner of the Partnership. In the event of the issuance and delivery of such opinion of counsel, the General Partner shall promptly provide to each Partner a copy thereof, together with a copy of the written notice of the election of such Bank Limited Partner to withdraw. The General Partner shall have, in its sole discretion, a period of 45 days following receipt of such counsel's opinion to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of such Bank Limited Partner, whether by correction of the condition giving rise to the necessity of such Bank Limited Partner's withdrawal, by amendment of this Agreement, by effectuation of a transfer of such Bank Limited Partner's interest in the Partnership to a substituted Limited Partner at a fair and reasonable price (provided such Bank Limited Partner consents to such transfer) or otherwise. If such cause for withdrawal is not cured within such 45-day period, then such Bank Limited Partner shall withdraw from the Partnership as of the date following the expiration of such 45-day period (or, if the General Partner elects in writing not to attempt so to cure, as of the date following such election) which is the earlier of (i) the last day of the fiscal year of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, and (ii) the last day of the fiscal quarter of the Partnership during which such 45-day period expires or during which the General Partner so elects not to attempt a cure, as the case may be, provided that the last day of such fiscal quarter is recommended for withdrawal by counsel in such opinion (the

earlier of (i) and (ii) being herein referred to as the "Bank Limited Partner Withdrawal Date"). If the General Partner determines not to attempt a cure, it shall give the written notice thereof promptly after making such determination. Effective upon the Bank Limited Partner Withdrawal Date, such Bank Limited Partner shall cease to be a Partner of the Partnership for all purposes and, except for its right to receive payment for its Partnership interest as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement, including without limitation the right to receive allocations pursuant to Paragraph 9, the right to receive distributions during the term of the Partnership pursuant to Paragraph 10 and upon liquidation of the Partnership pursuant to Paragraph 13 and the right to vote on Partnership matters as provided in this Agreement.

As promptly as practicable following the Bank Limited Partner Withdrawal Date, there shall be distributed to such Bank Limited Partner, in full payment and satisfaction of its interest in the Partnership, an amount equal to the amount which such Bank Limited Partner would have been entitled to receive pursuant to Paragraph 13 if the Partnership had been liquidated on and as of the Bank Limited Partner Withdrawal Date. No approval of the Review Committee or of the Partners shall be required prior to the making of such distribution. For purposes of determining the amount of the distribution to be made to such Bank Limited Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with Paragraph 18 for the period ending on the Bank Limited Partner Withdrawal Date shall be deemed to be conclusive, subject to the provisions of Paragraph 11(d). Such distribution to the withdrawing Bank Limited Partner shall be payable in cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets, with each such separate group of cash, cash equivalents, securities of Partnership Portfolio Companies and/or other assets (determined in a manner consistent with the penultimate sentence of Paragraph 10(e)) being distributed to the withdrawing Bank Limited Partner on a basis that is pro rata to such Bank Limited Partner's interest in the Partnership to the extent practicable, unless otherwise required by law or

contract; provided, however, that if the withdrawing Bank Limited Partner notifies the Partnership in writing that the receipt by such Bank Limited Partner of the securities of any Partnership Portfolio Company would create a material likelihood of a material violation of the Holding Company Act by such Bank Limited Partner, then the Partnership shall use all reasonable efforts to arrange for the sale of such securities on behalf of and for the account of such Bank Limited Partner and, if unable to arrange for such sale after all reasonable efforts, shall instead use all reasonable efforts to make an Alternative Holding Company Act Distribution to such Bank Limited Partner.

Upon the withdrawal of any Bank Limited Partner from the Partnership pursuant to this Paragraph 24, the Partners (including the withdrawing Bank Limited Partner) shall enter into an amendment to this Agreement reflecting such withdrawal and amending such provisions of this Agreement, including without limitation the provisions regarding allocations pursuant to Paragraph 9 and distributions during the term of the Partnership and upon its liquidation pursuant to Paragraphs 10 and 13, respectively, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account the withdrawal of such Bank Limited Partner.

25. General Provisions.

(a) Notices. Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and shall be deemed to have been properly given by personal delivery or if mailed from within the United States by first class U.S. Mail, postage prepaid, or if sent by prepaid telegram, telex or telecopy, addressed in each case, if to the Partnership, at 237 Second Avenue South, Franklin, Tennessee 37064, and if to any Partner, to the address set forth in Schedule A or in the instrument pursuant to which he became a Partner or, in each case, to such other address or

addresses as the addressee may have specified by written notice as aforesaid to the other parties.

(b) Power of Attorney.

(i) Each of the Partners hereby constitutes and appoints the General Partner as his attorney to make, execute, sign, acknowledge and, if necessary, file (A) any required amendment to the Certificate of Limited Partnership; (B) any amendment to this Agreement that does not require, under the terms of this Agreement, the approval of all the Partners, provided that Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment have signed or otherwise approved such amendment and all other required signatures and approvals have been obtained; (C) any other instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner, to effect the substitution of the Partner's assignee as a Partner, or to reflect any action of the Partners provided for in this Agreement; and (D) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the United States or any state or governmental entity in any jurisdiction in which the Partnership is conducting or intends to conduct its affairs, provided all such instruments, certificates and other documents referred to in clauses (A), (B), (C) and (D) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents shall be sent to all Partners.

(ii) Each of the Partners is aware that the terms of this Agreement permit certain amendments to the Certificate of Limited Partnership and this Agreement to be effected and certain other actions to be taken by or with respect to the Partnership, in each case with the approval or by the vote of less than all the Partners. If, as and when (A) an amendment of the Certificate of Limited Partnership or this Agreement is proposed or an action is proposed to be taken by or with respect to the Partnership which does not require, under the terms of this Agreement, the approval of all of the Partners, (B) Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment or action have approved such amendment or action in the manner contemplated by this Agreement, (C) the Review Committee has approved such amendment or action in the manner contemplated by this Agreement, if its approval is required by this Agreement, and (D) a Partner has failed or refused to approve such amendment or action (hereinafter referred to as a non-consenting Partner), each non-consenting Partner agrees that the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such non-consenting Partner, and in his name, place and stead, any and all instruments and documents which may be necessary or appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Partner is fully aware that he and each other Partner have executed this special power of attorney, and that each Partner will

rely on the effectiveness of such powers with a view to the orderly administration of the Partnership's affairs.

(iii) The foregoing grant of authority (A) is a special power of attorney coupled with an interest in favor of the General Partner and as such shall be irrevocable and shall survive the death or incompetence (or, in the case of a Partner that is a corporation, association, partnership or trust, shall survive the merger, dissolution or other termination of the existence) of the Partner and (B) shall survive the assignment by the Partner of the whole or any portion of his interest, except that where the assignee of the whole thereof has furnished a power of attorney, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect such substitution and shall thereafter terminate.

(c) Contract Construction. Where the context of this Agreement so requires, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any such invalid or unenforceable provisions were omitted. References in this Agreement to sections of the Code or the Delaware Act shall be deemed to refer to such sections as they may be amended after the date of this Agreement.

(d) Additional Documents. Each Partner hereby agrees to execute all certificates, counterparts, amendments, instruments or documents that may be required by laws of the various states or other jurisdictions in which the Partnership conducts its affairs, to conform with the laws of such states or other jurisdictions governing limited partnerships.

(e) Binding on Successors. This Agreement shall be binding upon and it shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto.

(f) Counterparts. This Agreement or any amendment hereto may be signed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one Agreement (or amendment, as the case may be).

(g) Action by the Limited Partners. Whenever action is required by this Agreement to be taken by a specified percentage in interest of the Limited Partners or a designated group of Limited Partners, such action shall be deemed to be valid if taken upon written vote or written consent by those Limited Partners (excluding the General Partner and the general partners of the General Partner if they are also Limited Partners) whose Contributions Accounts represent at that time the specified percentage of the Contributions Accounts of all such Limited Partners or such designated group of Limited Partners, as the case may be. If and to the extent that the limited partnership interest held by any Bank Limited Partner exceeds 4.9% of the then total outstanding limited partnership interests (exclusive of Nonvoting Limited Partnership Interests, as herein defined), the excess thereof shall constitute a separate class of limited partnership interests denominated "Nonvoting Limited Partnership Interests". The rights, privileges, benefits and liabilities appertaining to the Nonvoting Limited Partnership Interests shall be identical in all respects to the rights, privileges, benefits and liabilities appertaining to all other limited partnership interests, except that holders of Nonvoting Limited Partnership Interests shall not be entitled to vote upon or give consents in respect of any action by the Limited Partners pursuant to any provision of this Agreement which requires or contemplates the vote or consent of Limited Partners, and the aggregate amount of the Contributions Accounts attributable to the Nonvoting Limited Partnership Interests shall not be treated under this Agreement as Contributions Accounts of the Limited Partners for purposes of determining whether the requisite percentage in interest of the Limited Partners has taken any such action.

(h) Voting. Any vote or other action required or permitted to be taken by this Agreement may be taken by written consent signed by not less than the requisite percentage in interest of parties required or permitted to take such vote or other action.

(i) Applicable Law. Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the State of Delaware and, without limitation thereof, that the Delaware Act as now adopted or as may be hereafter amended shall govern the partnership aspects of this Agreement.

(j) Securities Act Matters. Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, he must bear the economic risks of his investment for an indefinite period because the Partnership interests have not been registered under the Securities Act and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act or an exemption from such registration is available. Each Partner agrees with all other Partners that he will not sell or otherwise transfer his interest in the Partnership unless such interest has been so registered or in the opinion of counsel for the Partnership, or of other counsel reasonably satisfactory to the Partnership, such an exemption is available.

(k) Tax Matters Partner. The "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership shall be the General Partner (the "Tax Matters Partner").

26. Definitions.

The respective Paragraphs or other locations in which certain capitalized terms used in this Agreement are defined are set forth below opposite such terms:

Term	Paragraph Reference
125% Recovery	10(c)
Advisory Committee	6
Agreement	Preamble
Alternative ERISA Distribution	10(i)
Alternative Holding Company Act Distribution	10(i)
Bank Limited Partner	10(i)
Bank Limited Partner Withdrawal Date	24
Capital Account	8(b)
Code	3(i)(i)
Contributions Account	8(a)
Cost Basis	9(j)(i)
Deemed ERISA Partner	20
Delaware Act	Preliminary Statement
Discretionary Distribution	10(b)
Disposition	3(o)(i)
Disqualified Person	3(i)(vi)
ERISA	7(b)
ERISA Partner	20
ERISA Withdrawal Date	20
Finkelman	Preamble
Foreign Controlled Partner Withdrawal Date	21
Foreign Controlled Partner	21
Foreign Limited Partner	3(i)(v)

Foreign Partner's Counsel	21
Foundation Limited Partner	3(i)(vi)
Foundation Limited Partner Redemption Date	22
Foundation Limited Partner Withdrawal Date	22
Franklin Partnership	3(m)
Freely Tradable	11(c)
General Partner	Preamble
Governmental Plan Partner	23
Governmental Plan Partner Withdrawal Date	23
Holding Company Act	10(i)
Indemnified Person	17(a)
Investment Securities	3(i)(iii)
Letter Agreement	3(j)
Limited Partner	Preamble
Limited Partner Freely Tradable Securities	11(c)
Loss Items	9(j)(ii)
Management Agreement	3(c)
Management Company	3(c)
Negligent Conduct	17(b)
Net Gain or Loss	9(j)(iii)
Non-Portfolio Income	9(j)(iv)

Nonvoting Limited Partnership Interests	25(g)
Organizational Expenses	9(j)(v)
Partner	Preamble
Partnership	Preliminary Statement
Partnership Agreement	Preliminary Statement
Partnership Portfolio Company	3(i)(vii)
Pay-Back	10(d)(i)(A)
Pay-Back Date	10(d)(i)(A)
Post-Recovery Portion	10(d)(ii)
Pre-Recovery Portion	10(d)(ii)
PSERS	7(a)
Recovery Date	10(c)
Regulatory Allocations	9(f)(v)
Related Portfolio Company	3(m)
Reserves	3(i)(vii)
Restoration Amount	9(j)(vi)
Review Committee	5
Securities Act	11(c)
Subscription	7(a)
Tax Distributions	10(a)
Tax Matters Partner	25(k)
Transfer	14

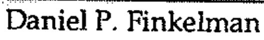
IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

GENERAL PARTNER

Franklin Ventures III L.P.

By:
General Partner

WITHDRAWING LIMITED PARTNER


Daniel P. Finkelman

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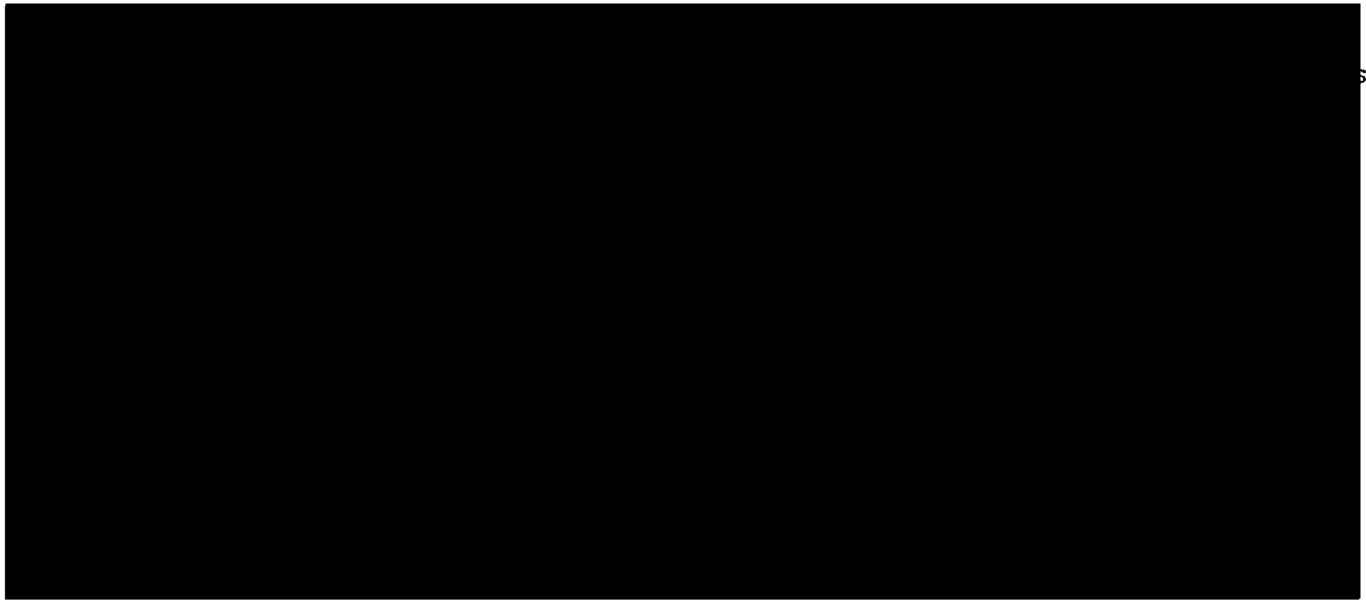

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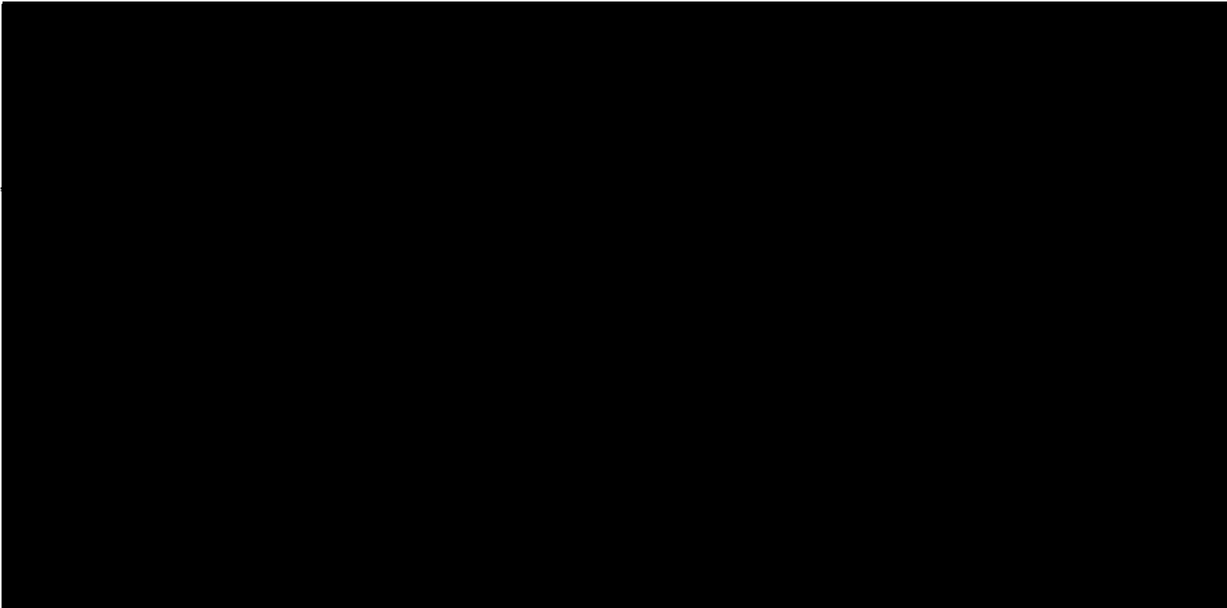

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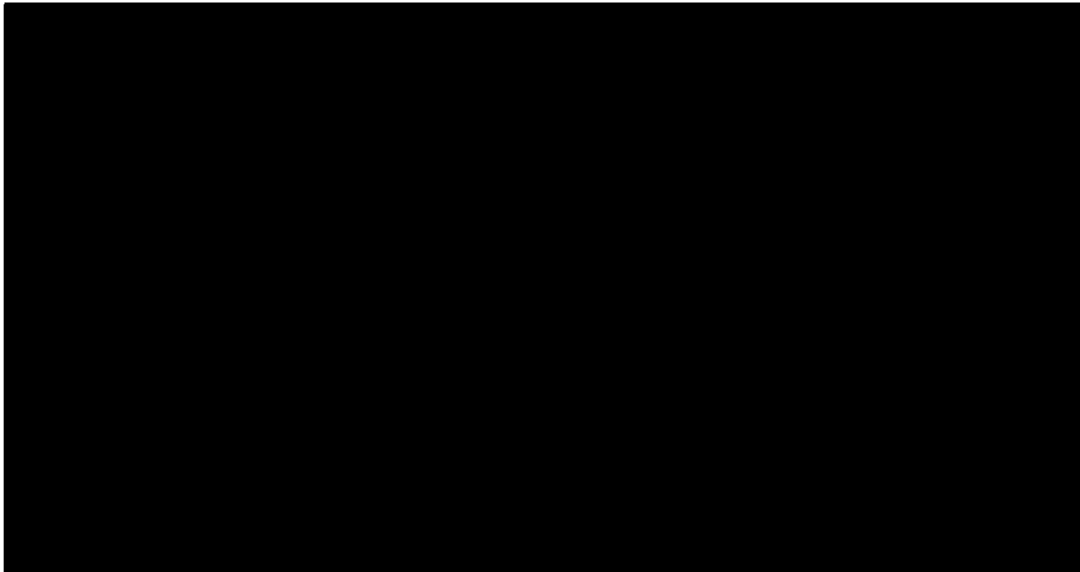

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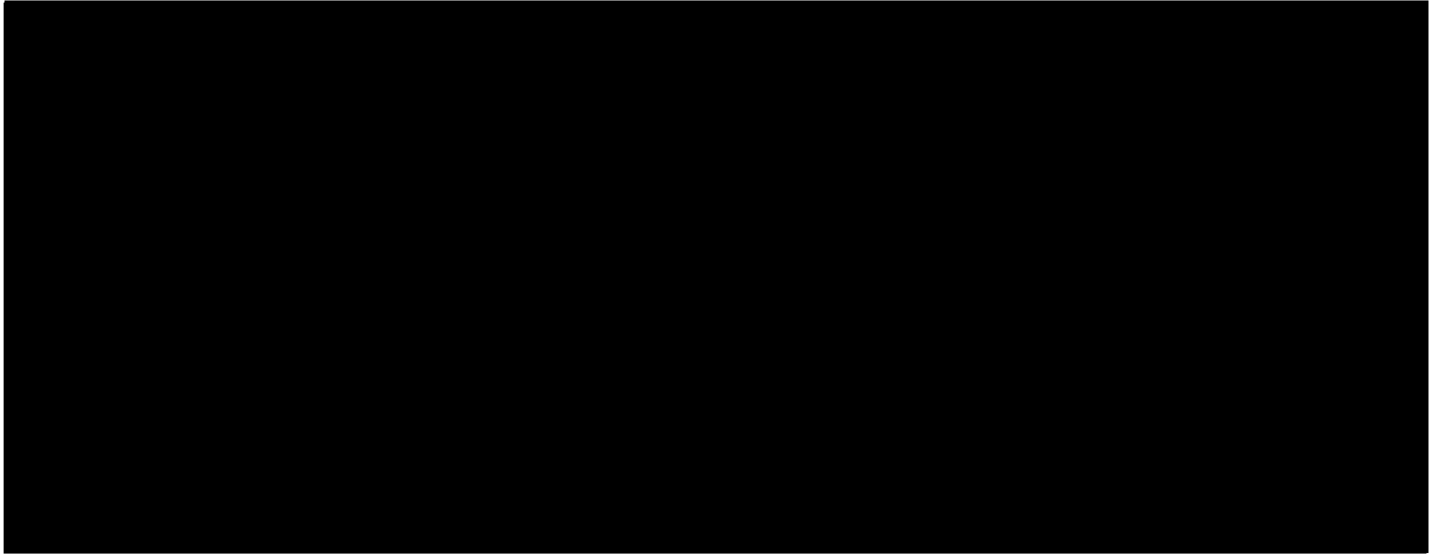

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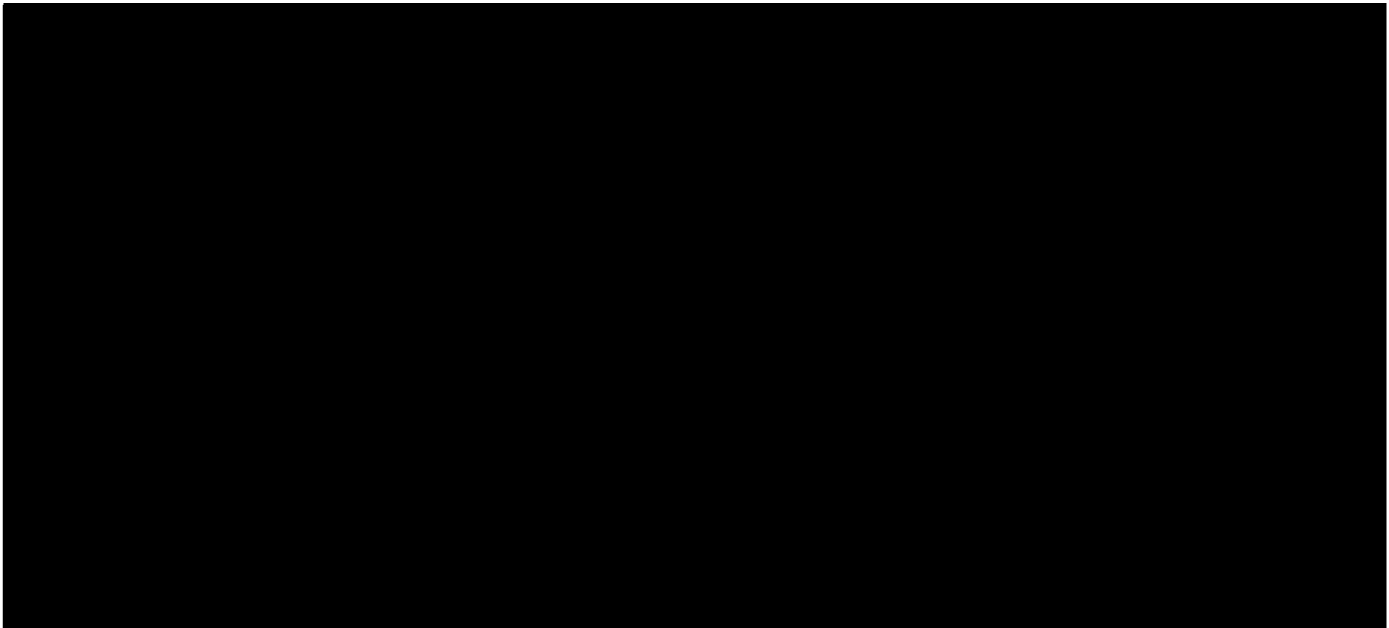

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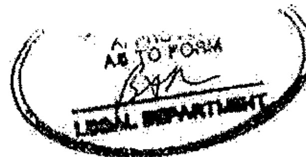
The decision to participate in this investment, any representations made herein by the participant, and any actions taken hereunder by the participant has/have been made solely at the direction of the investment fiduciary who has sole investment discretion with respect to this investment.



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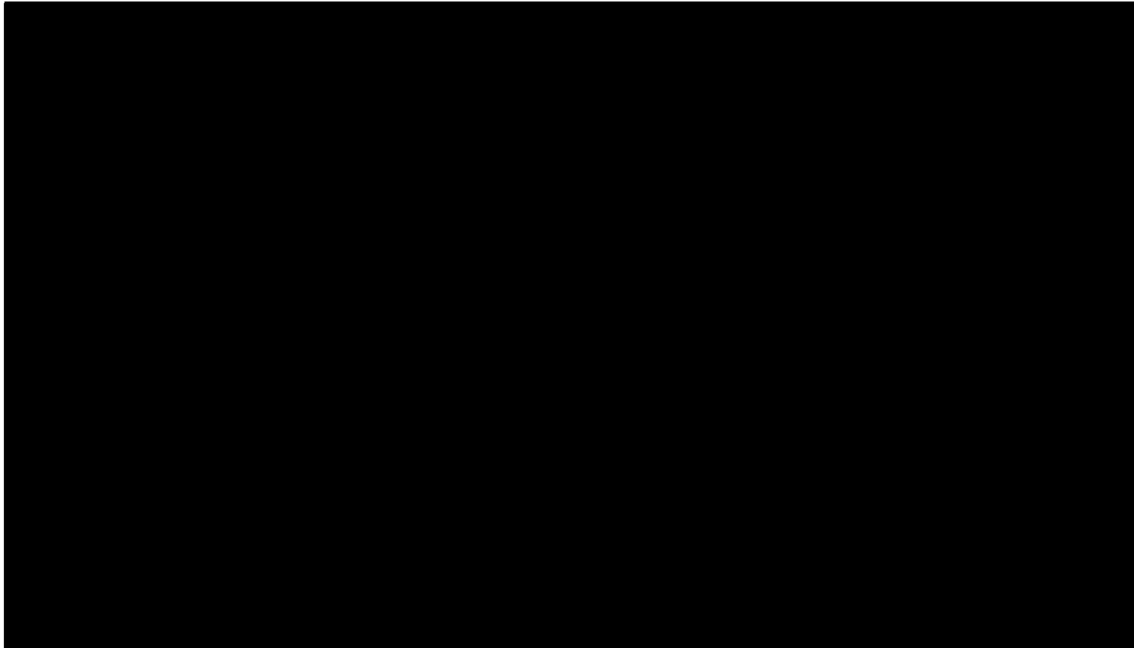

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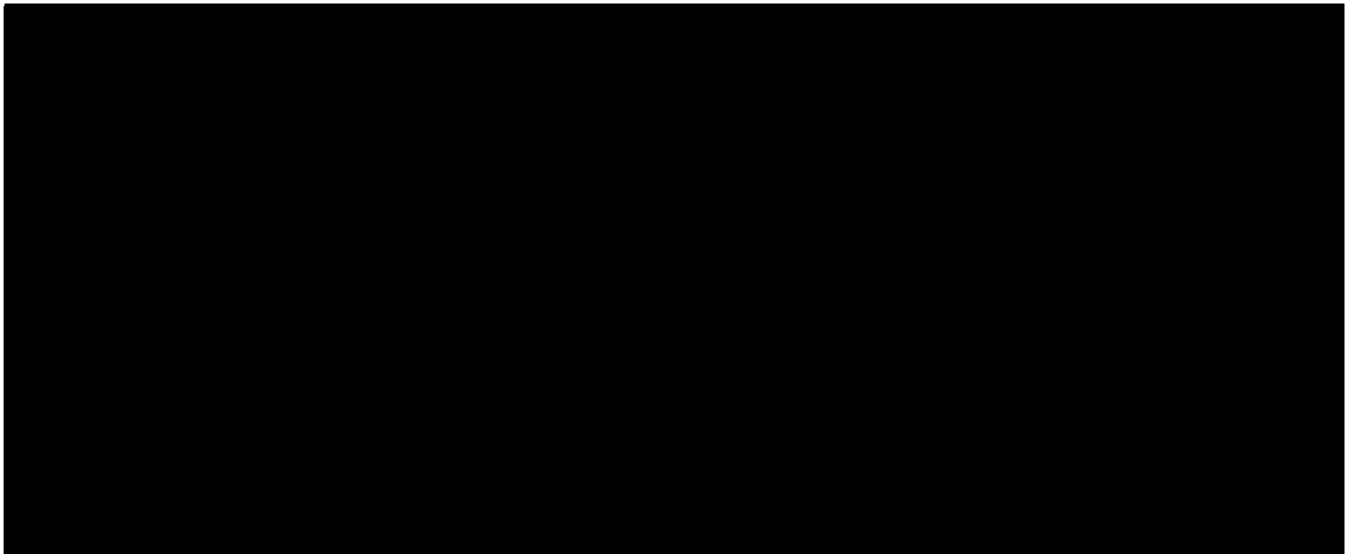

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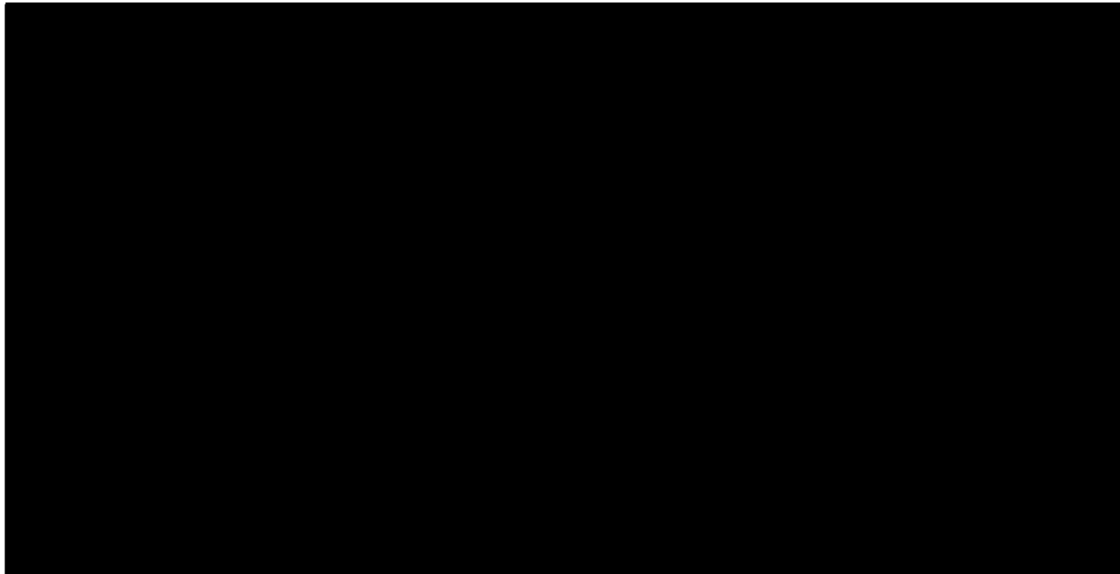

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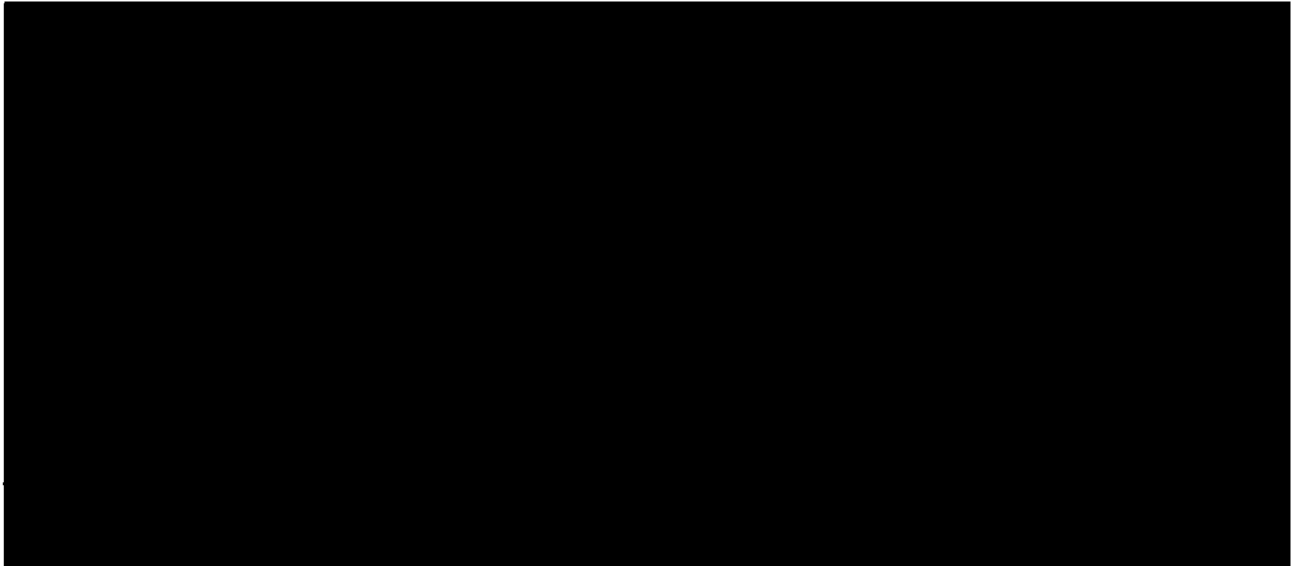

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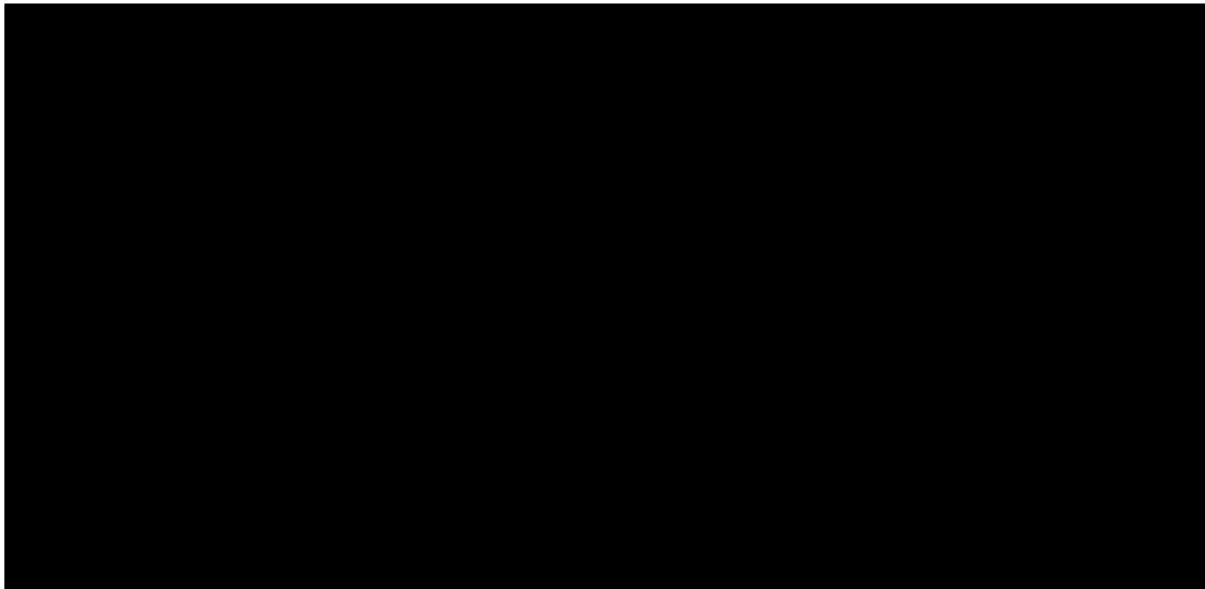

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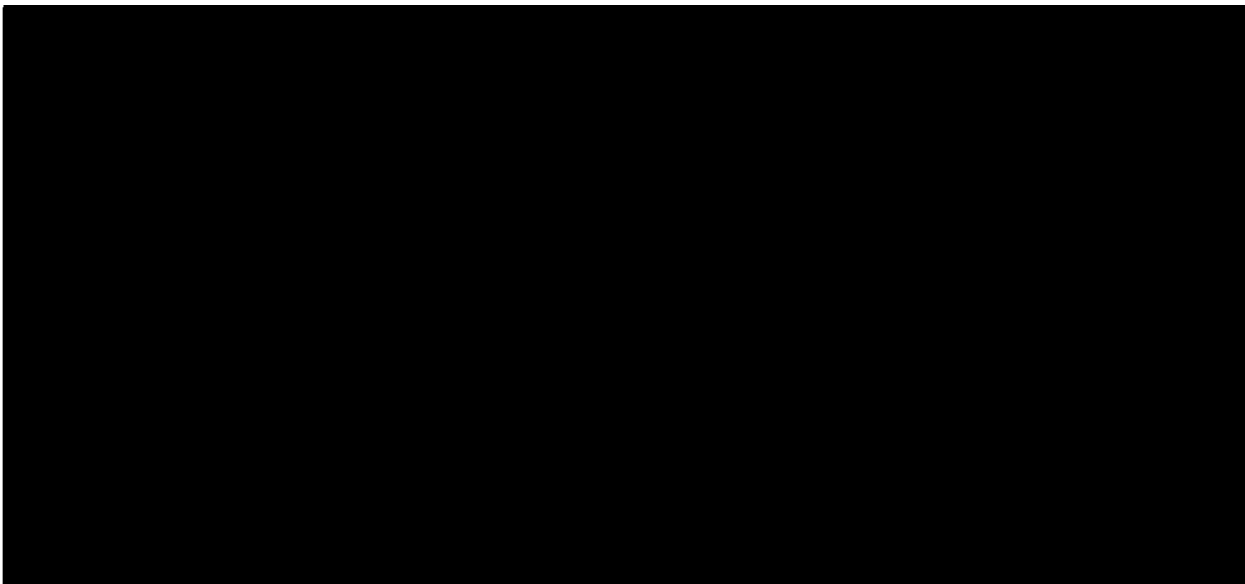

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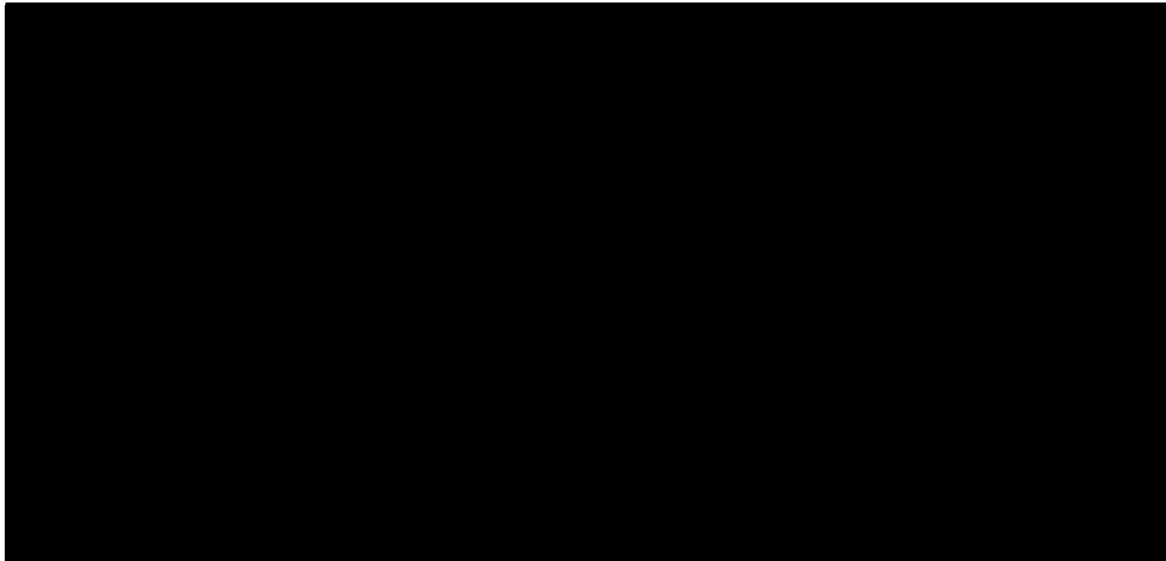

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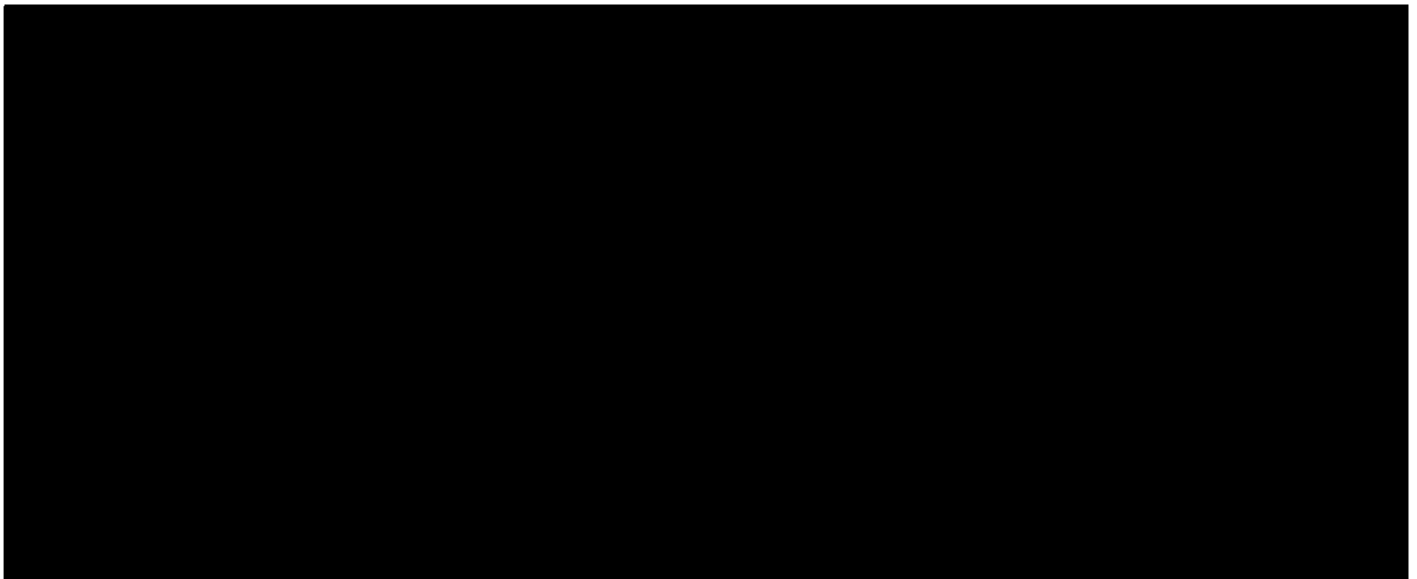

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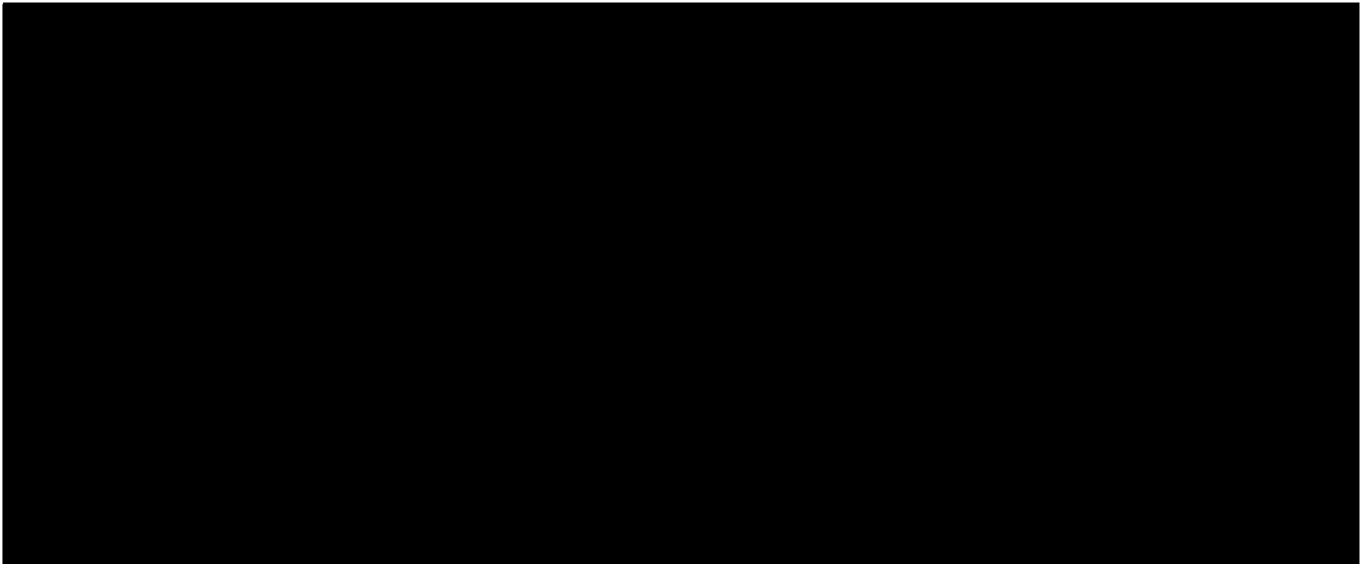

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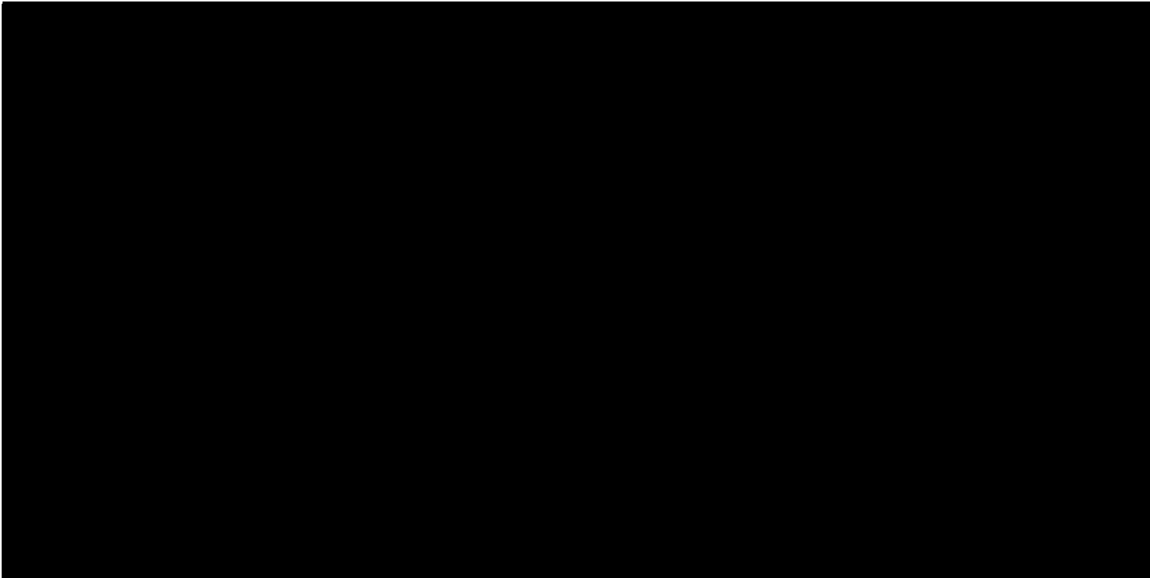

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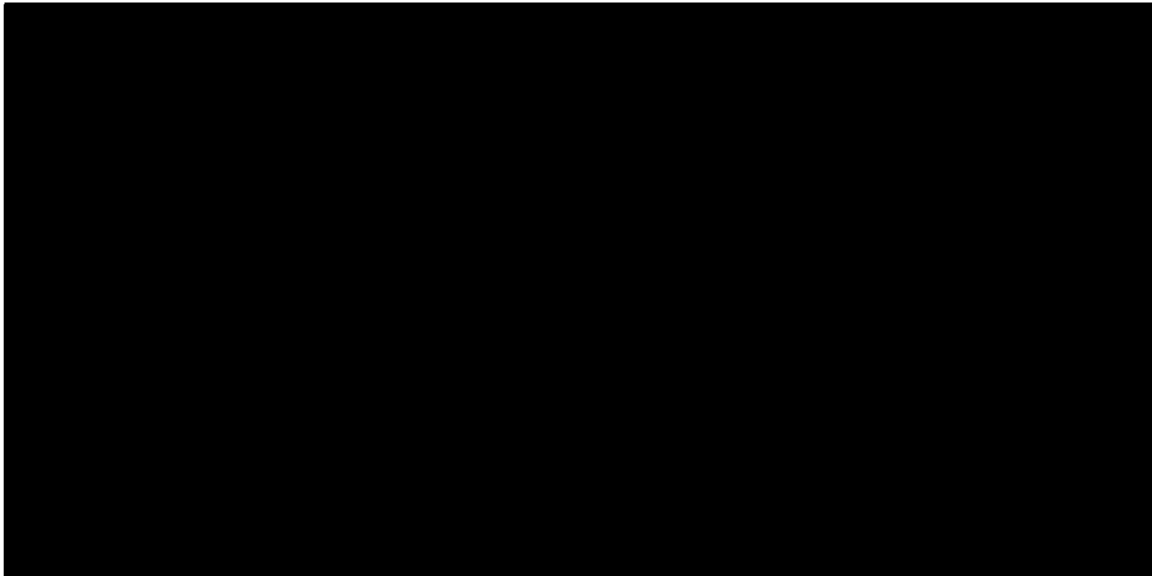

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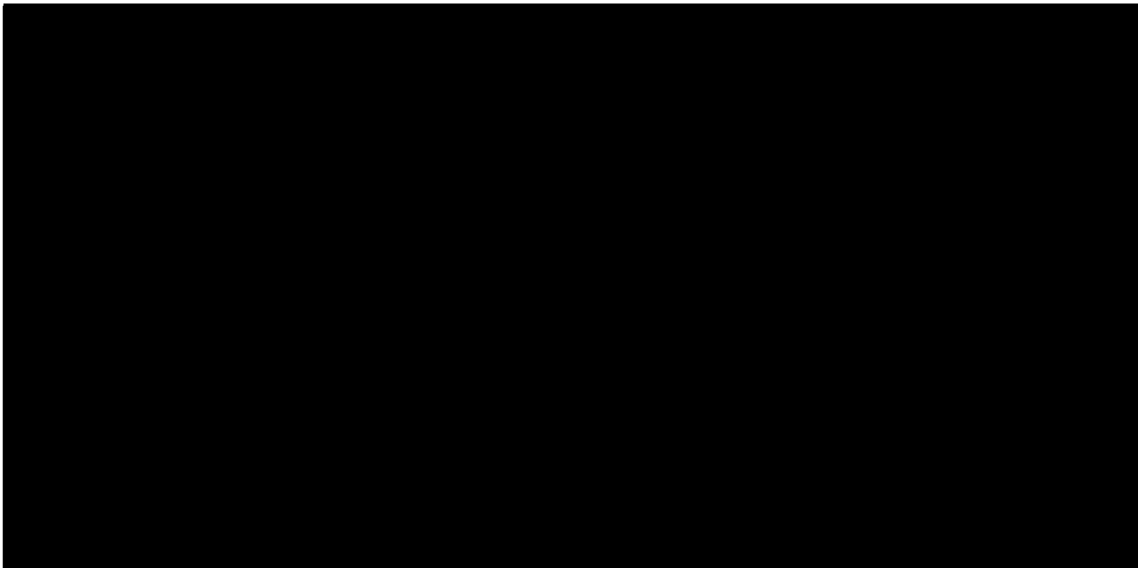

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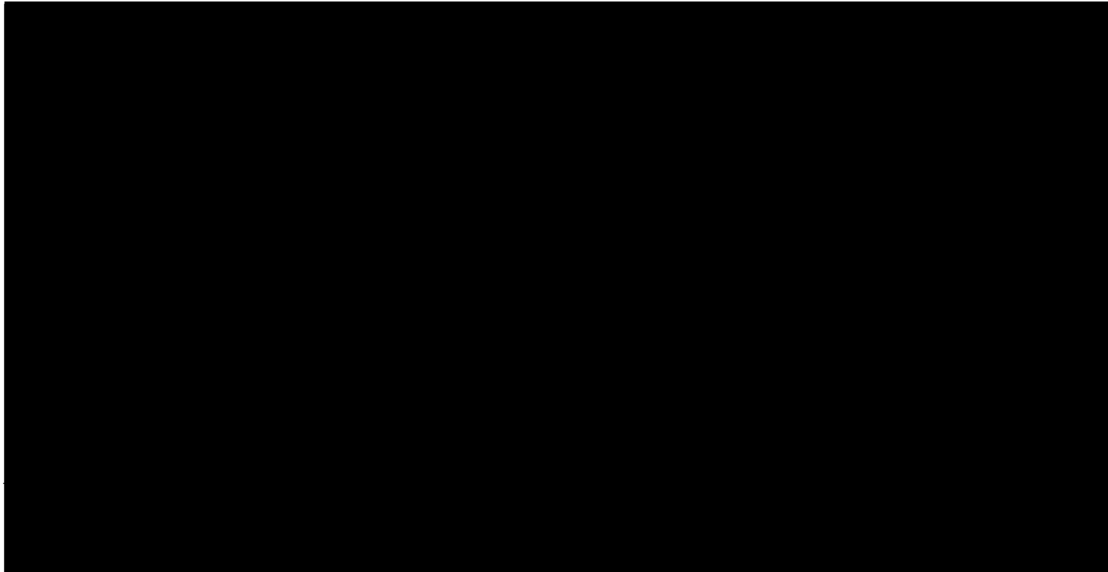

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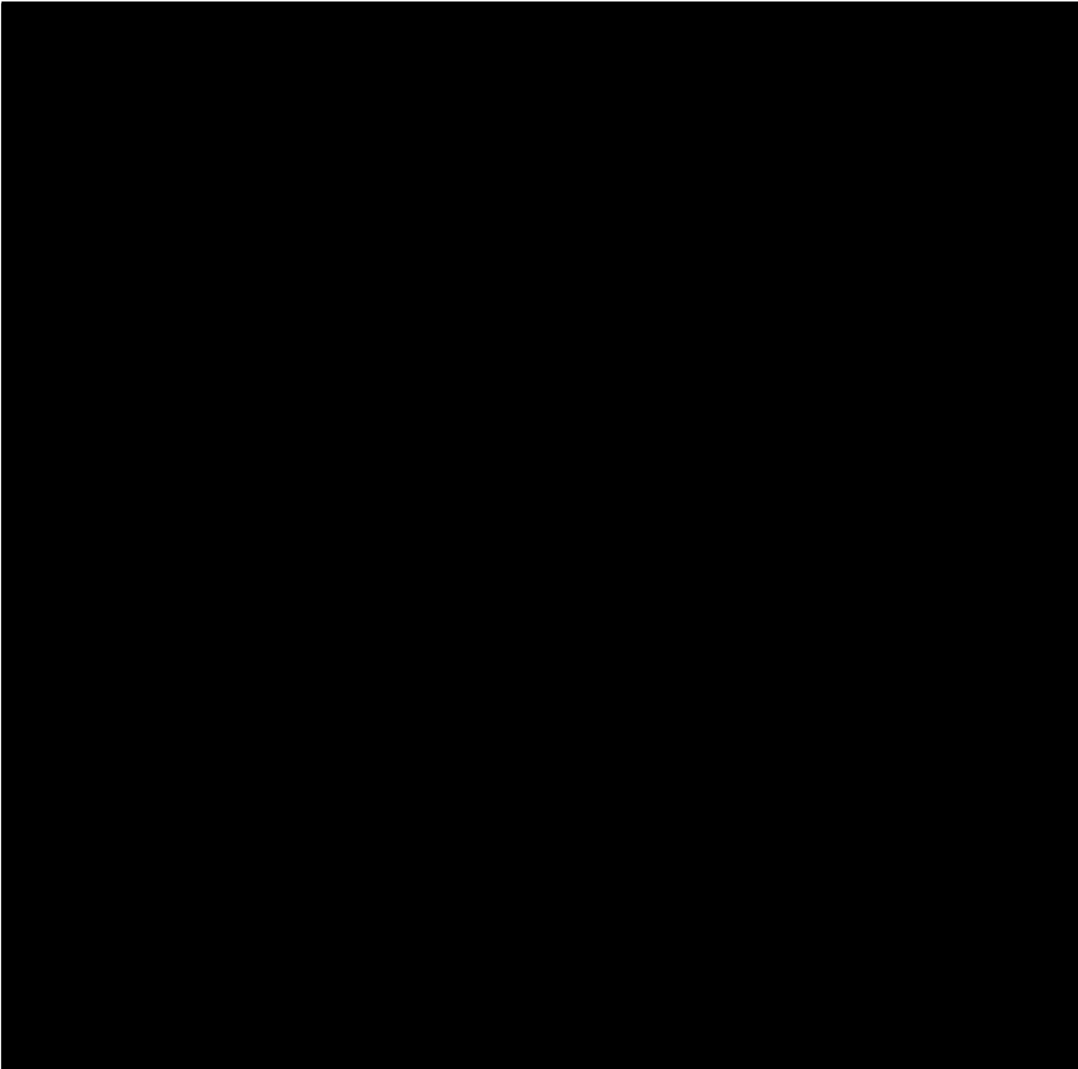
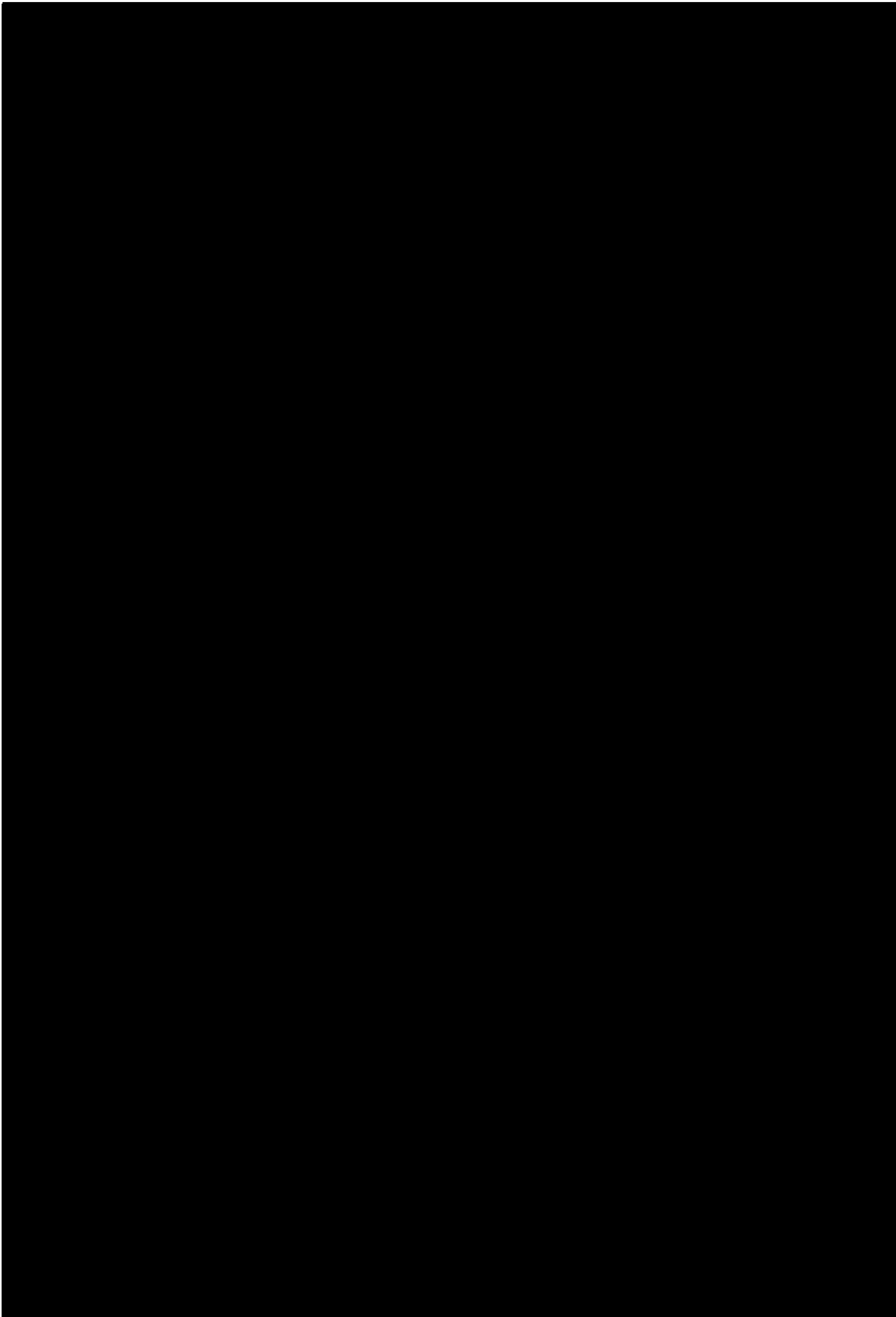
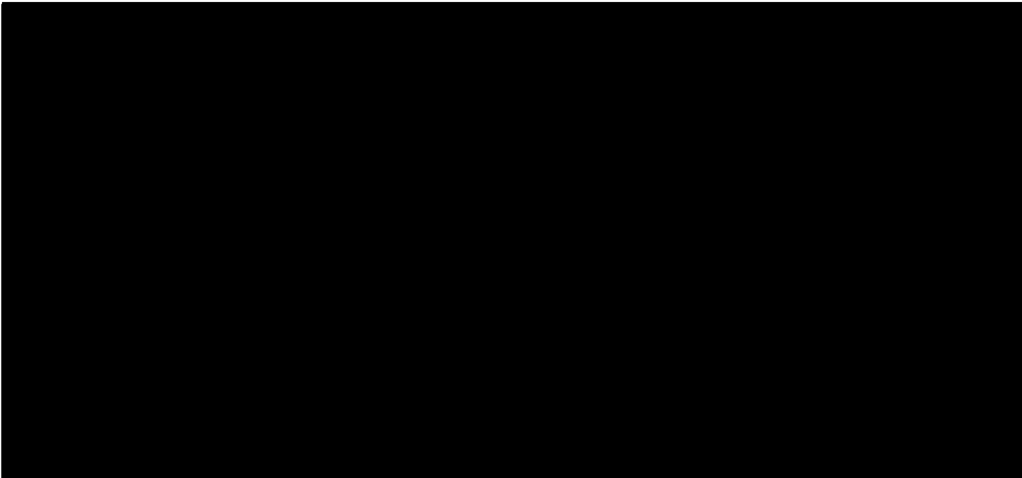
SCHEDULE A

GENERAL PARTNER	TOTAL SUBSCRIPTION
Franklin Ventures III L.P. 237 Second Avenue South Franklin, Tennessee 37064	$ 727,273

LIMITED PARTNERS







TOTAL	$57,727,273

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SCHEDULE B

MANAGEMENT AGREEMENT

AGREEMENT dated March 3, 1995, between Franklin Venture Capital Inc. (the "Management Company") and Franklin Capital Associates III L.P. (the "Partnership").

In consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in the First Amended and Restated Limited Partnership Agreement of the Partnership of even date herewith, as hereafter amended (the "Partnership Agreement").

2. Payment of Operating Expenses. The Management Company agrees to assume all normal operating expenses attributable to the Partnership on the terms and conditions herein set forth and, accordingly, the Partnership shall not be liable for such expenses. Normal operating expenses include all recurring routine expenses incident to conducting the affairs of the Partnership including, but not limited to, expenses incurred in investigating investment opportunities for and monitoring investments by the Partnership; compensation and expenses of the employees of the Management Company, including salaries of the general partners of the General Partner in their capacities as employees of the Management Company; and expenses for administrative services, office space and facilities, maintenance of books and records for the Partnership, telephone, travel and business consulting services. Normal operating expenses exclude, without limitation, any taxes which may be assessed against the Partnership; commissions, brokerage fees, registration expenses or similar charges incurred in connection with the purchase and sale of securities (including any merger fees payable to third parties); expenses of members of Partnership committees; expenses relating to the

Partnership's annual and special meetings with its Limited Partners; all expenses relating to litigation and threatened litigation involving the Partnership; normal and extraordinary investment banking, legal, custodial, auditing, accounting and chartered financial analyst services provided to the Partnership; premiums for liability insurance to protect the Partnership, the partners of the General Partner and the members of any Partnership committees; and all other non-recurring or extraordinary expenses properly chargeable to the affairs of the Partnership. The Management Company also provides services to one or more of the Franklin Partnerships. Any fees and expenses which are attributable to the Partnership and one or more of the Franklin Partnerships will be prorated by the General Partner among the Partnership and such Franklin Partnerships in such amounts as reasonably determined by the General Partner.

3. Management Company Duties. The Management Company shall perform such duties as the General Partner shall delegate to it in order to assist it in carrying out the purposes of the Partnership. The Management Company shall maintain a staff trained and experienced in identifying and providing assistance to privately-held, primarily early stage, growth oriented businesses in the health care industry. Such staff shall be adequate for the performance of the Management Company's duties under this Agreement. Services to be rendered by the Management Company shall include assistance within the areas of expertise of its staff and, when considered necessary by the Management Company, the services of its officers and employees as directors, consultants and advisors for Partnership Portfolio Companies. In addition to the services of its own staff, the Management Company shall, after consultation with the Partnership concerning services to be rendered at the request of the Partnership, arrange for and coordinate the services of other professionals and consultants. Notwithstanding the services provided by the Management Company, the Management Company shall not be authorized to manage the affairs of, act in the name of, or bind the

Partnership. The management, policies and operations of the Partnership and all decisions relating to the Partnership, including the selection and management of its investments, shall be the responsibility of the General Partner, acting pursuant to and in accordance with the terms of the Partnership Agreement.

4. Management Fee. Upon the date on which initial capital contributions are made by the Partners to the Partnership, the Partnership shall reimburse the Management Company for any reasonable expenses incurred by it in connection with the organization of the Partnership, up to a maximum of $300,000 in the aggregate. In addition, the Partnership shall pay the Management Company during the term of this Agreement an annual management fee (the "Management Fee") for the services to be provided hereunder, subject to the following limitations: (a) the Management Fee shall not exceed on average over the term of this Agreement an annual rate equal to 2.14% of aggregate Subscriptions; and (b) the Management Fee for each year of the term of this Agreement shall not exceed the percentage of aggregate Subscriptions computed in accordance with the following schedule:

Year Ending on Anniversary Date of this Agreement	Percentage of Aggregate Subscriptions
First	1.6%
Second	1.8%
Third	2.1%
Fourth	2.1%
Fifth and thereafter	2.5%

Solely for purposes of determining compliance with the limitations set forth in the preceding sentence, the amount of the Management Fee deemed to have been paid by the Partnership to the Management Company for any year shall be calculated before taking into account any reduction on account of fees or other remuneration paid to the Management Company by Partnership Portfolio Companies, as provided for below. Any Subscriptions made after the

date of this Agreement shall be deemed to have been made on the date of this Agreement and the portion of the Management Fee attributable to such Subscriptions shall be payable on a basis retroactive to such date. The Management Fee otherwise payable for any year shall be reduced (but not below zero) by 100% of any director's fees, consulting fees, investment banking fees and other remuneration (whether in cash or otherwise) paid during such year to the Management Company by Partnership Portfolio Companies for services rendered by members of the Management Company staff; provided, however, that if any such fees or other remuneration are paid to the Management Company by a Partnership Portfolio Company and a Franklin Partnership also has an investment in such Partnership Portfolio Company, then in such cases the Management Fee otherwise payable in any such year will be reduced by only that portion of such fees or other remuneration equal to the amount thereof multiplied by a fraction, the numerator of which shall be the total cost of all capital stock and other securities of such Partnership Portfolio Company owned by the Partnership and the denominator of which shall be the total cost of all such capital stock and other securities owned by the Partnership and all Franklin Partnerships. If in any year such reductions exceed the Management Fee otherwise payable, the excess amount of such reductions shall be carried forward on a year-by-year basis. Payments of the Management Fee shall be made each year in installments in advance, at such times and in such amounts as may be determined by the Management Company, subject to the limitations described above. The first payment shall be due upon the date of this Agreement.

5. Term of Agreement. Management services shall be performed hereunder until such time as liquidation of the Partnership has been completed.

6. Termination. This Agreement may be terminated without cause and without penalty at any time on 90 days' prior written notice by either party, with the written consent of at least 66-2/3% in interest of the Limited Partners.

7. Amendment. This Agreement can be modified or amended only by a writing signed by the parties hereto, with the written consent of at least 66-2/3% in interest of the Limited Partners.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

FRANKLIN VENTURE CAPITAL INC.

By:________________________

Title:_______________________

FRANKLIN CAPITAL ASSOCIATES III L.P.

By: Franklin Ventures III L.P., General Partner

By:________________________
General Partner

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SCHEDULE C

Franklin Ventures III L.P.
237 Second Avenue South
Franklin, Tennessee 37064

March 3, 1995

To each of the Limited Partners of
Franklin Capital Associates III
L.P. listed in Schedule A to the
Partnership Agreement
hereinafter described:

Reference is made to the First Amended and Restated Limited Partnership Agreement of Franklin Capital Associates III L.P., of even date herewith, executed by you as the Limited Partners (as amended from time to time, the "Partnership Agreement"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Partnership Agreement.

In consideration of your subscription for an interest in the Partnership as a Limited Partner, each of the undersigned general partners of the General Partner hereby represents, warrants and agrees that, so long as he is a general partner of the General Partner:

1. He shall at all times devote sufficient business time to the Partnership to manage the affairs thereof. He may have other business activities provided that such other business activities do not conflict in any material way with the business of the Partnership (without limitation, it being agreed and acknowledged by each of you that his activities on behalf of the Franklin Partnerships do not constitute such a conflict, so long as such activities remain substantially similar to the activities contemplated to be performed by him for the Partnership as a general partner of the General Partner and as an employee of the Management Company under the Management Agreement). Furthermore, he shall not act as a general partner or similar principal of any other venture capital entity that is organized after the date hereof if such entity is similar in purpose and operation to the Partnership and the Partnership is less than 65% invested, unless he shall have received the prior written consent of the Review Committee. For purposes of this Paragraph 1, the Partnership shall be deemed to be 65% invested when an amount equal to 65% of the sum of the Partners' Subscriptions has been invested in Investment Securities or used to pay Partnership expenses (including the Management Fee as defined in the Management Agreement).

2. While the Management Agreement is in effect, 100% of any director's fees, consulting fees, investment banking fees and other remuneration (whether in cash or otherwise) paid to him or the General Partner by a Partnership Portfolio Company for services rendered shall only be received by him or the General Partner as an officer, employee or agent of the Management Company, as the case may be, and shall be remitted to the Management Company; provided, however, that if any such fees or other remuneration are paid to him by such entity and a Franklin Partnership also has an investment in such entity, then in such cases he shall be obligated to remit to the Management Company for application against the Management Fee only that portion of such fees or other remuneration as is equal to the amount thereof multiplied by a fraction, the numerator of which shall be the total cost of all capital stock and other securities of such entity owned by the Partnership and the denominator of which shall be the total cost of all such capital stock and other securities owned by the Partnership and all Franklin Partnerships.

3. All investment opportunities which come to his attention, except for such opportunities which he reasonably believes are not within the purposes of or appropriate for the Partnership, shall be made available to the Partnership before he or any account which he controls shall invest in such opportunity; provided, however, that if an investment opportunity is in an entity in which he has an investment which was made prior to the Partnership's initial investment in such entity, then he shall not be required to make such investment opportunity available to the Partnership if he obtains the prior approval of the Review Committee. Furthermore, neither he nor any account which he controls or in which he has a beneficial interest (unless he has no control) shall invest in a Partnership Portfolio Company unless he or the account which he controls or in which he has a beneficial interest has an investment in such Partnership Portfolio Company which was made prior to the Partnership's initial investment in such Partnership Portfolio Company. For purposes of this Paragraph 3, the terms "account" and "accounts" shall specifically exclude the Partnership and the Franklin Partnerships.

4. He shall cause Franklin Capital Associates L.P. and Franklin Capital Associates II L.P. (unless he has no control over such entities) not to invest in a Partnership Portfolio Company unless such entity has an investment in such Partnership Portfolio Company which was made prior to the Partnership's initial investment in such Partnership Portfolio Company.

5. He shall not sell, and shall cause the General Partner not to sell, any Freely Tradeable securities issued by Partnership Portfolio Companies that are distributed to him by the General Partner or to the General Partner by the Partnership until at least 30 days after the distribution of such securities has been made to the Partners by the Partnership.

6. He shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber (a "Disposition") all or any part of his interest as a general partner in the General Partner, except (a) if such Disposition, together with all prior Dispositions (other than those covered by clause (b) or (c)), would represent 25% or less of the general partnership interest he purchased in the General Partner, (b) for Dispositions to other general partners of the General Partner or to members of the Advisory Committee, and (c) for Dispositions to members of his immediate family or trusts for the benefit of such general partner or members of his immediate family (and, in the case of any Dispositions to such family members or such trusts, the transferees shall thereafter be subject, as to further transfers, to the same restrictions on transfer as were applicable to the transferor).

The terms and provisions of this letter agreement may be waived, modified, amended or terminated only by a writing signed by a majority in number of those of the undersigned persons who are then general partners of the General Partner and with the written consent of the General Partner and of Limited Partners constituting at least 66-2/3% in interest of the Limited Partners (as such percentage is determined in accordance with the Partnership Agreement). No amendment shall, however, (i) enlarge the obligations of any general partner of the General Partner under this letter agreement without the written consent of such general partner or (ii) alter or waive the terms of this paragraph. The general partners of the General Partner shall promptly furnish copies of any amendments to this letter agreement to all Limited Partners. This letter agreement shall also be deemed to apply in all respects to and be enforceable by any Limited Partner who is listed after the date hereof in Schedule A to the Partnership Agreement.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Very truly yours,

____
John T. Booth

____
Larry H. Coleman

____
James C. Hoffman

____
W. David Swenson

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