AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
[FUND NAME], L.P.  
(Basic)

DATED AS OF                         ,

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OF  
[FUND NAME], L.P.

Dated as of \_\_\_\_\_\_\_\_\_\_\_,

This AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT of **[FUND NAME], L.P.** (the "Partnership"), is made as of the day of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, by and among **[GP of Fund] L.L.C.**, a [Delaware] limited liability company, as General Partner, the persons and/or entities listed from time to time in Part II of Schedule A of this Agreement, as Limited Partners (the "Limited Partners"), and, **[name of initial LP in the initial agreement of limited partnership]**, as the Withdrawing Limited Partner (the "Withdrawing Limited Partner").

1. DEFINITIONS; INTERPRETATION

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* 1. Definitions

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As used herein the following terms shall have the following respective meanings:

Book Value—with respect to any Partnership asset, the asset's adjusted basis for federal income tax purposes, except that the Book Values of all Partnership assets shall be adjusted to equal their respective Fair Market Values, in accordance with the rules set forth in Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional Interest by any new or existing Partner in exchange for more than a de minimis Capital Contribution; (b) the date of the actual distribution of more than a de minimis amount of Partnership property (other than a pro rata distribution) to a Partner; or (c) the date of the actual liquidation of the Partnership within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided that adjustments pursuant to clauses (a) and (b) above shall be made only if the General Partner determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners. The Book Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its Fair Market Value. The Book Value of any Partnership asset shall be adjusted to reflect any write-down which constitutes a Disposition.

Disposition—the sale, exchange, redemption, assignment, transfer, repayment, repurchase or other disposition by the Partnership of all or any portion of a Portfolio Company or Portfolio Investment for cash or for Marketable Securities which can be distributed to the Partners pursuant to section 6.2 and shall include the receipt by the Partnership of a liquidating dividend, distribution upon a sale of all or substantially all of the assets of a Portfolio Company or other like distribution for cash or for Marketable Securities of a Portfolio Investment or any portion thereof which can be distributed to the Partners pursuant to section 6.2 and shall also include a distribution in kind to the Partners of all or any portion of a Portfolio Investment as permitted hereby. A Disposition shall be deemed to include a Security becoming worthless within the meaning of section 165(g) of the Code or written down [in accordance with GAAP] [to reflect an impairment in value that in the good faith judgment of the General Partner is permanent] (to the extent of any such write-down only).

Distributable Cash—the excess of the sum of all cash receipts of all kinds over cash disbursements (or reserves therefor) for Partnership Expenses.

Fair Market Value—(a) as to any Securities which are listed or admitted to trading on any national securities exchange on any trading day, the amount equal to (i) the last sale price of such Securities, regular way, on such date or, if no such sale takes place on such date, the average of the closing bid and asked prices thereof on such date, in each case as officially reported on the principal national securities exchange on which such Securities are then listed or admitted to trading, or (ii) if such Securities are not then listed or admitted to trading on any national securities exchange but are reported through the automated quotation system of a registered securities association, the last trading price of such Securities on such date, or if there shall have been no trading on such date, the average of the closing bid and asked prices of such Securities on such date as shown by such automated quotation system, and (b) as to any other property on any date, the fair market value of such property on such date as determined in good faith by the General Partner in accordance with valuation procedures approved by the Advisory Board, provided that if a Majority in Interest so requests in writing, the fair market value of such property shall be determined by an independent, nationally recognized investment banking firm, accounting firm or an appraisal firm selected by the General Partner.

Net Income and Net Loss—for each fiscal year or other period, the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for federal income tax purposes with the following adjustments: (a) all items of income, gain, loss, deduction or expense specially allocated pursuant to this Agreement (including section 5.2) shall not be taken into account in computing such taxable income or loss; (b) any income of the Partnership that is exempt from federal income taxation and not otherwise taken into account in computing Net Income and Net Loss shall be added to such taxable income or loss; (c) if the Book Value of any asset differs from its adjusted tax basis for federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Book Value; (d) upon an adjustment to the Book Value of any asset pursuant to the definition of Book Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (e) if the Book Value of any asset differs from its adjusted tax basis for federal income tax purposes the amount of depreciation, amortization or cost recovery deductions with respect to such asset for purposes of determining Net Income and Net Loss shall be an amount which bears the same ratio to such Book Value as the federal income tax depreciation, amortization or other cost recovery deductions bears to such adjusted tax basis (provided that if the federal income tax depreciation, amortization or other cost recovery deduction is zero, the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deductions in calculating Net Income and Net Loss); and (f) except for items in (a) above, any expenditures of the Partnership not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Net Income and Net Loss pursuant to this definition, shall be treated as deductible items.

Percentage Interest—with respect to any Partner and any Portfolio Investment, the ratio of such Partner's Capital Contribution to that Portfolio Investment to the total Capital Contributions of all Partners to that Portfolio Investment, as adjusted from time to time pursuant to sections 4.5 and 10.3(c).

Permitted Temporary Investments—investments by the Partnership in (a) Securities that are obligations of or guaranteed by the United States government or an agency or instrumentality thereof; (b) domestic, corporate or governmental indebtedness rated Aa or Prime-1 (or the equivalent thereof) or better by Moody's Investors Service Inc. or A-1 (or its equivalent) or better by Standard & Poor's Corporation; (c) certificates of deposit, money market accounts, savings accounts, checking accounts or any combination thereof in banks which have total assets of $100,000,000 or more (or in banks insured by the Federal Deposit Insurance Corporation (the "FDIC") which have total assets of less than $100,000,000 if the amount of the Partnership's funds deposited in such bank is fully insured by the FDIC); or (d) any other Securities that the General Partner determines are appropriate for short term investments.

Portfolio Company—a Person whose Securities have been acquired, directly or indirectly, in whole or in part, by the Partnership, other than through a Permitted Temporary Investment.

Portfolio Investment—an investment in Securities (other than Permitted Temporary Investments) which have been acquired, directly or indirectly, in whole or in part, by the Partnership or Securities issued to the Partnership, directly or indirectly, as a dividend on, or in reclassification or exchange of, other Securities held by the Partnership.

Realized Investment—any Portfolio Investment (or any portion thereof) which has been the subject of a Disposition, in any such case to the extent so subject.

1. CAPITAL ACCOUNTS, ALLOCATIONS

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* 1. Capital Accounts

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A capital account (a "Capital Account") shall be established and maintained for each Partner to which shall be credited the Capital Contributions made by such Partner and such Partner's allocable share of Net Income (and items thereof), and from which shall be deducted distributions to such Partner of cash or other property and such Partner's allocable share of Net Loss (and items thereof). To the extent not provided for in the preceding sentence, the Capital Accounts of the Partners shall be adjusted and maintained in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

* 1. Allocations to Capital Accounts

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* + 1. General Rule. Except as provided in section 5.2(b) or elsewhere in this Agreement, Net Income (and items thereof) and Net Loss (and items thereof) for any fiscal year shall be allocated among the Partners in a manner such that the Capital Account of each Partner, immediately after giving effect to such allocation, is, as nearly as possible, equal (proportionately) to the amount equal to the distributions that would be made to such Partner during such fiscal year pursuant to section 6.2, if (i) the Partnership were dissolved and terminated; (ii) its affairs were wound up and each Partnership asset was sold for cash equal to its Book Value (except that any Partnership asset that is a Realized Investment in such fiscal year shall be treated as if sold for an amount of cash equal to the sum of (x) the amount of any net cash proceeds actually received by the Partnership in connection with such Disposition and (y) the Fair Market Value of any property actually received by the Partnership in connection with such Disposition); (iii) all Partnership liabilities were satisfied (limited with respect to each nonrecourse liability to the Book Value of the assets securing such liability); and (iv) the net assets of the Partnership were distributed in accordance with section 6.2 to the Partners immediately after giving effect to such allocation. The General Partner may, in its discretion, make such other assumptions (whether or not consistent with the above assumptions) as it deems necessary or appropriate in order to effectuate the intended economic arrangement of the Partners.
    2. Allocations Relating to Last Fiscal Year. Except as otherwise provided elsewhere in this Agreement, if upon the dissolution and termination of the Partnership pursuant to section 12 and after all other allocations provided for in section 5.2 have been tentatively made as if this section 5.2(b) were not in this Agreement, a distribution to the Partners under section 12 would be different from a distribution to the Partners under section 6.2, then Net Income (and items thereof) and Net Loss (and items thereof) for the fiscal year in which the Partnership dissolves and terminates pursuant to section 12 shall be allocated among the Partners in a manner such that the Capital Account of each Partner, immediately after giving effect to such allocation, is, as nearly as possible, equal (proportionately) to the amount of the distributions that would be made to such Partner during such last fiscal year pursuant to section 6.2. The General Partner may, in its discretion, apply the principles of this section 5.2(b) to any fiscal year preceding the fiscal year in which the Partnership dissolves and terminates (including through application of Section 761(e) of the Code) if delaying application of the principles of this section 5.2(b) would likely result in distributions under section 12 that are materially different from distributions under section 6.2 in the fiscal year in which the Partnership dissolves and terminates.
    3. Allocations in Special Circumstances. The following special allocations shall be made in the following order:
       1. Minimum Gain Chargeback. Notwithstanding any other provision of this section 5, if there is a net decrease in partnership minimum gain (as defined in Treasury Regulations Section 1.704-2(b)(2) and (d)) during any fiscal year, the Partners shall be specially allocated items of Partnership income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to the portion of such Partner's share of the net decrease in partnership minimum gain, determined in accordance with Treasury Regulations Section 1.704-2(f) and (g). This section 5.2(c)(i) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.
       2. Partner Minimum Gain Chargeback. Notwithstanding any other provision of this section 5, if there is a net decrease in Partner nonrecourse debt minimum gain attributable to a Partner nonrecourse debt (as defined in Treasury Regulations Section 1.704-2(i)) during any fiscal year, each Partner shall be specially allocated items of Partnership income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to the portion of such Partner's share of the net decrease in Partner nonrecourse debt minimum gain attributable to such Partner's nonrecourse debt, determined in accordance with Treasury Regulations Section 1.704-2(i). This section 5.2(c)(ii) is intended to comply with the minimum gain chargeback requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.
       3. Qualified Income Offset. 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) or (6), items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit, if any, in such Partner's Capital Account (as determined under Treasury Regulations Section 1.704-1) as quickly as possible, provided that an allocation pursuant to this section 5.2(c)(iii) shall be made only if and to the extent that such Partner would have such Capital Account deficit after all other allocations provided for in section 5.2 have been tentatively made as if this section 5.2(c)(iii) were not in this Agreement. This section 5.2(c)(iii) is intended to comply with the qualified income offset provisions in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.
       4. Gross Income Allocation. In the event any Limited Partner has a deficit balance in such Limited Partner's Capital Account (as determined after crediting such Capital Account for any amounts that such Limited Partner is obligated to restore or is deemed obligated to restore pursuant to Treasury Regulations Section 1.704-2), items of Partnership income and gain shall be specially allocated to such Limited Partner in an amount and manner sufficient to eliminate such deficit (as so determined) of such Limited Partner's Capital Account as quickly as possible; provided that an allocation pursuant to this section 5.2(c)(iv) shall be made only if and to the extent that such Limited Partner would have such Capital Account deficit (as so determined) after all other allocations provided for in section 5.2 (other than section 5.2(c)(iii)) have been tentatively made as if this section 5.2(c)(iv) were not in this Agreement.
       5. Loss Allocation Limitation. No allocation of Net Loss (or items thereof) shall be made to any Partner to the extent that such allocation would create or increase a deficit in such Partner's Capital Account (as determined after debiting such Capital Account for the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4),(5) and (6) and crediting such Capital Account for any amounts that such Partner is obligated to restore or is deemed obligated to restore pursuant to Treasury Regulations Section 1.704-2).
    4. Allocation Periods. In each fiscal year of the Partnership, Net Income (and items thereof) and Net Loss (and items thereof) shall be allocated:
       1. at the time of any distribution pursuant to section 6.2, for the period commencing on the later of (x) the first day of such fiscal year and (y) the date of the most recent prior distribution in such fiscal year, and ending on the date immediately preceding such distribution; and
       2. as of the last day of each fiscal year, for the period commencing on the later of (x) the first day of such fiscal year and (y) the date of the most recent prior distribution in such fiscal year, and ending on such last day.
    5. Transfer of or Change in Interests. The General Partner is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation and/or special allocation of items of Partnership income, gain, loss, deduction and expense with respect to a newly issued Interest, a transferred Interest and a redeemed Interest. A transferee of an Interest in the Partnership shall succeed to the Capital Account of the transferor Partner to the extent it relates to the transferred Interest.
    6. Syndication and Organization Expenses. Syndication and organization expenses (as defined in Section 709(a) of the Code) for any fiscal year shall be allocated to the Capital Accounts of the Partners so that, as nearly as possible, the cumulative amount of such expenses allocated with respect to such Partner corresponds to the amount paid directly or indirectly by such Partner.
    7. Certain Interest Expense. Interest expense attributable to borrowings described in section 7.4 shall be specially allocated pro rata to the Partners other than those Partners making a Capital Contribution in lieu of such borrowings as described in section 7.4.
    8. Management Fee Expense. Management Fee expenses shall be allocated to the Capital Accounts of the Partners so that, as nearly as possible, the cumulative amount of such expenses allocated with respect to each Partner corresponds to the amount paid directly or indirectly by such Partner.
  1. Tax Allocations

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* + 1. General Rules. Except as otherwise provided in section 5.3(b), for each fiscal period, items of Partnership income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes, among the Partners in the same manner as the Net Income (and items thereof) or Net Loss (and items thereof) of which such items are components were allocated pursuant to section 5.2.
    2. Section 704(c) of the Code. Income, gains, losses and deductions (and items thereof) with respect to any property (other than cash) contributed or deemed contributed to the capital of the Partnership shall, solely for income tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its Fair Market Value at the time of the contribution or deemed contribution in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible tax elections as determined in the discretion of the General Partner.

If there is a revaluation of Partnership property pursuant to the definition of Book Value, subsequent allocations of income, gains, losses or deductions with respect to such property shall be allocated among the Partners so as to take account of any variation between the adjusted tax basis of such property to the Partnership for federal income tax purposes and its Fair Market Value in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible tax elections as determined in the discretion of the General Partner.

* + 1. Capital Accounts Not Affected. Allocations pursuant to this section 5.3 are solely for federal, state and local tax purposes and shall not affect, or in any way be taken into account in computing, any Partner's Capital Account or allocable share of Net Income (or items thereof) or Net Loss (or items thereof).
    2. Tax Allocations Binding. The Partners acknowledge that they are aware of the tax consequences of the allocations made by this section 5.3 and hereby agree to be bound by the provisions of this section 5.3 in reporting their respective shares of items of Partnership income, gain, loss, deduction and expense.
  1. Determinations by General Partner

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All matters concerning the computation of Capital Accounts, the allocation of items of Partnership income, gain, loss, deduction and expense for all purposes of this Agreement and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the General Partner in its discretion. Such determinations shall be final and conclusive as to all the Partners. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any item of income, gain, loss, deduction or expense of any Partner or the Partnership is constructively attributed to, respectively, the Partnership or any Partner, or any contribution to or distribution by the Partnership or any payment by any Partner or the Partnership is recharacterized, the General Partner may, in its discretion and without limitation, specially allocate items of Partnership income, gain, loss, deduction and expense and/or make correlative adjustments to the Capital Accounts of the Partners in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net Capital Account balances of the Partners (after taking into account such special allocations and adjustments) shall, as nearly as possible, be equal, respectively, to the amount of income, gain, loss, deduction and expense that would have been realized by each relevant party and the Capital Account balances of the Partners that would have existed if such attribution and/or recharacterization and the application of this sentence of this section 5.4 had not occurred. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the General Partner shall determine, in its discretion, that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Partners, the General Partner may make such modification.

1. DISTRIBUTIONS

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* 1. No Right to Withdraw

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No Partner shall have the right to withdraw capital or demand or receive distributions or other returns of any amount in its Capital Account, except as expressly provided in this section 6.

* 1. Ordinary Distributions

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* + 1. Timing. Subject to the provisions of section 6.4, after provision for sufficient working capital consistent with good fiscal operating policy and management and such other needs as the General Partner, in its discretion, shall deem necessary or advisable, the General Partner shall cause Distributable Cash received in connection with:
       1. a Disposition to be distributed hereunder no later than 90 days following the receipt thereof;
       2. interest, dividend or other income from a Portfolio Investment received in any fiscal quarter of the Partnership, net of any obligations and expenses, to be distributed hereunder promptly following the end of such fiscal quarter; and
       3. income from Permitted Temporary Investments to be distributed hereunder on an annual basis, or more often in the discretion of the General Partner.
    2. Distributions of Distributable Cash Attributable to Portfolio Investments. Distributable Cash attributable to any Portfolio Investment (including income from Permitted Temporary Investments realized pending investment in such Portfolio Investment or pending distribution of Distributable Cash relating to such Portfolio Investment) shall initially be apportioned among the Partners (including the General Partner) in proportion to their respective Percentage Interests relating to such Portfolio Investment. The amount apportioned to any Limited Partner pursuant to the preceding sentence shall then be immediately reapportioned as between such Limited Partner on the one hand and the General Partner on the other hand and distributed as follows:
       1. Return of Capital and Costs. First, 100% to such Limited Partner until such Limited Partner has received pursuant to this clause 6.2(b)(i) cumulative distributions attributable to all Realized Investments in an amount equal to the sum of: (A) such Limited Partner's Capital Contributions relating to all Realized Investments, and (B) the product of (x) such Limited Partner's Capital Contributions which were applied to the payment of Partnership Expenses and (y) a fraction, the numerator of which is such Limited Partner's Capital Contributions relating to all Realized Investments and the denominator of which is such Limited Partner's Capital Contributions relating to all Portfolio Investments;
       2. 8% Preferred Return. Second, 100% to such Limited Partner until the excess of (A) the cumulative distributions to such Limited Partner attributable to all Realized Investments over (B) the amount described in section 6.2(b)(i) with respect to such Limited Partner, equals an 8% per annum cumulative return, compounded semi-annually, on the amount so described in section 6.2(b)(i);
       3. Catch-Up to 20%. Third, 100% to the General Partner to the extent, if any, necessary so that the cumulative distributions to the General Partner relating to such Limited Partner equal 20% of the sum of the cumulative distributions to such Limited Partner attributable to all Realized Investments (other than any such distributions described in section 6.2(b)(i)) plus the cumulative distributions to the General Partner relating to such Limited Partner; and
       4. 80/20 Share. Thereafter, (A) 80% to such Limited Partner and (B) 20% to the General Partner.

To the extent that Distributable Cash in the form of interest or ordinary dividend income is received by the Partnership in respect of a Portfolio Investment prior to the disposition of such Portfolio Investment, then such Distributable Cash shall first be applied to each Limited Partner's capital and costs in respect of such Portfolio Investment pursuant to Section 6.2(b)(i).

* + 1. Distributions of Distributable Cash Not Attributable to Portfolio Investments. Subject to sections 4.4, 6.2(d) and 6.7, distributions of Distributable Cash not attributable to Portfolio Investments shall be distributed to all Partners (including the General Partner) in proportion to their respective proportionate interests in the Partnership property or funds that produced such Distributable Cash, as determined in good faith by the General Partner.
    2. Clawback Provision. If, following the dissolution, winding up and termination of the Partnership and the distribution of all or substantially all of the Partnership's assets pursuant to section 12.2, (i) the aggregate amount received by any Limited Partner pursuant to section 6.2 and sections 6.3 and 12 does not equal or exceed (ii) an amount equal to (A) such Limited Partner's Capital Contributions applied to the purchase of Portfolio Investments, plus (B) amounts paid by such Limited Partner in respect of Partnership Expenses relating to Portfolio Investments, plus (C) an amount sufficient to provide an 8% per annum return, compounded semi-annually, on the amount set forth in clause (A) and (B) above, the General Partner shall immediately contribute to the Partnership for payment to such Limited Partner an amount equal to the excess of the amount set forth in clause (ii) above over the amount set forth in clause (i) above, provided, however, that the amount which must be repaid by the General Partner to the Partnership in respect of any Limited Partner shall not exceed the amount distributed to the General Partner pursuant to (or by reference to) sections 6.2(b)(iii) and (iv) and sections 6.3 and 12 in respect of such Limited Partner after deducting from such amount the aggregate income tax liability of each Person whose tax liability is determined by reference to the income of the General Partner determined by using the Assumed Income Tax Rate. In addition, if, following the dissolution, winding up and termination of the Partnership and the distribution of all or substantially all of the Partnership's assets pursuant to section 12.2 and the immediately preceding sentence (i) the aggregate amount distributed to the General Partner with respect to any Limited Partner pursuant to (or by reference to) section 6.2(b)(iii) and (iv) exceeds (ii) twenty percent (20%) of the excess of (A) the sum of the aggregate distributions received by such Limited Partner pursuant to sections 6.2 and 12.2 and the immediately preceding sentence, plus the aggregate amount distributed to the General Partner with respect to such Limited Partner pursuant to (or by reference to) section 6.2(b)(iii) and (iv) (less any portion of such distributions paid to such Limited Partner pursuant to the immediately preceding sentence) over (B) an amount equal to such Limited Partner's Capital Contributions to the Partnership applied to the purchase of Portfolio Investments and amounts paid by such Limited Partner in respect of Partnership Expenses relating to Portfolio Investments, then the General Partner shall immediately contribute to the Partnership for payment to such Limited Partner an amount equal to the lesser of (1) the excess of the amount set forth in clause (i) above over the amount set forth in clause (ii) above and (2) the aggregate amount distributed to the General Partner pursuant to (or by reference to) section 6.2(b)(iii) and (iv) with respect to such Limited Partner (less any portion of such distributions paid to such Limited Partner pursuant to the immediately preceding sentence), reduced by the aggregate income tax liability of each Person whose tax liability is determined by reference to the income of the General Partner determined by using the Assumed Income Tax Rate. Each such payment to a Limited Partner shall constitute a guaranteed payment (within the meaning of Section 707(c) of the Code) to such Limited Partner, and the related deduction shall be allocated solely to the General Partner.
    3. Tax Distributions. Notwithstanding section 6.2(b), the Partnership shall, prior to any distribution of Distributable Cash pursuant to section 6.2(b) with respect to a Portfolio Investment, make distributions to the Partners in amounts intended to enable the Partners (or any Person or Persons whose tax liability is determined by reference to the income of a Partner) to discharge their United States federal, state and local income tax liabilities arising from the allocations made pursuant to section 5.2. The amount distributable pursuant to this section 6.2(e) shall be determined by the General Partner in its discretion, based on the Assumed Income Tax Rate and the amounts allocated to the Partners, and otherwise based on such reasonable assumptions as the General Partner determines in good faith to be appropriate. The amount distributable to any Partner pursuant to section 6.2(b) shall be reduced by the amount distributed to such Partner pursuant to this section 6.2(f). For purposes of the preceding sentence, the General Partner shall equitably allocate any distributions received by it pursuant to this section 6.2(e) among Distributable Cash apportioned to each Partner.
  1. Distributions in Kind

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* + 1. General Rule. Subject to the provisions of section 6.4, if at any time the General Partner, in its discretion, decides to make a distribution of property other than cash (which in the case of an interim distribution of property other than Marketable Securities shall require the consent of the Advisory Board), such property shall be deemed to be sold as of the Business Day immediately preceding the date of distribution for its Fair Market Value (net of any liabilities secured by such distributed property that the recipient Partners are considered to assume or take subject to under Section 752 of the Code), and any gain or loss associated with such deemed sale shall be included in determining Net Income or Net Loss for purposes of the allocations specified in section 5.2. Any such distributions shall be made after giving effect to the allocations required by section 5.2, adjustments to Capital Accounts in respect of distributions of such property shall reflect such Fair Market Value and all such distributions shall be made in the same respective proportions as distributions of cash would at the time be made pursuant to section 6.2 or 12.2, as the case may be.
    2. Legends on Certificates. The General Partner may cause certificates evidencing any Securities to be distributed to be imprinted with legends as to such restrictions on transfer that it may in its discretion deem necessary or appropriate, including legends as to applicable federal or state securities laws or other legal or contractual restrictions, and may require any Partner to which Securities are to be distributed to agree in writing (i) that such Securities will not be transferred except in compliance with such restrictions and (ii) to such other matters as the General Partner may deem necessary or appropriate.
    3. Allocations as Between Cash and Non-Cash. Except as otherwise provided in this section 6.3, distributions consisting of both cash and other property (including Marketable Securities) shall be made, to the extent practicable, in equal proportions of cash and such other property to each Partner receiving such distributions.
    4. Receipt of Distributions in Kind. The General Partner may, in its discretion, elect to receive any distribution to it in kind, provided that the Fair Market Value of any such distribution shall not exceed the amount which the General Partner would have been entitled to receive if the property so distributed had been sold for cash at such Fair Market Value in accordance with and following the principles of section 6.3(a).
    5. Violation of Law. If a Limited Partner shall, upon the advice of counsel, determine that there is a reasonable likelihood that any distribution in kind of an asset would cause such Limited Partner to be in violation of any law, regulation or order, such Limited Partner and the General Partner shall each use their reasonable best efforts to make alternative arrangements for the sale or transfer into an escrow account of any such distribution on mutually agreeable terms.
  1. Restrictions on Distributions

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The foregoing provisions of this section 6 to the contrary notwithstanding, no distribution shall be made:

* + 1. if such distribution would violate any contract or agreement to which the Partnership is then a party or any law, rule, regulation, order or directive of any Governmental Authority then applicable to the Partnership;
    2. to the extent that the General Partner, in its discretion, determines that any amount otherwise distributable should be retained by the Partnership to pay, or to establish a reserve for the payment of, any liability or obligation of the Partnership, whether liquidated, fixed, contingent or otherwise; or
    3. to the extent that the General Partner, in its discretion, determines that the cash available to the Partnership is insufficient to permit such distribution.
  1. Withholding

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Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines in its discretion to be necessary or appropriate to cause the Partnership to comply with any foreign or United States federal, state or local withholding or deduction requirement with respect to any allocation, payment or distribution by the Partnership to any Partner or other Person. All amounts so withheld, and, in the manner determined by the General Partner in its discretion, amounts withheld with respect to any allocation, payment or distribution by any Person to the Partnership, shall be treated as distributions to the applicable Partners under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Partner exceeds the amount distributable to such Partner under the applicable provision of this Agreement, or if any such withholding requirement was not satisfied with respect to any amount previously allocated or distributed to such Partner, such Partner and any successor or assignee with respect to such Partner's Interest hereby indemnifies and agrees to hold harmless the General Partner and the Partnership for such excess amount or such withholding requirement, as the case may be.

* 1. Final Distribution

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The final distributions following dissolution of the Partnership shall be made in accordance with the provisions of section 12.

1. DURATION AND TERMINATION OF THE PARTNERSHIP

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* 1. Winding-Up

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Upon the occurrence of an Event of Termination, the Partnership shall be dissolved and the business and affairs of the Partnership shall be wound-up. In connection with the dissolution and winding-up of the Partnership, the General Partner or, if there is no General Partner, a liquidator or other representative (the "Liquidation Representative") appointed by a Majority in Interest shall proceed with the sale or liquidation of all of the assets of the Partnership (including the conversion to cash or cash equivalents of its notes or accounts receivable) and shall apply and distribute the proceeds of such sale or liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

* + 1. first, to pay (or to make provision for payment) in satisfaction of all obligations of the Partnership for all expenses of such liquidation;
    2. second, to pay (or to make provision for the payment of) all creditors of the Partnership (including Partners who are creditors of the Partnership) in the order of priority provided by law or otherwise, in satisfaction of all debts, liabilities or obligations of the Partnership due such creditors;
    3. third, to the establishment of any reserve which the General Partner or the Liquidation Representative, as the case may be, may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership (such reserve may be paid over by the General Partner or the Liquidation Representative to an escrow agent acceptable to the General Partner or the Liquidation Representative, to be held for disbursement in payment of any of the aforementioned liabilities and, at the expiration of such period as shall be deemed advisable in their discretion by the General Partner or the Liquidation Representative for distribution of the balance in the manner hereinafter provided in this section 12.2); and
    4. fourth, after the payment (or the provision for payment) of all debts, liabilities and obligations of the Partnership in accordance with each of the clauses above, to the Partners or their legal representatives in accordance with the positive balances in their respective Capital Accounts, after taking into account all adjustments to Capital Accounts for all periods, no later than the end of the Fiscal Year in which the Event of Termination occurs or, if later, within ninety (90) days after the date of the liquidation of the Partnership.
  1. Distributions in Cash or in Kind or a Winding Up

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Upon dissolution, the General Partner or the Liquidation Representative, as the case may be, may in its discretion (a) liquidate all or a portion of the Partnership assets and apply the proceeds of such liquidation in the manner set forth in section 12.2 and/or (b) hire independent appraisers to appraise the value of Partnership assets not sold or otherwise disposed of (the cost of such appraisal to be considered a Partnership Expense) or determine the Fair Market Value of such assets, and allocate any unrealized gain or loss determined by such appraisal to the Partners' respective Capital Accounts as though the properties in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets in the manner set forth in section 12.2, provided that the General Partner or the Liquidation Representative shall in good faith attempt to liquidate sufficient Partnership assets to satisfy in cash the debts and liabilities described in section 12.2.

If a Limited Partner shall, upon the advice of counsel, determine that there is a reasonable likelihood that any distribution in kind of an asset would cause such Limited Partner to be in violation of any law, regulation or order, such Limited Partner and the General Partner shall each use its reasonable best efforts to make alternative arrangements for the sale or transfer into an escrow account of any such distribution on mutually agreeable terms.