TPG PARTNERS, L.P.

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AGREEMENT OF LIMITED PARTNERSHIP dated as of December 15, 1993, by and among TPG GenPar, L.P., as general partner (the "General Partner"), and the persons listed on Schedule A hereto, as limited partners.

WITNESSETH:

In consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

1.01 Definitions. The following terms, as used herein, have the meanings hereinafter specified:

"Actively Invested Capital Contributions" shall mean Capital Contributions made in respect of Investments that have not yet been the subject of Dispositions.

"Adjusted Price" shall have the meaning specified in paragraph 3.06(b).

"Advisory Committee" shall have the meaning specified in paragraph 7.01.

"Affiliate" as to any Person shall mean any other Person that controls, is controlled by, or is under common control with, such Person. For these purposes, "control" shall mean ownership of at least 50% of the equity securities of a

Person, or control of a majority of the general partners of a Person.

"Agreement" shall mean this Agreement of Limited Partnership, as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"Allocable Share" shall mean, with respect to a calculation of the amount of Management Fees or Organizational Expenses to be allocated to any Investment in connection with calculation of the Basic Threshold Amount as of any Calculation Date, the product of (x) a Partner's Proportionate Interest in the Investment in respect of which such calculation is being made and (y) a fraction equal to (i) the aggregate Capital Contributions as of such Calculation Date of all Partners to the Investment in respect of which such calculation is being made, divided by (ii) the sum of the amount described in clause (i) and the aggregate Actively Invested Capital Contributions of all Partners as of such Calculation Date (to the extent not included in clause (i)); provided, that the Capital Contributions to Investments described in clauses (i) and (ii) of this definition shall, in each case, be deemed reduced by any Write-Down Amounts attributable thereto. The "Allocable Share" of Management Fees or Organizational Expenses, as applicable, shall be determined as of the earlier of (a) the date of Disposition of the Investment to which such items are allocated and (b) the most recent Calculation Date relating to Distributions from such Investment.

Amounts of Management Fees and Organizational Expenses allocated to an Investment pursuant to this formula shall not be included in the calculation of the amounts of Management Fees and Organizational Expenses allocable to subsequent Investments.

"Alternative Investment Vehicles" shall have the meaning set forth in paragraph 3.09.

"Bankruptcy Code" shall mean 11 U.S.C. §§ 101-1330, as amended from time to time.

"Basic Threshold Amount" shall have the meaning specified in paragraph 4.02(b).

"Basic Threshold Return" shall have the meaning specified in paragraph 4.02(b)(B).

"Break-Up Fees" shall mean any fees or amounts that are received by the Partnership or by the General Partner (which shall be deemed to have received such fees and amounts as agent for the Partnership) specifically in connection with the termination, cancellation or abandonment of a potential Investment that is not consummated.

"Bridge Financing" shall mean loans, guaranties or surety arrangements extended by the Partnership to actual or prospective Portfolio Companies on an interim basis in order to facilitate Investments contemplated by the Partnership.

"Bridge Financing Distributions" shall mean the lesser of (x) a Partner's Capital Contributions in respect of a Bridge Financing that is refinanced (by a Person other than the Partnership or its Subsidiaries), repaid, assigned or sold within

one year following the closing date of such Bridge Financing and (y) the total Distributions received by such Partner in respect of repayments of principal amounts due under such Bridge Financing within one year following the closing date of such Bridge Financing.

"Business Day" shall mean any day on which banks located in Fort Worth, Texas and/or New York, New York are not required or authorized to close.

"Calculation Date" shall mean, in respect of any allocation or Distribution of Disposition Proceeds, the date the related Disposition Proceeds are Distributed and, in respect of any allocation or Distribution of Current Income or Uninvested Funds Income, the date on which such amounts are Distributed by the Partnership.

"Capital Account" shall have the meaning specified in paragraph 4.05(a).

"Capital Commitment" of a Partner shall mean the amount set forth under the heading Capital Commitment opposite the name of such Partner on Schedule A as the same may be modified pursuant to the provisions of paragraph 3.03(e) or 3.09.

"Capital Contributions" of a Partner shall mean the amount of cash such Partner has contributed to the Partnership pursuant to Article Three as of the date in question, as adjusted pursuant to paragraph 3.03(e), paragraph 3.06, paragraph 3.08 and paragraph 6.02.

"Capital Partners" shall mean, with respect to each Investment, the Partners that made contributions to such Investment pursuant to Article Three, and, with respect to the Partnership, the Partners that made Capital Contributions to the Partnership, including, in each case, the General Partner to the extent of its contributions to such Investment or Capital Contributions to the Partnership, as the case may be.

"Claims" shall mean claims and other causes of action, matured or unmatured, contingent or otherwise, of creditors and/or equity holders of any Person, against such Person, including both "claims" and "interests" as defined under the Bankruptcy Code, and all rights and options relating to any of the foregoing.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time (including any successor law).

"Commitment Period" shall mean the period of time from the date first above written until, but not including, the sixth anniversary thereof, unless earlier terminated pursuant to paragraph 5.03(b), paragraph 5.03(c), paragraph 5.03(d) or either of the two succeeding sentences. If, in the opinion of counsel selected by the General Partner, changes in applicable law after the date hereof have materially adversely affected the ability of the Partnership to pursue its investment objectives, the General Partner may cause an early termination of the Commitment Period. If (a) the General Partner determines, in its reasonable discretion, that there are insufficient business opportunities

consistent with the business objectives of the Partnership, or (b) at least seventy-five percent (75%) of the aggregate Capital Commitments of the Partners have been used to fund Investments and pay Partnership Expenses, then the General Partner may cause an early termination of the Commitment Period.

"Consent" shall mean the consent of a Partner, given as provided in paragraph 12.01, to do the act or thing for which the consent is given or solicited, or the act of granting such consent, as the context may require. Reference to the Consent of a majority in Interest or a specified percentage in Interest of the Partners, the Limited Partners, the ERISA Partners or the Governmental Plan Partners shall mean the Consent of such Partners, Limited Partners, ERISA Partners or Governmental Plan Partners whose aggregate Capital Commitments represent more than fifty percent (50%) or not less than the specified percentage, as the case may be, of the aggregate Capital Commitments of all Partners, Limited Partners, ERISA Partners or Governmental Plan Partners, as applicable.

"Consenting Partner" shall have the meaning specified in paragraph 12.01(a).

"Current Income" shall mean (i) all cash received from Investments or otherwise earned in connection with the activities or business of the Partnership (including, without limitation, dividends and interest), less (ii) any Partnership Expenses not funded through Capital Contributions, less (iii) reserves fixed by the General Partner for Partnership Expenses that have been

incurred or are anticipated, plus (iv) subsequent reductions, as determined by the General Partner, in the amount of such reserves; except that Current Income shall be computed without regard to any item of income or expense taken into account in computing Uninvested Fund Income, Fee Income or Disposition Proceeds (it being understood that items of expense otherwise includible in the calculation of Uninvested Fund Income, Fee Income or Disposition Proceeds may be applied instead to reduce Current Income to the extent that such items otherwise would reduce Uninvested Fund Income, Fee Income or Disposition Proceeds below zero).

"Defaulting Partner" shall mean a Partner who has defaulted in the payment of any contributions to the Partnership or in the payment of any amount due to the Partnership pursuant to paragraph 4.06 when required to be made.

"Disposition" of any Investment shall mean the sale, exchange (other than an exchange for other Securities or Claims of the Person in which such Investment is made) or other disposition by the Partnership of all or any portion of that Investment for cash, Securities or other property, and shall include the receipt by the Partnership of a liquidating dividend or other like Distribution on such Investment. Without limiting the generality of the foregoing, Disposition shall include the refinancing (by a Person other than the Partnership or its Subsidiaries), repayment, assignment or sale of a Bridge Financing.

"Disposition Proceeds" from an Investment or any portion thereof shall mean (i) the amount of cash and the Fair Value of Securities and other property received by the Partnership on the Disposition of such Investment or portion thereof, less (ii) any Partnership Expenses allocable to such Investment and not funded through Capital Contributions to the extent not previously taken into account in computing Disposition Proceeds or Current Income, less (iii) reserves for the payment of anticipated Partnership Expenses allocable thereto, plus (iv) subsequent reductions, as determined by the General Partner, in the amount of such reserves.

"Distribution" shall mean any distribution made by the Partnership to Partners pursuant to Article Four or Article Ten.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Partner" shall mean any Limited Partner that is an employee benefit plan subject to Title I of ERISA or a plan subject to Section 4975 of the Code or is a nominee for, or is using the assets of, or is a trust established pursuant to, one or more such employee benefit plans or other plans.

"Excess Unconsummated Transaction Expenses" shall mean, with respect to any Capital Partner as of any date, the excess, if any, of (i) such Partner's Proportionate Interest in Unconsummated Transaction Expenses as of such date over (ii) such Partner's Proportionate Interest in all Transaction Fees and Break-Up Fees received as of such date.

"Expert" shall have the meaning specified in paragraph 6.03(b).

"Fair Value" shall have the meaning specified in paragraph 6.03(a) or 6.03(b), as applicable.

"Fee Income" shall mean (i) all cash received from Break-Up Fees and Transaction Fees, less (ii) any Unconsummated Transaction Expenses and Management Fees not funded through Capital Contributions (to the extent not previously taken into account in computing Fee Income or Current Income), less (iii) reserves fixed by the General Partner for Unconsummated Transaction Expenses and Management Fees that have been incurred or are anticipated, plus (iv) subsequent reductions, as determined by the General Partner, in the amount of such reserves.

"Fiscal Year" shall mean the calendar year or, in the case of the first and last fiscal years of the term of the Partnership, the portion thereof commencing on the date on which the Partnership is formed under the Partnership Act or ending on the date on which the winding up of the Partnership is completed, as the case may be.

"Foreign Investor" shall mean any Limited Partner that is not a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or any political subdivision thereof, or an estate or trust the income of which is subject to United States Federal income taxation regardless of its source.

"Governmental Plan Partner" shall mean any Limited Partner that is a governmental plan as such term is defined in Section 3(32) of ERISA.

"GP Withdrawal Event" shall have the meaning specified in paragraph 5.03(b).

"Holdback Portion" shall have the meaning specified in paragraph 4.03(a).

"Inactive Partner" shall have the meaning specified in paragraph 5.03(e).

"Incapacity" (and, by correlation, "Incapacitation") shall mean, (i) as to any Person any case, proceeding, other action or entry of an order for relief by or against such Person under any existing or future law of any jurisdiction relating to bankruptcy, reorganization or relief of debtors or (ii) the incompetence, insanity, permanent physical disability or death of any individual.

"Indemnified Persons" shall mean the General Partner, its general and limited partners, their respective officers, directors, agents, stockholders, partners and other Affiliates, and any other Person who serves at the request of the General Partner on behalf of the Partnership as an officer, director, partner, employee or agent of any other entity; provided that an agent acting on behalf of the Partnership shall be an Indemnified Person only to the extent that the Partnership or the General Partner has a legal or contractual obligation to indemnify such agent, it being understood that this Agreement is not intended to

create any such obligation, and that any indemnification of such agent will be subject to and limited by the terms of such legal or contractual obligation; and provided further that a Person who co-invests with the Partnership in the Securities or Claims of any Person shall not, by reason of such co-investment, become an Indemnified Person.

"Interest" shall mean (i) in respect of matters other than (a) voting and (b) paragraphs 3.06 and 6.02(d), the entire interest of a Partner in the Partnership at any particular time, including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement; or (ii) in respect of (a) voting and (b) paragraphs 3.06 and 6.02(d), the ratio of the Capital Commitment of such Partner to the Capital Commitments of all Partners entitled to vote.

"Investment" shall mean any Securities or Claims acquired by the Partnership in any transaction or series of related transactions described in paragraph 2.04, and any Bridge Financing made by the Partnership, but shall exclude any investment made pursuant to paragraph 5.01(b)(9).

"Liens" shall mean title defects, contracts of sale, leases, mortgages, security interests, encumbrances, charges and pledges.

"Limited Partners" shall mean the Persons listed on Schedule A hereto, as amended from time to time.

"Liquidating Trustee" shall mean a Person selected by a majority in Interest of the Limited Partners to act as a liquidating trustee as provided in paragraph 10.02(a).

"Management Fee" shall have the meaning specified in paragraph 6.02(a).

"Management Fee Percentage" shall mean (i) 2.00% per annum of the aggregate Capital Commitments up to and including $250,000,000, (ii) 1.50% per annum of the portion of the aggregate Capital Commitments greater than $250,000,000 but less than or equal to $400,000,000, and (iii) 1.25% per annum of the portion of the aggregate Capital Commitments greater than $400,000,000; provided, however, that upon expiration or early termination of the Commitment Period, the definition of Management Fee Percentage shall be deemed to reflect the substitution of the term Capital Commitments with the term Actively Invested Capital Contributions.

"Marketable," with respect to Securities, shall mean Securities that are traded on a national securities exchange in the United States, reported through the National Association of Securities Dealers, Inc. Automated Quotation System or otherwise actively traded over-the-counter in the United States, and are not subject to restrictions on transfer as a result of applicable contract provisions or the provisions of the Securities Act of 1933, as amended, or regulations thereunder other than the volume and method-of-sale restrictions of Rule 144 promulgated thereunder or any successor thereto.

"Non-Public Information" shall have the meaning specified in paragraph 16.08.

"Organizational Expenses" shall have the meaning specified in paragraph 6.01(a).

"Original Payment Date" shall have the meaning set forth in paragraph 3.03(g).

"Parallel Investment Entities" shall mean entities organized by or on behalf of the General Partner or its Affiliates (the structure of which may differ from the Partnership) created in order to facilitate, from a tax standpoint, the making of Investments by certain categories of investors, including foreign investors, who are unwilling, due to their special tax concerns, to invest in the Partnership. To the extent feasible consistent with such facilitation, Parallel Investment Entities will have investment objectives, economic terms, conditions and management similar to (and in any event will have economic terms not more favorable in the aggregate to investors than), those of the Partnership, and will invest in transactions with the Partnership proportionately in accordance with the relative aggregate capital commitments of each such Parallel Investment Entity and the aggregate Capital Commitments of the Partnership.

"Partner" shall mean a Limited Partner or the General Partner, and "Partners" shall mean the General Partner and all the Limited Partners, unless otherwise indicated.

"Partnership" shall mean the limited partnership governed hereby, as such limited partnership may from time to time be constituted.

"Partnership Act" shall mean the Delaware Revised Uniform Limited Partnership Act, set forth as Chapter 17 of Title 6 of the Delaware Code, as amended from time to time.

"Partnership Expenses" shall mean the expenses payable by the Partnership pursuant to paragraphs 5.04(b), 5.04(c), 5.04(d), 5.04(e), 6.01 and 6.02.

"Person" shall mean any individual, partnership, corporation, unincorporated organization or association, trust (including the trustees thereof in their capacity as such) or other entity (including any governmental entity), whether organized under the laws of (or, in the case of individuals, resident in) the United States (or any political subdivision thereof) or any foreign jurisdiction.

"Plan Assets Regulations" shall have the meaning specified in paragraph 5.02(b).

"Portfolio Company" shall mean any Person in which the Partnership has an Investment.

"Preliminary Divisions" shall mean (i) in the case of amounts attributable to an Investment, the division of such amounts among the Capital Partners in proportion to their respective Proportionate Interests in such Investment, (ii) in the case of Break-Up Fees and Current Income that is not attributable to an Investment, the division of such Break-Up Fees

among the Capital Partners in proportion to their respective Proportionate Interests in the Partnership and (iii) in the case of Uninvested Fund Income, the division of such Uninvested Fund Income among the Capital Partners in proportion to their respective Capital Contributions toward the Uninvested Funds to which such Uninvested Fund Income relates (or, if such Uninvested Funds result from Disposition Proceeds, Current Income or other earnings of the Partnership, then in proportion to the Capital Partners' respective rights to receive Distributions of such earnings).

"Principals" shall mean David Bonderman, James G. Coulter and William S. Price, either individually or in combination, as the context requires.

"Proportionate Interest" of a Partner in an Investment, a Write-Down Amount or Transaction Fees shall mean the ratio of (x) such Partner's total contributions to that Investment (or, in the case of a Write-Down Amount or Transaction Fees, to the Investment in respect of which such Write-Down was taken or to which such Transaction Fees relate) to (y) the total contributions of all Partners to that Investment; and the "Proportionate Interest" of a Partner in the Partnership, in Break-Up Fees or in Unconsummated Transaction Expenses shall mean the ratio of (x) such Partner's Capital Contributions to (y) the Capital Contributions of all Partners.

"Return Amounts" shall have the meaning specified in paragraph 4.02(b)(A).

"Securities" shall mean capital stock, partnership interests, subscriptions, warrants, bonds, notes, debentures and other debt or equity securities of any Person and all rights and options relating to any of the foregoing.

"Segregated Reserve Account" shall have the meaning specified in paragraph 4.03(a).

"Short-Term Investment" shall mean an Investment in Marketable Securities that is subject to a Disposition within one year following the date on which such Investment is made by the Partnership.

"Short-Term Investment Distribution" shall mean the lesser of (x) a Partner's Capital Contributions in respect of a Short-Term Investment and (y) the total Distributions received by such Partner in respect of such Short-Term Investment.

"Special Subaccount Distributions" shall have the meaning specified in paragraph 4.03(j).

"Special Tax Distribution" shall have the meaning specified in paragraph 4.02(f).

"Strategic Public Investments" shall mean Investments in the form of Marketable Securities of Persons not effectively controlled by the Partnership, other than (i) temporary investments of Uninvested Funds, and (ii) investments in Securities that were not Marketable at the time of purchase thereof by the Partnership. Investments in Marketable Securities of Persons as to which the Partnership has gained effective

control shall, from the date such control is obtained, no longer constitute Strategic Public Investments.

"Subsidiary" of the Partnership shall mean a Person at least 50% of the equity securities of which are held by the Partnership.

"Substituted Limited Partner" shall mean any Person admitted to the Partnership as a Limited Partner pursuant to the provisions of paragraph 9.03.

"Tax Advances" shall have the meaning specified in paragraph 4.06.

"Tax Exempt Limited Partner" shall mean any Limited Partner that is exempt from federal income taxation under Sections 115 or 501(a) of the Code.

"Tax Matters Partner" shall mean the tax matters partner for the Partnership as such term is defined in Section 6231(a)(7) of the Code.

"Transaction Fees" shall mean directors' fees, financial consulting fees, advisory fees and any other fees earned on or relating to Investments and received by the Partnership, or by the General Partner, its employees, or the Principals or their respective Affiliates (which and who shall be deemed to have received such fees and amounts as agents for the Partnership), other than fees received by Colony Capital, Inc., Colony Investors, L.P. or Colony Advisors, Inc.

"Transfer" shall have the meaning specified in paragraph 9.01(a).

"Transition Period Investments" shall have the meaning set forth in paragraph 3.03(b).

"Treasury Regulations" shall mean the Income Tax Regulations promulgated under the Code, as amended from time to time (including any successor regulations).

"UBTI" shall mean unrelated business taxable income as defined in Section 512 (including by reason of Section 514) of the Code.

"Unconsummated Transaction Expenses" shall mean fees and expenses paid by the Partnership to Persons other than the General Partner and not otherwise reimbursed by third parties, relating directly to potential Investments that are not consummated.

"Uncontributing Partner" shall have the meaning set forth in paragraph 3.03(g).

"Uninvested Fund Income" shall mean (i) the amount of all income earned on Uninvested Funds, less (ii) any Partnership Expenses related to such Uninvested Fund Income and not funded through Capital Contributions (to the extent not previously taken into account in computing Uninvested Fund Income or Current Income), less (iii) reserves fixed by the General Partner for Partnership Expenses related to such Uninvested Fund Income that have been incurred or are anticipated, plus (iv) subsequent reductions, as determined by the General Partner, in the amount of such reserves.

"Uninvested Funds" shall mean (i) Capital Contributions of the Partners that have not as of any particular date been used to fund the making of any Investment or to pay Partnership Expenses and (ii) Disposition Proceeds, Current Income, Fee Income, Uninvested Fund Income and reserves fixed by the General Partner prior to Distribution thereof.

"Unused Capital Commitment" of a Partner as of any date shall mean the amount of such Partner's Capital Commitment as of that date (x) reduced by the amount of all contributions made by that Partner pursuant to paragraph 3.03(a), paragraph 3.06(b) and paragraphs 6.02(c) and (d) as of that date and (y) increased by all Short-Term Investment Distributions and Bridge Financing Distributions distributed to such Partner, Capital Contributions returned to that Partner pursuant to paragraphs 3.03(e) and 3.05 and certain amounts specified in paragraphs 3.06(b) and 6.02(c) and (d) as of that date.

"Write-Down" shall mean a determination by the General Partner, acting in its sole discretion, subject to paragraph 7.03(g), in connection with calculation of the Basic Threshold Amount as of any Calculation Date, that the Fair Value of any Investment held by the Partnership and as to which a Disposition has not occurred as of such Calculation Date is less than the aggregate Capital Contributions of the Partners made in respect of such Investment.

"Write-Down Amount" shall mean the amount by which, pursuant to a Write-Down, the aggregate Capital Contributions of

the Partners made in respect of an Investment are determined to exceed the Fair Value of such Investment.

ARTICLE TWO

ORGANIZATION

2.01 Formation. The parties hereby form a limited partnership pursuant to the provisions of the Partnership Act. The rights and liabilities of the Partners shall be as provided in the Partnership Act, except as otherwise expressly provided herein.

2.02 Name. The name of the Partnership shall be TPG Partners, L.P. The business of the Partnership may be conducted, upon compliance with all applicable laws, under any other name designated by the General Partner, provided that such name contains the words "limited partnership" or the abbreviation "L.P." The General Partner shall give the Limited Partners reasonable notice of such other name promptly following commencement of the conduct of Partnership business under such name.

2.03 Place of Business; Registered Agent. The Partnership shall maintain its principal office in Fort Worth, Texas. The General Partner may at any time change the location of the Partnership's offices and may establish additional offices. Notice of any such change shall be given to the other Partners on or before the date of any such change. The Partnership shall maintain a registered office at, and the name and address of the Partnership's registered agent is, Prentice

Hall Corporation System, Inc., 32 Loockerman Square, Suite L-100, Dover, Delaware 19901.

2.04 Purpose; No Hostile Transactions. The purpose of the Partnership is to (x) invest in public and private debt or equity Securities and Claims and/or (y) make secured or unsecured Bridge Financings. The Partnership may engage in open market purchases, privately-negotiated transactions or other means of pursuing any Investment. In furtherance of the foregoing, the Partnership shall have all powers necessary and appropriate for the accomplishment thereof, including, without limitation, the following:

(a) to purchase, sell, invest, trade, hold, receive, mortgage, pledge, transfer, exchange, or otherwise acquire or dispose of, realize upon, or deal in or with Securities and Claims and otherwise deal in or with and exercise all rights, powers, privileges, options and other incidents of ownership or possession with respect to all assets or property held or owned by the Partnership;

(b) to hold all or any part of the assets, property or funds of the Partnership in cash or cash equivalents;

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

(d) to engage accountants, custodians, attorneys and any and all other agents and assistants, both professional and

nonprofessional, and, subject to the provisions of paragraph 6.01, to compensate them for such services;

(e) to sue, prosecute, settle or compromise all claims against third parties, to compromise, settle or accept judgment in respect of claims against the Partnership and to execute all documents and make all representations, admissions and waivers in connection therewith;

(f) to make loans, and to act as guarantor or surety; provided, that the aggregate principal amount of Bridge Financing to a particular Portfolio Company, together with the aggregate dollar amount (valued at cost) of the permanent investment by the Partnership in such Portfolio Company, shall not exceed twenty-five percent (25%) of aggregate Capital Commitments (determined at the time of such Bridge Financing or, if later, the time of such investment);

(g) to create special purpose entities to make or pursue such Investments either alone or as joint venturers with other Persons; and

(h) to enter into, make and perform all other contracts, agreements and undertakings and pay all Partnership Expenses as the Partnership may deem necessary, appropriate, advisable or incident to carrying out the purposes of the Partnership.

Notwithstanding the foregoing, the Partnership may not make any Investment pursuant to a tender offer for outstanding equity Securities of any Person that is the subject, directly or

indirectly, of such Investment if the Board of Directors (or other analogous body) of such Person recommends in such Person's Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9, as amended or supplemented, that security holders not tender securities pursuant to such offer.

2.05 Term. The term of the Partnership shall commence on the date first above written and shall continue in full force and effect until, but not including, the tenth anniversary thereof, unless (i) extended by the General Partner, with the approval of the Advisory Committee, for up to two consecutive additional one-year periods from and after such date or (ii) terminated prior thereto in accordance with paragraph 10.01.

2.06 Qualification in other Jurisdictions. The General Partner shall cause the Partnership to be qualified, formed or registered under assumed or fictitious names or foreign limited partnership statutes or similar laws in any jurisdiction in which the Partnership owns property or transacts business if and to the extent that such qualification, formation or registration is necessary in order to protect the limited liability of the Limited Partners or to permit the Partnership lawfully to own property or to transact business. The General Partner shall execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Partnership to conduct business as a limited partnership in all jurisdictions in which the Partnership elects to do business or to maintain the limited liability of the Limited Partners.

2.07 Restrictions on Certain Borrowings and Investments. (a) The Partnership shall not borrow funds.

(b) If the Partnership determines to invest in a partnership or other entity that is treated as a "flow-through" entity for U.S. Federal income tax purposes and which, as a result, could cause the Partnership to incur "unrelated business taxable income" within the meaning of Section 512 of the Code or could cause a Foreign Investor to be treated as engaged in a trade or business within the United States for U.S. Federal income tax purposes, the Partnership shall first notify the Tax Exempt Limited Partners or Foreign Investors, as the case may be, of this fact and shall, if any of such investors so elect, create a corporation to which the Capital Contributions of such electing Partner(s) toward such Investment will be contributed by the Partnership and which will invest in such Investment as and when the Partnership so invests. The purpose of such corporation shall be to convert the income and gain that otherwise would be earned by such electing Partner(s) in respect of such Investment into dividends from such corporation. The General Partner will work with the electing Partner(s) to implement this structure, and shall amend this Agreement as necessary in connection therewith; provided, that no such amendment shall affect the interest of any Partner other than an electing Partner in income, gains or losses or Distributions or alter the obligations of a Partner (electing or otherwise) to make contributions to the Partnership or other payments under this Agreement, nor shall

such amendment otherwise be adverse to the Interests of the Partners (other than electing Partners). Costs and expenses relating to such corporation (including entity-level taxes), and all other items of income, gain or loss received by the Partnership in respect of such corporation, shall be specially allocated to such electing Partner(s). Partners other than electing Partners shall be entitled to receive the same allocations of income, gains and losses, and the same Distributions, as they would have received if the electing Partners had invested in the Investment directly through the Partnership.

ARTICLE THREE

PARTNERS AND CAPITAL

3.01 General Partner. The name, address and Capital Commitment of the General Partner in the Partnership is set forth on Schedule A hereto, as amended from time to time. The Capital Commitment of the General Partner, when combined with that of other Affiliates of the Principals, shall at all times be at least thirty million dollars ($30,000,000) (except as such Capital Commitment may be reduced pursuant to this Agreement), of which the General Partner's Capital Commitment shall be at least equal to the lesser of (A) 1% of the aggregate Capital Commitments of the Partners and (B) $500,000.

3.02 Limited Partners. (a) The name, address, and Capital Commitment of each Limited Partner in the Partnership are set forth on Schedule A hereto, as amended from time to time.

(b) Except as expressly provided herein, the Limited Partners shall not participate in, or take part in the control of, the Partnership business and shall have no right or authority to act for or to bind the Partnership. The exercise by any Limited Partner of any right conferred herein shall not be construed to constitute participation by such Limited Partner in the control of the business of the Partnership so as to make such Limited Partner liable as a general partner for the debts and obligations of the Partnership for purposes of the Partnership Act.

(c) Unless named in this Agreement, or unless admitted to the Partnership as a General Partner or a Limited Partner as provided in this Agreement, no Person shall be considered a Partner. The Partnership and the General Partner shall not be required to recognize any Person merely because of an assignment or transfer of all or part of a Partner's Interest to such Person (including an assignment or transfer thereof by reason of the Incapacity of such Partner). Any Distribution by the Partnership to the Person shown on the Partnership records as a Partner or to its legal representatives, or to the assignee of the right to receive Partnership Distributions as provided herein, shall acquit the Partnership and the General Partner of all liability to any other Person who may be interested in such Distribution by reason of any other assignment or transfer of such Partner's Interest for any reason (including an assignment or transfer thereof by reason of such Partner's Incapacity).

(d) The General Partner and its Affiliates may also be Limited Partners; provided that the General Partner in its capacity as a Limited Partner and the Limited Partners that are Affiliates of the General Partner shall not participate in any Consent of the Limited Partners and their Interests as Limited Partners shall not be taken into account for the purposes of any such Consent.

3.03 Partnership Capital; Investments. (a) Each Partner shall contribute cash to the Partnership, from time to time, within ten (10) Business Days after having been given written notice to do so by the General Partner (or on or before such later date as may be specified in such notice). Each such notice shall state that such contribution is required (x) in connection with an Investment, in which case such notice shall also set forth the anticipated closing date of such Investment, the date by which the Partnership will fund the Investment and, except as provided in paragraph 3.04 below, a description of the Investment to be made (which description shall include the name and address of the proposed Portfolio Company, a brief description of its business and the terms of the proposed Investment, including the types of Securities or Claims to be acquired and the amount to be invested in each such type), or (y) to meet (or to reimburse the General Partner for its payment of, or anticipated payment of) Partnership Expenses. In the event the use to which any contribution described in clause (x) of the preceding sentence is to be put shall materially change, the

General Partner promptly shall give written notice thereof to each Partner setting forth the anticipated closing date of such changed Investment and, except as provided in paragraph 3.04, a description of the changed Investment to be made.

(b) Until the expiration or early termination of the Commitment Period, the General Partner may require the Partners to contribute in cash amounts up to their Unused Capital Commitment for the purposes described in clauses (x) and (y) of paragraph 3.03(a) above. From and after such expiration or early termination, each Partner shall be released from any obligation hereunder to make any further contributions for the purposes described in paragraph 3.03(a) above, except that such Partner shall remain liable at all times (both prior to and after such expiration) to make contributions up to the full amount then or thereafter comprising its Unused Capital Commitment (i) for the purposes described in clause (y) of paragraph 3.03(a) above and (ii) in connection with Investments as to which the Partnership had entered into a letter of intent, memorandum of understanding or similar document (whether or not such document created a legally binding obligation to proceed with the transaction described), or a definitive agreement to proceed with such transaction, but which Investments had not yet been made as of the date of such expiration ("Transition Period Investments").

(c) Contributions described in clause (x) of paragraph 3.03(a) shall be made in proportion to the Unused Capital Commitments of the Partners, except as may be provided in

paragraphs 3.05, 3.06(b) and 3.08; contributions described in clause (y) of paragraph 3.03(a) shall, except as provided in paragraphs 3.06(b) and 6.02, be made in proportion to the Proportionate Interest of the Partners in the Investment, if any, to which such Partnership Expense relates, or, if such Partnership Expense does not relate to a particular Investment, then in proportion to the Unused Capital Commitments of the Partners. Notwithstanding any other provision of this Agreement, no Capital Partner shall be obligated to make any contribution to the Partnership except in accordance with such Partner's proportions referred to in the preceding sentence.

(d) No Partner shall be paid interest on any of its Capital Contributions or on any amount outstanding in such Partner's Capital Account.

(e) Except as otherwise provided in this Agreement, no Partner shall have any right to demand the return of its Capital Contributions. The General Partner may nonetheless from time to time elect, in its sole discretion, to (i) make partial returns to the Partners of Capital Contributions which have not yet been invested (together with corresponding Uninvested Fund Income earned thereon, if any), or (ii) reduce the Capital Commitments of the Partners in proportion to their Unused Capital Commitments. In addition, the General Partner shall be required to return to the Partners such portion (and any Uninvested Fund Income earned on such portion), if any, of their Capital Contributions as have not been (x) invested, or committed for

investment, in Investments (or intended for use in Transition Period Investments) or (y) used or required to pay Partnership Expenses (including Management Fees), as of the expiration or early termination of the Commitment Period, less reasonable reserves for the payment of anticipated Partnership Expenses. The foregoing provisions of this paragraph 3.03(e) notwithstanding, no such partial return of Capital Contributions or reduction of Capital Commitments shall be made unless, at the time of each such partial return or reduction, all liabilities of the Partnership to Persons other than Partners shall have been paid or, in the good faith determination of the General Partner, there shall remain property of the Partnership sufficient to pay them. In the event of any such partial return of Capital Contributions (and of corresponding Uninvested Fund Income) to the Partners, such Distribution shall, except as provided in paragraph 3.08, be made pro rata to all Partners based upon their Proportionate Interests in the Investments for which such Capital Contributions were originally made or, to the extent such Capital Contributions are not attributable to any Investment, in proportion to the Partners' Capital Contributions.

(f) Notwithstanding any of the foregoing provisions of this paragraph 3.03, the General Partner shall not require the Partners to make contributions (w) in respect of any one Investment, in an amount exceeding twenty-five percent (25%) of aggregate Capital Commitments, (x) in respect of any three Investments, in an amount exceeding fifty percent (50%) of

aggregate Capital Commitments, (y) in respect of Investments in Persons that are domiciled outside the United States, in an amount exceeding fifteen percent (15%) of aggregate Capital Commitments and (z) in Strategic Public Investments, in an amount exceeding twenty percent (20%) of aggregate Capital Commitments (in each case determined at the time of the making of any Capital Contribution in respect of such Investment); provided that nothing in this paragraph 3.03(f) shall limit the ability of the General Partner to require contributions pursuant to clause (y) of paragraph 3.03(a); and provided, further, that nothing in this paragraph 3.03(f) shall limit the ability of the Partnership to extend Bridge Financings pursuant to paragraph 2.04(f).

(g) Notwithstanding any of the foregoing provisions of this paragraph 3.03, no ERISA Partner or Governmental Plan Partner shall be required to make its first contribution to the Partnership pursuant to this Article Three unless (i) the General Partner states in the written notice described in paragraph 3.03(a) that such contribution is required in connection with an Investment, (ii) together with such notice, the General Partner has delivered to such Limited Partner an opinion of Cleary, Gottlieb, Steen & Hamilton or other counsel similarly recognized in connection with ERISA matters (which opinion shall be addressed to and shall be reasonably satisfactory to such Limited Partner) to the effect that at the time of the Investment for which the contribution is required the Partnership should qualify as a "venture capital operating company" under ERISA (which

opinion may rely, inter alia, upon a certificate of the General Partner as to the Partnership's intention to obtain and exercise management rights of the kind described in paragraph (d)(3) of Department of Labor Regulation § 2510.3-101 with respect to such Investments and as to a description of such proposed investments) and (iii) such contribution is to be made contemporaneously with or subsequent to the closing date of the Investment to which it is related. If, by virtue of this paragraph 3.03(g), any ERISA Partner or Governmental Plan Partner is excused from paying its pro rata share of any Capital Contributions in respect of Partnership Expenses pursuant to paragraph 3.03(a)(y) (such ERISA Partner or Governmental Plan Partner, an "Uncontributing Partner"), such Uncontributing Partner will, at such time as the General Partner requires the Partners to make a contribution toward an Investment in accordance with paragraph 3.03(a)(x), (i) make an additional Capital Contribution in an amount equal to the pro rata share of Partnership Expenses with respect to which such Uncontributing Partner was excused from making a Capital Contribution by virtue of this paragraph 3.03(g), and (ii) make a payment to the General Partner of a fee (the "Late Fee") in an amount equal to such additional Capital Contribution multiplied by the product of (A) the base or prime rate announced by Chemical Bank as of the date such Capital Contribution would have been required in the absence of such excuse (the "Original Payment Date") plus two percent (2%), multiplied by (B) the number of days from the Original Payment Date until the date the

Late Fee is paid divided by 365 (which Late Fee shall not reduce such Partner's Unused Capital Commitment).

3.04 Confidentiality Regarding Investments. Notwithstanding the provisions of paragraph 3.03, if the General Partner determines that, because of a need to keep an Investment by the Partnership confidential, notifying the other Partners of the identity of an Investment pursuant to clause (x) of paragraph 3.03(a) above would cause a risk of jeopardizing that Investment or of detriment to the anticipated profits from that Investment, the General Partner may omit that information from the notice required by said clause (x). In such a case, the General Partner shall (i) include in such notice as much information as it deems prudent, in light of the risks referred to in the preceding sentence, about the nature of the Investment, and (ii) notify each other Partner of the identity of the Investment as soon as the General Partner deems such notice to be prudent, but in any event not later than the date such Investment is required to be publicly disclosed (in the case of Investments in Marketable Securities) or two (2) Business Days prior to the date such Investment is intended to be made (in the case of all Investments other than Marketable Securities).

3.05 Exclusion from Certain Investments. If, within eight (8) Business Days after a Limited Partner shall have received written notice of the identity of an Investment or written notice of a change in the use to which any contribution of capital by a Limited Partner is to be put pursuant to

paragraph 3.03(a) or within five (5) Business Days after delayed identification of an Investment in accordance with paragraph 3.04, such Limited Partner delivers to the General Partner a written opinion (addressed to the General Partner) that satisfies the requirements of the following sentence, then such Limited Partner shall be excused from its obligation to make a contribution relating to that Investment (or that part of its obligation which would cause a violation or noncompliance as referred to below), and its failure to make such contribution shall not constitute a default for the purposes of paragraph 3.08, or shall be refunded the amount of its contribution relating to that Investment (including any Uninvested Fund Income earned thereon) if such contribution has already been made as of that time. The opinion referred to in the preceding sentence shall be a written opinion of counsel to such Limited Partner (which counsel may be an employee of such Limited Partner), which opinion shall be satisfactory to the General Partner, that (i) the Limited Partner's participation in such Investment (or in the case of an excuse from part but not all of its obligation, the part of its participation in question) would result in a violation of, or noncompliance with, any law or regulation to which it or any of its Affiliates or fiduciaries is or would be subject or (ii) with respect to an ERISA Partner or Governmental Plan Partner, if the Partnership does not qualify as a "venture capital operating company" within the meaning of the "Plan Assets Regulations" (as defined below), any securities or other assets

of the Partnership would be deemed to be "plan assets" under ERISA; provided, however, that if the most recent opinion of counsel delivered pursuant to paragraph 5.02(c) hereof shall have stated that the Partnership should not have qualified as a "venture capital operating company" for the period covered thereby and if subsequently thereto the General Partner shall not have delivered an opinion of the same counsel that the Partnership should have so qualified in an earlier period or that the Securities or other assets of the Partnership would not be deemed to be "plan assets" under ERISA for other reasons articulated by such counsel, the opinion described in clause (ii) of this sentence shall be deemed to have been delivered to the General Partner. In the event that an opinion meeting the standards set forth above is delivered to the General Partner as specified above, the General Partner may then either (i) elect that the Partnership shall not make the Investment, so notify the Partners and release the Partners from their obligations to make contributions relating to that Investment or refund the amount of any such contributions already made, or (ii) elect to make the Investment notwithstanding the nonparticipation of such Partner and deliver a supplemental notice to each other Partner indicating the additional contribution, which additional contribution shall be determined on the basis of the ratio of such participating Partner's Unused Capital Commitment to the sum of the Unused Capital Commitments of all Partners participating in such Investment, required to be made by such Partner in

respect of such Investment, in which case each such Partner shall make such additional contribution within ten (10) days after having been given such new notice; provided that the Limited Partners' obligations to make additional contributions shall be subject to the provisions of paragraph 3.03(f) and no Partner shall be obligated to contribute an amount in excess of its Unused Capital Commitment as of that date. If during the period between the contribution and the refund of such amount, the Partners have made contributions for another Investment or for Partnership Expenses, in ratios that were incorrect in light of the preceding sentence, then the General Partner shall require such additional contributions, and shall refund such amounts (including any Uninvested Fund Income thereon), as are necessary to adjust the contributions of Partners for such other Investment or Investments, or for Partnership Expenses, to the correct ratio. In the event that an opinion delivered to the General Partner pursuant to this paragraph 3.05 is not satisfactory to the General Partner, the General Partner and the Limited Partner that provided such opinion shall together select a law firm with nationally recognized expertise in the areas of law addressed in the unsatisfactory opinion, and retain such firm to render an opinion as to whether the basis for excusal set forth in such unsatisfactory opinion is valid. The opinion of such mutually retained counsel shall be determinative of the validity or invalidity of any such basis for excusal. The fees and expenses

of such mutually retained counsel shall be shared equally by the Limited Partner seeking such excusal and the Partnership.

3.06 Admission of Additional Limited Partners. (a) At any time on or before the six (6) month anniversary of the date hereof, the General Partner may at its discretion cause the Partnership to admit one or more additional Limited Partners. Upon the execution and delivery of a counterpart of this Agreement, each such additional Limited Partner shall become a Limited Partner of the Partnership and shall be shown as such on the books and records of the Partnership, subject to the terms of the Agreement. The admission of an additional Limited Partner to the Partnership during such six (6) month period shall not require the approval of any Limited Partners existing immediately prior to such admission.

(b) An additional Limited Partner admitted to the Partnership after the date hereof shall contribute to the Partnership an amount equal to (a) the product of (x) such additional Limited Partner's Interest times (y) the excess of (i) the aggregate Capital Contributions of Partners previously admitted to the Partnership (other than sums drawn to pay Management Fees) over (ii) all Distributions made to Partners previously admitted to the Partnership, plus (b) interest on the average daily balance of the excess of such aggregate Capital Contributions over such Distributions at a rate equal to the base or prime rate announced by Chemical Bank as of the date of admission of such additional Limited Partner plus two percent

(2%); provided, that if, at the time of such admission, the Partnership has made one or more Investments, and if, in the opinion of the General Partner in its sole discretion, there has been a material change in the value of any such Investment since the date such Investment was made, or there has been a Disposition or Write-Down of any Investment, the General Partner may adjust the contribution required to be made by additional Limited Partners in such manner as the General Partner deems reasonable in order to reflect the effect of such events on the value of interests in the Partnership (any such adjusted contribution, the "Adjusted Price"). Upon admission of an additional Limited Partner to the Partnership, the net amount contributed by such Additional Limited Partner shall be refunded by the Partnership to Partners previously admitted to the Partnership, pro rata in accordance with the unreturned Capital Contributions of such Partners as of the date of admission of such additional Limited Partner. The amount so refunded, excluding the interest component thereof, shall be deemed added to the Unused Capital Commitments of such Partners and shall be subject to recall.

(c) No additional Limited Partner shall be admitted to the Partnership if the admission of such Limited Partner would prevent the Partnership from being classified as a partnership for federal income tax purposes, cause a dissolution of the Partnership under the Partnership Act, cause the Partnership's assets to be deemed to be "plan assets" for purposes of ERISA,

cause the Partnership to be deemed to be an "investment company" for purposes of the Investment Company Act, or would materially violate, or cause the Partnership materially to violate, any material applicable law or regulation, including any applicable federal or state securities laws.

3.07 Liability of Partners. (a) Except as provided in paragraphs 3.07(b) and 4.06, a Limited Partner shall have no liability to make contributions to the Partnership in excess of its Unused Capital Commitment as of the date of a contribution and shall not be required to lend any funds to the Partnership or to repay to the Partnership, any Partner, or any creditor of the Partnership all or any fraction of any negative balance in such Limited Partner's Capital Account or any amount distributed to the Partners pursuant to paragraph 4.02 or otherwise. Subject to paragraph 3.07(b), no Limited Partner shall have any personal liability whatsoever in its capacity as a Limited Partner, whether to the Partnership, to any of the Partners or to the creditors of the Partnership, for the debts, liabilities, contracts or any other obligations of the Partnership or for any losses of the Partnership.

(b) In accordance with the law of the State of Delaware, a limited partner of a partnership may, under certain circumstances, be required to return to such partnership, for the benefit of partnership creditors, amounts previously distributed to such partner. To the extent that a Limited Partner may be required to return capital to the Partnership under the

Partnership Act, it is the intent of the General Partner that any Distribution to any Limited Partner of Current Income, Uninvested Fund Income or Disposition Proceeds shall be deemed to be a compromise within the meaning of paragraph 17-502(b) of the Partnership Act and, except as required by law, the Limited Partner to whom any money or property is distributed shall not be required to return any such money or property to the Partnership or any creditor of the Partnership. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to make any such payment, such obligation shall be the obligation of such Limited Partner and not of the General Partner.

(c) The General Partner shall not be required to lend any funds to the Partnership or, except to the extent required by law, to make at any time any additional contribution to the Partnership that exceeds its Unused Capital Commitment as of such time. Neither the General Partner nor any Affiliate of the General Partner shall have any liability to repay out of the assets of the General Partner (including its Partnership Interest) or any Affiliate any Capital Contributions or Capital Account balance of any other Partner.

3.08 Defaulting Partner. In the event any Limited Partner shall become a Defaulting Partner, then, except to the extent the General Partner, acting in its sole discretion, agrees otherwise with such Defaulting Partner in writing, the following provisions of this paragraph 3.08 shall apply:

(a) A Defaulting Partner shall not be entitled to (i) make any further contributions (including contributions to the Investment with respect to which such Defaulting Partner initially defaulted) to the Partnership pursuant to clause (x) of paragraph 3.03(a), (ii) receive any further Distributions by the Partnership (except as provided in this paragraph 3.08), (iii) be counted as a Capital Partner for voting purposes or (iv) participate in any Consent of the Partners. No Defaulting Partner's Interest shall be counted in connection with the giving or withholding of any Consent. Each Defaulting Partner shall remain fully liable to the creditors of the Partnership, to the extent provided by law, as if such default had not occurred, and the full amount of such Defaulting Partner's Capital Commitment (and Actively Invested Capital Contributions, as the case may be) shall be included in calculating the amount of the portion of the Management Fee payable by such Defaulting Partner pursuant to paragraph 6.02.

(b) Notwithstanding anything to the contrary in this Agreement, except to the extent the General Partner, acting in its sole discretion, agrees otherwise with a Defaulting Partner in writing, no Distributions shall be made to such Defaulting Partner prior to the dissolution and liquidation of the Partnership. The Proportionate Interest of a Defaulting Partner in each Investment held by the Partnership and in the Partnership at the time of such Partner's default shall be reduced by twenty-five percent (25%) of the Proportionate Interest of the

Defaulting Partner in such Investment and in the Partnership, and the Proportionate Interest of each non-defaulting Partner in each such Investment and in the Partnership shall be increased by an amount equal to the product of (x) a fraction, the numerator of which is such Partner's Proportionate Interest in such Investment or the Partnership and the denominator of which is the Proportionate Interest of all non-defaulting Partners in such Investment or the Partnership, multiplied by (y) an amount equal to twenty-five percent (25%) of the Proportionate Interest of the Defaulting Partner in such Investment or the Partnership. The Capital Accounts of the Partners and the Capital Contributions made by the Defaulting Partner (but not the Capital Contributions of the non-defaulting Partners) shall be automatically adjusted to reflect such reductions and increases; provided, however, that nothing herein shall reduce the Unused Capital Commitment of any Partner or increase the obligations of any non-defaulting Partner. Upon a default by any Partner, each non-defaulting Partner shall have the option to increase its Capital Commitment by an amount up to such Partner's pro rata share (determined based on the ratio of such non-defaulting Partner's Capital Commitment to the aggregate Capital Commitments of all non-defaulting Partners so electing) of the Unused Capital Commitment of the Defaulting Partner, and the General Partner shall amend Schedule A hereto accordingly. A Defaulting Partner shall be entitled to receive, upon the dissolution and liquidation of the Partnership, without interest, only an amount

equal to the excess, if any, of (A) the lesser of (i) the positive balance in the Capital Account of such Partner at the time of such dissolution and liquidation (after taking into account any gain or loss allocable to such Partner), and (ii) the excess, if any, of the Capital Contributions of such Partner over all prior Distributions made to such Partner, over (B) the full amount of the Capital Contributions for which such Defaulting Partner is liable pursuant to paragraph 3.03(a)(y) to the extent not previously paid plus interest on such amount at a rate equal to the base or prime rate announced by Chemical Bank from time to time during the relevant period plus two percent (2%). The excess, if any, of the positive balance in the Capital Account of the Defaulting Partner over the amount required to be distributed to such Partner as described above shall be treated as an additional amount to be allocated to the Capital Partners other than the Defaulting Partner pursuant to paragraph 4.05 and distributed to the Partners other than the Defaulting Partner as Disposition Proceeds pursuant to paragraph 4.02. The General Partner shall reserve, solely from amounts attributable to the Defaulting Partner's Proportionate Interest, such amounts as are necessary, in its sole discretion, to pay any amounts owed to the Defaulting Partner pursuant to this paragraph. The General Partner may, in its sole discretion, Distribute to the non-defaulting Partners amounts attributable to the Defaulting Partner's Proportionate Interest in excess of the amounts so reserved, in accordance with paragraph 4.02(a).

(c) Each Limited Partner hereby Consents to the application to it of the remedies provided in this paragraph 3.08 in recognition of the risk and speculative damages its default would cause the other Partners, and further agrees that the availability of such remedies shall not preclude any other remedies which may be available at law, in equity, by statute or otherwise in respect of any default by such Limited Partner in the performance of its other obligations under this Agreement, including without limitation its obligations under paragraphs 3.07(b) and 5.04.

3.09 Commitment Transfer Option. If the Partnership encounters legal, tax or regulatory impediments to the making of a potential Investment, the General Partner may offer the Limited Partners the opportunity to reduce their Unused Capital Commitments in the Partnership by transferring a portion thereof to one or more entities organized by or on behalf of the General Partner or its Affiliates and having investment objectives, economic terms, conditions and management substantially identical, to the extent practicable, to those of the Partnership, but which would not encounter such legal, tax or regulatory impediments ("Alternative Investment Vehicles"); provided, that the General Partner or an Affiliate thereof shall serve as the general partner or in some other fiduciary capacity with respect to any such Alternative Investment Vehicle. The General Partner will use its best efforts to ensure that such transfer would occur in a manner which would not unfairly

discriminate among the Partners. However, such offer will not be made to Limited Partners whose participation, in the opinion of counsel to the Partnership, may cause or contribute to such legal, tax or regulatory impediments. Other investors may be solicited to participate in the Alternative Investment Vehicles.

ARTICLE FOUR

DISTRIBUTIONS AND ALLOCATIONS

4.01 Timing of Distributions. Distributions shall be made at the times provided below:

(a) Current Income, Fee Income and Uninvested Fund Income shall be distributed no less frequently than quarterly, within fifteen (15) days after the end of each calendar quarter during the term of the Partnership.

(b) Disposition Proceeds from an Investment that are in the form of cash or Marketable Securities shall be distributed within 60 days of the date such Disposition Proceeds are received by the Partnership. Distributions of Marketable Securities shall be made (i) in an initial tranche in an amount equal to eighty percent (80%) of the value of such Marketable Securities (determined in accordance with paragraph 6.03) and (ii) in a second tranche, on the third day following the initial tranche, in an amount equal to the amount necessary to satisfy the requirements of paragraph 4.02(a), as if all Marketable Securities had been Distributed at a value determined as of the date of the initial tranche in accordance with paragraph 4.02(e).

4.02 Amounts and Priority of Distributions. Subject to paragraphs 3.06, 3.08, 4.03, 4.06 and 5.01(b)(12), any Disposition Proceeds, Current Income, Fee Income and Uninvested Fund Income (whether or not associated with a particular Investment) shall be distributed to the Partners in accordance with the following provisions:

(a) Except as otherwise provided in this paragraph 4.02, Disposition Proceeds, Current Income and Uninvested Fund Income shall first be divided among the Capital Partners in accordance with the Preliminary Divisions, and shall then be further divided between that Capital Partner and the General Partner and distributed as follows:

(A) First, to the Capital Partner, until the cumulative Distributions to such Capital Partner pursuant to this subclause (A) equal the Basic Threshold Amount (as defined in clause (b) below);

(B) Second, fifty percent (50%) to the Capital Partner and fifty percent (50%) to the General Partner, until the cumulative Distributions to the General Partner pursuant to this subclause (B) equal 20% of the sum of the Distributions made to the Capital Partner in respect of the Basic Threshold Return (as defined in clause (b) below) and the Distributions made to the General Partner and the Capital Partner under this subclause (B); and

(C) Thereafter, eighty percent (80%) to the Capital Partner and twenty percent (20%) to the General Partner.

(b) The "Basic Threshold Amount" shall mean, for each Capital Partner as of any Calculation Date, the sum of:

(A) The amount necessary to cause such Capital Partner to receive, from all Disposition Proceeds, Current Income and Uninvested Fund Income through the Calculation Date, the following amounts (the "Return Amounts"):

(v) each Capital Contribution made by such Partner with respect to the Investment (if any) that is the basis of such Preliminary Division, plus

(w) each Capital Contribution made by such Partner with respect to each other Investment as to which a Disposition has occurred, plus

(x) such Partner's Proportionate Interest in each Write-Down Amount, plus

(y) such Partner's Allocable Share of the aggregate amount of Capital Contributions made by such Partner with respect to Management Fees and Organizational Expenses paid by the Partnership relating to the Investments taken into account in subclauses (v), (w) and (x) above, plus

(z) Capital Contributions made by such Partner with respect to Excess Unconsummated Transaction Expenses and other Partnership Expenses (other than Management Fees and Organizational Expenses); plus

(B) An amount which, together with the amounts then and previously distributed pursuant to paragraph 4.02(a),

constitutes an internal rate of return (calculated in the manner described in clause (c) below) equal to ten percent (10%) per annum, compounded annually, on the Return Amounts for the periods described in clause (c) below (such amount being the "Basic Threshold Return").

(c) The Basic Threshold Return shall be determined in each case based on the period of time from (A) the day after the date on which (i) the Capital Contribution in respect of each Investment that is taken into account in subclauses (v), (w) and (x) of clause (b)(A) above is made, (ii) the Capital Contribution in respect of Management Fee or Unconsummated Transaction Expenses is made or (iii) the Capital Contribution in respect of Organizational Expenses is made, as the case may be, through (B) the date on which the Partnership distributes the Disposition Proceeds, Current Income or Uninvested Fund Income (as the case may be). In calculating the dollar amounts required to be distributed to meet the Basic Threshold Return as of any subsequent Calculation Date, the dollar amounts corresponding to the various items included in the Basic Threshold Amount as of the immediately preceding Calculation Date shall be reduced by the actual amount of Distributions paid to the Capital Partners as of such immediately preceding Calculation Date.

(d) Fee Income (net, in the case of Break-Up Fees, of amounts payable to the General Partner in accordance with paragraph 5.03(g)) shall be divided among and distributed to the Capital Partners in accordance with their Proportionate Interests

in the Investment to which such Fee Income relates (or, if such Fee Income results from Break-Up Fees, then to the Capital Partners in accordance with their Proportionate Interests in the Partnership).

(e) Distributions may be made in cash or Marketable Securities in the discretion of the General Partner, or (in the case of liquidation Distributions) such other property as may be permitted pursuant to paragraph 10.02. In the case of Distributions of Marketable Securities, such Securities shall be valued for purposes of this paragraph 4.02 on the basis of the average of their opening sale price on the principal national securities exchange on which they are traded on each business day during the six day period commencing two (2) days prior to the date of such Distribution and ending three (3) days following the date of such Distribution, or if the principal market for such Securities is, or is deemed to be, in the over-the-counter market, their average opening "bid" price on each day during such period, as published by the National Association of Securities Dealers Automated Quotation System, or if such price is not so published, the mean between their opening "bid" and "asked" prices, if available, on each day during such period, which prices may be obtained from any reputable broker or dealer. Distributions of any Securities or other property shall be made, to the extent practicable, so that the relative proportion of such Securities and other property (as well as any cash distributed therewith) shall be the same for all Partners. In

the event a Distribution is made to a Partner that is determined not to be in conformity with this paragraph 4.02, such Partner shall be required to reimburse the Partnership for the amount of such nonconforming Distribution.

(f) Notwithstanding the Distribution provisions set forth in paragraph 4.02(a), if the cumulative historic tax liability (calculated based on the applicable highest marginal tax rates for an individual resident in California and taking into account the deductibility of state and local income taxes for federal income tax purposes) of the direct and indirect partners in the General Partner, as of any Calculation Date, with respect to income, profit and gain allocated to the General Partner pursuant to paragraph 4.05(c) in respect of all Distributions previously made pursuant to paragraph 4.02(a) and the Distribution to be made in respect of such Calculation Date, exceeds the Distributions made to the General Partner through such Calculation Date pursuant to paragraph 4.02(a), the General Partner shall receive a Distribution ("Special Tax Distribution") in an amount equal to such excess tax liability and the amount distributed to the Capital Partners pursuant to paragraph 4.02(a) shall be reduced by the amount of such excess tax liability. The Special Tax Distribution shall be derived from the Capital Partners separately on a Capital Partner/General Partner-by-Capital Partner/General Partner basis in conformity with the determinations made under paragraph 4.02(a).

(g) If, after all Investments have been disposed of and after giving effect to all Distributions made in accordance with paragraphs 4.02(a) and (f) in respect of such Investments, the aggregate amount of such Distributions with respect to any Capital Partner is less than the aggregate amount that such Capital Partner would have received pursuant to paragraph 4.02(a) if the General Partner had not previously received any Special Tax Distribution, then the General Partner shall contribute to the Partnership for Distribution to such Capital Partner an amount equal to the lesser of (x) the amount of the deficiency and (y) the sum of (A) the aggregate amount distributed to the General Partner pursuant to clauses (B) and (C) of paragraph 4.02(a) with respect to such Capital Partner and (B) the aggregate amount of any Special Tax Distributions previously made with respect to such Capital Partner.

4.03. Segregated Reserve Accounts. (a) The Partnership shall maintain an account (the "Segregated Reserve Account") for each Limited Partner (other than Affiliates of the General Partner) into which a portion (the "Holdback Portion") of Disposition Proceeds that would otherwise be distributed to the General Partner under subparagraphs 4.02(a)(B) and (C) shall be deposited. For each Fiscal Year of the Partnership, the Holdback Portion shall be a percentage equal to fifty percent (50%) of the difference of one hundred percent (100%) minus the sum of the federal, state and local marginal income tax rates for individuals resident in California in the highest income tax

bracket for such year (taking into account the deductibility of state and local income taxes for federal income tax purposes).

(b) Notwithstanding paragraph 4.03(a), no Distributions shall be withheld from the General Partner and deposited into a Limited Partner's Segregated Reserve Account if, after giving effect thereto, the balance in such Segregated Reserve Account would exceed the lesser of (A) four percent (4%) of the total Capital Commitment (or, following the end of the Commitment Period, total Capital Contributions) of such Limited Partner and (B) following the end of the Commitment Period, twenty percent (20%) of the Actively Invested Capital Contributions of such Limited Partner; provided, however, that deposits shall continue to be made into such Segregated Reserve Account under paragraph 4.03(a) hereof without a maximum ceiling if both of the following tests are met:

(A) Such Limited Partner's Actively Invested Capital Contributions equal less than thirty-five percent (35%) of the total Capital Contributions of such Limited Partner; and

(B) Assuming that each of the Investments then held by the Partnership were to be disposed of for cash at eighty percent (80%) of their Fair Value (as determined in accordance with paragraph 6.03(a)) and the proceeds therefrom, together with the amounts in the Segregated Reserve Account in respect of such Limited Partner, were to be distributed pursuant to paragraph 4.02(a), such Distributions would be insufficient to satisfy in full the

Distribution requirements for such Limited Partner under paragraph 4.02(b).

(c) As of any Calculation Date with respect to Disposition Proceeds, if the Distributions under subparagraph 4.02(a) in respect of any Limited Partner are insufficient to satisfy in full the Distribution requirements for such Limited Partner under paragraph 4.02(b), and if such Limited Partner's Segregated Reserve Account has a positive balance, then a Distribution from such Segregated Reserve Account to such Limited Partner shall be made in an amount (up to the total balance of such Account) sufficient to satisfy in full the Distribution requirements for such Limited Partner under paragraph 4.02(b), and any such Distribution shall be treated as a Distribution of Disposition Proceeds under paragraph 4.02(a).

(d) If the balance of any Limited Partner's Segregated Reserve Account at any time exceeds the maximum balance required to be deposited therein under paragraph 4.03(b), such excess shall be distributed to the General Partner.

(e) The General Partner may from time to time, in its discretion, distribute to any Limited Partner from its Segregated Reserve Account all or any portion of the remaining balance in such Account, which Distribution shall be treated as a Distribution of Disposition Proceeds under paragraph 4.02(a).

(f) Upon a dissolution of the Partnership, but prior to the Distribution of liquidation proceeds under paragraph 10.02, the remaining balance in each Limited Partner's Segregated

Reserve Account shall be distributed to the Limited Partner to the extent required pursuant to clause (c) above, and thereafter to the General Partner.

(g) For purposes of making Distributions under paragraph 4.02 as of any date of Distribution, the balance in a Limited Partner's Segregated Reserve Account as of such date shall be deemed to have been previously distributed to the General Partner in respect of such Limited Partner under paragraph 4.02(a)(B) or (C). For purposes of making Distributions under this paragraph 4.03, the balance in a Limited Partner's Segregated Reserve Account as of the date of such Distribution shall not be deemed to have been distributed to any Partner.

(h) The funds attributable to each Limited Partner's Segregated Reserve Account may be commingled and deposited in a single account and/or invested, on a pro rata basis, in Marketable Securities, as the General Partner, in its sole discretion, deems appropriate.

(i) For each Fiscal Year, any items of income or gain earned on, and any items of deduction or loss incurred in respect of, amounts deposited in a Segregated Reserve Account shall be allocated to the General Partner, and the net income or gain so realized for each Fiscal Year shall be distributed to the General Partner within sixty (60) days after the end of such Fiscal Year. If, as of the last Business Day of any Fiscal Year, the aggregate Fair Value of the assets held in the Segregated Reserve Account

is less than the Fair Value of such assets as of the last Business Day of the prior Fiscal Year (other than as a result of Distributions from the Segregated Reserve Account made in accordance with this paragraph 4.03), the General Partner shall, within sixty (60) days after the end of such Fiscal Year, contribute into the Segregated Reserve Account an amount sufficient to correct such deficit.

(j) If the General Partner determines in good faith that it is necessary or desirable for a Distribution to the General Partner to be made from the Segregated Reserve Account in order for the Partnership not to be in violation of ERISA, the General Partner may make such Distribution notwithstanding the prohibitions set forth elsewhere in this paragraph 4.03. Any Distributions pursuant to this clause (j) shall constitute "Special Subaccount Distributions". The General Partner shall restore to the Partnership, in cash, any Special Subaccount Distributions to the extent of any deficit in the Segregated Reserve Account created as a result of such Distributions as promptly as practicable after such deficit has been created.

4.04 Computations with Respect to Dispositions. For all purposes of this Agreement, whenever a portion of a Security and/or Claim included in an Investment (but not the entire amount of such Security and/or Claim) is the subject of a Disposition, that portion shall be treated as having been a separate Investment from the portion of the Investment that is retained by the Partnership, and the Partners' contributions to the

Partnership with respect to, and prior Distributions from, the Security and/or Claim a portion of which was sold shall be treated as having been divided between the sold portion and retained portion on a pro rata basis, based on the original cost (as estimated by the General Partner) of each such portion.

4.05 Allocation of Profits and Losses. (a) "Capital Account" means, with respect to any Partner, the Capital Account the Partnership shall maintain for such Partner in accordance with the following provisions:

(1) Each Partner's Capital Account shall be increased by the amount of such Partner's Capital Contributions, any income or gain allocated to such Partner pursuant to this paragraph 4.05, and the amount of any Partnership liabilities assumed by such Partner or secured by any Partnership assets distributed to such Partner.

(2) Each Partner's Capital Account shall be decreased by the amount of cash and the gross Fair Value of any other Partnership property distributed to such Partner pursuant to any provision of this Agreement, any expenses or losses allocated to such Partner pursuant to this paragraph 4.05 (including the Partner's share of expenditures described in Treasury Regulations Section 1.704-1(b)(2)(iv)(i)) and the amount of any liabilities of such Partner assumed by the Partnership.

(3) In the event any Partner's Interest (or portion thereof) is transferred in accordance with the terms of this

Agreement, the transferee shall succeed to the Capital Account of such Partner to the extent such Capital Account relates to the transferred Interest (or portion thereof).

(4) There shall be maintained two Capital Accounts for the General Partner: one in its capacity as Capital Partner and the other in its capacity as General Partner (the latter to exclude any increases or decreases attributable to its capacity as Capital Partner).

(b) For Capital Account purposes, all items of income, gain, loss, deduction and credit shall be allocated among the Partners in a manner such that if the Partnership were dissolved, its affairs wound up and its assets distributed to the Partners in accordance with their respective Capital Account balances immediately after making such allocation, such Distributions would, as nearly as possible, be equal to the Distributions that would be made pursuant to paragraph 4.02(a) and (d). For purposes of making allocations pursuant to this paragraph 4.05(b) prior to the dissolution of the Partnership, the assets held by the Partnership on any Calculation Date (as to which a Disposition has not occurred as of such Calculation Date) shall be deemed to have a value equal to their basis for Capital Account purposes reduced by any Write-Down Amount.

(c) For federal, state and local income tax purposes, items of income, gain, loss and deduction shall be allocated to the Partners in accordance with the allocations of the corresponding items for Capital Account purposes under this

paragraph 4.05, except that items with respect to which there is a difference between tax and book basis will be allocated in accordance with Section 704(c) of the Code, the Treasury Regulations thereunder, and Treasury Regulations Section 1.704-1(b)(4)(i).

(d) The provisions of paragraph 4.05(a) and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and Temporary Treasury Regulations Section 1.704-1T(b) and shall be interpreted and applied in a manner consistent with such Regulations. The General Partner shall be authorized to make appropriate amendments to the allocations of items pursuant to this paragraph 4.05 if necessary in order to comply with Section 704 of the Code or applicable Treasury Regulations thereunder; provided that no such change shall have an adverse effect upon the amount distributable to any Partner pursuant to this Agreement.

(e) Notwithstanding any provision set forth in this paragraph 4.05, no item of deduction or loss shall be allocated to a Partner to the extent the allocation would cause a negative balance in such Partner's Capital Account (after taking into account the adjustments, allocations and distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6)) that exceeds the amount that such Partner would be required to reimburse the Partnership pursuant to this paragraph or under applicable law. In the event some but not all of the Partners

would have such excess Capital Account deficits as a consequence of such an allocation of loss or deduction, the limitation set forth in this paragraph 4.05(e) shall be applied on a Partner by Partner basis so as to allocate the maximum permissible deduction or loss to each Partner under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations. All deductions and losses in excess of the limitations set forth in this paragraph 4.05(e) shall be allocated to the General Partner. In the event any loss or deduction shall be specially allocated to a Partner pursuant to either of the two preceding sentences, an equal amount of income of the Partnership shall be specially allocated to such Partner prior to any allocation pursuant to paragraph 4.05(b).

(f) In the event any Partner unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6), items of Partnership income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate as quickly as possible any deficit balance in its Capital Account in excess of that permitted under paragraph 4.05(e) created by such adjustments, allocations or distributions. Any special allocations of items of income or gain pursuant to this paragraph 4.05(f) shall be taken into account in computing subsequent allocations pursuant to this Article Four so that the net amount of any items so allocated and all other items allocated to each Partner pursuant to this Article Four shall, to the extent possible, be equal to the net amount that would have been

allocated to each such Partner pursuant to the provisions of this Article Four if such unexpected adjustments, allocations or distributions had not occurred.

(g) In the event the Partnership incurs any nonrecourse liabilities, income and gain shall be allocated in accordance with the "minimum gain chargeback" provisions of Sections 1.704-1(b)(4)(iv) and 1.704-2 of the Treasury Regulations.

(h) The Capital Accounts of the Partners shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f) to reflect the Fair Value of Partnership property whenever an Interest in the Partnership is relinquished to the Partnership, whenever an Additional Limited Partner is admitted to the Partnership in accordance with paragraph 3.06 at an Adjusted Price, upon any termination of the Partnership within the meaning of Section 708 of the Code, and when the Partnership is liquidated pursuant to Article Ten, and shall be adjusted in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(e) in the case of a Distribution of any property (other than cash).

(i) All elections, decisions and other matters concerning the allocation of profits, gains and losses among the Partners, and accounting procedures, not specifically and expressly provided for by the terms of this Agreement, shall be determined by the General Partner in good faith. Such determination made in good faith by the General Partner shall be final and conclusive as to all Partners.

(j) In the event of a Transfer of a Limited Partner's Interest permitted under paragraph 9.01, at the request of the Limited Partner transferring such Interest or its successor in interest that the Partnership make an election under Section 754 of the Code, if such election would not materially adversely affect the interests of the Capital Partners as opposed to the interests of the General Partner, the General Partner may, in its sole discretion, cause the Partnership to make such election (which election, unless properly revoked, will, in accordance with Section 754 of the Code and the Treasury Regulations thereunder, be binding with respect to all subsequent Transfers of Interests in the Partnership and with respect to certain Distributions of property by the Partnership).

4.06 Tax Advances. To the extent the Partnership is required by law to withhold or to make tax payments on behalf of or with respect to any Partner (e.g., backup withholding or withholding with respect to Foreign Investors) ("Tax Advances"), the General Partner may withhold such amounts and make such tax payments as so required. All Tax Advances made on behalf of a Partner, plus interest thereon at a rate equal to the base or prime rate announced by Chemical Bank as of the date of such Tax Advances plus two percent (2%), shall, at the option of the General Partner, (i) be promptly paid to the Partnership by the Partner on whose behalf such Tax Advances were made (such payment not to constitute a Capital Contribution nor to reduce the Unused Capital Commitment of such Partner) or (ii) be repaid by reducing

the amount of the current or next succeeding Distribution or Distributions which would otherwise have been made to such Partner or, if such Distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Partner. Whenever the General Partner selects option (ii) pursuant to the preceding sentence for repayment of a Tax Advance by a Partner, for all other purposes of this Agreement such Partner shall be treated as having received all Distributions (whether before or upon liquidation) unreduced by the amount of such Tax Advance and interest thereon. Each Partner hereby agrees to reimburse the Partnership and the General Partner for any liability with respect to Tax Advances required on behalf of or with respect to such Partner.

ARTICLE FIVE

RIGHTS AND DUTIES OF THE GENERAL PARTNER

5.01 Management. (a) The management and operation of the Partnership shall be vested in the General Partner. The General Partner, upon the formation of the Partnership, will be subject to the control and management of TPG Advisors, Inc., a Delaware corporation; the General Partner shall notify the Limited Partners if its control or management changes.

(b) The General Partner shall have the rights, powers and obligations required to be vested in or assumed by a general partner of a limited partnership under the Partnership Act and otherwise as provided by law. Except as otherwise expressly provided in this Agreement or by law, the General Partner is

hereby vested with the full, exclusive and complete right, power and discretion to operate, manage and control the affairs of the Partnership and to make all decisions affecting Partnership affairs, as deemed proper, convenient or advisable by the General Partner to carry on the business of the Partnership as described in paragraph 2.04. Without limiting the generality of the foregoing, all of the Partners hereby specifically agree and consent that the General Partner may, on behalf of the Partnership, at any time, and without further notice to or consent from any Limited Partner (except to the extent otherwise provided in this Agreement), do the following:

(1) make Investments consistent with the purposes of the Partnership; provided that the Partnership may not purchase interests or invest in investment partnerships (or similar entities) in which it intends to maintain solely a passive role if such investment partnerships (or similar entities) provide for carried interest or management fees to be paid to any Person (it being understood that stock options, "cheap stock" and similar equity incentive plans for management of portfolio companies shall not be deemed subject to this clause);

(2) make Dispositions, on such terms as the General Partner shall determine to be appropriate;

(3) provide, or arrange for the provision of, managerial assistance to Portfolio Companies and any Affiliates thereof;

(4) incur all expenditures permitted by this Agreement and, to the extent that funds of the Partnership are available, pay all expenses, debts and obligations of the Partnership;

(5) employ and dismiss from employment any and all consultants, custodians of the assets of the Partnership or other agents;

(6) sue, prosecute, settle or compromise all claims against third parties and compromise, settle or accept judgment in respect of claims against the Partnership and execute all documents and make all representations, admissions and waivers in connection therewith;

(7) create special purpose entities to make or pursue Investments either alone or as a joint venturer with other Persons;

(8) except as otherwise provided in this Agreement, enter into, execute, amend, supplement, acknowledge and deliver any and all contracts, agreements or other instruments as the General Partner shall determine to be appropriate in furtherance of the purposes of the Partnership;

(9) pending the making of any Investment, the making of Distributions to the Partners after any Disposition or the return of Capital Contributions pursuant to paragraph 3.03(e), make temporary investments of Partnership capital in (i) United States government and agency obligations; (ii)

commercial paper rated not lower than P-1; (iii) interest-bearing deposits in United States banks with an unrestricted surplus of at least $250,000,000, maturing within one (1) year; (iv) money market mutual funds with assets of not less than $750,000,000, substantially all of which assets consist of items described in clause (i), (ii) or (iii); or (v) investments designed to hedge the investments described in clauses (i) - (iv) above.

(10) admit an assignee of all or any fraction of a Limited Partner's Interest to be a Substituted Limited Partner in the Partnership pursuant to and subject to the terms of paragraph 9.03;

(11) act as the Tax Matters Partner and exercise any authority permitted the Tax Matters Partner under the Code and Treasury Regulations, and take whatever steps the General Partner, in its reasonable discretion, deems necessary or desirable to perfect such designation, including filing any forms and documents with the Internal Revenue Service and taking such other action as may from time to time be required under Treasury Regulations; and

(12) withhold amounts otherwise distributable to the Partners, in its discretion, in order to maintain the Partnership in a sound financial and cash position and to make such reasonable provisions as the General Partner in its discretion deems necessary or advisable for any and all liabilities and obligations, contingent or otherwise, of the

Partnership (other than the obligation of the Partnership to make or pay for Investments).

(c) Third parties dealing with the Partnership may rely conclusively upon any certificate of the General Partner to the effect that it is acting on behalf of the Partnership. The signature of the General Partner shall be sufficient to bind the Partnership in every manner to any agreement or on any document, including, but not limited to, documents drawn or agreements made in connection with the acquisition or disposition of any Investment or other properties in furtherance of the purposes of the Partnership.

5.02 Duties and Obligations of the General Partner.

(a) The General Partner will manage and operate the Partnership, and will control the making and disposition of Investments.

(b) So long as equity participation in the Partnership by "benefit plan investors" is "significant" (as such terms, or terms succeeding thereto with the same objective, are used in the regulations of the Department of Labor included in 29 CFR § 2510.3-101(d) (the regulations contained in 29 CFR § 2510.3-101 or successor regulations, the "Plan Assets Regulations")), the General Partner shall endeavor to conduct the affairs of the Partnership so that the Partnership will qualify as a "venture capital operating company" within the meaning of the Plan Assets Regulations or otherwise, so that the assets of the Partnership will not be "plan assets", within the meaning of the Plan Assets

Regulations, of any Partner. In furtherance of the foregoing obligation of the General Partner to endeavor to so conduct the affairs of the Partnership, so long as equity participation in the Partnership by "benefit plan investors" (as defined in the Plan Assets Regulations) is "significant," (as defined in the Plan Assets Regulations) the General Partner shall endeavor (i) to ensure that the first Investment of the Partnership constitutes a "venture capital investment" (as defined in the Plan Assets Regulations) and that, on the "initial valuation date" (as defined in the Plan Assets Regulations) of the Partnership, at least fifty percent (50%) of the Partnership's assets (other than short-term investments pending long-term commitment or distribution to Partners), valued at cost, are invested in "venture capital investments," (ii) to ensure that, during the period beginning on such "initial valuation date" of the Partnership and ending on the last day of the first "annual valuation period" (as defined in the Plan Assets Regulations) of the Partnership, the Partnership, in the ordinary course of its business, exercises "management rights" (as defined in the Plan Assets Regulations) with respect to one or more of the "operating companies" (as defined in the Plan Assets Regulations) in which it invests, and thereafter (iii) to ensure that, at some time during each "annual valuation period" of the Partnership, at least fifty percent (50%) of the Partnership's assets (other than short-term investments pending long-term commitment or distribution to Partners), valued at cost, are invested in

"venture capital investments" or "derivative investments" (as defined in the Plan Assets Regulations) and (iv) to ensure that, during the twelve (12) month period following the expiration of each "annual valuation period" of the Partnership, the Partnership, in the ordinary course of its business, exercises "management rights" with respect to one or more of the "operating companies" in which it invests; provided that (x) clauses (iii) and (iv) shall not apply during any "distribution period" (as defined in the Plan Assets Regulations) established by the Partnership (and the General Partner shall not cause the Partnership to make a "new portfolio investment" (as defined in the Plan Assets Regulations) so as to terminate such "distribution period" if, after the termination of such "distribution period," the assets of the Partnership would constitute "plan assets" of any Partner) and (y) if the Plan Assets Regulations, as in effect on the date hereof, are subsequently amended, modified or repealed after the date hereof, the General Partner shall not be required to endeavor to take the foregoing actions if, but only to the extent, such actions are not necessary to qualify the Partnership as a "venture capital operating company" or would not enable the Partnership to qualify as a "venture capital operating company," under the terms of the Plan Assets Regulations as so amended or modified (or if repealed), in which case the General Partner shall endeavor to conduct the affairs of the Partnership so that the assets of the Partnership will not be "plan assets" of any Partner.

(c) The General Partner shall, within twenty (20) days after the last day of each "annual valuation period", (as defined in 29 CFR § 2510.3-101(d)(5)) deliver to each ERISA Partner and Governmental Plan Partner an opinion (addressed to the ERISA Partners and Governmental Plan Partners) of Cleary, Gottlieb, Steen & Hamilton or other counsel similarly recognized in connection with ERISA matters, dated as of the last day of each "annual valuation period", which opinion (A) with respect to the first "annual valuation period", shall state whether the Partnership should have qualified as a "venture capital operating company" for the period beginning on the date on which the Partnership made the first Investment that caused it to qualify as a "venture capital operating company" and ending on the last day of such first "annual valuation period", or (B) with respect to each subsequent "annual valuation period", shall state whether the Partnership should have qualified as a "venture capital operating company" for the 12-month period ending on the last day of such "annual valuation period". Each opinion referred to in the prior sentence (x) may rely, inter alia, upon a certificate of the General Partner dated as of the last day of each such "annual valuation period" as to the exercise of management rights (of the kind described in 29 CFR § 2510.3-101(d)(3)) with respect to one or more Investments during the appropriate period preceding the date of the certificate and as to a description of the Partnership's Investments and (y) shall state whether the Partnership has included in a certification to such counsel a

statement to the effect that during such "annual valuation period" at least fifty percent (50%) of the Partnership's assets (other than short-term investments pending long-term commitment or Distribution to Partners), valued at cost, were invested in venture capital investments as described in 29 CFR § 2510.3-101(d)(3)(i). If the opinion described in this paragraph 5.02(c) is not affirmative, each Limited Partner to which it is delivered may, within thirty (30) days of receiving such opinion, elect to become an "Inactive Partner" as such term is defined in paragraph 5.03(e) hereof.

5.03 Other Businesses of Partners; Default by General Partner; Certain Fees. (a) Except as otherwise Consented in writing by sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners (in the case of clauses (i)-(v) hereof), (i) the General Partner shall not withdraw from the Partnership except pursuant to the express terms hereof, (ii) the General Partner shall devote to the Partnership, and to Persons that the Partnership acquires or in which the Partnership holds Investments, substantially all of its business time and attention (other than time devoted to Parallel Investment Entities, Alternative Investment Vehicles and to Persons which are acquired by any Parallel Investment Entity or Alternative Investment Vehicle or in which such a vehicle or entity holds investments), (iii) so long as TPG GenPar, L.P. is the General Partner of the Partnership, it shall cause the Principals and their Affiliates not to act as managers of, or the primary source of transactions for, other pooled investment funds the principal objectives of

which are investment in Securities of or Claims against domestic corporate Persons of which such fund would have effective control (it being understood that the Principals and Persons controlled by them shall not be restricted, among other things, from involvement in pooled investment funds the primary objectives of which are investment in real estate and real estate-related Securities and/or foreign investment and/or passive public market securities trading or similar "hedging" transactions) until the earlier of (A) the time that at least seventy-five percent (75%) of the Capital Commitments of the Partnership has either been (x) placed in Investments or (y) used or reserved for Partnership Expenses and (B) the expiration or early termination of the Commitment Period, (iv) during the Commitment Period, any non-passive domestic corporate investment opportunity presented to the General Partner or the Principals which the General Partner reasonably believes to be suitable for the Partnership shall be offered to the Partnership, unless the Advisory Committee advises the General Partner that such investment opportunity need not be so offered, (v) either James G. Coulter or William S. Price shall remain actively involved in the Partnership, shall devote to the Partnership, and to Persons that the Partnership acquires or in which the Partnership holds Investments, a majority of his business time and attention (other than time devoted to Parallel Investment Entities, Alternative Investment Vehicles and to Persons which are acquired by any Parallel Investment Entity or Alternative Investment Vehicle or

in which such a vehicle or entity holds investments) and shall not be subject to a final, non-appealable conviction for a material violation of federal or state securities laws and (vi) David Bonderman shall remain actively involved in the Partnership, shall devote to the Partnership, and to Persons that the Partnership acquires or in which the Partnership holds Investments, a majority of his business time and attention (other than time devoted to Parallel Investment Entities, Alternative Investment Vehicles and to Persons which are acquired by any Parallel Investment Entity or Alternative Investment Vehicle or in which such a vehicle or entity holds investments) and shall not be subject to a final, non-appealable conviction for a material violation of federal or state securities laws; provided, however, that nothing in this paragraph 5.03(a) shall be construed as prohibiting the Principals from investing on their own account or that of their associates and Affiliates in investment opportunities related to investments existing as of the date of this Agreement. The remedies described in paragraphs 5.03(b), 5.03(c), 5.03(d) and 5.03(e) shall be the sole remedies of the Partnership and its Partners in the event of any breach by the General Partner of the covenants contained in this paragraph 5.03(a)(i)-(vi) (it being understood that nothing in this paragraph shall be construed as limiting the rights of the Limited Partners under paragraph 10.01(v) of this Agreement). Within thirty (30) days of the occurrence of an event described in paragraphs 5.03(b), 5.03(c), 5.03(d) or 5.03(e) the General

Partner shall use its best efforts to demonstrate to the Limited Partners its ability to it to mitigate the adverse consequences of such event.

(b) In the event (a "GP Withdrawal Event") that (x) the General Partner breaches the covenants contained in clause (i) or (ii) of paragraph 5.03(a) and, in the case of paragraph 5.03(a)(ii), such breach continues for sixty (60) days following notice thereof from a majority of the Advisory Committee members, the Limited Partners, by Consent of sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners given no later than sixty (60) days after the sending of written notice by a majority of the Advisory Committee members to the Limited Partners of the occurrence of the GP Withdrawal Event, may elect (i) to terminate the Commitment Period, (ii) to cause the General Partner to withdraw from the Partnership and elect a successor General Partner in accordance with the provisions of paragraph 8.02 or (iii) dissolve the Partnership in accordance with the provisions of paragraph 10.01.

(c) In the event that the Principals engage in a business described in paragraph 5.03(a)(iii) or the General Partner fails to adhere to paragraph 5.03(a)(iv), the Limited Partners, by Consent of sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners given no later than sixty (60) days after the sending of written notice by a majority of the Advisory Committee members to the Limited Partners of the occurrence of such an event, may elect to (i) terminate the

Commitment Period or (ii) dissolve the Partnership in accordance with the provisions of paragraph 10.01.

(d) In the event of noncompliance with paragraph 5.03(a)(v) which continues for sixty (60) days following the sending of written notice thereof by a majority of the Advisory Committee members (which notice shall be sent immediately upon the determination by a majority of the Advisory Committee members that such noncompliance exists), the Commitment Period shall terminate; provided that any termination of the Commitment Period pursuant to this paragraph 5.03(d) may be waived by Consent of sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners given no later than sixty (60) days after the sending of written notice by the majority of the Advisory Committee members to the Limited Partners of the failure to adhere to the requirements contained in clause (v) of paragraph 5.03(a).

(e) In the event of noncompliance with paragraph 5.03(a)(vi) which continues for sixty (60) days following the sending of written notice thereof by a majority of the Advisory Committee members (which notice shall be sent immediately upon the determination by a majority of the Advisory Committee that such noncompliance exists), each Limited Partner may elect to become an "Inactive Partner" by sending written notice of such election to the General Parter no later than sixty (60) days after the sending of written notice by the majority of the Advisory Committee members to the Limited Partners of the failure to cure, after notice thereof, the noncompliance with the

requirements contained in clause (vi) of paragraph 5.03(a). Upon such an election, an Inactive Partner shall be treated for all purposes under this Agreement as if the Commitment Period had terminated with respect to such Partner (including, without limitation, the substitution of the term Capital Commitments with the term Actively Invested Capital Contributions in the definition of Management Fee Percentage as such definition applies to such Partner). No such election shall affect the rights of the non-electing Limited Partners or the obligations of the General Partner or the Principals to such non-electing Limited Partners during the remainder of the Commitment Period.

(f) The General Partner and its Affiliates may invest, participate as principals, or both, in any venture in which the Partnership, in good faith, has declined to invest. The General Partner shall notify the Advisory Committee of each such investment or declination.

(g) In the event that the General Partner receives Break-Up Fees, such Break-Up Fees shall be deemed to have been received by the General Partner as agent for the Partnership and distributed by the General Partner as follows: (i) first, to compensate the General Partner for any unreimbursed expenses (including, for the purposes of this paragraph, travel and other expenses relating to the discovery, investigation or development of investment opportunities) incurred by it in connection with such potential Investment; (ii) second, to compensate the General Partner for any unreimbursed expenses (including, for the purposes of this paragraph, travel and other expenses relating to

the discovery, investigation or development of investment opportunities) incurred by it in connection with prior potential Investments that were not consummated; and (iii) third, as described in paragraph 4.02.

(h) Subject to the foregoing and to paragraph 5.03(i) below, any Partner and any Affiliate of any Partner may engage in or possess any interest in other business ventures of any kind, nature or description, independently or with others. The General Partner will not engage in any business other than as described in this Agreement. Neither the Partnership nor any Partner shall have any rights or obligations by virtue of this Agreement or the partnership relation created hereby in or to such independent ventures in which any Partner and its Affiliates are permitted to be engaged under the terms hereof or the income or profits or losses derived therefrom. The Partners recognize and Consent that the Partnership may enter into transactions with the General Partner and its Affiliates; provided that such transactions shall be on terms no less favorable to the Partnership than terms that could have been obtained from an unaffiliated party. The Partners further recognize and Consent that Affiliates of the General Partner may receive fees and/or retainers from Portfolio Companies, and neither the Partnership nor any Partner shall have any interest therein by virtue of this Agreement or the partnership relation created hereby; provided that (i) such services would otherwise customarily be provided to such Portfolio Companies by third parties and are not services customarily provided by the general partner of an investment fund

as part of its management function; (ii) the fees and/or retainers charged by the General Partner and its Affiliates for such services (x) are not investment banking, financial advisory or directors fees and (y) do not exceed the amount customarily charged by third parties for such services; and (iii) neither the General Partner nor any of its Affiliates shall charge a transaction fee in connection with the making by the Partnership of any Investment in any Person; and provided, further, that such fees and retainers shall be subject to the prior Consent of the Advisory Committee.

(i) Except for co-investments permitted by this paragraph 5.03(i), neither the General Partner nor any Affiliate of the General Partner shall invest in any potential Investment presented to the Partnership unless the Partnership has declined to consummate such potential Investment. The General Partner shall notify the Advisory Committee of each such declination. Subject to the limitations expressed in this paragraph 5.03, each Partner and its Affiliates shall each have the right to take for its own account (individually or in another capacity) or to recommend to others any investment opportunity; and the Partners hereby Consent that any Partner (including the General Partner) and its Affiliates may co-invest with the Partnership in the Securities or Claims of any Person, with the prior consent of the General Partner; provided that (A) the General Partner and its Affiliates shall not co-invest, and the General Partner shall not consent to any co-investment by any Limited Partner or its Affiliates, with the Partnership unless the Partnership has, in

the opinion of the General Partner, been given the opportunity to invest in the amount and types of such Securities or Claims as is appropriate and (B) the General Partner and its Affiliates shall co-invest with the Partnership only by investing in the same Securities or Claims, and on the same terms, as the Partnership; and provided further that, for the purposes of this Agreement, a co-investment by a Partner or its Affiliate, in Securities or Claims in which the Partnership invests, which investment is the result of the discretionary action of a Person who either (x) did not know of the Partnership's existing or proposed investment at the time such Person invested on behalf of such Partner or Affiliate or (y) knew of the Partnership's Investment only as a result of generally available public information or information provided otherwise than by or through such Partner or its Affiliates, shall not be considered a co-investment for the purposes of this Agreement. Subject to the limitations expressed in this paragraph 5.03, the Partners further Consent that any Partner may offer to any other Partner, in its individual capacity, the opportunity to invest in, or make loans to, any Persons in which the Partnership acquires or holds Investments, and no other Partner shall have any right to participate, or any interest, therein by virtue of this Agreement or the partnership relation created hereby.

5.04 Reimbursement, Exculpation and Indemnification. (a) In the absence of fraud, willful misconduct or gross negligence by such Person (or any of its Affiliates), and provided such Person (and its Affiliates) shall act in good faith consistent with applicable law and the provisions of this

Agreement, no Indemnified Person shall be liable to any other Partner or the Partnership in connection with any of the transactions contemplated by this Agreement (i) for any mistake in judgment, (ii) for any action or inaction taken or omitted, or (iii) for any loss due to the mistake, action, inaction or negligence of any broker or other agent that is not an Indemnified Person or the dishonesty, fraud or bad faith of any broker or other agent. Any Indemnified Person may consult with legal counsel and accountants in respect of Partnership affairs and, except in respect of matters in which there is an alleged conflict of interest, shall be fully protected and justified in any action or inaction which is taken or omitted in good faith, in reliance upon and in accordance with the opinion or advice of such counsel or accountants, provided that they shall have been selected in good faith. In determining whether an Indemnified Person acted in good faith and with the requisite degree of care, such Indemnified Person shall be entitled to rely on reports and written statements of the directors, officers and employees of a Person in which the Partnership holds Investments unless the Person to be exculpated hereby believed that such reports or statements were not true and complete.

(b) If an Indemnified Person (or any of its respective successors or assigns) was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including any action by or in the right of the

Partnership), by reason of any actions or omissions or alleged acts or omissions arising out of such Indemnified Person's activities acting on behalf of the General Partner, the Partnership, an Affiliate of the Partnership, or an entity in which the Partnership holds an Investment, the Partnership shall, to the fullest extent permitted by law, indemnify such Indemnified Person and hold such Indemnified Person harmless against losses, damages or expenses for which such Person has not otherwise been reimbursed (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such Indemnified Person in connection with such action, suit or proceeding; provided that all of the conditions described in clauses (i) - (v) below are satisfied:

(i) such activities were performed in good faith either on behalf of the Partnership or in furtherance of the interests of the Partnership in Persons (and their Affiliates) in which the Partnership holds, or may seek to make, an Investment;

(ii) such activities were performed in a manner believed by such Indemnified Person to be within the scope of the authority conferred by this Agreement or by law or by the Consent of the Partners;

(iii) such Indemnified Person (A) was not guilty of fraud, gross negligence or wilful misconduct and (B) in respect of any criminal action or proceeding, did not know that his or her conduct was unlawful;

(iv) such Indemnified Person, if otherwise entitled to indemnification from the Partnership hereunder, shall first seek recovery under any insurance policies by which such Person is covered and, if other than the General Partner, shall obtain the written consent of the General Partner, prior to entering into any compromise or settlement which would result in an obligation of the Partnership to indemnify such Person; and

(v) if liabilities arise out of the conduct of the business and affairs of the Partnership and any other Person for which the Person entitled to indemnification from the Partnership hereunder was then acting in a similar capacity, the amount of the indemnification provided by the Partnership shall be limited to the Partnership's proportionate share thereof as determined in good faith by the General Partner in light of its fiduciary duties to the Partnership and the Limited Partners.

(c) Expenses (including attorneys' fees) incurred by an Indemnified Person in defending a civil or criminal action, suit or proceeding may be paid by the Partnership in advance of the final disposition of such action, suit or proceeding; provided that if an Indemnified Person is advanced such expenses and it is later determined that such Indemnified Person was not entitled to indemnification with respect to such action, suit or proceeding, such Indemnified Person shall reimburse the Partnership for such advances.

(d) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless any Limited Partner or its Affiliates against losses, damages or expenses for which such Person has not otherwise been reimbursed (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such Person in connection with claims, other than claims made on behalf of the Partnership or the General Partner with respect to a breach by such Limited Partner of its obligations under this Agreement, arising out of such Limited Partner's capacity as a Partner. Each Limited Partner by execution of this Agreement represents and warrants to every other Partner and to the Partnership that such Limited Partner will not take any action not provided for herein which would cause such Limited Partner to become liable for the obligations of the Partnership or otherwise cause any other Person to reasonably believe that such Limited Partner is a general partner of the Partnership.

(e) The General Partner shall cause the Partnership to purchase such insurance as the General Partner may deem necessary or appropriate in order to insure the General Partner and/or any other Indemnified Person against any liability for any breach or alleged breach of the fiduciary obligations of such Indemnified Person to the Partnership for which such Person would be entitled to seek indemnification hereunder. The cost of such insurance shall be a Partnership Expense.

ARTICLE SIX

GENERAL PARTNER OBLIGATIONS;
EXPENSES; VALUATION

6.01 Expenses. (a) The General Partner will pay the fees of Merrill Lynch & Co. in connection with its role as placement agent of the Interests and financial advisor to the General Partner in connection with formation of the Partnership. The Partnership shall pay the organizational expenses of the Partnership (including fees and expenses of counsel to the Partnership and the General Partner, travel expenses of personnel of the General Partner and Merrill Lynch & Co. and other direct costs), up to a maximum of one million dollars ($1,000,000) ("Organizational Expenses"). Any organizational expenses in excess of one million dollars ($1,000,000) shall be paid by the General Partner.

(b) The Partnership shall pay for (or shall reimburse the General Partner for its payment of) all expenses relating to the Partnership's operations (other than expenses resulting from the fraud, gross negligence or willful misconduct of the General Partner or from conduct otherwise not meeting the standards set forth in paragraph 5.04(b), and expenses required to be borne by the General Partner pursuant to this paragraph 6.01) including, without limitation, fees, costs and expenses payable to Persons other than the General Partner (including Affiliates of the General Partner, to the extent that fees payable to such Affiliates do not exceed the amount customarily charged by third parties for services similar to those actually provided) directly

related to the discovery, investigation, development, making, management and disposition of Investments (including potential Investments that are not consummated), travel expenses of personnel of the General Partner incurred in connection with Investments that are consummated, fees and expenses of custodians, consultants, outside counsel and accountants, the cost of insurance, any taxes, fees or other governmental charges levied against the Partnership, expenses relating to any governmental inquiry or public relations undertaking, and the costs and expenses of any litigation involving the Partnership and the amount of any judgments or settlements paid in connection therewith, relating to the business, activities and interests of the Partnership.

(c) The General Partner shall pay (i) all expenses (other than fees, costs and expenses payable to Persons other than the General Partner which are required to be paid by the Partnership pursuant to clause (b) above and travel expenses of personnel of the General Partner incurred in connection with Investments that are consummated) related to its own activities in connection with consummation of Investments and the discovery, investigation or development of investment opportunities, whether or not resulting in the making of an Investment, including without limitation, any general or background investigation of industries suitable for investment and (ii) all other day-to-day expenses of the General Partner, including salaries and other personnel expenses of its employees.

6.02 Management Fee. (a) In consideration of its services, the General Partner or an Affiliate of the General Partner designated by the General Partner shall be entitled to receive annually a management fee (the "Management Fee") from the Partnership equal to the Management Fee Percentage, with each Limited Partner's allocable portion thereof being calculated based on such Limited Partner's Interest in the Partnership during the Commitment Period (or, in respect of each period which occurs after expiration or early termination of the Commitment Period, such Limited Partner's Actively Invested Capital Contributions).

(b) The Management Fee shall be paid out of distributable income and gain of the Partnership and paid to the General Partner in semi-annual installments in advance on the first day of each January (or, at the General Partner's option in any period, on December 31 of the year prior to the year in respect of which such Management Fee is payable) and July and shall (in the case of installments of Management Fee payable in respect of each period which occurs after expiration or early termination of the Commitment Period) be based upon the aggregate amount of Actively Invested Capital Contributions made to the Partnership as of the commencement of each such period. The Management Fee for the period commencing on the date hereof to the end of the first fiscal period shall be based on Capital Commitments as of the date hereof, pro rated for that portion of the semi-annual period for which it applies.

(c) If the distributable income and gain of the Partnership are not sufficient to cover the Management Fee payable in respect of any period, the additional amount necessary to cover the Management Fee allocable to a Partner shall be drawn down from the Unused Capital Commitments of such Partner (such draw shall be considered to have been made in respect of a Partnership Expense pursuant to paragraph 3.03(a)(y)). Any amount drawn down from the Unused Capital Commitments of a Partner pursuant to the preceding sentence may, to the extent such Partner receives subsequent Distributions, be added to the Unused Capital Commitments of such Partner and be subject to recall.

(d) In addition to the amounts required to be paid by additional Limited Partners pursuant to paragraph 3.06 hereof, an additional Limited Partner admitted to the Partnership after the date hereof shall pay to the General Partner (or its designated Affiliate) its allocable share (based on such Limited Partner's Interest in the Partnership) of the aggregate Management Fee that would have been payable by the Partnership from the date hereof until the date of admission of such Limited Partner if such additional Limited Partner (and all other Limited Partners admitted to the Partnership on or prior to the date of admission of such Limited Partner) had been admitted to the Partnership on the date hereof, together with interest thereon from the dates on which installments of Management Fee were payable by the Partnership until the date of such admission at the base or prime

rate then offered by Chemical Bank. The amount paid by such Limited Partner in respect of such Management Fee (exclusive of the amount paid as interest thereon) shall constitute a Capital Contribution of such Limited Partner and shall reduce the Unused Capital Commitment of such Limited Partner. If, as a result of admission of additional Limited Partners or increase in Capital Commitments, any Limited Partner has borne more than the amount of Management Fee that would have been chargeable against its interest in the Partnership had such admission or increase occurred on the date hereof, such excess shall be refunded by the General Partner, and shall be added to the Unused Capital Commitment of such Limited Partner.

6.03 Valuation. (a) For all purposes of this Agreement other than paragraph 8.02 (including, without limitation, determinations of Fair Value made in connection with Write-Downs (subject to the provisions of paragraph 7.03(g)), and determinations of Fair Value made pursuant to paragraphs 4.03, 4.05(a)(2) and 4.05(h)), the calculation of the Fair Value of any Investment or of any other Partnership asset shall be made by the General Partner. In determining the Fair Value of any Investment or of any other Partnership asset, the General Partner shall apply generally accepted accounting principles and the following: (i) the value to be arrived at should represent the present cash value of such asset (net of actual and contingent associated liabilities and estimated costs of sale), without regard to temporary market fluctuations or aberrations and assuming a plan

of orderly disposition of such asset which does not involve unreasonable delays in cash realization; (ii) Marketable Securities will (except as provided in paragraph 4.02(e)) be valued taking into account the average of their last sale price on the principal national securities exchange on which they are traded on each business day during the one-month period ending immediately prior to the date of the determination, or if no sales occurred on any such day, the mean between the closing "bid" and "asked" prices on such day, or if the principal market for such Securities is, or is deemed to be, in the over-the-counter market, their average closing "bid" price on each day during such period, as published by the National Association of Securities Dealers Automated Quotation System, or if such price is not so published, the mean between their closing "bid" and "asked" prices, if available, on each day during such period, which prices may be obtained from any reputable broker or dealer; and (iii) all valuations shall be made taking into account all factors which might reasonably affect the sales price of the asset in question, including, without limitation, if and as appropriate, the existence of a control block, the lack of a market for such asset, the appropriateness of a discount with respect to the disposition of significant positions involving Marketable Securities, and the impact on present value of factors such as the length of time before any such sales may become possible and the cost and complexity of any such sales. Upon liquidation of the Partnership pursuant to paragraph 10.02, the

General Partner shall obtain and may rely on information provided by any source or sources reasonably believed to be accurate in determining the value of assets in accordance with the provisions of this paragraph 6.03(a). For all purposes of this Agreement (subject to the provisions of paragraph 7.03(g)), all valuations made by the General Partner shall be final and conclusive on the Partnership and all Partners, their successors and assigns.

(b) For purposes of paragraph 8.02, the calculation of the Fair Value of any Investment, of any other Partnership asset or of the General Partner Interest, as applicable, shall be made by an independent, nationally-recognized investment banking firm or other appropriate independent, appropriately-recognized expert (any of the foregoing, an "Expert") selected by the General Partner and approved by the Advisory Committee. The fees and expenses of such an Expert shall be borne by the Partnership. In the event that the General Partner and the Advisory Committee shall be unable to agree upon such an Expert within fifteen (15) days following the date on which either party proposes such Expert, the Partnership and the Advisory Committee each shall engage, at the expense of the Partnership, its own Expert, and the two Experts so selected shall, within ten (10) days following their selection, appoint a third Expert to calculate such Fair Value, whose fees and expenses shall be borne by the Partnership and whose calculations shall be final and conclusive on the Partnership and all Partners. In determining the Fair Value of any Investment or other Partnership asset or General Partner

Interest for purposes of paragraph 8.02, any Expert engaged pursuant to this paragraph 6.03(b) shall utilize the principles described in paragraph 6.03(a).

ARTICLE SEVEN

ADVISORY COMMITTEE

7.01 Selection of the Advisory Committee. The General Partner shall select an "Advisory Committee", which shall be a committee consisting of at least five (5) and no more than nine (9) Limited Partners; provided, that no member of the Advisory Committee shall be an Affiliate of the General Partner; and provided, further, that the members of the Advisory Committee shall be representative of the Limited Partners and that, in any event, the average Capital Commitment of the members of the Advisory Committee shall equal at least twelve million dollars ($12,000,000) each, unless the Limited Partners whose participation would result in such average Capital Commitment refuse to serve. Any member of the Advisory Committee may resign by giving the General Partner thirty (30) days' prior written notice. Additionally, the Advisory Committee may, by a majority vote of its members, remove and replace members of the Advisory Committee from time to time. Any vacancy in the Advisory Committee (other than those filled in accordance with the prior sentence) shall be promptly filled by the General Partner.

7.02 Meetings of and Action by the Advisory Committee. A meeting of the Advisory Committee shall be held at least once in every Fiscal Year and meetings may be called by the General

Partner on not less than fifteen (15) days' notice to all members and shall be so called promptly upon the request of any three members of the Advisory Committee. The Advisory Committee shall act by affirmative vote of a majority of its members and, except as provided in paragraphs 7.03(c), 7.03(f), 7.03(g) and 7.03(k) below, the recommendations of the Advisory Committee shall be advisory only and shall not obligate the General Partner to act in accordance therewith. The General Partner shall undertake to provide to the Limited Partners, on a yearly basis, a report summarizing the recommendations made to the General Partner by the Advisory Committee in the immediately preceding year.

7.03 Functions of the Advisory Committee. (a) Prior to the consummation of any transaction with respect to which calculations of the type described in (i) below are performed or of any transaction of the type described in (ii) below, the Advisory Committee shall review and indicate to the General Partner its approval or disapproval of:

(i) any valuation of Securities in connection with allocations made pursuant to paragraph 4.05(h) or valuation of Securities that are not Marketable Securities in connection with allocations made pursuant to paragraph 4.05(a)(2); in determining its approval or disapproval of any such calculation, the Advisory Committee shall utilize the principles for determining Fair Value described in paragraph 6.03; and

(ii) any settlement or judgment in respect of which an Indemnified Person is entitled to indemnification pursuant to the provisions of paragraph 5.04(b).

(b) Prior to the consummation or payment thereof, the Advisory Committee shall review and indicate to the General Partner its approval or disapproval of:

(i) the services, and fees therefor, provided during such Fiscal Year by the General Partner or any of its Affiliates to any Person that the Partnership acquires or in which it holds an Investment; and

(ii) any Partnership Expenses arising from services performed during such Fiscal Year by any Affiliate of the General Partner in connection with the making of an Investment.

The General Partner shall deliver to the Advisory Committee promptly following the end of each Fiscal Year a report specifying all the services, fees and transactions of the types described in (i)-(ii) above.

(c) Prior to the acquisition by the Partnership of any Investment from, or Disposition of any Investment to, the General Partner or any of its Affiliates, the Advisory Committee shall review, and approve or disapprove of, the terms of such acquisition or Disposition. For the purposes of determining the approval or disapproval of any such transaction, the Advisory Committee shall act by Consent of a majority of the Limited Partners having representatives on the Advisory Committee. The

General Partner, on behalf of the Partnership, shall not consummate any transaction of the type described in this paragraph 7.03(c) unless it has received the prior approval of the Advisory Committee.

(d) The Advisory Committee shall review any declination of a potential Investment reported to the Advisory Committee by the General Partner and determine whether such information should be disseminated to the Limited Partners.

(e) Upon the request of the General Partner, the Advisory Committee shall review, and approve or disapprove of, any proposal by the General Partner not to offer to the Partnership an investment opportunity that the General Partner reasonably believes to be suitable for the Partnership.

(f) The Advisory Committee shall exercise its rights and duties with respect to the selection of an Expert under paragraph 6.03(b).

(g) The Advisory Committee shall review, on a yearly basis, the Write-Down Amounts established by the General Partner and shall approve or disapprove of such Write-Down Amounts. In the event that the Advisory Committee disapproves of any Write-Down Amount, the General Partner shall either (i) agree to be bound by the Advisory Committee's increase in the Write-Down Amount or (ii) elect to have an evaluation of the appropriate Write-Down Amount made by an Expert selected in conformity with the provisions of paragraph 6.03(b). Such Expert shall utilize the principles described in paragraph 6.03(a). The determination of the Expert as to the appropriate Write-Down Amount shall be

binding on the General Partner and the Limited Partners for all purposes hereunder (including the next application of paragraph 4.02(b)(A)(x)) and, if the Expert increases the Write-Down Amount, any future reduction in such Write-Down Amount shall require approval by a majority of the Advisory Committee; provided, that the foregoing in no way modifies the General Partner's obligation to make a determination as to whether or not to increase such Write-Down Amount upon the next application of paragraph 4.02(b)(A)(x).

(h) The Advisory Committee shall review, on a yearly basis, the calculation by the General Partner of amounts relating to the Segregated Reserve Account.

(i) At least yearly, the General Partner will discuss with the Advisory Committee the Partnership's investment strategy and prospects.

(j) The General Partner shall supply the Advisory Committee with all information and data reasonably requested by the Advisory Committee to enable it to reach an informed judgment with respect to any decision or recommendation required to be made by the Advisory Committee pursuant to (a) - (h) above.

(k) The Advisory Committee shall review and indicate to the General Partner its approval or disapproval of an extension of the term of the Partnership in accordance with paragraph 2.05.

ARTICLE EIGHT

TRANSFER OF THE GENERAL PARTNER'S INTEREST

8.01 Assignment of the General Partner's Interest. Without the prior Consent of sixty-six and two-thirds percent

(66-2/3%) in Interest of the Limited Partners, the General Partner shall not assign, sell or otherwise dispose of all or any fraction of its Interest as a General Partner in the Partnership, or enter into any agreement as a result of which any Person shall have an Interest as a General Partner in the Partnership, except that nothing in this paragraph 8.01 shall preclude changes in the identity and composition of the general and limited partners of the General Partner or the sale of the General Partner's Interest as General Partner as the result of action by the Limited Partners pursuant to paragraph 5.03(b). Any assignee or other successor of the General Partner shall assume the rights and obligations of the General Partner hereunder, including without limitation (a) such Partner's Unused Capital Commitment and (b) such Partner's rights and obligations pursuant to paragraph 5.03.

8.02 Continuation of the Partnership Upon the Withdrawal or Incapacity of the General Partner. In the event the General Partner withdraws from the Partnership, or upon the Incapacitation of the General Partner, the Partnership shall be dissolved unless the Limited Partners shall, within ninety (90) days after the occurrence of any such event, elect, by the Consent of sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners, to continue the Partnership as a successor limited partnership upon the same terms and conditions as are set forth in this Agreement, except as required by the next succeeding sentence, and, provided such requisite percent so elects, each Limited Partner shall be deemed to have Consented to such reconstitution (and agrees to do so in writing). In the

event that such election is made, sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners shall elect a new General Partner to serve as the General Partner of the Partnership, and such election shall be deemed to have occurred immediately prior to the withdrawal of the General Partner. The newly appointed General Partner, if it desires so to serve, shall be required to purchase in cash, within thirty (30) days of its appointment as General Partner, (i) the Interest as a General Partner of the General Partner (who shall be required to sell such Interest) and (ii) the Interests of the General Partner and any Affiliates thereof (who shall be required to sell such Interests) as Limited Partners, in each case for an amount equal to the Fair Value of such Interest (plus assumption of the Unused Capital Commitments relating thereto). During the ninety (90) day period above provided, the Partnership shall continue.

8.03 Effect of Withdrawal or Incapacity. (a) Subject to the terms of paragraph 8.04 below, upon the General Partner ceasing to be the General Partner of the Partnership as provided in this Agreement or the Incapacitation of the General Partner, its liability as General Partner, and its authority to act on behalf of the Partnership, shall cease as provided in the Partnership Act, and the Partnership shall promptly file an amendment to the Partnership's certificate of limited partnership and otherwise take all steps reasonably necessary under the Partnership Act to cause such cessation of liability and authority.

(b) Upon the General Partner ceasing to be the General Partner of the Partnership as provided in this Agreement, the General Partner and any of its officers, directors and other appointees or designees shall submit resignations from all directorships, officerships and engagements held by them in the Partnership and any Person in which the Partnership then holds an Investment.

8.04 Liability of Withdrawn General Partner. If a General Partner withdraws from the Partnership, the General Partner nonetheless shall remain liable for obligations and liabilities incurred by it as General Partner prior to the time of such withdrawal, but it shall be free of any obligation or liability incurred on account of the activities of the Partnership from and after the time of such withdrawal.

ARTICLE NINE

TRANSFER OF A LIMITED PARTNER'S INTEREST

9.01 Restrictions on Transfers of Interests. (a) No sale, exchange, transfer, assignment or other disposition (herein collectively called a "Transfer") of all or any fraction of a Limited Partner's Interest may be made without the Consent of the General Partner, which Consent may be withheld in the sole discretion of the General Partner. In any event, the Consent of the General Partner shall be withheld unless in the opinion of counsel (who may be counsel for the Partnership or any Partner) satisfactory in form and substance to the General Partner,

(i) such Transfer would not violate the Securities Act of 1933, as amended, or any state securities or "Blue

Sky" laws applicable to the Partnership or the Interest to be transferred;

(ii) such Transfer, taken alone or in conjunction with other transactions, would not cause the Partnership to terminate under Section 708 of the Code or otherwise cause the Partnership to lose its status as a partnership for federal income tax purposes;

(iii) such Transfer would not cause the Partnership to become subject to the registration requirements of the Investment Company Act of 1940, as amended;

(iv) such Transfer would not cause all or any portion of the assets of the Partnership to constitute "plan assets" under ERISA or Section 4975 of the Code; and

(v) such Transfer would not render the Partnership a publicly traded partnership under Sections 7704, 469 or 512 of the Code.

(b) Any Limited Partner seeking to transfer all or a portion of its Interest agrees that it will pay all expenses, including attorneys' fees, incurred by the Partnership in connection with such Transfer, prior to the consummation of such Transfer.

(c) Any Person that acquires all or any fraction of the Interest of a Limited Partner in a Transfer permitted under this Article Nine shall be obligated to pay to the Partnership the appropriate portion of any amounts thereafter becoming due in respect of the Capital Commitment committed to be made by its

predecessor in interest. Each Limited Partner agrees that, notwithstanding the Transfer of all or any fraction of its Interest, as between it and the Partnership it will remain liable for its Capital Commitment and for all Capital Contributions required to be made by it (without taking into account the Transfer of all or a portion of such Interest) prior to the time, if any, when the purchaser, assignee or transferee of such Interest, or fraction thereof, is admitted as a Substituted Limited Partner.

(d) Each Limited Partner hereby severally agrees that it will not transfer all or any fraction of its Interest in the Partnership, except as permitted by this Agreement.

(e) The Partnership shall not recognize for any purpose any purported Transfer of all or any fraction of the Interest of a Limited Partner and shall be entitled to treat the transferor of an Interest as the absolute owner thereof in all respects, and shall incur no liability for Distributions made in good faith to it, unless the General Partner shall have given its Consent thereto (or such Consent shall have been deemed given pursuant to the provisions of paragraph 9.02(a)) and there shall have been filed with the Partnership a dated notice of such Transfer, in form satisfactory to the General Partner, executed and acknowledged by both the seller, assignor or transferor and the purchaser, assignee or transferee, and such notice (i) contains the acceptance by the purchaser, assignee or transferee of all of the terms and provisions of this Agreement and its

agreement to be bound thereby and (ii) represents that such Transfer was made in accordance with this Agreement and all applicable laws and regulations.

9.02 Assignees. (a) Notwithstanding the provision of the first sentence of paragraph 9.01(a), and subject to obtaining the opinion described in paragraph 9.01(a) and the fulfillment of the requirements set forth in paragraph 9.01(e), the General Partner shall be deemed to consent to the assignment by any Limited Partner that is a trust organized pursuant to one or more employee benefit plans (as defined in Section 3(3) of ERISA) or governmental plans (as defined in Section 3(32) of ERISA), whether or not subject to Title I of ERISA, to one or more successor or underlying trusts of such Limited Partner, of all or any fraction of such Limited Partner's right to receive all or part of the share of the profits, losses, Distributions and returns of Capital Contributions to which such Limited Partner would otherwise be entitled.

(b) Unless and until an assignee or other transferee of an Interest becomes a Substituted Limited Partner, such assignee shall not be entitled to give Consents with respect to such Interest and the assignor of such Interest shall not cease to be viewed as a Partner owning such Interest for the purposes of giving Consents.

(c) A Person who is the assignee of all or any fraction of the Interest of a Limited Partner as permitted hereby but does not become a Substituted Limited Partner and who desires

to make a further Transfer of such Interest, shall be subject to all of the provisions of this Article Nine to the same extent and in the same manner as any Limited Partner desiring to make a Transfer of its Interest.

9.03 Substituted Limited Partners. (a) No purchaser, assignee, transferee, donee, heir, legatee, distributee or other recipient of an Interest of a Limited Partner shall be admitted to the Partnership as a Substituted Limited Partner except (i) with the Consent of the General Partner (which Consent may be withheld by the General Partner in its sole discretion, and which Consent shall not be deemed to have been previously given pursuant to paragraph 9.02(a)), (ii) by satisfying the requirements of paragraphs 9.01 or 9.02 and (iii) upon an amendment to this Agreement and the Partnership's certificate of limited partnership recorded in the proper records of each jurisdiction in which such recordation is necessary to qualify the Partnership to conduct business or to preserve the limited liability of the Limited Partners.

(b) Each Substituted Limited Partner, as a condition of its admission as a Limited Partner, shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of the Substituted Limited Partner to be bound by all the terms and provisions of this Agreement with respect to the Interest acquired. All reasonable expenses,

including attorneys' fees, incurred by the Partnership in this connection shall be borne by such Substituted Limited Partner.

9.04 Incapacity of a Limited Partner. In the event of the Incapacity of a Limited Partner, the Partnership shall not be terminated, and the Limited Partner's trustee in bankruptcy or other legal representative shall have only the rights of a transferee of the right to receive Partnership Distributions applicable to the Interest of such Incapacitated Limited Partner as provided herein. Any Transfer from such trustee in bankruptcy or legal representative shall be subject to the provisions of this Agreement.

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

ARTICLE TEN

DISSOLUTION, LIQUIDATION AND
TERMINATION OF THE PARTNERSHIP

10.01 Dissolution. The Partnership shall be dissolved upon the happening of any of the following events:

(i) the expiration of its term;

(ii) upon the failure of the Limited Partners to elect to reconstitute and continue the Partnership as provided in paragraph 8.02 of this Agreement, in the event of the withdrawal or Incapacitation of the General Partner;

(iii) at any time upon the election of the General Partner on or after the expiration or early termination of the Commitment Period, upon a decision by the General Partner to liquidate the assets and wind up the affairs of the Partnership in accordance with the provisions of paragraph 10.02;

(iv) at any time upon the election of the General Partner upon the Disposition by the Partnership of all or substantially all of the Investments it then owns, provided that all or substantially all of the Capital Commitments of the Partners have been contributed to the Partnership;

(v) upon Consent by sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners (A) pursuant to paragraph 5.03(b) or (c) or (B) within sixty (60) days following the date on which the Limited Partners become aware (or are notified by the General Partner) that two or

more of the Principals have withdrawn from the General Partner;

(vi) upon Consent by sixty-six and two-thirds percent (66-2/3%) in Interest of the Limited Partners at any time after the twenty-four (24) month anniversary of the date hereof; or

(vii) any termination required by operation of law.

Dissolution of the Partnership shall be effective on the day on which the event occurs giving rise to the dissolution, but the Partnership shall not terminate until the certificate of limited partnership of the Partnership has been cancelled or withdrawn and the assets of the Partnership have been distributed as provided in paragraph 10.02.

10.02 Liquidation. (a) Upon dissolution of the Partnership, the General Partner or, if there is none or a majority in Interest of the Limited Partners so elect, the Liquidating Trustee, shall wind up the affairs of the Partnership and proceed within a reasonable period of time to sell or otherwise liquidate the assets of the Partnership and, after paying or making due provision by the setting up of reserves for all liabilities to creditors of the Partnership, to distribute the assets among the Partners in accordance with the provisions for the making of Distributions set forth in this Article Ten. Notwithstanding the foregoing, in the event that the General Partner or the Liquidating Trustee shall, in its absolute discretion, determine that a sale or other disposition of part or

all of the Partnership's Investments would cause undue loss to the Partners or otherwise be impractical, the General Partner or the Liquidating Trustee may either defer liquidation of, and withhold from Distribution for a reasonable time, any such Investments or distribute part or all of such Investments to the Partners in kind (utilizing the principles of paragraph 4.02 and the valuation procedures described in paragraph 6.03(a)). The General Partner or Liquidating Trustee shall use its reasonable efforts, consistent with its judgment concerning maximizing value, not to distribute Securities that are not Marketable.

(b) No Partner shall be liable for the return of the Capital Contributions of other Partners.

(c) Upon liquidation, all of the assets of the Partnership, or the proceeds therefrom, shall be distributed or used as follows and in the following order of priority:

(i) for the payment of the debts and liabilities of the Partnership and the expenses of liquidation;

(ii) to the setting up of any reserves which the General Partner or the Liquidating Trustee may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership; and

(iii) to the Partners in accordance with paragraph 4.02.

(d) When the General Partner or the Liquidating Trustee has complied with the foregoing liquidation plan, the Partners shall execute, acknowledge and cause to be filed an

instrument evidencing the cancellation of the certificate of limited partnership of the Partnership.

ARTICLE ELEVEN

AMENDMENTS

11.01 Adoption of Amendments; Limitations Thereon. (a) Except as provided in paragraphs 11.01(b) and (c), this Agreement is subject to amendment only with the written Consent of the General Partner and a majority in Interest of the Limited Partners; provided, however, that no amendment to this Agreement may:

(i) increase the Capital Commitment of any Partner; convert a Limited Partner's Interest into a General Partner's Interest; modify the limited liability of a Limited Partner; or increase the liabilities or responsibilities of, or (except for dilution resulting from the admission of additional Limited Partners as otherwise permitted under this Agreement) diminish the rights or protections of, any Partner under this Agreement; in each case, without the Consent of each such affected Partner; and provided, further, that no amendment which would increase the Capital Commitment of any Partner may be adopted after the six-month anniversary of the date hereof unless all of the Partners are offered the opportunity to increase their Capital Commitments on a pro rata basis;

(ii) alter the interest of any Partner in income (including amounts described in paragraph 5.03(g)) gains and

losses or amend or modify any portion of Article Four without the Consent of each Partner adversely affected by such amendment or modification (except in connection with the admission of additional Limited Partners as otherwise permitted under this Agreement);

(iii) amend or modify any portion of Article Nine in a manner that would further restrict the transferability of a Limited Partner's Interest without the Consent of all of the Limited Partners;

(iv) amend any provisions hereof which require the Consent, action or approval of a majority or a specified percentage in Interest of the Limited Partners or Partners without the Consent of such majority or specified percentage in Interest of such Limited Partners or Partners;

(v) amend the definition of ERISA or ERISA Partner or any of the provisions of paragraphs 3.03(g), 3.05 (with respect to the rights of ERISA Partners), or 5.02(b) or paragraph 9.02(a) without the consent of a majority in Interest of the ERISA Partners;

(vi) amend the definition of ERISA or Governmental Plan Partner or any of the provisions of paragraphs 3.03(g), 3.05 (with respect to the rights of Governmental Plan Partners), or 5.02(b) or paragraph 9.02(a), without the consent of a majority in Interest of the Governmental Plan Partners;

(vii) amend the definition of Tax Exempt Limited Partner or any of the provisions of paragraphs 2.07(a), 2.07(b) or 3.07(c) (with respect to the rights of Tax Exempt Limited Partners), without the consent of a majority in Interest of the Tax Exempt Limited Partners; or

(viii) amend this paragraph 11.01(a) without the Consent of all of the Partners.

(b) This Agreement may be amended from time to time by the General Partner without the Consent of any of the Limited Partners (i) to add to the representations, duties or obligations of the General Partner; (ii) to cure any ambiguity or correct or supplement any provisions hereof which may be inconsistent with any other provision hereof, or correct any printing, stenographic or clerical errors or omissions; (iii) to admit one or more additional Limited Partners or Substituted Limited Partners, or withdraw one or more Limited Partners, in accordance with the terms of this Agreement; (iv) to amend Schedule A hereto to provide any necessary information regarding any Partner, any additional or successor General Partner or any additional or Substituted Limited Partner; (v) to reflect any change in the amount of the Capital Commitment of any Partner in accordance with the terms of this Agreement; and (vi) to make such changes as are necessary to implement the provisions of paragraph 2.07(b); provided, however, that no amendment shall be adopted pursuant to this paragraph 11.01(b) unless (a) in the case of any amendment referred to in clause (i) or (ii) of this paragraph

(other than an amendment resulting from the admission of one or more additional Limited Partners in accordance with this Agreement), such amendment would not alter the interest of any Partner in income, gains or losses or Distributions or alter the obligations of a Partner to make contributions to the Partnership or other payments under this Agreement and such amendment otherwise is not adverse to the Interests of the Limited Partners, and (b) such amendment would not, in the opinion of counsel for the Partnership, alter, or result in the alteration of, the limited liability of the Limited Partners or the status of the Partnership as a partnership for federal income tax purposes. The General Partner shall send each Limited Partner a copy of any amendment adopted pursuant to this paragraph 11.01(b).

(c) This Agreement may be amended from time to time by the General Partner without the Consent of any of the Limited Partners (except as provided in the following proviso) to permit a Limited Partner to renounce and disclaim all or part of the Fee Income (or other category of income) attributable to such Limited Partner that otherwise would have been distributed or allocated to such Limited Partner under this Agreement; provided, however, that any such amendment shall require the prior Consent of the Limited Partner affected thereby and that no such amendment shall alter any Limited Partner's interest in Fee Income (or any other category of income) without such Limited Partner's Consent.

(d) Upon the adoption of any amendment to this Agreement, the amendment shall be executed by all Partners and shall be recorded in the proper records of the State of Delaware and of each jurisdiction in which recordation is necessary for the Partnership to conduct business or to preserve the limited liability of the Limited Partners. Any such amendment may be executed by the General Partner on behalf of the Limited Partners pursuant to the power of attorney granted in paragraph 13.01.

11.02 Amendment of Certificate. In the event this Agreement shall be amended pursuant to paragraph 11.01, the General Partner shall amend the Partnership's certificate of limited partnership to reflect such amendment if the General Partner deems such amendment to be necessary and shall make any other filings or publications required or desirable to reflect such amendment, including any required filing for recordation of any certificate of limited partnership or other instrument or similar document of the type contemplated by paragraph 2.06.

ARTICLE TWELVE

CONSENTS, VOTING AND MEETINGS

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

(a) by a written Consent given by the Partner whose Consent is solicited and obtained (the "Consenting Partner") at or prior to the doing of the act or thing for which the Consent is solicited; provided that such Consent shall not have been

nullified by either (i) notice to the General Partner by the Consenting Partner at or prior to the time of, or the negative vote by such Consenting Partner at, any meeting held to consider the doing of such act or thing, or (ii) notice to the General Partner by the Consenting Partner prior to the doing of any act or thing, the doing of which is not subject to approval at such meeting; or

(b) by the affirmative vote by the Consenting Partner to the doing of the act for which the Consent is solicited at any meeting called and held to consider the doing of such act.

12.02 Meetings. Any matter requiring the Consent of all or any of the Limited Partners pursuant to this Agreement may be considered at a meeting of the Partners held not fewer than twenty (20) nor more than sixty (60) days after notice thereof shall have been given by the General Partner to all Partners. The General Partner shall cause a meeting of the Partners to be held not less often than once in every Fiscal Year. Notice of meetings of the Partners (i) may be given by the General Partner, in its discretion, at any time, and (ii) shall be given by the General Partner within thirty (30) days after receipt by the General Partner of a request for such a meeting made by Limited Partners whose aggregate Capital Commitments represent more than fifty percent (50%) of the aggregate Capital Commitments of the Limited Partners. Any such notice shall state briefly the purpose, time and place of the meeting. All such meetings shall be held within or outside the State of Delaware at such

reasonable place as the General Partner shall designate and during normal business hours.

12.03 Record Dates. The General Partner may set in advance a record date for determining the Partners entitled to notice of and to vote at any meeting and to give any Consent. Each such record date shall not be more than sixty (60) days prior to the date of the meeting to which such record date relates.

12.04 Submissions to Partners. The General Partner shall give each Partner notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for the consideration and approval of such Partner. Such notice shall include any information required by the relevant provisions of this Agreement or by law. Neither the General Partner nor the Partnership shall solicit, request or negotiate for or with respect to any proposed waiver or amendment of any provision of this Agreement or the Partnership's certificate of limited partnership or any Consent by the Limited Partners unless each Limited Partner shall be informed thereof by the General Partner or the Partnership, as the case may be, and shall be afforded the opportunity of considering the same and shall be supplied with sufficient information to enable it to make an informed decision with respect thereto. Neither the General Partner nor the Partnership shall, directly or indirectly, pay or cause to be paid any remuneration, fee or other consideration to any Limited Partner for or as an

inducement to the entering into by such Limited Partner of any waiver or amendment of any term or provision of this Agreement or the Partnership's certificate of limited partnership or the giving of any Consent, unless such remuneration is concurrently paid on the same terms, in proportion to their respective Proportionate Interests in the Partnership, to all the then Limited Partners.

ARTICLE THIRTEEN

POWER OF ATTORNEY

13.01 Power of Attorney. (a) Each Limited Partner, by its execution hereof, hereby irrevocably makes, constitutes and appoints the General Partner as its true and lawful agent and attorney-in-fact, with full power of substitution and full power and authority in its name, place and stead, to make, execute, sign, acknowledge, swear to, record and file (i) any amendment to this Agreement which has been adopted as herein provided; (ii) all certificates and other instruments deemed advisable by the General Partner to comply with the provisions of this Agreement and applicable law or to permit the Partnership to become or to continue as a limited partnership or other entity wherein the Limited Partners have limited liability in each jurisdiction where the Partnership may be doing business; (iii) all instruments that the General Partner deems appropriate to reflect a change or modification of this Agreement or the Partnership in accordance with this Agreement, including, without limitation, the substitution of assignees as Substituted Limited Partners

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

(b) With respect to each Limited Partner, the foregoing power of attorney:

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

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

(iii) shall survive the delivery of an assignment by such Limited Partner of the whole or any fraction of its Interest; except that, where the assignee of the whole of such Limited Partner's Interest has been approved by the General Partner for admission to the Partnership as a Substituted Limited Partner, the power of attorney of the

assignor shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, swear to, acknowledge and file any instrument necessary or appropriate to effect such substitution.

ARTICLE FOURTEEN

RECORDS AND ACCOUNTING; REPORTS; FISCAL AFFAIRS

14.01 Records and Accounting. (a) Proper and complete records and books of account of the business of the Partnership, including a list of the names, addresses and Interests of all Limited Partners, shall be maintained at the Partnership's principal place of business. Any Partner, or its duly authorized representatives, shall be entitled to a copy of the list of names, addresses and Interests of the Limited Partners, provided such information shall be used only for Partnership purposes. Each Limited Partner and its duly authorized representatives may visit and inspect any of the properties of the Partnership, examine its books of account, records, reports and other papers (to the extent the same pertain to the Partnership) which are not legally required to be kept confidential or secret, make copies and extracts therefrom, and discuss the affairs, finances and accounts of the Partnership with the General Partner and the independent public accountants (which shall be one of the "Big Six" accounting firms unless the Advisory Committee consents to another accounting firm proposed by the General Partner) of the Partnership (and by this provision

the Partnership authorizes said accountants to discuss with each Limited Partner the finances and affairs of the Partnership), all at such reasonable times and as often as may be reasonably requested. The General Partner shall use its best efforts to cause each Person in which the Partnership then holds Investments to afford similar rights of inspection to any Limited Partner (and its duly authorized representatives) which may request to exercise such rights.

(b) The books and records of the Partnership shall be kept in accordance with generally accepted accounting principles. The accounting and taxable year of the Partnership shall be its Fiscal Year.

14.02 Annual Reports. (a) Within ninety (90) days after the end of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial statements of any Person in which the Partnership holds an Investment), the General Partner shall cause to be delivered to each Person who was a Partner at any time during the Fiscal Year, an annual report containing the following:

(i) financial statements of the Partnership, including, without limitation, a balance sheet as of the end of the Fiscal Year and statements of income, Partners' equity and cash flows for such Fiscal Year, which, except as otherwise provided in this Agreement, shall be prepared in accordance with generally accepted accounting principles consistently applied and shall be audited and certified by a

firm of independent certified public accountants of recognized national standing;

(ii) a statement, in reasonable detail, showing the Capital Account of each Partner and computing the Distributions to each Partner during such Fiscal Year;

(iii) a report containing an overview of the investment activities of the Partnership during the Fiscal Year covered by the annual report, and, with respect to the fourth quarter, the description required by paragraph 14.04;

(iv) a statement describing (x) all services, and the fees therefor, provided during such Fiscal Year by the General Partner or any of its Affiliates to Persons that the Partnership acquires or in which it holds Investments and (y) all Partnership Expenses arising from services performed during such Fiscal Year by any Affiliate of the General Partner in connection with the making of an Investment;

(v) a separate calculation of the Management Fee for such Fiscal Year; and

(vi) a separate calculation of the division among the Partners of Current Income, Uninvested Fund Income and Disposition Proceeds in such Fiscal Year.

(b) For all purposes of this Agreement, no value shall ever be attributed to the firm name of the Partnership (which shall at all times remain the property of the General Partner), or to the right of its use, or to the goodwill appertaining to the Partnership or its business, either during the continuation

of the Partnership or in the event of its dissolution and termination. Liabilities shall be determined in accordance with generally accepted accounting principles.

14.03 Tax Information. The General Partner shall cause to be prepared all federal, state, local and foreign tax returns of the Partnership for each year for which such returns are required to be filed and shall cause such returns to be timely filed. Within one hundred twenty (120) days of the end of each Fiscal Year (subject to reasonable delays in the event of the late receipt of any necessary financial statements of any Person in which the Partnership holds an Investment, provided the General Partner has used its reasonable best efforts to avoid such delays), the General Partner will cause to be delivered to each Person who was a Partner at any time during such Fiscal Year a Form K-1 and such other information, if any, with respect to the Partnership as may be necessary for the preparation of (i) such Partner's federal income tax returns, including a statement showing each Partner's share of income, loss and credits for such Fiscal Year for federal income tax purposes, and (ii) such state and local income tax returns and other tax returns as are required to be filed by such Partner as a result of the Partnership's activities in such jurisdiction. Each Partner agrees that it shall not, without the prior written consent of the General Partner, (i) treat, on its own income tax returns, any item of income, gain, loss, deduction or credit relating to its interest in the Partnership in a manner inconsistent with the

treatment of such items by the Partnership as reflected on the Form K-1 or other information statement furnished to such Partner pursuant to this paragraph 14.03, or (ii) file any claim for a refund relating to any such item based on, or which would result in, such inconsistent treatment. The General Partner may, in its sole discretion, make, or refrain from making, any income or other tax elections for the Partnership that it reasonably deems necessary or advisable and that do not materially adversely affect the interests of the Capital Partners as opposed to the interests of the General Partner, including an election pursuant to Section 754 of the Code.

14.04 Interim Reports. Within forty-five (45) days after the end of each fiscal quarter of the Partnership, the General Partner shall cause to be delivered to each Person who was a Partner at any time during such quarter a report which shall contain, (i) with respect to the Partnership, unaudited financial statements, including, without limitation, a balance sheet as of the end of such quarter and statements of income, Partners' equity and cash flows for such quarter and (ii) with respect to each Person in which the Partnership then holds an Investment, copies of the most recent available consolidated balance sheet of such Person and the most recent available consolidated statements of income, retained earnings and cash flows of such Person, all accompanied by the report thereon, if any, from such Person's independent public accountants.

14.05 Partnership Funds. Except as permitted by paragraph 5.01(b)(9), the funds of the Partnership may be deposited in the name of the Partnership in one or more bank accounts in one or more banking corporations with an unrestricted surplus of at least $250,000,000. Withdrawals therefrom shall be made upon such signature(s) as the General Partner may designate. No funds of the Partnership shall be kept in any account other than a Partnership account; funds shall not be commingled with the funds of any other Person; and the General Partner shall not employ, or permit any other Person to employ, such funds in any manner except for the benefit of the Partnership. The custodian(s) of all securities held by the Partnership shall be banking corporation(s) with an unrestricted surplus of at least $250,000,000.

14.06 Other Information. With reasonable promptness, the General Partner will deliver such other information available to the General Partner, including financial statements and computations, relating to any Person in which the Partnership then holds an Investment as any Partner may from time to time reasonably request.

ARTICLE FIFTEEN

REPRESENTATIONS AND WARRANTIES OF THE PARTNERS

15.01 Representations and Warranties of the Limited Partners. Each Limited Partner is fully aware that the Partnership and the General Partner are relying upon the

exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the "Securities Act"), and upon the truth and accuracy of the following representations by each of the Limited Partners. Each of the Limited Partners hereby represents and warrants that (i) its Interest in the Partnership is being acquired for investment and not with a view to the distribution or sale thereof, subject to any requirement of law that its property at all times be within its control; (ii) it has been given the opportunity to ask the General Partner questions relating to the Partnership and has had access to such financial and other information concerning the Partnership as it has considered necessary to make a decision to invest in the Partnership and has availed itself of that opportunity to the full extent desired; (iii) it is able (x) to bear the economic risk of its investment in the Partnership, (y) to retain its Partnership Interest for the full term of the Partnership and (z) to afford a full loss of its Capital Commitment; and (iv) if any portion of its Capital Contributions consist, or will consist, of assets of an employee benefit plan as defined in Section 3(3) of ERISA, whether or not such plan is subject to Title I of ERISA or a plan subject to Section 4975 of the Code, determined after giving effect to applicable regulations, rulings, and exemptions thereunder, it has so notified the General Partner in writing. Additionally, each Limited Partner hereby represents and warrants that beneficial ownership by it of its Partnership Interest does not constitute

beneficial ownership by more than one person for purposes of Section 3(c)(1) of the Investment Company Act of 1940, as amended, or (if the General Partner, in its sole discretion, so permits) such larger number of persons, not to exceed ten (10), as such Limited Partner shall certify to the Partnership.

15.02 Representations and Warranties of the General Partner. The General Partner represents, warrants and covenants to each other Partner that:

(a) The Partnership is a duly organized and validly existing limited partnership under the laws of the State of Delaware with full power and authority to conduct its business as contemplated in this Agreement.

(b) The General Partner is a duly organized and validly existing limited partnership under the laws of the State of Delaware, with full power and authority to perform its obligations herein.

(c) All action required to be taken by the General Partner and the Partnership as a condition to the issuance and sale of the Interests in the Partnership being purchased by the Limited Partners has been taken; the Interest in the Partnership of each Limited Partner represents a duly and validly issued limited partnership interest in the Partnership; and each Limited Partner of the Partnership is entitled to all the benefits of a Limited Partner under this Agreement and the Partnership Act.

(d) This Agreement has been duly authorized, executed and delivered by the General Partner and, upon due authorization, execution and delivery by each Limited Partner, will constitute the valid and legally binding agreement of the General Partner enforceable in accordance with its terms against the General Partner.

(e) The execution and delivery of this Agreement by the General Partner and the performance of its duties and obligations hereunder do not result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, credit agreement, note or other evidence of indebtedness, or any lease or other agreement, or any license, permit, franchise or certificate, to which the General Partner is a party or by which it is bound or to which any of its properties are subject, or require any authorization or approval under or pursuant to any of the foregoing, or violate in any material respect any statute, regulation, law, order, writ, injunction or decree to which the General Partner is subject.

(f) Neither the General Partner nor the Partnership is in default (nor has any event occurred which with notice, lapse of time, or both, would constitute a default) in the performance of any obligation, agreement or condition contained in this Agreement, any indenture, mortgage, deed of trust, credit agreement, note or other evidence of indebtedness or any lease or other agreement or understanding, or any license, permit,

franchise or certificate, to which either is a party or by which either is bound or to which the properties of either are subject, nor is either in violation of any statute, regulation, law, order, writ, injunction, judgment or decree to which either is subject, which default or violation would materially adversely affect the business or financial condition of the General Partner or the Partnership or impair the General Partner's ability to carry out its obligations under this Agreement.

(g) There is no litigation, investigation or other proceeding pending or, to the knowledge of the General Partner, threatened against the General Partner or any of its Affiliates which, if adversely determined, would materially adversely affect the business or financial condition of the General Partner or the ability of the General Partner to perform its obligations under this Agreement.

(h) No consent, approval or authorization of, or filing, registration or qualification with, any court or governmental authority on the part of the General Partner or the Partnership is required for the execution and delivery of this agreement by the General Partner, the performance of its or the Partnership's obligations and duties hereunder, or the issuance of Interests in the Partnership as contemplated hereby, except any thereof which may be required of the Partnership solely by virtue of the nature of any Limited Partner.

(i) As of their respective dates and as of the date hereof, the final Private Placement Memorandum for TPG Partners,

L.P. dated December 10, 1993 and the confidential supplement to the final Private Placement Memorandum, dated December 14, 1993, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that the description therein of this Agreement and the provisions hereof is superseded in its entirety by this Agreement.

(j) The General Partner has not engaged any Person in such a manner as to give rise to a valid claim against the Partnership or any Limited Partner for any placement fee or similar compensation in connection with the organization of the Partnership.

(k) Assuming the accuracy of the representation made by each Limited Partner pursuant to the last sentence of paragraph 15.01, the Partnership is not required to register as an investment company under the Investment Company Act of 1940, as amended as of the date hereof.

(l) So long as TPG Advisors, Inc. is the general partner of TPG GenPar, L.P., TPG Advisors, Inc. will remain under the control of the Principals.

ARTICLE SIXTEEN

MISCELLANEOUS

16.01 Notices. (a) Any notice to any Partner shall be delivered or sent to the address of such Partner set forth in Schedule A hereto or such other mailing address of which such Partner shall advise the General Partner in writing. Any notice to the Partnership or the General Partner shall be delivered or

sent to the principal office of the Partnership as set forth in Schedule A or such other mailing address of which the General Partner shall advise the Partners in writing.

(b) Any notice hereunder shall be in writing and shall be deemed effectively given and received upon personal delivery, when sent by facsimile or similar electronic means or seven (7) Business Days after mailing by registered or certified mail, return receipt requested, postage prepaid, addressed as described in paragraph 16.01(a) or twenty-four (24) hours after sending by overnight courier, addressed as described in paragraph 16.01(a); provided that any notice sent by fascimile or similar electronic means shall be promptly followed by a copy of such notice sent by mail or overnight courier in the manner described herein.

16.02 GOVERNING LAW; SEPARABILITY OF PROVISIONS. **IT IS THE INTENTION OF THE PARTIES THAT THE INTERNAL LAWS OF THE STATE OF DELAWARE AND, IN PARTICULAR, THE PROVISIONS OF THE PARTNERSHIP ACT SHALL GOVERN THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION OF ITS TERMS AND INTERPRETATION OF THE RIGHTS AND DUTIES OF THE PARTIES. IF ANY PROVISION OF THIS AGREEMENT SHALL BE HELD TO BE INVALID, THE REMAINDER OF THIS AGREEMENT SHALL NOT BE AFFECTED THEREBY.**

16.03 Jurisdiction; Venue. (a) Any action or proceeding against the parties relating in any way to this Agreement may be brought and enforced in the courts of the State of Delaware or (to the extent subject matter jurisdiction exists therefor) of the United States for the District of Delaware, and

the parties irrevocably submit to the jurisdiction of both such courts in respect of any such action or proceeding.

(b) The parties irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such action or proceeding in the courts of the State of Delaware or the United States District Court for the District of Delaware and any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum.

16.04 Entire Agreement. This Agreement constitutes the entire agreement among the parties; it supersedes any prior agreement or understandings among them, oral or written, with respect to the matters addressed herein, all of which are hereby cancelled. This Agreement may not be modified or amended other than pursuant to Article Eleven.

16.05 Headings, etc. The headings in this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural.

16.06 Binding Provisions. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

16.07 No Waiver. The failure of any Partner to seek redress for violation, or to insist on strict performance, of any

covenant or condition of this Agreement shall not prevent a subsequent act which would have constituted a violation from having the effect of an original violation.

16.08 Confidentiality. Each Limited Partner shall maintain the confidentiality of (i) "Non-Public Information", (ii) any information subject to a confidentiality agreement binding upon the General Partner or the Partnership and (iii) the identity of other Limited Partners and their Affiliates so long as such information has not become otherwise publicly available unless, after reasonable notice to the Partnership by the Limited Partner, otherwise compelled by court order or other legal process or in response to other governmentally imposed reporting or disclosure obligations including, without limitation, any act regarding the freedom of information to which it may be subject; provided that each Limited Partner may disclose Non-Public Information to its Affiliates, officers, employees, agents and professional consultants upon notification to such Affiliate, officer, employee, agent or consultant that such disclosure is made in confidence and shall be kept in confidence. As used in this paragraph 16.08, "Non-Public Information" means information regarding the Partnership (including information regarding any Person in which the Partnership holds, or contemplates acquiring, any Investment) and the General Partner received by such Limited Partner pursuant to this Agreement, but does not include information that (i) was publicly known at the time such Limited Partner receives such information pursuant to this Agreement, (ii) subsequently becomes publicly known through no act or

omission by such Limited Partner or (iii) is communicated to such Limited Partner by a third party free of any obligation of confidence known to such Limited Partner. The General Partner may not disclose the identities of the Limited Partners, except on a confidential basis to prospective limited partners in the Partnership.

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

16.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument, provided that each such counterpart shall be executed by the General Partner.

16.11 No Third Party Rights. This Agreement is intended solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto, except as expressly provided to the contrary elsewhere in this Agreement.

16.12 Additional Information. The Limited Partners shall promptly, from time to time, provide the General Partner with such information regarding their composition and legal status as the General Partner may reasonably request.

Schedule A

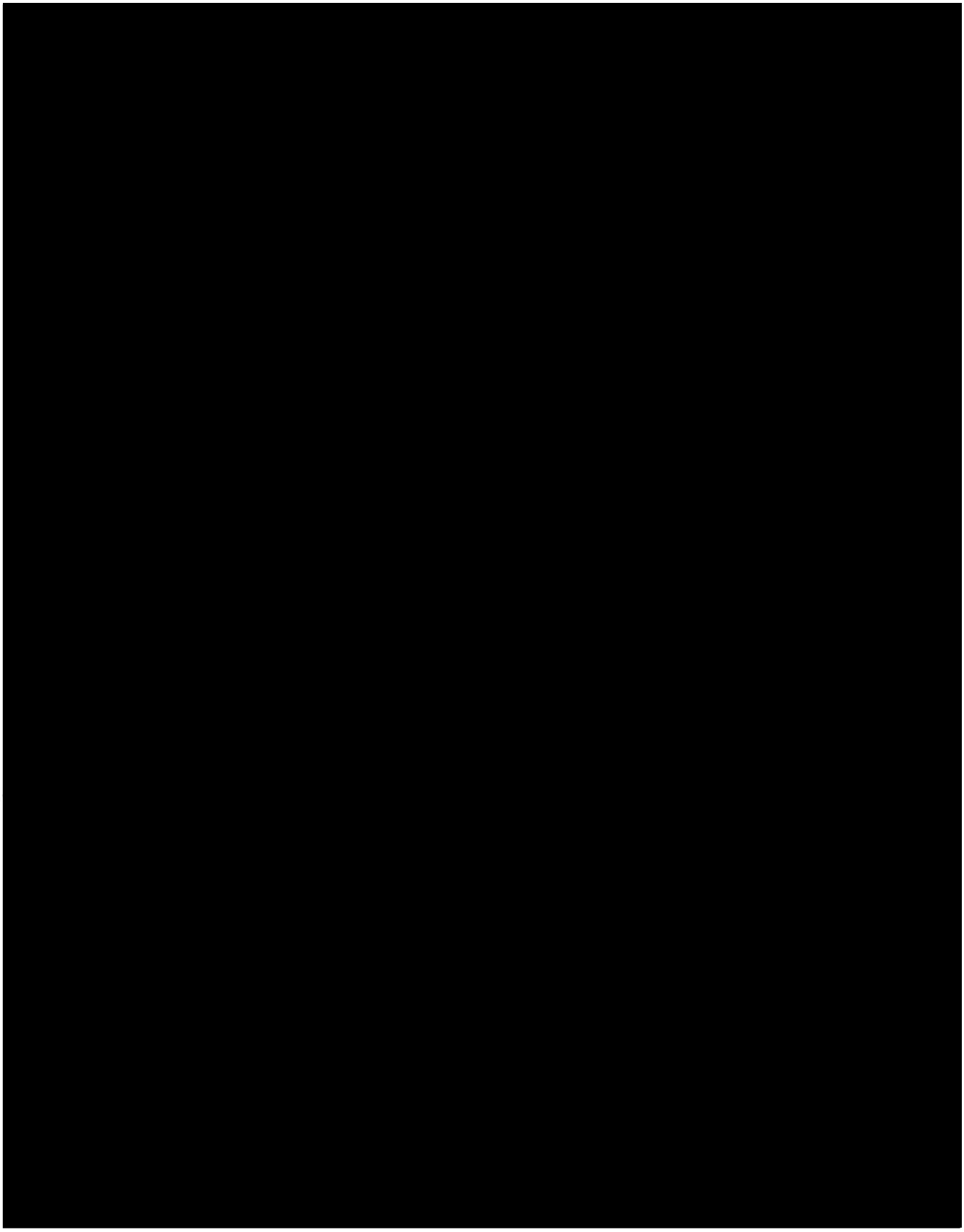
Partnership:

TPG Partners, L.P.
201 Main Street
Suite 2420
Fort Worth, Texas 76102

General Partner:

	Capital Commitment
TPG GenPar, L.P. 201 Main Street Suite 2420 Fort Worth, Texas 76102	$500,000

Limited Partners



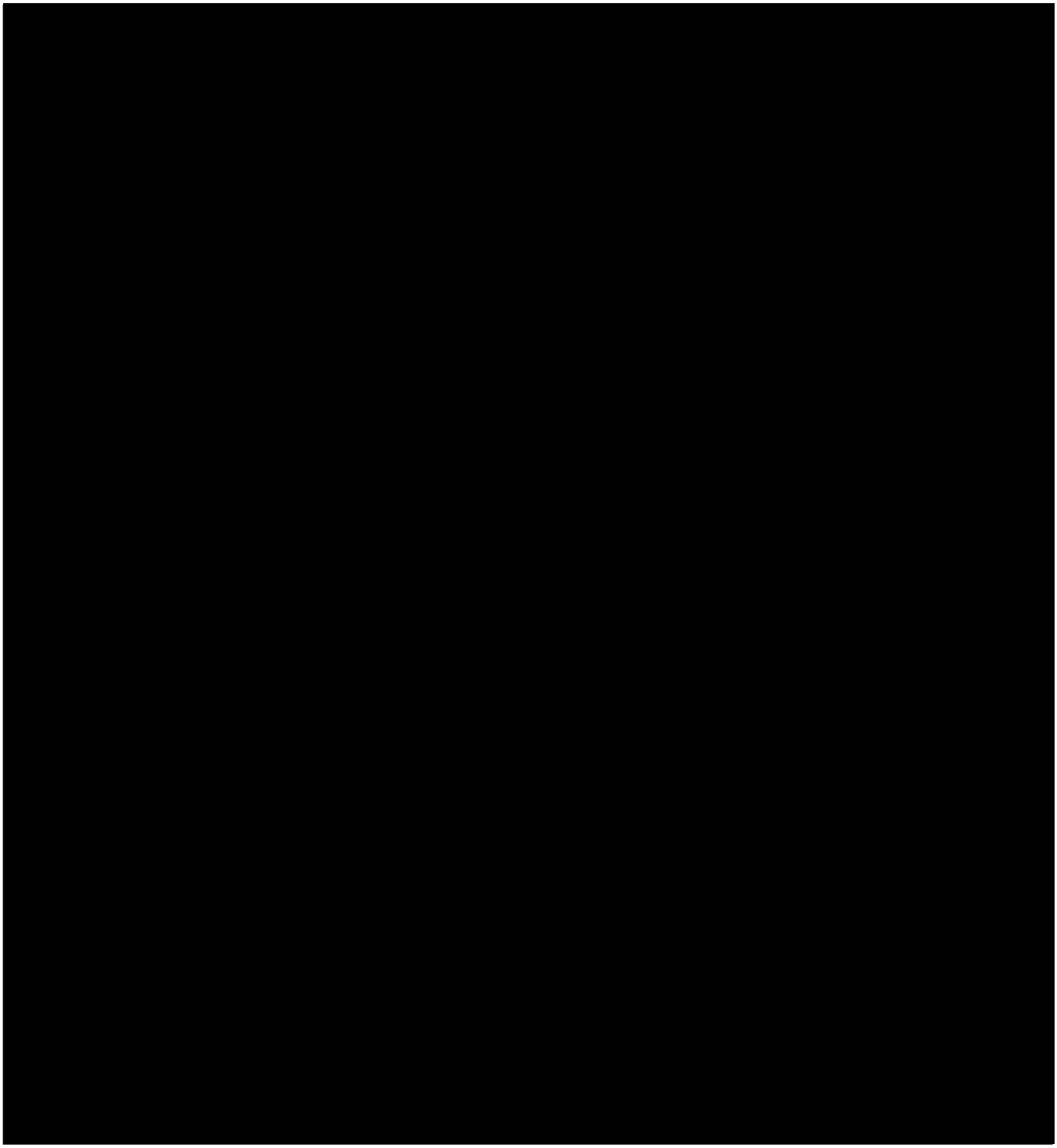


EXHIBIT B

TPG PARTNERS, L.P.

Written Consent of Limited Partners

April 1, 1994

The undersigned, being a Limited Partner in TPG Partners, L.P., a Delaware limited partnership (the "Partnership"), in accordance with the provisions of paragraphs 11.01(a) and 12.01(a) of the Agreement of Limited Partnership of the Partnership, dated as of December 15, 1993 (the "Partnership Agreement"), does hereby consent to the adoption of the resolutions set forth in the numbered paragraphs 1 through 15 below:

1. RESOLVED, that paragraph 1.01 of the Partnership Agreement be amended by inserting immediately after the definition of "Foreign Investor" therein the following provision:

""Foundation Limited Partner" shall mean each Limited Partner that is a private foundation within the meaning of Section 509(a) of the Code.";

by inserting immediately after the definition of "Person" therein the following provision:

""Plan Assets Committee" shall have the meaning specified in paragraph 5.02(d).";

by inserting immediately after the words "division of such Break-Up Fees" in the sixth line of the definition of "Preliminary Divisions" the words "and Current Income"; and

by inserting immediately after the definition of "Write-Down Amount" therein the following provisions:

""Write-Up" shall mean a determination by the General Partner, acting in its sole discretion, subject to paragraph 7.03(i), in connection with its calculation of the Fair Value of an Investment for purposes of paragraph 4.03(b)(B), that the Fair Value of any Investment as to which a Disposition has not occurred as of such Calculation Date is

greater than the aggregate Capital Contributions of the Partners made in respect of such Investment.

"Write-Up Amount" shall mean the amount by which, pursuant to a Write-Up, the Fair Value of an Investment is determined to exceed the aggregate Capital Contributions of the Partners in respect of such Investment."

2. RESOLVED, that paragraph 3.05 of the Partnership Agreement be amended by inserting immediately after the words "General Partner, that (i)" in the twenty-second line thereof the words "there is a substantial likelihood that", and by inserting immediately after the words "(as defined below)," in the thirty-first line thereof the words "there is a substantial likelihood that".

3. RESOLVED, that paragraph 3.06(b) of the Partnership Agreement be amended by inserting immediately after the words "subject to recall." at the end thereof the words "Upon satisfaction of the requirements of this paragraph 3.06(b), each additional Limited Partner shall be deemed to be a Capital Partner with respect to each of the Investments made by the Partnership prior to the time of such additional Limited Partner's admission to the Partnership, and shall be deemed to have contributed capital to each such Investment as of the date of such Investment pro rata with the Partners previously admitted to the Partnership."

4. RESOLVED, that paragraph 4.02(g) of the Partnership Agreement be amended by inserting immediately after the words "paragraphs 4.02(a)" in the third line thereof the letter ", (d),".

5. RESOLVED, that paragraph 5.02(b) of the Partnership Agreement be amended by deleting the word "endeavor" in the seventh, thirteenth, fifty-fifth, and sixty-first lines thereof, in each case inserting in its place the words "use its best efforts".

6. RESOLVED, that paragraph 5.02(c) of the Partnership Agreement be amended by deleting the words "twenty (20)" in the first line thereof, and replacing them with the words "ten (10) business"; and by deleting the final sentence thereof, beginning on the thirty-second line thereof, and inserting in its place the following provisions:

"(d) If the opinion described in paragraph 5.02(c) is not affirmative, then the General Partner shall, and it is hereby authorized and empowered to, take the actions described below.

As soon as possible, the General Partner shall form and consult with a special committee of the Limited Partners (the "Plan Assets Committee") consisting of the representatives or designees of the two ERISA Partners or Governmental Plan Partners having the largest Capital Commitments of all ERISA Partners and Governmental Plan Partners, and the two Limited Partners (other than the General Partner and any of its Affiliates) having the largest Capital Commitments of all such Limited Partners that are not ERISA Partners or Governmental Plan Partners. Each member of the Plan Assets Committee shall have one vote. The Plan Assets Committee shall review the opinion of counsel referred to above, consider the options available to the Partnership for mitigating, preventing or curing any adverse consequences to the Partners that may arise as a result of the situation described in such opinion, and shall make non-binding proposals to the General Partner as to which of those options should be pursued. Should the Plan Assets Committee be unable to agree upon one or more of such non-binding proposals, each member of the Plan Assets Committee shall have the right to make its own non-binding proposals to the General Partner as to which of the options should be pursued.

The General Partner shall then take such actions as it deems necessary and appropriate to mitigate, prevent or cure such adverse consequences, taking into account the interests of all Partners and the Partnership as a whole, considering the following alternatives, to the extent practicable, in the following order: (1) to the extent practicable, as determined by the General Partner in its discretion, taking the actions proposed by the Plan Assets Committee or substantially equivalent actions; (2) renegotiating the terms of any Investment or otherwise modifying the manner in which the Partnership conducts its business; (3) permitting the transfer of all or a portion of the Interests of any or all of the ERISA Partners and Governmental Plan Partners; (4) with the Consent of a majority in Interest of the ERISA Partners and Governmental Plan Partners (voting or consenting together as a single class of Partners), reducing (on a uniform and pro rata basis unless otherwise Consented by all ERISA Partners and Governmental Plan Partners) the ERISA Partners' and Governmental Plan Partners' Unused Capital Commitments or Capital Contributions to one or more (but less than all) Investments made thereafter; or (5) requiring each ERISA Partner and Governmental Plan Partner (on a uniform and pro rata basis unless otherwise Consented by all ERISA Partners and Governmental Plan Partners) to do one of the following: (x) transfer all or a portion of its Interest at a price not less than the Fair Value of such Interest or portion thereof, as adjusted to reflect the Fair Value of the Partnership's assets, or (y) completely or

partially withdraw from the Partnership upon terms reasonably determined by the General Partner to assure such ERISA Partner or Governmental Plan Partner the Fair Value of its Interest; provided, that if an ERISA Partner or Governmental Plan Partner so proposes, the General Partner shall cooperate with the ERISA Partner or Governmental Plan Partner in the discovery of a buyer for all or a portion of such ERISA Partner's or Governmental Plan Partner's Interest.

If, within ten (10) business days after (i) the General Partner has taken all action it deems necessary and appropriate pursuant to the terms of the previous paragraph, and (ii) the expiration of all time limits relating to such action contained in this paragraph 5.02(d), the Partnership fails to deliver to each of the ERISA Partners and Governmental Plan Partners an opinion of Cleary, Gottlieb, Steen & Hamilton or other counsel similarly recognized in connection with ERISA matters to the effect that the assets of the Partnership should not be treated as the assets of each ERISA Partner and Governmental Plan Partner under ERISA and the Plan Assets Regulations, each ERISA Partner and Governmental Plan Partner may do one of the following: (x) transfer all or a portion of its Interest at a price not less than the Fair Value of such Interest or portion thereof, as adjusted to reflect the Fair Value of the Partnership's assets, or (y) completely or partially withdraw from the Partnership upon terms reasonably determined by the General Partner to assure such ERISA Partner or Governmental Plan Partner the Fair Value of its Interest; provided, that if an ERISA Partner or Governmental Plan Partner so proposes, the General Partner shall cooperate with the ERISA Partner or Governmental Plan Partner in the discovery of a buyer for all or a portion of such ERISA Partner's or Governmental Plan Partner's Interest.

Any complete or partial withdrawal of the ERISA Partners or Governmental Plan Partners pursuant to this paragraph 5.02(d) shall occur as of a date determined by the General Partner, but in no event later than the later of (A) the last day of the Fiscal Year of the Partnership during which such decision to withdraw is made or (B) the last day of the second fiscal quarter after which such decision to withdraw is made.

Any distributions in kind made to a withdrawing ERISA Partner or Governmental Plan Partner shall be made at the option of the General Partner after consultation with such withdrawing Partner, and shall be made in the form of the withdrawing Partner's pro rata share of each Investment of the Partnership; provided that no distribution of Securities

or other property shall be made to the withdrawing Partner if the holding thereof would result in a violation of ERISA or other applicable law; and provided further, that the General Partner, to the extent permitted by applicable law, may require the withdrawing ERISA Partner or Governmental Plan Partner to give the General Partner its proxy with respect to Securities distributed to it.

(e) Notwithstanding any other provision of this Agreement to the contrary, and in addition to the rights set forth in paragraph 3.05 hereof, if any Foundation Limited Partner delivers an opinion of counsel, which counsel shall be reasonably acceptable to the General Partner, stating that there is a substantial likelihood that the continued direct or indirect participation by such Foundation Limited Partner in the Partnership or in any Investment, absent a reduction of such Foundation Limited Partner's direct or indirect Interest in the Partnership or any Investment, would give rise to excise taxes imposed by Subchapter A of Chapter 42 of the Code (other than sections 4940, 4947 or 4948 thereof) ("Excise Taxes"), then the General Partner shall, and it is hereby authorized and empowered to, take the actions described below. The General Partner shall take such actions as it deems necessary and appropriate to avoid the imposition of such Excise Taxes, taking into account the interest of all Partners and the Partnership as a whole, considering the following alternatives:

(1) permitting such Foundation Limited Partner to do one of the following: (x) transfer all or a portion of its Interest at a price not less than the Fair Value of such Interest or portion thereof being transferred, as adjusted to reflect the Fair Value of the Partnership's assets, or (y) completely or partially withdraw from the Partnership upon terms reasonably determined by the General Partner to assure such Foundation Limited Partner the Fair Value of its Interest; provided, that if Foundation Limited Partner so proposes, the General Partner shall cooperate with the Foundation Limited Partner in the discovery of a buyer for all or a portion of such Foundation Limited Partner's Interest; or

(2) reducing the Foundation Limited Partner's Unused Capital Commitment.

As soon as practicable on or after (but in no event later than ten (10) business days after) the date the Foundation Limited Partner knows, or has reason to know, that its withdrawal from the Partnership may be necessary to avoid Excise Taxes, it shall provide written notice thereof to the Partnership. Any complete or partial withdrawal of a Foundation Limited Partner pursuant to clause (1)(y) above

shall occur as of a date determined by the General Partner, but in no event earlier than forty-five (45) days after delivery to the General Partner of the opinion of counsel described in this paragraph 5.02(e), and in no event later than ninety (90) days after the date the Foundation Limited Partner knows, or has reason to know, that such withdrawal may be necessary to avoid Excise Taxes.

Any distributions made to a withdrawing Foundation Limited Partner shall, at the option of the General Partner after consultation with such withdrawing Foundation Limited Partner, be in cash, in kind, or in the form of a promissory note on commercially reasonable terms with a term no longer than four (4) years, provided that such promissory note shall be payable not later than the date of termination of the Partnership. Any such distributions made in kind shall be made in the form of the withdrawing Foundation Limited Partner's pro rata share of each Investment of the Partnership; provided that no distribution of Securities or other property shall be made to any Foundation Limited Partner if the holding thereof by such Foundation Limited Partner would result in a substantial likelihood of the imposition of Excise Taxes or the violation of any applicable law."

7. RESOLVED, that paragraph 5.03(a) of the Partnership Agreement be amended by inserting immediately after the words "to the" in the thirty-first line thereof the letter "(A)"; by inserting immediately after the word "or" in the thirty-first line thereof the letter "(B)"; and by inserting immediately after the words "the Principals" in the thirty-first line thereof the words "or their Affiliates".

8. RESOLVED, that paragraph 6.02(d) of the Partnership Agreement be amended by inserting immediately after the words "Capital Commitment of such Limited Partner." in the nineteenth line thereof the following provision: "Upon satisfaction of the requirements of this paragraph 6.02(d),, each additional Limited Partner shall be deemed to have made a Capital Contribution to the Partnership in respect of the Management Fee as of the date of the first such Capital Contribution made by the original Limited Partners."

9. RESOLVED, that paragraph 7.01 of the Partnership Agreement be amended by inserting immediately after the words "the Advisory Committee shall" in the sixth and seventh lines thereof the words "(i) include at least one member nominated by either an ERISA Partner or a Governmental Plan Partner, and (ii)".

10. RESOLVED, that paragraph 7.02 of the Partnership Agreement be amended by deleting the seventh line thereof

and inserting in its place the words "as provided in paragraph 5.03(h) above and in paragraphs 7.03(c), 7.03(f), 7.03(g), 7.03(i) and 7.03(l)".

11. RESOLVED, that paragraph 7.03 of the Partnership Agreement be amended by inserting immediately after the words "Segregated Reserve Account." in the third line of paragraph (h) thereof, the following provision:

"(i) The Advisory Committee shall review, on a yearly basis, any Write-Up Amounts established by the General Partner for purposes of paragraph 4.03(b)(B) which increase the Fair Value of any Investment held by the Partnership as to which a Disposition has not occurred in an amount in excess of 125% of the aggregate Capital Contributions of the Capital Partners with respect to such Investment, and shall approve or disapprove of such Write-Up Amounts."

12. RESOLVED, that paragraph 7.03(j) of the Partnership Agreement be amended by deleting the letter "(h)" in the fourth line thereof, and inserting in its place the letter "(i)".

13. RESOLVED, that paragraph 7.03 of the Partnership Agreement be amended by relettering paragraphs "(i)", "(j)", and "(k)" thereof as paragraphs "(j)", "(k)", and "(l)", respectively.

14. RESOLVED, that paragraph 11.01(a) of the Partnership Agreement be amended by deleting the word "or" at the end of clause (vii) thereof, and inserting immediately after such clause the following provision:

"(viii) amend the definition of Foundation Limited Partner or any of the provisions of paragraphs 2.07(a), 2.07(b), 3.05 (with respect to the rights of Foundation Limited Partners) or 5.02(e) without the consent of a majority in interest of the Foundation Limited Partners; or";

and by renumbering the present clause (viii) thereof as clause (ix).

15. RESOLVED, that paragraph 16.08 of the Partnership Agreement be amended by inserting immediately after the words "or the Partnership" in the fourth line thereof the words "and made known to the Limited Partners".

IN WITNESS WHEREOF, the undersigned Limited Partner has caused this consent to be executed by its duly authorized representative to be effective as of the date hereof.

_____
(Name of Limited Partner)

By: _____
Name:
Title:

EXHIBIT C

TPG PARTNERS, L.P.

Written Consent of Limited Partners

June 15, 1994

The undersigned, being a Limited Partner in TPG Partners, L.P., a Delaware limited partnership (the "Partnership"), in accordance with the provisions of paragraphs 11.01(a) and 12.01(a) of the Agreement of Limited Partnership of the Partnership, dated as of December 15, 1993, as amended by the amendment thereto authorized by the Written Consent of Limited Partners dated April 1, 1994 (the "Partnership Agreement"), does hereby consent to the adoption of the resolutions set forth in the numbered paragraphs 1 through 12 below:

1. RESOLVED, that paragraph 1.01 of the Partnership Agreement be amended by inserting immediately after the last line of the definition of "Parallel Investment Entity" therein the following:

"Any reimbursement of costs and investment management fees paid to the General Partner of a Parallel Investment Entity which would be distributed to the Partners, had the Parallel Investment Entity participated as a Limited Partner of the Partnership, shall be distributed to the Partners, as provided in paragraphs 3.06 and 6.02 hereof."

and by inserting immediately after the last line of the definition of "Unused Capital Commitment" therein the following:

"In the event that any Limited Partner is required to make any payment, pursuant to Section 5.1 of the Subscription Agreement between such Limited Partner and the General Partner, in respect of any losses, liabilities, claims, damages or expenses incurred by the General Partner, the Partnership or any other person, such Limited Partner may elect that its Unused Capital Commitment shall be reduced by the amount of such payment."

2. RESOLVED, that paragraph 2.04(f) of the Partnership Agreement be amended by inserting immediately after the last line thereof the following:

"and provided further that the aggregate principal amount of any loan as to which the Partnership may act as guarantor or surety, together with the aggregate dollar amount (valued at cost) of the permanent investment by the Partnership in the obligor of such loan, shall never exceed twenty-five percent (25%) of the Partnership's aggregate Capital Commitments (determined as of the time of such guarantee or surety agreement, or, if later, the time of such investment);"

3. RESOLVED, that paragraph 7.01 of the Partnership Agreement be amended by deleting the words "nine (9)" in the third and fourth lines thereof, and replacing them with the words "eleven (11)"; and by inserting immediately after the words "Limited Partners" in the fourth line thereof the words "of the Partnership or any Parallel Investment Entity".

4. RESOLVED, that paragraph 9.02(a) of the Partnership Agreement be amended by inserting immediately after the words "successor or underlying trusts" in the tenth line thereof the words "or fiduciaries", and inserting immediately after the last line thereof the following:

"Following the reconstitution of, or substitution of the fiduciary for, any such employee benefit plan or governmental plan, such plan (a "Reconstituted Plan") shall be deemed to be a successor or underlying trust or fiduciary within the meaning of the previous sentence."

5. RESOLVED, that paragraph 9.03 of the Partnership Agreement be amended by inserting immediately after the last line thereof the following:

"(c) Notwithstanding the provisions of paragraph 9.03(a)(i), and subject to the fulfillment of each of the requirements set forth in paragraphs 9.03(a)(ii), 9.03(a)(iii) and 9.03(b), the General Partner shall be deemed to consent to the admission as a Substitute Limited Partner of any Reconstituted Plan to which a Limited Partner has assigned all or part of its interest in the Partnership pursuant to paragraph 9.02, provided, however, that no Reconstituted Plan shall be admitted as a Substitute Limited Partner if the admission of such Plan would increase the number of persons holding beneficial ownership of interests in the Partnership, within the meaning of Section 3(c)(1) of the Investment Company Act of 1940, as amended."

6. RESOLVED, that paragraph 12.01 of the Partnership Agreement be amended by inserting immediately after the last line thereof the following:

"(c) With respect to all matters in respect of which the Consent of a Limited Partner is required by this Agreement, a Consent shall be required of each similarly situated limited partner of any Parallel Investment Entity, whose Interest in the Partnership for voting purposes shall be equal to the ratio of (i) the Capital Commitment to the Parallel Investment Entity of such limited partner to (ii) the sum of the aggregate Capital Commitments of all partners of the Partnership and the aggregate Capital Commitments of all partners of any Parallel Investment Entity who are entitled to vote."

7. RESOLVED, that paragraph 14.04 of the Partnership Agreement be amended by inserting immediately after the words "cash flows for such quarter" in the eighth line thereof, the words "and with respect to each Partner, a statement reflecting the balance in such Partner's Capital Account as of the end of such quarter".

8. RESOLVED, that paragraph 16.03(a) of the Partnership Agreement be amended by inserting immediately after the words "any such action or proceeding" in the seventh line thereof the following:

"provided, however, that any Governmental Plan Partner that, within ten business days of its admission to the Partnership, provides the General Partner with a certificate of its plan administrator stating that such an irrevocable submission to jurisdiction would constitute a violation of applicable law, regulation or established policy shall not be deemed to have made such an irrevocable submission."

9. RESOLVED, that paragraph 16.03(b) of the Partnership Agreement be amended by inserting immediately after the words "any inconvenient forum" in the seventh line thereof the following:

"provided, however, that any Governmental Plan Partner that, within ten business days of its admission to the Partnership, provides the General Partner with a certificate of its plan administrator stating that such a waiver would constitute a violation of applicable law, regulation or established policy shall not be deemed to have made such a waiver."

10. RESOLVED, that paragraph 16.08 of the Partnership Agreement be amended by inserting immediately after the

words "shall be kept in confidence" in the seventeenth line thereof the following:

"and provided further, that any Governmental Plan Partner may, upon being so compelled to disclose Non-Public Information, satisfy its obligations to the Partnership under this paragraph 16.08 by endeavoring to provide reasonable prior notice of such compelled disclosure to the General Partner and by, in any event, promptly notifying the General Partner after any such compelled disclosure."

11. RESOLVED, that a new paragraph 16.13 be added to the Partnership Agreement as follows:

"16.13 Opinions of Counsel. With regard to each instance in which this Agreement requires that a Limited Partner deliver an opinion of counsel to the General Partner, such requirement shall be deemed to have been satisfied by any Governmental Plan Partner which delivers to the General Partner a certificate of its plan administrator as to the matters required to be set forth in such opinion of counsel; provided, however, that if such certificate is not satisfactory to the General Partner, the General Partner shall select a law firm (reasonably acceptable to such Governmental Plan Partner) with nationally recognized expertise in the areas of law addressed in the unsatisfactory certificate, and retain such firm to render an opinion as to whether the matters set forth in such certificate are valid. The Limited Partner providing the certificate shall cooperate with such counsel and disclose to such counsel all facts and circumstances necessary for such counsel to render such opinion. The opinion of such counsel shall be determinative of the validity or invalidity of the matters set forth in the certificate. The fees and expenses of such counsel shall be borne entirely by the Governmental Plan Partner providing such a certificate, as a cost of exercising the rights for which the opinion is required."

12. RESOLVED, that a new paragraph 16.14 be added to the Agreement as follows:

"16.14 Interests in Media Companies. In the event that the Partnership acquires Securities that represent five percent (5%) or more of the outstanding voting stock of, or acquires a partnership interest in, a corporation or partnership that is, or directly or indirectly owns, controls or operates, a broadcast radio or television station, a cable or wireless cable television system or a "daily newspaper" (as such term is defined in the rules and regulations of the Federal Communications Commission, as they may be amended from time to time) (any such entity, a "Media Company"), any Limited

Partner may, upon delivery of a certificate evidencing such election to the General Partner on or before the date of such acquisition, elect to renounce any rights it may have to, and in no event shall a Limited Partner making such an election be required to: (a) act as an employee of the Partnership if such employment relates, directly or indirectly, to the media business of the Partnership, if any, or any Media Company, (b) serve, in any material capacity, as an independent contractor or agent with respect to the media business of the Partnership, if any, or any Media Company, (c) communicate on matters pertaining to the day-to-day media operations of the Partnership, if any, or a Media Company with (i) an officer, director, partner, agent, representative or employee of such Media Company, or (ii) the General Partner, (d) perform any services for the Partnership materially relating to the media activities of the Partnership, if any, or (e) become actively involved in the management or operation of the Partnership's media business."

IN WITNESS WHEREOF, the undersigned Limited Partner has caused this consent to be executed by its duly authorized representative to be effective as of the date hereof.

_____
(Name of Limited Partner)

By: _____
Name:
Title: