# MODEL DEBENTURE SBIC, L.P.

**Version 3.0 SBA Model Form of**

**Limited Partnership Agreement For an SBIC Issuing Debentures**

# A NOTE ON THE MODEL

**Introduction**

SBA encourages SBIC applicants to use this SBA Model Form of Limited Partnership Agreement for an SBIC Issuing Debentures (the “Model”). The Model has been prepared by SBA to assist applicants for SBIC licenses. The Model is designed to provide the required provisions for an SBIC formed as a limited partnership and the general format for that limited partnership agreement. Each applicant will need to add provisions that reflect its individual situation and the arrangements among its partners. Applicants not seeking to use debenture leverage should also use the Model but will need to make appropriate changes.

SBA has developed the Model as part of its effort to make the SBIC program more accessible to new applicants who are less familiar with many aspects of the SBIC program and to increase the efficiency of the SBIC licensing process.

The Model will help reduce the time and expense to applicants in preparing an agreement of limited partnership for an SBIC by providing applicants and their advisers with a working model of what is required and the formatting that will expedite processing.

SBA expects that the Model will reduce the time required for the review of an applicant’s legal documentation. Because the Model provides a standard set of required provisions and an outline for the placement of other basic provisions customarily found in many limited partnership agreements, SBA attorneys will be able to focus their attention on the more limited number of specific provisions added by an applicant.

# The Model

The Model combines four basic elements together in an integrated agreement:

* basic procedural and other standard provisions needed for an agreement of limited partnership formed under the Revised Uniform Limited Partnership Act;
* basic business, tax and regulatory provisions commonly used in privately held limited partnerships which make long term debt and equity investments;
* the specific provisions that SBA requires be included in limited partnership agreements for SBICs; and
* the suggested wording for additional provisions that are often incorporated into a limited partnership agreement.

The specific features of the Model are described briefly below:

*Bold and Regular Type.* The Model uses two different typefaces, brackets and underscoring to assist readers in identifying (i) required provisions, (ii) suggested possible

provisions if the terms are used, (iii) the general formatting of the agreement, and (iv) places where additional provisions can or may be added by a user:

* **Bold, Arial** type indicates provisions that are required.
* Times New Roman type indicates where optional provisions are expected to appear in the agreement, if used, and the suggested language of a particular provision. Applicants may determine the specific wording of these provisions, but SBA will not accept language that conflicts with the Small Business Investment Act of 1958, as amended, and the rules and regulations thereunder and interpretations thereof promulgated by SBA.
* [*Underscored and italicized Times New Roman type in brackets*] and underscored blank spaces without text indicates places where the user is required to insert information into a provision of the Model.
* [*Italicized Times New Roman type in brackets*] indicates a point at which the user may wish to add additional provisions to the Model.

*Footnotes.* Footnotes are included to explain the purpose of specific provisions, provide references to applicable SBA regulations and provide citations to relevant sections of the Delaware Revised Uniform Limited Partnership Act (“RULPA”) and other relevant statutes. An applicant using the Model to prepare an agreement of limited partnership for an SBIC may organize the partnership under the law of any state.

*Cross-references*. A user should carefully review the cross-references in its own agreement to ensure that they are correct.

*Word Processing.* The electronic version of this document in Microsoft Word format is available on SBA’s web site (www.sba.gov).

*Annex*. If the applicant is a wholly or partially-owned subsidiary of a parent fund

* what SBA refers to as a drop-down SBIC – an Annex is attached containing provisions required to be incorporated into the applicant’s limited partnership agreement.

# Using the Model

The Model provides applicants with the required terms and formatting for preparing an agreement of limited partnership for an SBIC. Rather than having an applicant develop its own form of limited partnership agreement, the Model allows an applicant to streamline the process by using required provisions and formatting, letting the applicant focus on and draft just those provisions that are particular to its own situation.

As discussed above, the Model indicates by Times New Roman type suggested provisions that an applicant may use or modify based on the understandings among its partners, and brackets where an applicant may add additional language or provisions. Applicants are free to add additional provisions and delete or modify those Model provisions other than the provisions in **bold, Arial** type or that footnotes indicate should not be modified if used.

The footnotes, brackets, and fonts other than **bold, Arial** type that appear in the Model are not required to be used by applicants and may be deleted or modified when an applicant creates its own agreement of limited partnership. Note, however, that provisions in **bold, Arial** type must be shown in **bold, Arial** type in the redline copies of the applicant’s agreement submitted to SBA for review (see below).

Because the Model reflects a general form of limited partnership agreement, all of its provisions, other than those in **bold, Arial** type, may not be appropriate for a particular applicant. Applicants and their advisers should carefully review the provisions in the Model to make sure that the provisions are appropriate for the applicant’s specific situation. Applicants should consider additions, deletions and modifications to the Model carefully, but should seek to avoid altering the general formatting because such changes will reduce the benefits of the standardization arising from the use of the Model. In addition, the Model reflects SBA regulations and SBA policy at the time that the Model was developed. If these regulations or policy change, changes may be required in the related provisions of the Model.

# Submitting to SBA an Agreement Using the Model

SBA strongly advises an applicant to use the Model’s format, sections and numbering and to keep the provisions of the applicant’s agreement in the same order as the provisions in the Model. Applicants should also be aware that changes in the text of those provisions of the Model that are either set out in **bold, Arial** type or where footnotes indicate that SBA requires particular language to be used if the provisions are incorporated will substantially delay processing and increase review time and are unlikely to be deemed acceptable by SBA.

Applicants must include with their submission to SBA:

* + a clean copy of the applicant’s agreement;
  + a redline copy of the applicant’s agreement marked to show all additions and deletions from the Model (including footnotes), using markings showing additions by underscoring and deletions by strikethrough. Model Provisions in **bold, Arial** type must be in **bold, Arial** type in the redline;
  + a copy of both the applicant’s agreement and the marked version of the applicant’s agreement, in electronic form on a USB flash drive (with Standard-A USB connector) or DVD/CD-ROM; and
  + a letter certifying that the marked copy of the applicant’s agreement submitted to SBA shows all additions and deletions from the Model.

# MODEL DEBENTURE SBIC, L.P.

**Table of Contents**

Page

[ARTICLE 1 General Provisions 1](#_bookmark0)

[Section 1.01. Definitions 1](#_bookmark1)

[Section 1.02. Name 12](#_bookmark20)

[Section 1.03. Principal Office; Registered Office; and Qualification. 12](#_bookmark21)

[Section 1.04. Formation and Duration. 12](#_bookmark22)

[Section 1.05. Admission of Partners 13](#_bookmark25)

[Section 1.06. Representations of Partners 13](#_bookmark26)

[Section 1.07. Notices With Respect to Representations by Limited Partners 15](#_bookmark29)

[Section 1.08. Liability of Partners 15](#_bookmark30)

[ARTICLE 2 Purpose and Powers 17](#_bookmark34)

[Section 2.01. Purpose and Powers 17](#_bookmark35)

[Section 2.02. Restrictions on Powers 17](#_bookmark36)

[Section 2.03. Venture Capital Operating Company 18](#_bookmark38)

[Section 2.04. Unrelated Business Taxable Income 18](#_bookmark39)

[ARTICLE 3 Management 19](#_bookmark40)

[Section 3.01. Authority of General Partner 19](#_bookmark41)

[Section 3.02. Authority of the Limited Partners 20](#_bookmark45)

[Section 3.03. The Investment Adviser/Manager 20](#_bookmark46)

[Section 3.04. Restrictions on Other Activities of the General Partner and its](#_bookmark51)

[Affiliates 21](#_bookmark51)

[Section 3.05. Management Compensation. 22](#_bookmark55)

[Section 3.06. Payment of Management Compensation. 23](#_bookmark62)

[Section 3.07. Partnership Expenses 24](#_bookmark65)

[Section 3.08. Valuation of Assets 26](#_bookmark70)

[Section 3.09. Standard of Care 27](#_bookmark76)

[Section 3.10. Indemnification. 28](#_bookmark78)

[Section 3.11. Advisory Board or Partnership Committees 31](#_bookmark80)

[Section 3.12. Key Person Event 32](#_bookmark83)

[ARTICLE 4 Small Business Investment Company Matters 33](#_bookmark86)

[Section 4.01. SBIC Act 33](#_bookmark87)

[Section 4.02. Consent or Approval of, and Notice to, SBA 33](#_bookmark88)

[Section 4.03. Provisions Required by the SBIC Act for Issuers of Debentures 33](#_bookmark89)

[Section 4.04. Effective Date of Incorporated SBIC Act Provisions 34](#_bookmark93)

[Section 4.05. SBA as Third Party Beneficiary 34](#_bookmark94)

[Section 4.06. Jurisdiction When SBA is a Party 34](#_bookmark95)

[Section 4.07. SBA Not Subject to Arbitration. 35](#_bookmark98)

[ARTICLE 5 Partners’ Commitments and Capital Contributions 36](#_bookmark99)

i

[Section 5.01. Commitments 36](#_bookmark100)

[Section 5.02. Capital Contributions by Limited Partners 36](#_bookmark101)

[Section 5.03. Capital Contributions by the General Partner 37](#_bookmark104)

[Section 5.04. Additional Limited Partners and Increased Commitments 38](#_bookmark111)

[Section 5.05. Conditions to the Commitments of the General Partner and the](#_bookmark113)

[Limited Partners 40](#_bookmark113)

[Section 5.06. Termination of the Obligation to Contribute Capital 40](#_bookmark114)

[Section 5.07. Notice and Opinion of Counsel 41](#_bookmark115)

[Section 5.08. Cure, Termination of Capital Contributions and Withdrawal 41](#_bookmark116)

[Section 5.09. Failure to Make Required Capital Contributions 41](#_bookmark117)

[Section 5.10. Notice and Consent of SBA with respect to Capital Contribution](#_bookmark120)

[Defaults 42](#_bookmark120)

[Section 5.11. Interest on Overdue Contributions of a Defaulting Limited Partner 42](#_bookmark121)

[Section 5.12. Withholding and Application of a Partner’s Distributions 43](#_bookmark122)

[Section 5.13. Termination of a Defaulting Limited Partner’s Right to Make](#_bookmark123)

[Further Capital Contributions 43](#_bookmark123)

[Section 5.14. Required Sale of a Defaulting Limited Partner’s Interest in the](#_bookmark124)

[Partnership. 43](#_bookmark124)

[Section 5.15. Forfeiture of a Defaulting Limited Partner’s Interest in the](#_bookmark125)

[Partnership. 45](#_bookmark125)

[ARTICLE 6 Capital Accounts and Allocations 47](#_bookmark127)

[Section 6.01. Capital Accounts 47](#_bookmark129)

[Section 6.02. Revaluation of Partnership Property 47](#_bookmark130)

[Section 6.03. Target Accounts 48](#_bookmark132)

[Section 6.04. Overall Intention of Capital Account Provisions 48](#_bookmark133)

[Section 6.05. Allocations of Net Profits and Net Losses 48](#_bookmark134)

[Section 6.06. Special/Regulatory Allocations 48](#_bookmark135)

[Section 6.07. Curative Allocations 50](#_bookmark136)

[Section 6.08. Other Allocation Rules 50](#_bookmark137)

[Section 6.09. Tax Allocations 51](#_bookmark138)

[Section 6.10. Negative Capital Accounts 52](#_bookmark139)

[Section 6.11. Tax Matters 52](#_bookmark140)

[ARTICLE 7 Distributions 53](#_bookmark141)

[Section 7.01. Distributions to Partners 53](#_bookmark142)

[Section 7.02. Distributions of Noncash Assets in Kind. 53](#_bookmark143)

[Section 7.03. Distributions for Payment of Tax 53](#_bookmark144)

[Section 7.04. Distributions that Violate the Act Are Prohibited. 54](#_bookmark148)

[ARTICLE 8 Dissolution, Liquidation, Winding Up and Withdrawal 55](#_bookmark152)

[Section 8.01. Dissolution 55](#_bookmark153)

[Section 8.02. Winding Up. 56](#_bookmark156)

[Section 8.03. Withdrawal or Removal of the General Partner 57](#_bookmark158)

[Section 8.04. Continuation of the Partnership After the Withdrawal or Removal of](#_bookmark164)

[the General Partner 59](#_bookmark164)

[Section 8.05. Withdrawals of Capital 59](#_bookmark165)

ii

[Section 8.06. Withdrawal by ERISA Regulated Pension Plans 59](#_bookmark166)

[Section 8.07. Withdrawal by Governmental Plans Complying with State and](#_bookmark167)

[Local Law 59](#_bookmark167)

[Section 8.08. Withdrawal by Governmental Plans Complying with ERISA 60](#_bookmark171)

[Section 8.09. Withdrawal by Tax Exempt Limited Partners 60](#_bookmark172)

[Section 8.10. Withdrawal by Registered Investment Companies 60](#_bookmark173)

[Section 8.11. Withdrawal by Banks 60](#_bookmark174)

[Section 8.12. Distributions on Withdrawal 61](#_bookmark176)

[ARTICLE 9 Accounts, Reports and Auditors 63](#_bookmark179)

[Section 9.01. Books of Account 63](#_bookmark180)

[Section 9.02. Audit and Report 63](#_bookmark181)

[Section 9.03. Fiscal Year 65](#_bookmark186)

[ARTICLE 10 Miscellaneous 66](#_bookmark188)

[Section 10.01. Assignments and Transfers 66](#_bookmark189)

[Section 10.02. Binding Agreement 69](#_bookmark198)

[Section 10.03. Notices 69](#_bookmark199)

[Section 10.04. Consents and Approvals 70](#_bookmark201)

[Section 10.05. Counterparts 70](#_bookmark202)

[Section 10.06. Amendments 71](#_bookmark203)

[Section 10.07. Power of Attorney 72](#_bookmark205)

[Section 10.08. Applicable Law 74](#_bookmark206)

[Section 10.09. Severability 74](#_bookmark207)

[Section 10.10. Entire Agreement 74](#_bookmark208)

[Section 10.11. Terms 75](#_bookmark212)

[Section 10.12. Venue 75](#_bookmark213)

[Section 10.13. Miscellaneous 75](#_bookmark214)

Schedule A Partners and Commitments

Exhibit I Valuation Guidelines

iii

# [NAME OF PARTNERSHIP]

This Agreement[1](#_bookmark2) of Limited Partnership is dated and effective as of

, 20 , among [*name of general partner*], a [*state of organization and type of entity],* in its capacity as a general partner of the Partnership (the “*General Partner*”), and the individuals and entities admitted to the Partnership from time to time as limited partners in accordance with this Agreement and designated as such on Schedule A hereto as maintained in the books and records of the Partnership (collectively, the “*Limited Partners*”).[2](#_bookmark3)

The parties, in consideration of their mutual agreements stated in this Agreement, agree to become Partners and to form a limited partnership under the Act. The purpose of the Partnership is to operate as a small business investment company under the SBIC Act and the terms and conditions stated in this Agreement. The parties further agree as follows:

Section 1.01. Definitions.[3](#_bookmark4)

# ARTICLE 1

**General Provisions**

meanings:

For the purposes of this Agreement, the following terms have the following

“Accrued Amount” has the meaning stated in Section 3.05(b).

“Acquisition Indebtedness Tests” means that both (i) no Partner that is exempt from income tax under the Code (other than a government unit) owns more than 25% of the capital or profits interest in the Partnership and (ii) Partners that are exempt from income tax under the Code (including government units other than any agency or instrumentality of the United States) own in the aggregate less than 50% of the capital or profits interest in the Partnership.[4](#_bookmark5)

1 The Agreement may be amended and restated if it is replacing one that is entered into at the time the Partnership was originally formed under state law. If this is the case, applicant will need to make appropriate language changes. See RULPA §§17-201 and 17-101(9).

2 The General Partner and the Limited Partners are those persons admitted as provided in Section 1.05 of this Agreement. The names and addresses of the General Partner and the Limited Partners and their Commitments are listed on Schedule A.

3 An applicant should delete terms defined in the Model if not used in the applicant’s Agreement.

4 §514(c) of the Code exempts Debenture Leverage from generating debt financed income (hence creating unrelated business taxable income) if this test is met. See Section 2.04 of this Agreement.

**“Act” means** [*state statute under which the partnership is organized, e.g. the Delaware Revised Uniform Limited Partnership Act set forth in Title 6, Chapter 17 of the Delaware Code*]. [5](#_bookmark6)

“Active Portfolio Company” means a Portfolio Company that remains an ongoing concern and in which the Partnership’s investment has not been written off or written down to zero, subject to SBA review.[6](#_bookmark7)

“Additional Limited Partners” has the meaning stated in Section 5.04.

“Adjusted Capital Account Deficit” means, with respect to any Partner, the deficit balance, if any, in such Partner’s Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

1. Credit to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulations §§1.704-2(g)(1) and 1.704-2(i)(5); and
2. Debit to such Capital Account the items described in §1.704- 1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of “Adjusted Capital Account Deficit” is intended to comply with the provisions of §1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

“Adversely Affected Banking Entity” has the meaning set forth in Section 8.11(b).

“Advisory Board” means the board selected by the General Partner whose members shall perform the functions as set forth in Section 3.10.

**“Affiliate” has the meaning stated in the SBIC Act.**

**“Agreement” means this agreement of limited partnership, as amended from time to time. References to this Agreement will be deemed to include all provisions incorporated in this Agreement by reference.**

“Amendment” means any amendment to this Agreement approved as provided in this Agreement.

5 The Model has been drafted to conform with the Revised Uniform Limited Partnership Act of the State of Delaware (“RULPA”). It may need to be modified if the Partnership is formed under the laws of another jurisdiction.

6 This definition is used in the definition of Management Fee Base.

**“Assets” means common and preferred stock (including warrants, rights and other options relating to such stock), notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and other properties or interests commonly regarded as securities, and in addition, interests in real property, whether improved or unimproved, and interests in personal property of all kinds (tangible or intangible), choses in action, and cash, bank deposits and so-called “money market instruments.”**

**“Assets Under Management” means, as of any specified date, the value of all Assets owned by the Partnership (the value to be determined as provided in this Agreement), including contributions requested and due from Partners and uncalled amounts of Commitments that are included in the Partnership’s Regulatory Capital, less the amount of any liabilities of the Partnership, determined in accordance with generally accepted accounting principles, consistently applied.**

**“Associate” has the meaning stated in the SBIC Act.**

**“Assumed Leverage” means the maximum amount of Leverage that the Partnership may apply for consistent with the Partnership’s business plan approved by SBA, not to exceed two (2) times the Partnership’s Regulatory Capital or such greater amount approved by SBA under 13 CFR §107.1150.**

“Banking Acts” means the Federal Deposit Insurance Act, as amended; the National Bank Act, as amended; the Federal Reserve Act, as amended; the Bank Holding Company Act of 1956, as amended; the Homeowners Loan Act, as amended; the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010; Section 302(b) of the SBIC Act (15 U.S.C.§682(b)); and the rules, regulations and written interpretations by the regulatory authority relating thereto or any other law, rule, regulation or written interpretation by such regulatory authority applicable to a bank, a bank holding company, savings and loan association, savings association holding company or any Affiliate thereof.

“Capital Account” means the separate account maintained for each Partner that reflects its interest in the Partnership and adjusted in accordance with Section 704 of the Code and this Agreement.

“**Capital Contribution” in respect of a Partner means the amount of cash and non-cash items approved by SBA actually contributed by the Partner to the capital of the Partnership pursuant to Section 5.02 of this Agreement.**[**7**](#_bookmark8)[The Capital Contribution of a Partner includes the amount of any interest payment credited to the Partner pursuant to Section 5.04(f)(i).][8](#_bookmark9) [The Capital Contribution of a Partner shall be reduced by any amounts returned to the Partner pursuant to Section 5.04(f)(ii) and Section 5.04(g).][9](#_bookmark10)

7 See 13 CFR §107.240 with respect to the limitations on non-cash Capital Contributions being included as Private Capital.

8 Delete if not used. This bracketed language is required if interest will be so credited.

returned.

9 Delete bracketed sentences if these sections are not used. This bracketed language is required if capital is

“Cause” means [*Insert definition of Cause. Subject to SBA approval.*][10](#_bookmark11)

**“Certificate of Limited Partnership” means the certificate of limited partnership with respect to the Partnership filed for record in the office of [*name of office] of [name of state*].**

**“Code” means the Internal Revenue Code of 1986, as amended, and the regulations thereunder and interpretations thereof promulgated by the Internal Revenue Service, as in effect from time to time.**

“Commencement Date” means the date on which the first Capital Contribution is made to the Partnership.

**“Commitment” in respect of a Partner means the Capital Contributions to the Partnership that the Partner has made and is obligated to make to the Partnership. The amounts and terms of the Commitments of the General Partner and the Limited Partners will be as stated in this Agreement.**

**“Control Person” has the meaning stated in the SBIC Act.**

**“Covered Party” means any of the following, whether currently or formerly in such capacity: (i) the General Partner; (ii) the Investment Adviser/Manager; (iii) each of the Principals; and (iv) the respective Affiliates, officers, directors, employees, agents, stockholders, members, or partners of those listed in the preceding clauses.**

**“Debentures” has the meaning stated in the SBIC Act.**

“Defaulting Limited Partner” means any Limited Partner that fails to make a Capital Contribution required under this Agreement within ten (10) days after receiving notice from the General Partner that the Limited Partner has failed to make its required Capital Contribution on the date such contribution was due.

“Depreciation” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis. In the event that the federal income tax depreciation, amortization, or other cost recovery deduction is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method, except to the extent the Code Section 704(c) “remedial allocation” method has been elected with respect to the underlying Partnership property in which case Depreciation with respect to such property shall be calculated in a manner consistent with Treasury Regulation § 1.7043(d).

10 See Section 8.03.

**“Employee Benefit Plan” means “employee benefit plan” as set forth in section 3(3) of Title I of ERISA, 29 U.S.C. §1002(3).**

**“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder and interpretations thereof promulgated by the Department of Labor, as in effect from time to time.**

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the regulations thereunder and interpretations thereof promulgated by the Securities and Exchange Commission, as in effect from time to time.

“Financial Reports” has the meaning stated in Section 9.02.

**“General Partner” means the general partner or general partners of the Partnership, as set forth in this Agreement.**

**“Governmental Plan” means “governmental plan” as set forth in section 3(32) of Title I of ERISA, 29 U.S.C. §1002(32).**

“Gross Asset Value” means, with respect to any Asset, the adjusted basis of such Asset for federal income tax purposes, except as follows:

1. The initial Gross Asset Value of any Asset contributed by a Partner to the Partnership shall be the gross fair market value of such Asset, as determined pursuant to Section 3.08.
2. The Gross Asset Value of any Partnership Asset distributed to a Partner shall be adjusted to equal the gross fair market value of such Asset on the date of distribution as determined as determined pursuant to Section 3.08.
3. The Gross Asset Values of the Partnership Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Assets pursuant to Sections 734(b) or 743(b) of the Code should the Partnership make an election under Section 754 of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(m).
4. The Gross Asset Value of the property of the Partnership shall be adjusted to equal its gross fair market value, as determined by the General Partner in accordance with Section 3.08 (with any unrealized appreciation or depreciation not reflected in such valuation deemed realized and included in the determination) as of the following times: (i) the acquisition of an additional Partner interest by any new or existing Partner; (ii) the distribution by the Partnership to a Partner of more than a *de minimis* amount of property as consideration for an interest; (iii) the liquidation of the Partnership within the meaning of Treasury Regulation

§1.704-1(b)(2)(ii)(g); (iv) the complete liquidation of a Partner’s Partnership interest within the meaning of Section 761(d) of the Code; and (v) such additional times as are permitted by applicable regulations and which the General Partner determines to use; provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the General Partner

reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership.

1. The Gross Asset Value of the property of the Partnership shall be adjusted as necessary to apply Treasury Regulation §1.704-3(d), if applicable.
2. If the Gross Asset Value of an asset has been determined or adjusted pursuant to this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

**“Indemnifiable Costs” means all costs, expenses, damages, claims, liabilities, fines and judgments (including the reasonable cost of the defense, and any sums which may be paid with the consent of the Partnership in settlement) incurred in connection with or arising from any actual or threatened claim, action, suit, proceeding or investigation, by or before any court or administrative or legislative body or authority.**

**“Investment Adviser/Manager” has the meaning stated in the SBIC Act, and is [*name of Investment Adviser/Manager*], subject to SBA approval.**

“Investment Advisers Act” means the Investment Advisers Act of 1940, as amended, and the regulations thereunder and interpretations thereof promulgated by the Securities and Exchange Commission, as in effect from time to time.

“Investment Company Act” means the Investment Company Act of 1940, as amended, and the regulations thereunder and interpretations thereof promulgated by the Securities and Exchange Commission, as in effect from time to time.

“Investment Period” means the period beginning on the Commencement Date and ending on [ ]. The Investment Period is subject to earlier termination as provided in this Agreement.[11](#_bookmark12)

“Investor Information” has the meaning stated in Section 9.02(f). “Investor Portal” has the meaning stated in Section 9.02(f).

“Key Person” means [ , and ].[12](#_bookmark13) “Key Person Event” means [ ].[13](#_bookmark14)

11 SBA will not permit an open-ended Investment Period, which period should generally be limited to five

1. years.

3.12.

12 Applicant may want to insert this definition if Key Persons are different than Principals. See Section

13 SBA will carefully review this definition. It could by way of example include such concepts as: (i) if less than [ ] Principals are actively involved in the activities of the General Partner and the Investment Adviser/Manager, whether by reason of disability or otherwise; (ii) if [ ] or [ \_] is no longer a Principal;

**“Leverage” has the meaning stated in the SBIC Act.**

**“Limited Partners” mean the limited partners of the Partnership.**

“Majority in Interest of the Limited Partners” means Limited Partners [*(excluding Affiliates of the General Partner)*] entitled to vote whose Capital Contributions aggregate in excess of fifty percent (50%) of the Capital Contributions of all Limited Partners [*(excluding Affiliates of the General Partner)*] entitled to vote as of the time of determination.[14](#_bookmark15)

**“Management Compensation” means the amounts payable by the Partnership to the General Partner or Investment Adviser/Manager, as provided in Section 3.05.**

**“Management Expenses” has the meaning set forth in Section 3.07(a).**

“Management Fee Base” means:

* 1. During the Management Fee Initial Period, the sum of (A)

Management Fee Unreduced Regulatory Capital and (B) Assumed Leverage; and

* 1. After the Management Fee Initial Period, for any fiscal quarter in which Management Compensation is paid or begins to accrue (whichever occurs earlier), the cost basis of the Partnership’s Portfolio Securities in Active Portfolio Companies as of the first day of such quarter.

“Management Fee Initial Period” means the period (a) commencing on the earliest of (i) the date on which the Partnership’s application for an SBIC license is approved,

(ii) the date on which the Partnership acquires its first Portfolio Securities or (iii) the first date on which the Partnership charges or accrues any Management Compensation based on Assumed Leverage[15](#_bookmark16) and (b) ending on the date five (5) years from the commencement of the Management Fee Initial Period.

“Management Fee Rate”[16](#_bookmark17) means:

1. if Cause exists with respect to a Key Person/Principal and the Key Person/Principal has not been terminated as a member, manager, general partner or employee of the General Partner and the Investment Adviser/manager; or
2. if the General Partner has withdrawn or is removed pursuant to Section 8.03 of this Agreement. If disability is used, applicant may wish to provide a definition.

14 Wherever this term appears, applicant may use a different percentage.

15 The earliest date on which the Partnership may charge or accrue any Management Compensation based on Assumed Leverage is the Commencement Date, provided the Commencement Date occurs on or after the date on which the Partnership submits an application for an SBIC license. Section 3.05(b) places certain limits on the amount of Management Compensation that may be paid until the Partnership’s receipt of an SBIC license.

16 See Section 3.05. The rate is the maximum permitted by SBA. Limited Partners may negotiate a lower rate, and SBA encourages Limited Partners to engage in negotiations with SBIC applicants regarding a variety of business issues, including Management Compensation. The Agreement may include alternative terms in order to

million;

* 1. [*2.5*]%, if the Management Fee Base is equal to or less than $60
  2. if the Management Fee Base is greater than $60 million but less than $120 million, such percentage that is equal to the difference between (A) [*2.5*]%, and (B) [*0.5*]% multiplied by a fraction (I) the numerator of which is the difference between the Management Fee Base and $60 million, and (II) the denominator of which is $60 million; or

million.

* 1. [*2.0*]%, if the Management Fee Base is greater or equal to $120

“Management Fee Unreduced Regulatory Capital” means the sum of (i) Regulatory Capital at the time Management Compensation is paid or begins to accrue (whichever is earlier), with increases to Regulatory Capital recognized on the first day of the fiscal quarter in which the Partnership notifies SBA of the increase as evidenced by an executed capital certificate, and (ii) any Partnership distributions previously made under 13 CFR §107.585 which reduced Regulatory Capital by no more than two percent (2%) per year or which SBA approves for inclusion in the calculation of Management Compensation.

“Maximum Tax Liability” has the meaning set forth in Section 7.03(a).

“Net Profits” and “Net Losses” mean, for each fiscal year or other period, an amount equal to the Partnership’s taxable income or loss for such fiscal year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

* + 1. Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be added to such taxable income or loss;
    2. Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be subtracted from such taxable income or loss;
    3. In the event the Gross Asset Value of any Partnership Asset is adjusted pursuant to subparagraphs (b), (c), or (d) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the Asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the Asset) from the disposition of such Asset and shall be taken into account for purposes of computing Net Profits or Net Losses;

memorialize such rate. For example, a Limited Partner may wish to use the term “Outstanding Leverage” rather than “Assumed Leverage” in the definition of Management Fee Base.

* + 1. Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;
    2. In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;
    3. To the extent an adjustment to the adjusted tax basis of any Partnership Asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulation §1.704- 1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner’s interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the Asset) or loss (if the adjustment decreases such basis) from the disposition of such Asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 5.04(f), Section 6.06, and Section 6.07 shall not be taken into account in computing Net Profits or Net Losses. The amounts of the items of Partnership income, gain, loss or deduction available to be specially allocated pursuant to such Sections shall be determined by applying rules analogous to those set forth in subparagraphs (a) through (f) above.

“Noncash Asset” means any Asset of the Partnership other than cash. “Nonrecourse Deductions” means “nonrecourse deductions” as set forth in

Treasury Regulation §1.704-2(b).

“Non-Defaulting Limited Partners” means all Limited Partners except Defaulting Limited Partners.

“Offered Partnership Interest” has the meaning set forth in Section 5.14. “Organization Expenses” means the fees, costs and expenses of and incidental to

the formation, qualifications to do business and fund raising of the Partnership and the General Partner and the application to be licensed and the licensing of the Partnership as an SBIC.[17](#_bookmark18)

**“Outstanding Leverage” means the total amount of outstanding Debentures issued by the Partnership, which qualify as Leverage and have not been redeemed or repaid as provided in the SBIC Act.**

17 SBA considers fees paid to a placement agent to be within the definition of Organizational Expenses. If SBA determines that unreasonable or excessive expenses were incurred, SBA will require a person or entity other than the SBIC to pay for these expenses.

“Partnership Minimum Gain” means, at any time, with respect to all nonrecourse liabilities of the Partnership (within the meaning of Treasury Regulation §1.704-2(b)(3)), the aggregate amount of gain (of whatever character), if any, that would be realized by the Partnership if it disposed of (in a taxable transaction) all Partnership property subject to such liabilities in full satisfaction thereof, and as further defined in Treasury Regulation §1.704-2(d).

“Partner Nonrecourse Debt” means nonrecourse indebtedness of the Partnership with respect to which no Partner has a direct or indirect risk of loss, as more fully defined in Treasury Regulation §1.704-2(b)(4).

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

“Partner Nonrecourse Deductions” means “partner nonrecourse deductions” as set forth in Treasury Regulations §§1.704-2(i)(1) and 1.704 2(i)(2).

**“Partners” means the General Partner and the Limited Partners.**

**Agreement.**

**“Partnership” means the limited partnership established by this**

“ Percent ( %) in Interest of the Limited Partners” means Limited

Partners [*(excluding Affiliates of the General Partner)*] whose Capital Contributions represent such percentage of the Capital Contributions of all Limited Partners [*(excluding Affiliates of the General Partner)*] as of the time of determination.

**“Partnership Expenses” has the meaning set forth in Section 3.07(b). “Portfolio Company” means any issuer of Assets acquired by the**

**Partnership, other than investments in idle funds as such term is described in 13 CFR**

**§107.530.**

**“Portfolio Security” means the Assets of a Portfolio Company acquired by the Partnership.**

“Pre-Existing Partners” means the Partners that were Partners prior to the time that the Additional Limited Partner is admitted to the Partnership or the increased Commitment of the Limited Partner increasing its Commitment is accepted by the Partnership.

“Principal” means [ ,

and

], in each case, so long as such individual is [*a manager of or serves in a similar capacity for*] the [*General Partner*] [*Investment Adviser/Manager*], and any other individual who the [*General Partner*] [*and a Majority in Interest of the Limited Partners*] designate as a Principal, so long as that individual is [*a manager of or serves in a similar*

*capacity for*] the [*General Partner*] [*Investment Adviser/Manager*], in each of the foregoing cases, subject to approval of SBA.[18](#_bookmark19)

“Purchase Price” has the meaning set forth in Section 5.14(a). “Regulatory Allocations” has the meaning set for[th in Section 6.07.](#_bookmark136) **“Regulatory Capital” has the meaning stated in the SBIC Act.** “Remaining Portion” has the meaning stated in Section 5.14(b).

**the SBIC Act.**

**“Retained Earnings Available for Distribution” has the meaning stated in**

**“SBA” means the United States Small Business Administration. “SBA Agreements” has the meaning stated in Section 10.10(a).**

**SBIC Act.**

**“SBIC” means a small business investment company licensed under the**

**“SBIC Act” means the Small Business Investment Act of 1958, as amended, and the rules and regulations thereunder and interpretations thereof promulgated by SBA, as in effect from time to time.**

**“SEC” means the Securities and Exchange Commission.**

**“Securities Act” means the Securities Act of 1933, as amended, and the regulations thereunder and interpretations thereof promulgated by the SEC, as in effect from time to time.**

“Side Letters” has the meaning set forth in Section 10.10(b). “Special Limited Partner” has the meaning stated in Section 8.03(c). “Suspension Period” has the meaning set forth in Section 3.12(a).

“Target Account” means, with respect to any Partner for any fiscal year or other period an amount equal to the hypothetical distribution such Partner would receive if all property of the Partnership were sold for cash equal to its Gross Asset Value (taking into account any adjustments to Gross Asset Value for such fiscal year or other period), all liabilities allocable to such property were then due and were satisfied (limited with respect to any nonrecourse liabilities to the Gross Asset Values of the assets securing such liabilities), and all obligations (or deemed obligation of the Partners to contribute additional capital to the Partnership were satisfied and all remaining proceeds from such sale were distributed pursuant to 7.01(b).

18 SBA may determine in its sole discretion that other individuals are principals of an applicant or SBIC, regardless of whether such individual is identified in this Agreement.

[*insert any additional defined terms in the above list in alphabetical order*]  Section 1.02. Name.

1. The name of the Partnership is “[*insert name of partnership*].”
2. The General Partner has the power at any time to:

SBA; and

1. change the name of the Partnership, subject to the prior approval of
2. qualify the Partnership to do business under any name when the Partnership’s name is unavailable for use, or may not be used, in a particular jurisdiction.
3. The General Partner will give prompt notice of any action taken under this Section 1.02 to each Partner and SBA.

Section 1.03. Principal Office; Registered Office; and Qualification.[19](#_bookmark23)

1. The principal office of the Partnership will be at [*address of principal office*], or such other place as may from time to time be designated by the General Partner, subject to the approval of SBA.
2. The registered office of the Partnership in the State of [*name of state*] will initially be located at [*address of registered office*]. The name of the registered agent for the Partnership will initially be [*name of registered agent*]. The General Partner may from time to time change the registered agent and registered office of the Partnership.
3. The General Partner will qualify the Partnership to do business in each jurisdiction where the activities of the Partnership make such qualification necessary.
4. The General Partner will give prompt notice of any action taken under this Section 1.03 to each Partner and SBA.

Section 1.04. Formation and Duration.

1. The Partnership was formed upon the filing for record of the Certificate of Limited Partnership.[20](#_bookmark24)

[*add any additional conditions precedent to the formation of the Partnership*]

1. The Partnership will be dissolved and wound up at the time and in the manner provided for in Article 8.[21](#_bookmark23)

19 RULPA addresses the requirements for a registered domestic office and agent; see RULPA §17-104. See also 13 CFR §107.680 regarding actions which require SBA approval, but not prior approval.

20 See RULPA §17-201(b).

Section 1.05. Admission of Partners.

1. **No person may be admitted as a General Partner or a Limited Partner without subscribing and delivering to the Partnership a counterpart of this Agreement, or other written instrument, which sets forth:**
   1. **the name and address of the Partner,**
   2. **the Commitment of the Partner, and**

**Agreement.**

* 1. **the agreement of the Partner to be bound by the terms of this**

1. **Without the prior approval of SBA, no person may be admitted as:**
   1. **a General Partner, or**
   2. **a Limited Partner or a group of Limited Partners acting in concert with a beneficial or an of record ownership interest of ten percent (10%) or more of the Partnership’s capital.**[**22**](#_bookmark27)
2. **The General Partner will compile and amend from time to time, as necessary, Schedule A attached to this Agreement, which will list the name, address and Commitment of the General Partner and each Limited Partner.**
3. The addition to the Partnership at any time of one or more Partners will not be a cause for dissolution of the Partnership, and all the Partners will continue to be subject to the provisions of this Agreement in all respects.

Section 1.06. Representations of Partners.

1. **This Agreement is made with the General Partner in reliance upon the General Partner’s representation to the Partnership, the Limited Partners and SBA that:**
   1. **it is duly organized, validly existing and in good standing under the laws of the State of [*state of organization*], and is qualified to do business under the laws of each state where such qualification is required to carry on the business of the Partnership;**
   2. **it has full power and authority to execute and deliver this Agreement and to act as General Partner under this Agreement;**

21 See 13 CFR §107.160(c)(1), which prescribes the minimum duration for an SBIC.

22 See 13 CFR §107.400(a), which requires SBA approval for the issuance or transfer of ownership interests of 10% or more of the capital of an SBIC.

* 1. **this Agreement has been authorized by all necessary actions by it, has been duly executed and delivered by it, and is a legal, valid and binding obligation of it, enforceable against it according to its terms, except as such enforceability may be limited by applicable bankruptcy or insolvency or similar laws affecting the rights and remedies of creditors generally and general principles of equity; and**
  2. **the execution and delivery of this Agreement and the performance of its obligations under this Agreement do not require the consent of any third party not previously obtained, and will not conflict with, or result in any violation of, or default under, any provision of any governing instrument applicable to it, or any agreement or other instrument to which it is a party or by which it or any of its properties are bound, or any provision of law, statute, rule or regulation, or any ruling, writ, order, injunction or decree of any court, administrative agency or governmental body applicable to it.**

[*add any additional General Partner representations*]

1. **This Agreement is made with each Limited Partner in reliance upon that Limited Partner’s representation to the General Partner, the Partnership and SBA, that:**
   1. **it has full power and authority to execute and deliver this Agreement and to act as a Limited Partner under this Agreement; this Agreement has been authorized by all necessary actions by it; this Agreement has been duly executed and delivered by it; and this Agreement is a legal, valid and binding obligation of it, enforceable against it according to its terms, except as such enforceability may be limited by applicable bankruptcy or insolvency or similar laws affecting the rights and remedies of creditors generally and general principles of equity;**
   2. **the execution and delivery of this Agreement and the performance of its obligations under this Agreement do not require the consent of any third party not previously obtained, and will not conflict with, or result in any violation of, or default under, any provision of any governing instrument applicable to it, or any agreement or other instrument to which it is a party or by which it or any of its properties are bound, or any provision of law, statute, rule or regulation, or any ruling, writ, order, injunction or decree of any court, administrative agency or governmental body applicable to it;**
   3. **if the Limited Partner is a bank (as the term is used in the SBIC Act, at 15 U.S.C. §682(b)), the total amount of such Limited Partner’s investments in SBICs, including such Limited Partner’s interest in the Partnership, does not exceed five percent (5%) of such Limited Partner’s capital and surplus;**[**23**](#_bookmark28)
   4. **unless otherwise disclosed to the Partnership in writing, the Limited Partner is a citizen or resident of the United States, an entity organized under the laws of the United States or a state within the United States or an entity engaged in a**

23 See §302(b) of the SBIC Act.

**trade or business within the United States and qualified to do business in one or more states;**

* 1. **unless otherwise disclosed to the Partnership in writing, the Limited Partner has not assigned, pledged or granted a security interest in its interest in the Partnership as collateral for indebtedness;**[**24**](#_bookmark31) **and**
  2. unless otherwise disclosed to the Partnership in writing, the Partner is not subject to Title I of ERISA.

[*add any additional Limited Partner representations*]

1. **Each Partner that has disclosed to the Partnership in writing that it is not a person described in Section 1.06(b)(iv): (i) has irrevocably appointed an agent within the United States to receive service of process on the Partner’s behalf in connection with the enforcement of the obligations of the Partner to make Capital Contributions to the Partnership pursuant to its Commitment; and (ii) agrees to provide the Partnership with any information or documentation necessary to permit the Partnership to fulfill any tax withholding or other obligation relating to the Partner, including but not limited to any documentation necessary to establish the Partner’s eligibility for benefits under any applicable tax treaty.**

Section 1.07. Notices With Respect to Representations by Limited Partners.

1. **If any representation made by a Limited Partner in Section 1.06(b)(i), (ii), (iii), (iv), or (v)**[**25**](#_bookmark32) **ceases to be true, the Limited Partner will promptly provide the Partnership with a correct separate written representation as provided in each such Section.**
2. **The Partnership will give SBA prompt notice of any corrected representation received from any Limited Partner under Section 1.07(a).**

Section 1.08. Liability of Partners.

1. The General Partner has the liability for the liabilities of the Partnership provided for in the Act and the SBIC Act. The General Partner will not:
   1. be obligated to restore by way of Capital Contribution or otherwise any deficits in the respective Capital Accounts of the Limited Partners should such deficits occur; or
   2. have any greater obligation with respect to any Outstanding Leverage than is required by the SBIC Act or by SBA.

24 See 13 CFR §107.450.

25 Applicant may add additional clauses.

1. Except as otherwise provided under this Agreement, the Act and the SBIC Act, no Limited Partner will be liable for any loss, liability or expense whatsoever of the Partnership. Notwithstanding the preceding sentence, a Limited Partner will remain liable for any portion of such Limited Partner’s Commitment not paid to the Partnership and cannot be released from its obligation to contribute capital to the Partnership pursuant to the Limited Partner’s Commitment without SBA’s prior consent.
2. **Nothing in this Agreement limits any liability of any Partner under any agreement between the Partner and SBA.**
3. If a Limited Partner is required to return to the Partnership, for the benefit of creditors of the Partnership, amounts previously distributed to the Limited Partner, the obligation of the Limited Partner to return any such amount to the Partnership will be the obligation of the Limited Partner and not the obligation of the General Partner. No Limited Partner will be liable under this Agreement for the obligations under this Agreement of any other Partner.[26](#_bookmark33)

26 See RULPA §17-603(b) with respect to returns of distributions by limited partners for the benefit of creditors.

# ARTICLE 2

**Purpose and Powers**

Section 2.01. Purpose and Powers.

1. The Partnership is being organized solely for the purpose of operating as a [*describe purpose of Partnership (e.g., senior debt fund, mezzanine investment fund, early stage fund, etc.)*] **that will apply to SBA for a license to operate as an SBIC under the SBIC Act. The Partnership shall (i) conduct only the activities described under Title III of the SBIC Act, (ii) have the powers and responsibilities, and be subject to the limitations, provided in the SBIC Act, and (iii) conduct all operations and take all actions in compliance with the SBIC Act.**
2. **Subject to Section 2.01(a) and Section 2.02, the Partnership may make, manage, own and supervise investments of every kind and character in conducting its business as an SBIC.**
3. **Subject to the provisions of the SBIC Act, the Partnership has all powers necessary, suitable or convenient for the accomplishment of the purposes set forth in Section 2.01(a) and Section 2.01(b), alone or with others, as principal or agent, including without limitation the following:**
   1. **to engage in any lawful act or activity for which limited partnerships may be organized under the Act;**

[*specify any other powers of the Partnership that applicant wishes to expressly identify*]  Section 2.02. Restrictions on Powers.

1. Except as set forth in this Section 2.02(a), the Partnership may make investments in Portfolio Companies only during the Investment Period. Upon the termination of the Investment Period, the Partnership shall be prohibited from making investments in any company that was not a Portfolio Company (including successors thereto by sale, merger or operation of law) at the termination date of the Investment Period; provided that nothing herein shall prohibit the Partnership or the General Partner from calling Capital Contributions or using other available funds to: (i) complete investments (including executing or making payment on guarantees) that were in process or committed to at the termination of the Investment Period; (ii) make investments (including executing or making payment on guarantees) to preserve, protect or enhance the value of existing investments; (iii) pay costs, expenses and liabilities of the Partnership, including Leverage, Management Compensation, expenses and indemnification obligations; and (iv) make payments required by SBA or otherwise required by the SBIC Act.
2. Notwithstanding any provision of Section 2.01, the Partnership will not [*specify any restrictions on the powers that the Partnership may exercise*][27](#_bookmark37)

27 This section can be used to specify restrictions on actions of the Partnership, for example, with respect to lending, borrowing other than Leverage, percentage of capital in any one portfolio company (and affiliates),

Section 2.03. Venture Capital Operating Company.

At any time that a Limited Partner is subject to Title I of ERISA and twenty-five percent (25%) or more in interest of all Limited Partners (as measured by their aggregate Capital Accounts) are “benefit plan investors” (within the meaning of Department of Labor Regulation

§2510.3-101(f)(2), 51 Fed. Reg. 41,282 (November 13, 1986) or any amendment or successor regulation), the Partnership will use its best efforts to ensure that the Partnership qualifies as a “venture capital operating company” (within the meaning of Department of Labor Regulation

§2510.3-101(d), 51 Fed. Reg. 41,281 (November 13, 1986) or any amendment or successor regulation). Subject to SBA approval if and to the extent required, the General Partner shall have the authority to take any action it deems necessary in order to implement this Section 2.03.

Section 2.04. Unrelated Business Taxable Income.

Subject to the SBIC Act, the General Partner will use commercially reasonable efforts to ensure that the Acquisition Indebtedness Tests are met. The Partnership will, subject to the SBIC Act, including, without limitation, 13 CFR §107.720, use commercially reasonable efforts to ensure that no Partner (or any limited partner or member of a Partner) exempt from income taxation under the Code will be deemed to have “unrelated business taxable income” as that term is defined in Sections 512 and 514 of the Code.

prohibited investments, investments in a portfolio company of an Associate, investments in public companies, hostile investments, etc. 13 CFR §§107.700-885 set forth certain investment rules for SBICs.

# ARTICLE 3

**Management**

Section 3.01. Authority of General Partner.

1. **The management and operation of the Partnership and the formulation of investment policy is vested exclusively in the General Partner**, which shall have the rights and powers which may be possessed by a general partner under the Act, and such rights and powers as are otherwise conferred by law and are necessary, advisable or convenient to the discharge of its duties under the SBIC Act, this Agreement, and to the management of the operations and affairs of the Partnership. The General Partner is expressly authorized to make any election or take any other action on behalf of the Partnership permitted under the Code as may be required to have the Partnership treated as a partnership under the Code.
2. **The act of the General Partner in carrying on the business of the Partnership will bind the Partnership.**

**Partnership:**

1. **So long as the General Partner remains the general partner of the**
   1. **it will comply with the requirements of the SBIC Act, including, without limitation, 13 CFR §§107.160(a) and 107.160(b),**[**28**](#_bookmark42) **as in effect from time to time; and**
   2. **in the case of any General Partner other than a natural person, except as set forth in Section 3.01(c)(iii), it will devote all of its activities to the conduct of the business of the Partnership and will not engage actively in any other business, unless its engagement is related to and in furtherance of the affairs of the Partnership.**[**29**](#_bookmark43)
   3. **The General Partner may, however:**

**SBICs;**[**30**](#_bookmark44) **and**

1. **act as the general partner for one or more other**
2. **receive, hold, manage and sell Assets received by it from the Partnership (or other SBIC for which it acts as general partner or Investment Adviser/Manager), or through the exercise or exchange of Assets received by it from the Partnership (or other SBIC for which it acts as general partner or Investment Adviser/Manager**).

28 These regulations describe the organizational requirements for the General Partner.

29 See 13 CFR §107.160(b), which requires that, if a general partner of a limited partnership SBIC is an entity (rather than a natural person), it must be organized for the sole purpose of serving as the general partner of one or more SBICs.

30 See 13 CFR §107.160(b).

1. In the case of any General Partner other than a natural person, at any time that the Partnership is licensed as an SBIC, the General Partner will not allow any person to serve as a general partner, director, officer or manager of the General Partner, unless such person has been approved by SBA.[31](#_bookmark47)

Section 3.02. Authority of the Limited Partners.

The Limited Partners will take no part in the control of the business of the Partnership, and the Limited Partners will not have any authority to act for or on behalf of the Partnership except as is specifically permitted by this Agreement.[32](#_bookmark48)

Section 3.03. The Investment Adviser/Manager.[33](#_bookmark49)

1. **Subject to the SBIC Act, the General Partner may delegate any part of its authority to an Investment Adviser/Manager, except the General Partner must make the final determinations with respect to all purchases and sales of Portfolio Securities and Partnership valuations.**
2. **Any agreement delegating any part of the authority of the General Partner to an Investment Adviser/Manager will:**
   1. **be in writing, executed by the General Partner, the Partnership and the Investment Adviser/Manager;**
   2. **specify the authority so delegated; and**
   3. **expressly require that such delegated authority will be exercised by the Investment Adviser/Manager in conformity with the terms and conditions of such agreement, this Agreement and the SBIC Act.**[**34**](#_bookmark50)
3. Each agreement with an Investment Adviser/Manager under Section 3.03(a) will be binding upon the General Partner and any succeeding General Partner in accordance with its terms.

31 See 13 CFR §107.160(b). Note that 13 CFR §107.410 requires that any transaction resulting in control by any person not previously approved by SBA requires prior approval of SBA.

32 This language follows RULPA §17-303(a) with respect to limited partner liability to third parties.

33 This section is applicable if there will be an Investment Adviser/Manager other than or in addition to the General Partner of the SBIC. See 13 CFR §107.50 for the definition of Investment Adviser/Manager; 13 CFR

§107.510 for the basic requirements of a management contract; and 13 CFR §§107.140 and 107.520 for the requirements for SBA approval of Management Expenses.

34 13 CFR §107.600(b) requires an SBIC to maintain its books and records at its principal place of business or, in the case of certain transactions, at the SBIC’s office primarily responsible for the transaction. In addition, 13 CFR §107.691 requires that all such books and records be made available to SBA for examinations. An SBIC’s books and records should not be maintained at an office of an Investment Adviser/Manager unless the two are co- located, and, in any event, all such books and records of the SBIC must be made available to SBIC in order to comply with the SBIC’s examination requirements under 13 CFR §107.691.

1. **Each agreement with an Investment Adviser/Manager, and any material amendment to any such agreement, is subject to the prior approval of SBA**.[**35**](#_bookmark52)

[*add any provisions requiring approval by the Limited Partners of any change of the Investment Adviser/Manager or the terms of any agreement with an Investment Adviser/Manager*]

Section 3.04. Restrictions on Other Activities of the General Partner and its Affiliates.[36](#_bookmark53)

1. Except as provided in the SBIC Act and as otherwise specifically provided in this Agreement, no provision of this Agreement will be construed to preclude any (i) Limited Partner, (ii) Investment Adviser/Manager, or (iii) Affiliate (excluding the General Partner), general partner, member, manager, director or owner of any Limited Partner or Investment Adviser/Manager, from engaging in any activity whatsoever or from receiving compensation therefor or profit from any such activity. Such activities may include, without limitation, (A) receiving compensation from issuers of securities for investment banking services, (B) managing investments, (C) participating in investments, brokerage or consulting arrangements or (D) acting as an adviser to or participant in any corporation, partnership, limited liability company, trust or other business person.
2. Without the consent of a [*Majority*] in Interest of the Limited Partners, no Principal may act as general partner or principal or in any similar management capacity for an entity with investment objectives substantially similar to the Partnership until the earlier of (i) such time as an amount equal to percent ( %) of the Commitments [*and Leverage*] have been invested or committed for investment in portfolio companies or applied to or committed for Partnership expenses or reserves, or (ii) the expiration of the Investment Period.[37](#_bookmark54)
3. The General Partner shall require that each Principal devote substantially all of such Principal’s respective business time and attention to the Partnership during the Investment Period, provided that the Principals shall not be prohibited from participating in preexisting business ventures and other business ventures that do not unreasonably interfere with their responsibilities to the Partnership, or in civic or charitable activities. [*add language, if desired, identifying any lesser amount of time that any principal will devote to the Partnership, which must be a sufficient amount of time to properly conduct the business of the Partnership*]

[*add subsections dealing with such issues as restrictions on investments by General Partner affiliates, apportionment of investment opportunities among the Partnership and affiliates, and any other restrictions on the investment or other activities of the General Partner, Limited Partners or Investment Adviser/Manager*]

35 13 CFR §107.510(b) requires SBA approval for any material amendment of a management contract.

Even if a change does not require advance approval, 13 CFR §107.680(a) may require a non-material amendment to be reported to SBA.

36 SBA regulations address the terms on which an SBIC and its affiliates can receive fees from and can conduct other transactions with portfolio companies. See 13 CFR §§107.730, 107.860 and 107.900.

37 Even with the requisite consent of the Limited Partners under Section 3.04(c)(i), the Partnership must show, to the satisfaction of SBA, that it has qualified management as required under 13 CFR §107.130.

Section 3.05. Management Compensation.[38](#_bookmark56)

1. As Management Compensation for services rendered in the management of the Partnership, beginning on the [*insert date on which management compensation begins to accrue, (e.g., Commencement Date)*] and ending on the termination of the Partnership, the Partnership will pay an annual management fee computed on a daily basis equal to: (i) prior to the Management Fee Initial Period, [*2.0*]%[39](#_bookmark57) multiplied by the aggregate Commitments of the Partners;[40](#_bookmark58) and (ii) on and after the commencement of the Management Fee Initial Period, the Management Fee Base multiplied by the Management Fee Rate.[41](#_bookmark59)
2. Notwithstanding the provisions of paragraph (a) of this Section 3.05, following the Commencement Date until the date the Partnership is licensed as an SBIC, the Partnership shall pay as Management Compensation an annual amount equal to [*2.0*]% multiplied by the aggregate Commitments of the Partners, and any amount that would have been payable pursuant to Section 3.05(a) in excess of such amount shall accrue (the “*Accrued Amount*”) and the Accrued Amount shall be payable on the date the Partnership receives its SBIC license.[42](#_bookmark60)
3. The Management Compensation will be paid by the Partnership to the General Partner or, at the General Partner’s direction, in whole or in part to the Investment Adviser/Manager.
4. **The Partnership will not pay any Management Compensation with respect to any fiscal year in excess of the amount of Management Compensation approved by SBA.**[**43**](#_bookmark61)

38 See 13 CFR §§107.50, 107.140 and 107.520 relating to Management Expenses. Also see 13 CFR

§§107.860 and 107.900 relating to fees paid by portfolio companies to the SBIC or its Associates.

39 This rate is not required by SBA and SBA encourages negotiations regarding this rate among the Limited Partners and the General Partner.

40 Any management fee accrued or paid prior to the quarter in which the Partnership’s SBIC license application has been accepted for filing by SBA will not be counted as Regulatory Capital or Leverageable Capital.

41 The timing and amount of Management Compensation is a business issue subject to negotiation. The Limited Partners may negotiate a lower rate than the maximum rate provided in the Management Fee Rate definition, including, among other things, whether the Partnership accrues or pays any Management Compensation prior to receipt of an SBIC license. SBA will not approve Management Compensation formulas that are inequitable to SBA or the Partnership. For example, SBA will not permit SBICs utilizing a drop-down structure to pay a higher management fee rate at the SBIC level than the rate paid by the parent fund.

42 For the avoidance of doubt, any Accrued Amount that includes Management Compensation based on Assumed Leverage is only payable to the extent such amount is consistent with the maximum amount of Leverage that the Partnership may apply for consistent with the Partnership’s business plan approved by SBA, generally not to exceed two (2) times the Partnership’s Regulatory Capital.

43 13 CFR §107.520 provides that SBA consent is required for increases in Management Expenses if an SBIC has Outstanding Leverage, and 13 CFR §107.520(c) discusses SBA required approval of Management Expenses.

Section 3.06. Payment of Management Compensation.

1. Management Compensation will be paid in advance on the first day of each fiscal quarter or a portion thereof in cash.[44](#_bookmark63) Increases in Regulatory Capital will be recognized on the first day of the fiscal quarter in which the Partnership notifies SBA of the increase on an executed capital certificate. If the Management Compensation payable for a fiscal quarter or other period calculated as provided in Section 3.05 is greater than the amount paid at the beginning of that fiscal quarter or period, the additional Management Compensation owed shall be paid at the beginning of the next fiscal quarter. If the Management Compensation payable for a fiscal quarter or other period calculated as provided in Section 3.05 is less than the amount paid at the beginning of that fiscal quarter or period, then Management Compensation payable for the following fiscal quarter or period shall be reduced by the amount of the overpayment or, if the Partnership will be wound up and liquidated by the end of such fiscal quarter or other period, the overpayment shall be repaid by the recipient to the Partnership.
2. Within [*thirty (30)*] days after (i) the end of each fiscal year of the Partnership, (ii) the date the Partnership is terminated and (iii) the date a person ceases to be the Investment Adviser/Manager, appropriate adjustment (by way of payment or refund) will be made so that the Management Compensation paid with respect to the fiscal year then ended or the period from the end of the last fiscal year to the date set forth in clause (ii) or (iii) of this Section 3.06(b) will be equal to the Management Compensation calculated on a daily basis under Section 3.05 for such period.
3. If the General Partner or the Investment Adviser/Manager, or any Associate of the Partnership (except for any such Associate that (i) is regularly engaged in the business of providing investment banking services, and (ii) is a broker-dealer registered with the SEC in accordance with section 15(b) of the Exchange Act), receives any financing fees, management services fees, director fees, or transaction fees from a Portfolio Company, 100% of such fees shall be used to reduce the Management Compensation paid by the Partnership pursuant to this Section 3.06,[45](#_bookmark64) except (i) to the extent such fees reimburse for actual expenses,
   1. to the extent the SBIC Act does not require the reduction and (iii) as provided in the two sentences that immediately follow this sentence. If any fees that are required to be credited against Management Compensation as provided in this Section 3.06(c) arise from an investment by the Partnership and an investment by one or more Associates of the Partnership (except for any Associate that (i) is regularly engaged in the business of providing investment banking services, and (ii) is a broker-dealer registered with the SEC in accordance with section 15(b) of the Exchange Act), then the amount of such fees that shall be so credited against Management Compensation shall equal the amount of these fees multiplied by a fraction, the numerator of which is the amount of the investment by the Partnership in the Portfolio Company paying the fees and the denominator of which is the aggregate amount of the investments by the Partnership and the Associate(s) in the Portfolio Company paying the fees. If any fees that are required to be credited against the Management Compensation as provided in this Section 3.06(c) arise from

44 SBA permits no more than a three month advance payment of Management Compensation.

45 See also 13 CFR §§107.860 and 107.900.

proposed investments by the Partnership and one or more Associates which investments are not consummated, then the amount of such fees that shall be credited against the Management Compensation shall equal the amount of those fees multiplied by a fraction, the numerator of which is the amount of the investment that the Partnership proposed to make and the denominator of which is the aggregate amount proposed to be invested by the Partnership and the Associate(s). Notwithstanding the foregoing, any options, warrants or other non-cash compensation paid, granted or otherwise conveyed by Portfolio Companies for services rendered by any Principal, the Investment Adviser/Manager, the General Partner or any Associate of the Partnership, including any employees thereof, shall, to the extent permitted by the option, warrant or other non-cash compensation, be assigned to the Partnership, but if the option, warrant or other non-cash compensation cannot be so assigned, it shall be assigned after exercise, with the Partnership paying the exercise price.[46](#_bookmark67) Any offset required to be applied against Management Compensation under this Section 3.06(c) remaining unapplied as of the liquidation of the Partnership shall be paid in cash to the Partnership.

Section 3.07. Partnership Expenses.

* + 1. **The entity entitled to receive Management Compensation will be responsible for payment of the following expenses (“*Management Expenses*”):**[47](#_bookmark68)
       1. **the compensation of all professional and other employees of the Partnership, the General Partner or the Investment Adviser/Manager who provide services to the Partnership;**
       2. **except as provided in Section 3.07(b), the cost of providing support and general services to the Partnership, including, without limitation:**
          1. **the Partnership’s normal routine recurring operating expenses, including rent, utilities and overhead charges;**

**the General Partner;**

* + - * 1. **fringe benefits of all employees of the Partnership and**
        2. **travel related to items identified in this Section 3.07(a);**
        3. **business development;**
        4. **office and equipment rental;**
        5. **bookkeeping and similar services** (including, without limitation, accounting fees, preparation of annual and interim financial statements of the Partnership, portfolio financing reports, and capital certificates);[48](#_bookmark66)

46Applicant should to set forth how options and other rights to acquire securities will be treated.

4713 CFR §107.520 defines the types of expenses that are and are not considered Management Expenses.

* + - * 1. **office supplies and postage;**
        2. **dues and subscriptions;**
        3. **telephone, facsimile, internet and similar charges; and**

**investments; and**

* + - * 1. **the development, investigation and monitoring of**
      1. **all other expenses not authorized to be paid by the Partnership under Section 3.07(b).**[**49**](#_bookmark69)

*Expenses*”):

* + 1. The Partnership will pay the following expenses (“*Partnership*
       1. costs and expenses of the Partnership relating to the annual audit of the Partnership and the preparation of Federal and state tax returns of the Partnership;
       2. all interest and expenses payable by the Partnership on any indebtedness incurred by the Partnership;
       3. all amounts payable to SBA under the SBIC Act (including, without limitation, SBA examination fees), and all amounts payable in connection with any Leverage commitment, Leverage issuance, and Outstanding Leverage;
       4. taxes payable by the Partnership to Federal, state, local and other governmental agencies;
       5. Management Compensation;
       6. expenses incurred in the actual or proposed acquisition or disposition of Assets, including without limitation, accounting fees, brokerage fees, legal fees, transfer taxes and costs related to the registration or qualification for sale of Assets;
       7. legal expenses of the Partnership;
       8. insurance and premiums protecting the Partnership, the General Partner, the Investment Adviser/Manager and any of their officers, directors, managers, owners, and employees (including any insurance contemplated under Section 3.10(n));

48 SBA considers these expenses to be Management Expenses, but will permit an applicant to allocate these expenses to the Partnership if the applicant is not seeking the maximum management fee permitted under SBA policy and payment of these expenses would not result in the Partnership exceeding the maximum management fee.

49 SBA recognizes that it is common practice for portfolio companies to reimburse certain expenses of an SBIC, including certain expenses identified in Section 3.07(a). However, consistent with 13 CFR §107.860(f), any expense reimbursement that SBA determines to be unreasonable or Management Expenses must be included in your Cost of Money under 13 CFR §107.855 or refunded to the portfolio company.

* + - 1. reasonable costs and expenses associated with meetings of the Limited Partners with the General Partner and meetings of the Advisory Board;
      2. to the extent permitted under Section 3.10, Indemnifiable Costs;
      3. Organization Expenses not to exceed $ ;[50](#_bookmark71)
      4. securities filing fees related to a Portfolio Company; and
      5. fees or dues in connection with the membership of the Partnership in any trade association for small business investment companies.

[*add any other expenses to be paid for by the Partnership*][51](#_bookmark72)

* + 1. **All Partnership Expenses paid by the Partnership will be made against appropriate supporting documentation. The payment by the Partnership of Partnership Expenses will be due and payable as billed.**

Section 3.08. Valuation of Assets.[52](#_bookmark73)

1. **The Partnership will adopt written guidelines for determining the value of its Assets. Assets held by the Partnership will be valued by the General Partner in a manner consistent with the Partnership’s written guidelines and the SBIC Act. The Valuation Guidelines attached to this Agreement as Exhibit I are the Partnership’s written guidelines for valuation.**[**53**](#_bookmark74)
2. **To the extent that the SBIC Act requires any Asset held by the Partnership to be valued other than as provided in this Agreement, the General Partner will value the Asset in such manner as it determines to be consistent with the SBIC Act.**
3. **Assets held by the Partnership will be valued at least annually (or more often, as SBA may require), and will be valued at least semi-annually (or more often, as SBA may require) at any time that the Partnership has Outstanding Leverage.**[**54**](#_bookmark75)

50 SBA requires Organization Expenses to be reasonable relative to the size of the fund.

51 Not all expenses may qualify as expenses that the Partnership may pay. See 13 CFR §107.520. In addition, SBA will review on a case by case basis the reasonableness of any expenses allocated to the Partnership relating to SBA regulatory compliance.

52 13 CFR §107.503 discusses how an SBIC must value its Portfolio Companies.

53 13 CFR §107.503(b) provides that an SBIC must either adopt without change SBA’s model valuation policy set forth in Section III of the Valuation Guidelines for SBICs or obtain SBIC’s prior written approval of an alternative valuation policy. The model valuation policy is Exhibit I of the Model.

54 See 13 CFR §§107.503(d) and 107.650 regarding the timing of valuations and reports.

Section 3.09. Standard of Care.[55](#_bookmark77)

1. Standard of Care for Covered Parties. **The standard of care for a Covered Party is as set forth in the SBIC Act, which requires a fiduciary duty, consisting of the duties of loyalty, due care and good faith. In connection with the discharge of those duties, no Covered Party will be liable to the Partnership or any Partner for any act or omission by it or any other Partner or other person taken in good faith, in a manner the Covered Party reasonably believed to be in or not opposed to the best interests of the Partnership, and with the care that an ordinarily prudent person in a like position would use under similar circumstances, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful. For the avoidance of doubt, any act or omission by any Covered Party in connection with the conduct of the affairs of the Partnership or in connection with this Agreement does not meet the standard of care set forth in this Section 3.09(a) if such act or omission results from any of the following: breach of fiduciary duty, material breach of this Agreement, gross negligence, fraud, bad faith, willful misconduct with respect to the Partnership or any Partner, or any violation of the SBIC Act arising from an act or omission that violates the standard of care identified in this section 3.09(a) and that has caused the Partnership to suffer financial loss or other damage. For the further avoidance of doubt, any particular finding of personal liability of a Covered Party, whether for a violation of the SBIC Act or otherwise, requires the satisfaction of the elements of a cause of action available under applicable state or federal (other than the SBIC Act) law, which cause of action imposes personal liability for such Covered Party’s violation of the standard of care set forth in this Section 3.09(a).** [*Applicant may include additional conduct it deems expressly inconsistent with the standard of care*].
2. Standard of Care for Other Parties. **Neither any Limited Partner, nor any member of any Partnership committee or board [***(including the Advisory Board)*] **who is not an Affiliate of the General Partner, nor any person who is not an Affiliate of the General Partner and who serves at the request of the General Partner on behalf of the Partnership as an officer, director, employee, agent or member of any other entity, including, without limitation, a Portfolio Company will be liable to the Partnership or any Partner as the result of any decision made in good faith by the Limited Partner or member, in its capacity as such.**
3. Reliance on Counsel. **Any Covered Party, any Limited Partner and any member of a Partnership committee or board [***(including the Advisory Board)***] may consult with independent legal counsel in respect of Partnership affairs selected by it and will be fully protected, and will incur no liability to the Partnership or any Partner, in acting or refraining to act in good faith in reliance upon the opinion or advice of such counsel, provided that such counsel was selected with reasonable care and has been provided with all material facts relevant to such counsel’s opinion or advice.**
4. No Waiver of Section 314 of SBIC Act. **This Section 3.09 implements Sections 314(a) and 314(b) of the SBIC Act and does not constitute a modification,**

55 Applicants not seeking to use Leverage may propose alternative language regarding the standard of care and indemnification.

**limitation or waiver of Section 314(a) or Section 314(b) of the SBIC Act, or a waiver by SBA of any of its rights under the SBIC Act.**[**56**](#_bookmark79)

Section 3.10. Indemnification.

1. Indemnification of Covered Parties. **The Partnership will indemnify and hold harmless, but only to the extent of Assets Under Management (less any Outstanding Leverage and any debt of the Partnership permitted under 13 CFR §107.560), any Covered Party, from any and all Indemnifiable Costs which may be incurred by or asserted against such person or entity, subject to the terms of this Section 3.10.**
2. Indemnification of Other Parties. **The Partnership will indemnify and hold harmless, but only to the extent of Assets Under Management (less any Outstanding Leverage and any outstanding debt of the Partnership permitted under 13 CFR §107.560), the Limited Partners and members of any Partnership committee or board [***(including the Advisory Board)*] **who is not an Affiliate of the General Partner or the Investment Adviser/Manager, from any and all Indemnifiable Costs which may be incurred by or asserted against such person or entity by any third party on account of any matter or transaction of the Partnership, which matter or transaction occurred during the time that such person has been a Limited Partner or member of any Partnership committee or board.**
3. Discretion to Indemnify. **The Partnership has power, in the discretion of the General Partner, to agree to indemnify on the same terms and conditions applicable to persons indemnified under Section 3.10(b), any person who is or was serving, under a prior written request from the Partnership, as a consultant to, agent for or representative of the Partnership as a director, manager, officer, employee, agent of or consultant to another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by the person in any such capacity, or arising out of the person's status as such.**
4. Compliance with Standard of Care. **No person may be entitled to claim any indemnity or reimbursement under Section 3.10(a), (b) or (c) in respect of any Indemnifiable Cost that may be incurred by such person which results from the failure of the person to act in accordance with the provisions of this Agreement and the applicable standard of care stated in Section 3.09. The termination of any action, suit or proceeding**

56 Sections 314(a) and 314(b) of the SBIC Act provide:

1. Wherever a licensee violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.
2. It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

**by judgment, order, settlement, conviction, or plea of nolo contendere or its equivalent, will not, of itself, preclude a determination that such person acted in accordance with the applicable standard of care stated in Section 3.09.**

* 1. Mandatory Indemnification. **To the extent that a person claiming indemnification under Section 3.10(a), (b) or (c) has been successful on the merits in defense of any action, suit or proceeding referred to in Section 3.10(a), (b) or (c) or in defense of any claim, issue or matter in any such action, suit or proceeding, such person must be indemnified with respect to such matter as provided in such section. Except as provided in the foregoing sentence and as provided in Section 3.10(h) with respect to advance payments, any indemnification under this Section will be paid only upon determination that the person to be indemnified has met the applicable standard of conduct stated in Section 3.09(a) or (b).**
  2. Permissive Indemnification. **A determination that a person to be indemnified under this Section has met the applicable standard stated in Section 3.09 may be made by (i) the General Partner, with respect to the indemnification of any person other than a person claiming indemnification under Section 3.10(a), (ii) any committee of the Partnership [***(including the Advisory Board)***] whose members are not affiliated with the General Partner or the Investment Adviser/Manager with respect to indemnification of any person indemnified under Section 3.10(a)), (iii) a court of competent jurisdiction, or**

**(iv) at the election of the General Partner, independent legal counsel selected by the General Partner, with respect to the indemnification of any person indemnified under this Section, in a written opinion.**

* 1. Determination of Permissive Indemnification. **In making any determination with respect to indemnification under Section 3.10(f), the General Partner, or any committee of the Partnership [***(including the Advisory Board)***] whose members are not affiliated with the General Partner, the Investment Adviser/Manager, or independent legal counsel, as the case may be, is authorized to make the determination on the basis of its evaluation of the records of the General Partner, the Partnership or the Investment Adviser/Manager and of the statements of the party seeking indemnification with respect to the matter in question and is not required to perform any independent investigation in connection with any determination. Any party making any such determination is authorized, however, in its sole discretion, to take such other actions (including engaging counsel) as it deems advisable in making the determination.**
  2. Advances. **Expenses incurred by any person in respect of any Indemnifiable Cost may be paid by the Partnership before the final disposition of any such claim or action upon receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined as provided in Section 3.10(e) or (f) that the person is entitled to be indemnified by the Partnership as authorized in this Section; however, no such person shall be entitled to any advance with respect to any claim, action, suit or proceeding brought by any receiver appointed under the SBIC Act unless such person obtains a bond for the amount of such advances, subject to SBA approval in its sole discretion, which approval will not be unreasonably withheld.** [*Applicant may include other limitations on advances (e.g., claims brought by a Majority in Interest of the Limited Partners)*].
  3. General Partner Disputes. **No person may be entitled to claim any indemnity or reimbursement under Section 3.10(a), (b) or (c) in respect of any Indemnifiable Cost that may be incurred by such person which results from any dispute solely among the General Partner, or its Affiliates, or any of their respective employees or agents which has not arisen as a result of a claim by a third party against the Partnership or any of them with respect to Partnership matters.**
  4. Successors and Assigns. **The rights provided by this Section will inure to the benefit of the heirs, executors, administrators, successors, and assigns of each person eligible for indemnification under this Agreement.**
  5. Exclusive Rights. **The rights to indemnification provided in this Section are the exclusive rights of all Partners to indemnification by the Partnership. No Partner may have any other rights to indemnification from the Partnership or enter into, or make any claim under, any other agreement with the Partnership (whether direct or indirect) providing for indemnification.**
  6. Other Agreements. **The Partnership may not enter into any agreement with any person (including, without limitation, the Investment Advisor/Manager, any Partner or any person that is an employee, officer, director, partner or shareholder, or an Affiliate, Associate or Control Person of any Partner) providing for indemnification of any such person (i) except as provided for under this Section, and (ii) unless such agreement provides for a determination with respect to the indemnification as provided under Section 3.10(f).**
  7. Limited Scope. **The provisions of this Section do not apply to indemnification of any person that is not at the expense (whether in whole or in part) of the Partnership.**
  8. Insurance. The Partnership may purchase and maintain insurance on its own behalf, or on behalf of any person or entity, with respect to liabilities of the types described in this Section. The Partnership may purchase such insurance regardless of whether the person is acting in a capacity described in this Section or whether the Partnership would have the power to indemnify the person against such liability under the provisions of this Section; provided, however, that the General Partner shall not be liable to the Partnership or the Partners for its failure to purchase any insurance or for the inadequacy of any coverage. If a Covered Party or the Partnership is entitled to indemnification under an insurance policy purchased by a Portfolio Company, the Covered Party shall first seek payment under that policy before seeking payment under this Section 3.10; however, if payment under any such Portfolio Company policy, whether for advances or otherwise, is not forthcoming in a timely manner, the Partnership shall make indemnification payments and advances as provided in this Section 3.10, and, to the extent of such payments, shall be subrogated to all rights of the Covered Party under the Portfolio Company policy.
  9. Notice. Promptly after receipt by a Covered Party of notice of the commencement of any threatened or actual claim, action, suit or proceeding, the Covered Party shall, if a claim for indemnification in respect thereof is to be made against the Partnership, give written notice to the Partnership of the commencement of the claim, action, suit or proceeding; provided that the failure of any Indemnified Person to give notice as provided in this Agreement

shall not relieve the Partnership of its obligations under this Section 3.10, except to the extent that the Partnership is actually prejudiced by the failure to give notice. In case any threatened or actual claim, action, suit or proceeding is brought against a Covered Party (other than a derivative suit in right of the Partnership), the Partnership shall be entitled to participate in and to assume the defense thereof to the extent that the Partnership may wish, with counsel reasonably satisfactory to the Covered Party. After notice from the Partnership to a Covered Party of the Partnership’s election to assume the defense of a threatened or actual claim, action, suit or proceeding, the Partnership shall not be liable for expenses subsequently incurred by the Covered Party in connection with the defense thereof unless the Covered Party identifies to the Partnership an actual or reasonably probable conflict of interest between the Partnership and such Covered Party.

* 1. No Waiver. Nothing contained in this Section 3.10 (or any related provision in Section 3.09) shall constitute a waiver by any Partner of any right that it may have against any party under law.

Section 3.11. Advisory Board or Partnership Committees.[57](#_bookmark81)

1. The Partnership shall have an Advisory Board chosen by the General

Partner made up of not less than

members who are representatives of the Limited

Partners.[58](#_bookmark82) The duties of the Advisory Board shall be to:

* 1. subject to the SBIC Act, including, without limitation, 13 CFR

§107.730, resolve conflicts of interest involving the General Partner and its Associates;

* 1. make indemnification determinations as set forth under Sections 3.10(f) and 3.10(g); and
  2. [*add other duties as appropriate*].

1. The Advisory Board will meet as required. The quorum for a meeting of the Advisory Board shall be a majority of its members. Members of the Advisory Board may participate in a meeting of the Advisory Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. All actions taken by the Advisory Board shall be by vote of a majority of the members present. Except as expressly provided in this Section 3.11, the Advisory Board shall

57 An Advisory Board is not required by SBA. Board or committee powers should conform to the applicable RULPA or other state law provisions for powers which may be granted to limited partners without exposing them to liability to third parties. See RULPA §17-303. Board or committee powers should also be examined in light of the definition of Control Person in the SBIC regulations (13 CFR §107.50) to avoid unintentionally causing committee members to become “Control Person” and consequently “Associates” of the SBIC. A Limited Partner committee may be designated to be the committee of the Partnership referenced in Sections 3.10(f) and 3.10(g) of these Model provisions. This section can also address other Partnership committees.

58 The Advisory Board may have members who are not representatives of Limited Partners. The Partnership may also have additional boards or committees.

conduct its business in the manner and by the procedures as a majority of its members deem appropriate.[59](#_bookmark84)

1. Any action required or permitted to be taken by the Advisory Board may be taken without a meeting if a majority of the members of the Advisory Board consent to such action in one or more writings delivered to the General Partner, provided that notice of the proposed action has first been circulated in writing to all members of the Advisory Board. If any written action is taken by the Advisory Board, the General Partner shall give prompt notice to the members of the Advisory Board.
2. No member of the Advisory Board may be removed except with the consent of the General Partner [*and either (i) a majority of the remaining members of the Advisory Board or (ii) a Majority in Interest of the Limited Partners*].

[*add provision for other Partnership committees, if any*]  Section 3.12. Key Person Event.

1. If a Key Person Event has occurred, the General Partner shall promptly notify the Limited Partners and SBA of that occurrence, and the Partnership will automatically enter into a period of up to [*180*] days during which the Investment Period will be suspended (the “*Suspension Period*”). During the Suspension Period, the General Partner shall not be authorized to call for or accept (and the Partners shall not be obligated to make) any drawdowns of capital to fund investments other than drawdowns to finance (i) companies that were Portfolio Companies at the time the Key Person Event occurred, provided such financing preserves, protects or enhances the value of such Portfolio Company and (ii) commitments to invest or guarantees entered into prior to the beginning of the Suspension Period Nothing in this Section 3.12(a) limits the right or the ability of the Partnership and the General Partner to make capital calls for any permitted purpose other than to fund investments as limited in the immediately preceding sentence, which permitted purposes include, but are not limited to, making capital calls to pay cost, expenses and liabilities of the Partnership, including Leverage, Management Compensation and indemnification obligations, and to make required payments to SBA.
2. During the Suspension Period, the General Partner will discuss with the Partners a course of action for the continued operation of the Partnership. Unless a Majority in Interest of the Limited Partners and the SBA approve the course of action and a termination of the Suspension Period, then the Investment Period will end [*180*] days following the occurrence of the Key Person Event.[60](#_bookmark85)

59 Except for reimbursements authorized under Section 3.07(b), the Partnership may not provide compensation to Limited Partner members of the Advisory Board.

60 In order for SBA to make a determination that the Suspension Period should end, the Partnership must demonstrate that it has qualified management as required under 13 CFR §107.130.

# ARTICLE 4

**Small Business Investment Company Matters**

Section 4.01. SBIC Act.

**The provisions of this Agreement must be interpreted to the fullest extent possible in a manner consistent with the SBIC Act. If any provision of this Agreement conflicts with any provision of the SBIC Act (including, without limitation, any conflict with respect to the rights of SBA or the respective Partners under this Agreement), the provisions of the SBIC Act will control.**

Section 4.02. Consent or Approval of, and Notice to, SBA.

1. **The requirements of the prior consent or approval of, and notice to, SBA in this Agreement will be in effect at any time that the Partnership is licensed as an SBIC or has Outstanding Leverage. These requirements will not be in effect if the Partnership is not licensed as an SBIC and does not have any Outstanding Leverage.**[**61**](#_bookmark90)
2. **Except as provided in the SBIC Act,**[**62**](#_bookmark91) **a consent or approval required to be given by SBA under this Agreement will be deemed given and effective for purposes of this Agreement only if the consent or approval is:**
   1. **given by SBA in writing, and**
   2. **delivered by SBA to the party requesting the consent or approval in the manner provided for notices to such party under Section 10.03.**

Section 4.03. Provisions Required by the SBIC Act for Issuers of Debentures.[63](#_bookmark92)

1. **The provisions of 13 CFR §107.1810(i) are incorporated by reference in this Agreement as if fully stated in this Agreement.**
2. **The Partnership and the Partners consent to the exercise by SBA of all of the rights of SBA under 13 CFR §107.1810(i), and agree to take all actions that SBA may require in accordance with 13 CFR §107.1810(i).**
3. **This Section 4.03 will be in effect at any time that the Partnership has outstanding Debentures, and will not be in effect at any time that the Partnership does not have outstanding Debentures.**

61 Note that if an applicant for an SBIC license begins operations prior to receiving its license, SBA approval may be required for certain actions taken while the application is pending (for example, pre-licensing investments).

62 In certain cases the SBIC Act provides that SBA will be deemed to have consented to an action if SBA does not act within a specified period after receiving notice of the action. See, for example, 13 CFR §107.680(b).

63 This Section incorporates regulations relating to the special rights of SBA when the Partnership has outstanding Debentures. See also 13 CFR §107.1140 regarding the automatic agreement to and incorporation of 13 CFR §§107.1800 through 107.1820 by an SBIC at the time of any issuance of Leverage.

1. **Nothing in this Section 4.03 may be construed to limit the ability or authority of SBA to exercise its regulatory authority over the Partnership as a licensed small business investment company under the SBIC Act.**

Section 4.04. Effective Date of Incorporated SBIC Act Provisions.[64](#_bookmark96)

1. **Any section of this Agreement which relates to Debentures issued by the Partnership and incorporates or refers to the SBIC Act or any provision of the SBIC Act (including, without limitation, 13 CFR §§107.1810(i) and 107.1830 - 107.1850) will, with respect to each Debenture, be deemed to refer to the SBIC Act or such SBIC Act provision as in effect on the date on which the Debenture was purchased from the Partnership.**
2. **Section 4.04(a) will not be construed to apply to:**
   1. **the provisions of the SBIC Act which relate to the regulatory authority of SBA under the SBIC Act over the Partnership as a licensed small business investment company; or**
   2. **the rights of SBA under any other agreement between the Partnership and SBA.**
3. **The parties acknowledge that references in this Agreement to the provisions of the SBIC Act relating to SBA’s regulatory authority refer to the provisions as in effect from time to time.**

Section 4.05. SBA as Third Party Beneficiary.

**SBA will be deemed an express third party beneficiary of the provisions of this Agreement to the extent of the rights of SBA under this Agreement and under the Act. SBA will be entitled to enforce the provisions (including, without limitation, the obligations of each Partner to make Capital Contributions to the Partnership) for its benefit, as if SBA were a party to this Agreement.**

Section 4.06. Jurisdiction When SBA is a Party.

**Notwithstanding any other provision of this Agreement or any SBA Agreement, jurisdiction and venue in any legal proceeding, claim or request for relief brought by SBA under Section 311 of the SBIC Act (15 U.S.C. §687c) shall be exclusively in the United States District Courts in the district in which the Partnership shall have its principal place of business. Further, each Partner waives any objection to the jurisdiction and venue of any such court.**[65](#_bookmark97)

64 See 13 CFR §107.1140 regarding the automatic agreement to and incorporation of 13 CFR §§107.1800 through 107.1820 by an SBIC at the time of any issuance of Leverage.

65 This language implements Section 311 of the SBIC and, to the extent of any inconsistency between that Section of the SBIC Act and this language, the SBIC Act will control.

Section 4.07. SBA Not Subject to Arbitration.

**Notwithstanding any other provision of this Agreement or of any other agreement or writing to the contrary, under no circumstances shall SBA in any capacity be subject to arbitration with respect to any legal, factual, equitable or any other assertion, argument, claim or defense of any kind whatsoever. The parties agree and acknowledge that SBA will not be subject to arbitration under any circumstances, and the Partnership does not agree to arbitration in the event it is subject to a complaint filed by SBA under 15 U.S.C. §687c. Without limiting the foregoing: (i) under no circumstances shall SBA in its capacity as a receiver be subject to arbitration with respect to any legal, factual, equitable or any other assertion, argument, claim or defense of any kind whatsoever by or against SBA-as-receiver or the applicable receivership estate and including without limitation as to any assertion, argument, claim or defense asserted by the receiver on behalf of the Partnership or on behalf of the receivership estate; (ii) in the event SBA files a complaint against the Partnership in any federal district court under 15 U.S.C. §687c, then upon such filing any arbitration clause that could otherwise ever have had any applicability to any legal, factual, equitable or any other assertions, arguments, claims or defenses by or among the Limited Partners, General Partner, Investment Adviser/Manager or anyone else related to the Partnership shall be of no force and effect. Furthermore, any person who asserts in any state or federal court or in any administrative proceeding that SBA or SBA-as-receiver are obligated to participate in arbitration in any manner whatsoever shall pay all costs, expenses and legal fees of SBA and/or SBA-as-receiver in responding to such assertion.**

# ARTICLE 5

**Partners’ Commitments and Capital Contributions**

Section 5.01. Commitments.[66](#_bookmark102)

**The Limited Partners and the General Partner commit to make Capital Contributions to the Partnership in the amounts set forth by their respective names on Schedule A of this Agreement, as amended from time to time. All Commitments are binding and not subject to any defense at law or equity. No Partner may decrease or be released from its Commitment without the prior written approval of SBA except as provided in Sections 5.06 through 5.15 of this Agreement.**

Section 5.02. Capital Contributions by Limited Partners.[67](#_bookmark103)

1. **All Capital Contributions to the Partnership by a Limited Partner must be in cash, except as otherwise provided in this Agreement and approved by SBA.**
2. Each Limited Partner will pay as its initial Capital Contribution to the Partnership an amount determined by the General Partner. The General Partner will give the Limited Partners notice of the amount and due date of the initial Capital Contribution.
3. After the date of the initial Capital Contribution, the Limited Partners will pay the remaining balances of their Commitments in such amounts and at such times as will be determined by the General Partner in its sole discretion. The General Partner will give each Limited Partner notice before each such payment is due. Each such notice will be given not less than ( ) days before the payment to which such notice relates is due, and will specify the date the payment will be due and the percentage or amount of the Limited Partners’ Commitments then due.
4. If the Partnership does not use Capital Contributions (other than the Capital Contributions required to be called for the Partnership to have $2,500,000 of drawn capital at the time of being licensed as an SBIC) in respect of a capital call to purchase portfolio securities, pay Partnership Expenses or establish a reserve, within [ninety (*90)*] days after receipt, the Partnership may return all or portions of such Capital Contributions to the Partners making such Capital Contributions. All amounts returned to the Partners under this Section 5.02(d) shall

(i) reduce, dollar for dollar, each Partner’s Capital Contributions to date, (ii) increase, dollar for dollar, the unfunded Commitment of each Partner, (iii) be available for call by the Partnership for investment, to pay expenses or otherwise, and (iv) constitute a return of capital and not a payment of any distribution pursuant to Article 7. No preferred/priority return will accrue on any

66 The Commitment of a Partner may be evidenced by a promissory note; however, such a note will not be treated as a capital contribution for purposes of SBA regulations. See 13 CFR §107.240.

67 RULPA addresses the forms that capital contributions may take, see Delaware RULPA §17-501. Although a partner’s promissory note will qualify as a capital contribution for purposes of RULPA, it will not qualify as a capital contribution for purposes of SBA regulations. SBA approval of non-cash contributions is generally limited to qualified pre-licensing investments. See 13 C.F.R. §107.240 for the regulatory limitations on non-cash capital contributions.

amount returned pursuant to this Section 5.02(d). The Partnership may not avail itself of the return of Capital Contributions permitted by this Section 5.02(d) if the Partnership has either (x) used those Capital Contributions that prior to the date on which such Capital Contributions were made did not qualify as Regulatory Capital to obtain SBA’s commitment to reserve Leverage or

* 1. used those Capital Contributions for the purpose of drawing down Leverage against SBA’s commitment.

[*Applicant may add additional provisions, if desired, addressing such issues as limiting the amount of Limited Partners’ Commitments that may be called in any specified period, e.g., not*

*more than % during any*

*consecutive months,*[*68*](#_bookmark105) *making draws that result in equal*

*percentage of Commitments drawn, and any other Capital Contribution provisions*.][69](#_bookmark106)

Section 5.03. Capital Contributions by the General Partner.[70](#_bookmark107)

* + 1. **All Capital Contributions to the Partnership by the General Partner must be in cash, except as otherwise provided in this Agreement and approved by SBA.**[**71**](#_bookmark108)
    2. The General Partner must pay its Commitment in installments at the same times and in the same percentage amounts as the Limited Partners.[72](#_bookmark109)
    3. If the Commitment of the General Partner is increased as a result of an increase in the Commitment of a Limited Partner or the admission of any Additional Limited Partner, the amount of the increased Commitment will be payable by the General Partner in installments, the first of which will be due upon the effectiveness of the increased Commitment and each subsequent installment will be due at the same times and in the same percentage amounts as the Limited Partners.[73](#_bookmark110)

68 Any provision that limits the amount or percentage of the Limited Partners’ Commitments that may be called in any specified period must contain a proviso that any such limitation will not be considered in effect in the event that the Partnership is transferred to SBA’s Office of Liquidation within the Office of Investment and Innovation.

69 Limitations on the amount of a Commitment which may be called down within a specified period are permitted under Section 5.05, but must be disclosed on Table 4 to the Partnership’s capital certificate filed with SBA.

70 This section may need to be modified if the Partnership is utilizing a drop-down structure and the general partner is not making any Capital Contributions.

71 SBA will not permit a General Partner or any member, manager, limited partner or general partner of the General Partner to deliver a promissory note or notes in satisfaction of the General Partner’s Commitment or Capital Contribution to the Partnership.

72 This may require modification if a fee waiver is being used for Capital Contributions. Note that SBA will allow a maximum of fifty percent (50%) of the General Partner’s Capital Contribution to be paid by waived management fees.

73 Section 5.03(c) addresses a situation where the Commitment of the General Partner is a percentage (e.g., 1%) of the Commitments of the Partners or the Limited Partners. In this situation, the Commitment of the General

[*add additional provisions if desired*]

Section 5.04. Additional Limited Partners and Increased Commitments.

1. The General Partner may (i) without the consent of the Limited Partners from time to time after the date of this Agreement and during the ( ) month period following the Commencement Date, and (ii) on or after the end of that period with the consent of [*the Advisory Board/a Majority in Interest of the Limited Partners*], admit one or more new Limited Partners (the “*Additional Limited Partners*”) or permit any Limited Partner to increase its Commitment under the terms and conditions set forth in this Section 5.04.
2. Each Additional Limited Partner (and Limited Partner increasing its Commitment) must execute and deliver to the Partnership the documentation required by this Section 5.04, thereby evidencing its agreement to be bound by and comply with the terms and provisions of this Agreement, and Schedule A attached to this Agreement will be amended to reflect such Additional Limited Partner’s name, address and Commitment (or the increase in the Limited Partner’s Commitment, as the case may be).
3. Each Additional Limited Partner shall be admitted to the Partnership as of the date that (i) an executed subscription agreement in form and substance acceptable to the General Partner has been accepted by the Partnership, (ii) an executed counterpart of this Agreement has been delivered to and accepted by the Partnership and (iii) the Additional Limited Partner shall have paid by way of a Capital Contribution to the Partnership, cash in an amount equal to the sum of (x) a Capital Contribution representing the same proportion of the Additional Limited Partner’s Commitment as the proportion which each Pre-Existing Partner has been required to contribute of its Commitment prior to such date (taking into account any amount previously returned to any Partner pursuant to Section 5.04(g) and any amount which the General Partner decides to then return to any Pre-Existing Partner pursuant to Section 5.04(g), as if such amounts had not been contributed by the Pre-Existing Partners) and (y) an additional amount set forth in Section 5.04(f).
4. In the case of each Limited Partner whose Commitment has been increased, such increased Commitment shall be effective as of the date (i) an executed document in form and substance acceptable to the General Partner reflecting such increased Commitment is executed and delivered by the Limited Partner and accepted by the Partnership and (ii) the Limited Partner shall have paid by way of a Capital Contribution to the Partnership cash in an amount equal to the sum of (x) a Capital Contribution representing the same proportion of the increased Commitment as the proportion which each Pre-Existing Partner has been required to contribute of its Commitment prior to such date (taking into account any amount previously returned to any Partner pursuant to Section 5.04(g) and any amount which the General Partner decides to then return to any Pre-Existing Partner pursuant to Section 5.04(g), as if such amounts had not been contributed by the Pre-Existing Partners) and (y) an additional amount set forth in Section 5.04(f).

Partner may increase when new Limited Partners are admitted or Limited Partners’ Commitments otherwise increase.

1. If Additional Limited Partners are admitted to the Partnership as Limited Partners or if Limited Partners increase their Commitments pursuant to this Section 5.04, Capital Contributions of such Limited Partners and Organization Expenses and other expenses of the Partnership (including Management Compensation) that are allocated to the Limited Partners on or after the effective date of such admission or increase shall be made by and allocated to such Limited Partners to the extent necessary to cause such persons to be treated with respect to such items as if they had been Limited Partners with such Commitments from the Commencement Date of the Partnership. **This Section 5.04(e) is solely for the purpose of allocating expenses and shall have no effect on how the Management Compensation is calculated pursuant to Section 3.05**.
2. Each Additional Limited Partner that is admitted or Limited Partner that increases its Commitment may pay, in the sole discretion of the General Partner, in addition to the Capital Contribution required to be paid pursuant to Section 5.04(c)(iii) or Section 5.04(d)(ii), as applicable, interest in an amount equal to [ percent ( %)] per annum, compounded annually, on each Capital Contribution that would have been paid had the Additional Limited Partner been a Limited Partner from the Commencement Date and paid its proportionate share of all prior Capital Contributions made to the Partnership prior to the admittance of the Additional Limited Partner or that would have been paid had the Limited Partner increasing its Commitment made its increased Commitment on the Commencement Date and paid its proportionate share of all prior Capital Contributions made to the Partnership prior to the acceptance of the increased Commitment. Any such interest paid by any Partner shall not be considered a Capital Contribution of such Partner and shall not be credited against its Commitment. The amount of each interest payment pursuant to the foregoing, in the sole discretion of the General Partner, shall (i) be allocated among, and added to the Capital Accounts of, the Pre-Existing Partners in proportion to the Capital Contributions of the Pre-Existing Partners, and the outstanding unfunded Commitments of the Pre-Existing Partners shall be reduced by the amounts allocated, or (ii) be remitted to the Pre-Existing Partners in proportion to the Capital Contributions of the Pre-Existing Partners. Any such allocation or remittance by a Limited Partner to the other Partners shall be treated as a payment of such Limited Partner directly to the Pre-Existing Partners, and shall not be deemed to be a Capital Contribution of such Limited Partner followed by a distribution to the other Partners.[74](#_bookmark112)
3. The Capital Contribution made by an Additional Limited Partner pursuant to Section 5.04(c) and the Capital Contribution made by a Limited Partner increasing its Commitment pursuant to Section 5.04(d) may be distributed in whole or in part by the Partnership to the Pre-Existing Partners so that the ratio, after such remittance, that each Partner’s (including the Additional Limited Partner and the Limited Partner increasing its Commitment) aggregate Capital Contributions bears to its capital commitment is the same for all Partners. All amounts remitted to a Pre-Existing Partner under this Section 5.04(g) (other than interest) shall (i) reduce, dollar for dollar, such Pre-Existing Partner’s aggregate Capital Contributions to date, (ii) increase, dollar for dollar, the unfunded Commitment of such Pre- Existing Partner, (iii) be available for call by the Partnership for investment, to pay expenses or

74 This section should only be used if Additional Limited Partners or Limited Partners increasing their Commitments will be assessed interest.

otherwise, and (iv) constitute a return of capital and not a payment of any distribution pursuant to Section 7.

1. Payment of interest to the Pre-Existing Partners pursuant to Section 5.04(f) and remittances to the Pre-Existing Partners pursuant to Section 5.04(g) shall, in accordance with Section 7.07(a) of the Code be treated for all purposes of this Agreement and for all accounting and tax reporting purposes as payments made directly from each Additional Limited Partner or Partner increasing its Commitment to the Pre-Existing Partners and not as items of Partnership income, gain, loss, expense, contribution or distribution.

[*add other conditions or provisions relating to the admission of Limited Partners or increases in Commitments*]

Section 5.05. Conditions to the Commitments of the General Partner and the Limited Partners.

1. **Notwithstanding any provision in this Agreement and any other SBA Agreement, to the contrary, on the earlier of (i) the completion of the liquidation of the Partnership or (ii) one year from the commencement of the liquidation, the General Partner and the Limited Partners will be obligated to contribute any amount of their respective Commitments not previously contributed to the Partnership, if and to the extent that the other Assets of the Partnership have not been sufficient to permit at that time the redemption of all Outstanding Leverage, the payment of all amounts due with respect to the Outstanding Leverage as provided in the SBIC Act, and the payment of all other amounts owed by the Partnership to SBA.**
2. **The provisions of this Section 5.05 do not apply to the Commitment of any Limited Partner whose obligation to make Capital Contributions has been terminated or who has withdrawn from the Partnership, with the consent of SBA, under a provision of this Article 5 or Article 8, or any agreement, release, settlement or action under any provision of this Agreement. No Limited Partner or General Partner has any right to delay, reduce or offset any obligation to contribute capital to the Partnership called under this Section 5.05 by reason of any counterclaim or right to offset by the Partner or the Partnership against SBA.**

Section 5.06. Termination of the Obligation to Contribute Capital.

1. **Any Limited Partner that is a Governmental Plan, Employee Benefits Plan, tax exempt Limited Partner, “investment company” subject to registration under the Investment Company Act, or Limited Partner subject to regulation under the Banking Acts, may elect to terminate its obligation in whole or in part to make a Capital Contribution required under this Agreement, or upon demand by the General Partner, will no longer be entitled to make such Capital Contribution, if the Limited Partner or the General Partner obtains an opinion of counsel as provided under Section 5.07 to the effect that making such contribution would require the Limited Partner to withdraw from the Partnership under Section 8.06 through Section 8.11, provided that no such withdrawal shall be permitted based upon the investment strategy or performance of the Partnership.**
2. **Upon receipt by the General Partner of a notice and opinion as provided under Section 5.07, unless cured within the period provided under Section 5.08,**

**the Commitment of the Limited Partner delivering the opinion will be deemed to be reduced by the amount of such unfunded Capital Contribution and this Agreement will be deemed amended to reflect a corresponding reduction of aggregate Commitments to the Partnership.**

Section 5.07. Notice and Opinion of Counsel.

1. **A copy of any opinion of counsel issued as described in Section**

**5.06 or Section 8.06 through Section 8.11 must be sent by the General Partner to SBA, together with (i) the written notice of the election of the Limited Partner or (ii) the written demand of the General Partner, to which the opinion relates.**

1. **An opinion rendered to the Partnership as provided in Section 5.06 or Section 8.06 through Section 8.11 will be deemed sufficient for the purposes of those Sections only if the General Partner and SBA each approve (i) the counsel rendering the opinion and (ii) the form and substance of the opinion.**

Section 5.08. Cure, Termination of Capital Contributions and Withdrawal.

1. **Unless within ninety (90) days after the giving of written notice and opinion of counsel, as provided in Section 5.06, the Limited Partner or the Partnership eliminates the necessity for termination of the obligation of the Limited Partner to make further Capital Contributions or for the withdrawal of the Limited Partner from the Partnership in whole or in part to the reasonable satisfaction of the Limited Partner and the General Partner, the Limited Partner will withdraw from the Partnership in whole or in part to the extent required, effective as of the end of the ninety (90) day period.**
2. **Subject to the provisions of Section 5.10, in its discretion the General Partner may waive all or any part of the ninety (90) day cure period and cause such termination of Capital Contributions or withdrawal to be effective at an earlier date as stated in the waiver.**[**75**](#_bookmark118)
3. Any distributions made to a Limited Partner with respect to such Partner’s withdrawal under this Section will be subject to and made as provided in Section 8.12.

Section 5.09. Failure to Make Required Capital Contributions.[76](#_bookmark119)

**The Partnership is entitled to enforce the obligations of each Partner to make the contributions to capital specified in this Agreement. The Partnership has all rights and remedies available at law or equity if any such contribution is not so made, including but not limited to those set forth in this Agreement.**

75 RULPA §17-502 requires that unless this agreement provides otherwise, the unanimous consent of all Partners is required to compromise the commitment obligation of a partner. Unless expressly provided in this Agreement, the General Partner does not have the authority to compromise a Limited Partner’s obligation to make a contribution or apply any remedy other than collection in the event of a default.

76 RULPA addresses the issue of the consequences of a failure by a partner to make a required capital contribution; see Delaware RULPA §§17-306 and 17-502.

Section 5.10. Notice and Consent of SBA with respect to Capital Contribution Defaults.

1. **The Partnership must give SBA prompt written notice of any failure by a Limited Partner to make any Capital Contribution to the Partnership required under this Agreement when due, which failure continues beyond any applicable grace period specified in this Agreement.**
2. **Unless SBA has given its prior consent or the provisions of Section 5.10(c) have become applicable, the Partnership will not (i) take any action (including entering into any agreement (whether oral or written), release or settlement with any Partner) which defers, reduces, or terminates the obligations of the Partner to make contributions to the capital of the Partnership, or (ii) commence any legal proceeding or arbitration, which seeks any such deferral, reduction or termination of such obligation. Without the consent of SBA (including SBA’s deemed consent under Section 5.10(c)) no such agreement, release, settlement or action taken will be effective with respect to the Partnership or any Partner.**
3. **If the Partnership has given SBA thirty (30) days prior written notice of any proposed legal proceeding, arbitration or other action described under Section 5.10(b) with respect to any default by a Limited Partner in making any Capital Contribution to the Partnership, and the Partnership has not received written notice from SBA that it objects to the proposed action within the thirty (30) day period, then SBA will be deemed to have consented to the proposed Partnership action.**

**must:**

1. **Any notice given by the Partnership to SBA under this Section 5.10**
   1. **be given by separate copies directed to each of the Office of Investment and Innovation and the Office of the General Counsel of SBA;**
   2. **explicitly state in its caption or first sentence that the notice is being given with respect to a specified default by a Limited Partner in making a Capital Contribution to the Partnership and a proposed legal proceeding, arbitration, agreement, release, settlement or other action with respect to that default; and**
   3. **state the nature of the default, the identity of the Defaulting Limited Partner, and the nature and terms of the proposed legal proceeding, arbitration, agreement, release, settlement or other action with respect to that default.**

Section 5.11. Interest on Overdue Contributions of a Defaulting Limited Partner.

The General Partner may, in its sole discretion, elect to charge a Defaulting Limited Partner interest at an annual rate equal to [ percent ( %)] on the amount due from the date such amount became due until the earliest of (i) the date on which such payment is received by the Partnership from a Defaulting Limited Partner, (ii) the date on which such payment is received by the Partnership under Section 5.12 or Section 5.14, and (iii) the date of any notice given to the Defaulting Limited Partner by the General Partner pursuant to Section 5.13 or Section 5.15. Any distributions to which the Defaulting Limited Partner is entitled shall be reduced by the amount of such interest, and such interest shall be deemed to be income to the Partnership. If the rate of interest payable under this Section 5.11 is limited by

law, the rate payable hereunder shall be the lesser of (i) the rate set forth in the first sentence of this Section 5.11 or (ii) the maximum rate permitted by law. If, however, interest is paid hereunder in excess of the maximum rate of interest permitted by law, any interest so paid which exceeds such maximum rate shall automatically be considered a Capital Contribution and shall automatically be applied in reduction of the Capital Contribution then owed to the extent of such excess.

Section 5.12. Withholding and Application of a Partner’s Distributions.

No part of any distribution shall be paid to any Defaulting Partner from which there is then due and owing to the Partnership, at the time of such distribution, any amount required to be paid to the Partnership. At the election of the General Partner, which it may make in its sole discretion, the Partnership may either (i) apply all or part of any such withheld distribution in satisfaction of (a) first, any amounts then due to the Partnership from such Partner (including any interest due pursuant to Section 5.11) other than such Partner’s unfunded Commitment, and (b) second, any unfunded Commitment then due to the Partnership or (ii) withhold such distribution until all amounts then due are paid to the Partnership by such Partner. Upon payment of all amounts due to the Partnership (by application of withheld distributions or otherwise), the General Partner shall distribute any unapplied balance of any such withheld distribution to such Partner. No interest shall be payable to the Partner on the amount of any distribution withheld by the Partnership pursuant to this Section 5.12.

Section 5.13. Termination of a Defaulting Limited Partner’s Right to Make Further Capital Contributions.

The General Partner may, in its sole discretion (but only with the consent of SBA given as provided in Section 5.10), elect to declare, by notice to a Defaulting Limited Partner, that:

1. the Defaulting Limited Partner’s Commitment shall be deemed to be reduced to the amount of any Capital Contributions timely made pursuant to this Agreement; and
2. upon such notice (A) the Defaulting Limited Partner shall have no right to make any Capital Contribution thereafter (including the contribution as to which the default occurred and any contribution otherwise required to be made thereafter pursuant to the terms of this Agreement) and (B) this Agreement shall be deemed amended to reflect such reduced Commitment.

Section 5.14. Required Sale of a Defaulting Limited Partner’s Interest in the Partnership.

The General Partner, in its sole discretion (but only with the consent of SBA given as provided in Section 5.10), may elect to offer and dispose of [ percent ( %)] of the interest in the Partnership of the Defaulting Limited Partner, which shall include [ percent ( %)] of the Capital Account of the Defaulting Limited Partner (the “*Offered Partnership Interest*”), on the following terms:

1. The General Partner that has elected to offer and dispose of a Defaulting Limited Partner’s interest shall give each Non-Defaulting Limited Partner notice, advising of the availability of the Offered Partnership Interest for acquisition, offering to sell the Offered Partnership Interest on the terms set forth in this Section 5.14, the portion of the Offered Partnership Interest available to the Non-Defaulting Limited Partner and the price therefor. The portion available to each Non-Defaulting Limited Partner shall be that portion of the Offered Partnership Interest that bears the same ratio to the Offered Partnership Interest as each Non- Defaulting Limited Partner’s Capital Contributions to the Partnership bears to the aggregate Capital Contributions to the Partnership, excluding the Capital Contributions to the Partnership of the Defaulting Limited Partner. The aggregate price for the Offered Partnership Interest shall be the assumption of the unpaid Commitment obligation (both that portion then due and amounts due in the future) of the Defaulting Limited Partner (the “*Purchase Price*”). The Purchase Price for each Non-Defaulting Limited Partner shall be prorated according to the portion of the Offered Partnership Interest purchased by each such Non-Defaulting Limited Partner so that the percentage of the unpaid Commitment assumed by each Non-Defaulting Limited Partner is the same as the percentage of the Offered Partnership Interest purchased by such Non-Defaulting Limited Partner. The option granted hereunder shall be exercisable by each Non-Defaulting Limited Partner, in whole only, at any time within [*thirty (30)*] days of the date of the notice from the General Partner by the delivery to the General Partner of (i) a notice of acceptance of the offer to purchase, and (ii) the Capital Contribution due in accordance with Section 5.14(e)(i). The General Partner shall forward the above notices of acceptance received to the Defaulting General Partner.
2. Should any Non-Defaulting Limited Partner not exercise the offer to acquire the Offered Partnership Interest within the period provided in Section 5.14(a), the General Partner, within [*ten (10)*] days of the end of such period, shall notify each of the other Non-Defaulting Limited Partners who have previously agreed to purchase the full amount of the Offered Partnership Interest made available to it pursuant to Section 5.14(a), which Non- Defaulting Limited Partners shall have the right and option ratably among them to acquire the portion of the Offered Partnership Interest not so acquired (the “*Remaining Portion*”) within [*ten (10)*] days of the date of the notice specified in this subsection on the same terms as provided in Section 5.14(a).
3. The amount of the Remaining Portion not acquired by the Non-Defaulting Limited Partners pursuant to Section 5.14(b) may be acquired by the General Partner within [*ten (10)*] days of the expiration of the period specified in Section 5.14(b) on the same terms as set forth in Section 5.14(a).
4. The amount of the Remaining Portion not acquired by the Non-Defaulting Limited Partners pursuant to Section 5.14(a) and Section 5.14(b) and the General Partner pursuant to Section 5.14(c) may, if the General Partner deems it in the best interest of the Partnership, be sold to any other persons on terms not more favorable to such purchaser than the offer to the Non-Defaulting Limited Partners in Section 5.14(a) (and the General Partner may admit any such third party purchaser as a Limited Partner, subject to the approval of SBA, if required under the SBIC Act). Any consideration received by the Partnership for such amount of the Offered Partnership Interest in excess of the Purchase Price shall be retained by the

Partnership and allocated among the Partners’ Capital Accounts in proportion to the respective Partners’ Capital Contributions.

1. Upon exercise of any purchase right under this Section 5.14, such Non- Defaulting Limited Partner (or the General Partner, if it has exercised its rights pursuant to Section 5.14(c)) shall be deemed to have assumed the portion of the Defaulting Limited Partner’s unpaid Commitment that constitutes the Purchase Price for the portion of the Offered Partnership Interest purchased by such Non-Defaulting Limited Partner, and shall be obligated (i) to contribute to the Partnership the portion of the Capital Contribution then due from the Defaulting Limited Partner equal to the percentage of the Offered Partnership Interest purchased by such Non-Defaulting Limited Partner or General Partner and (ii) to pay the same percentage of any further contributions which would have otherwise been due from such Defaulting Limited Partner.
2. Upon the purchase by the General Partner of any portion of the Offered Partnership Interest in the Partnership pursuant to Section 5.14(c), the General Partner shall also become a Limited Partner to the extent of such interest.
3. Upon the purchase of any portion of any Offered Partnership Interest by a Non-Defaulting Limited Partner, the General Partner or other person pursuant to this Section 5.14, the Defaulting Limited Partner shall have no further rights or obligations under this Agreement with respect to such portion.
4. Upon the purchase of any portion of the Offered Partnership Interest, for purposes of computing such purchaser’s aggregate Capital Contributions, such purchaser shall be deemed to have aggregate Capital Contributions (or the aggregate Capital Contributions of any Non-Defaulting Limited Partner, shall be increased by an amount) equal to the percentage of the Defaulting Limited Partner’s aggregate Capital Contribution which the purchased portion of the Offered Partnership Interest represents of the Defaulting Limited Partner’s entire Partnership interest, and the aggregate Capital Contributions of such Defaulting Limited Partner shall be reduced by a corresponding amount.

Section 5.15. Forfeiture of a Defaulting Limited Partner’s Interest in the Partnership.[77](#_bookmark126)

The General Partner may, in its sole discretion (but only with the consent of SBA given as provided in Section 5.10), elect to declare, by notice of forfeiture to a Defaulting Limited Partner, that [\_ percent ( \_%)] of the interest of the Defaulting Limited Partner in the Partnership (including amounts in its Capital Account as well as any interest in future profits, losses or distributions of the Partnership) is forfeited, effective as of the date of such Defaulting Limited Partner’s failure to make such required contribution. As of the date such notice of forfeiture is given (i) the Defaulting Limited Partner shall cease to be a Partner with respect to such forfeited interest; provided, however, that such Defaulting Limited Partner shall cease to have any liability for the payment of any Capital Contributions due at such time or in the future and (ii) the forfeited percentage of the Defaulting Limited Partner’s Capital Account

77 SBA expects that the General Partner will make a good faith effort to sell the interest of a Defaulting Limited Partner pursuant to Section 5.14 prior to seeking to forfeit such interest under Section 5.15.

shall be held by the Partnership and reallocated among the Capital Accounts of the General Partner and the Non-Defaulting Limited Partners in accordance with their respective aggregate Capital Contributions on the date of reallocation.

# ARTICLE 6[78](#_bookmark131)

**Capital Accounts and Allocations**

Section 6.01. Capital Accounts.

The Partnership shall maintain a Capital Account for each Partner in accordance with Treasury Regulations issued under Section 704(b) of the Code and the provisions of this Agreement.

1. Credits. To each Partner’s Capital Account there shall be credited the amount of cash and, if and only if permitted as a Capital Contribution by SBA, the Gross Asset Value of any property transferred by such Partner to the Partnership as a contribution to the capital of the Partnership, such Partner’s allocated share of Net Profits, any items in the nature of income or gain which are specially allocated pursuant to this Agreement and which would not otherwise be included in the computation of Net Profits and Net Losses, and the amount of any Partnership liabilities assumed by such Partner or which are secured by any property of the Partnership distributed to such Partner (but only to the extent such liabilities are to be credited pursuant to the Code).
2. Debits. To each Partner’s Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property of the Partnership distributed to such Partner pursuant to any provision of this Agreement, such Partner’s allocated share of Net Losses, any items in the nature of expenses or losses which are specially allocated pursuant to this Agreement and which would not otherwise be included in the computation of Net Profits and Net Losses, and the amount of any liabilities of such Partner assumed by the Partnership or which are secured by any property contributed by such Partner to the Partnership (but only to the extent such liabilities are to be debited pursuant to the Treasury Regulations).
3. Transfers. In the event any interest of a Partner in the Partnership or portion thereof is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Partnership interest or portion thereof.

Section 6.02. Revaluation of Partnership Property.

The Capital Accounts of the Partners shall be adjusted to reflect a revaluation of Partnership property made by the Partnership pursuant to the definition of Gross Asset Value; provided that any adjustments hereunder shall be made in accordance with and to the extent provided in Treasury Regulations §1.704-1(b)(2)(iv)(e), (f), and (g).

78 The provisions in this Article 6 and the related definitions in Section 1.01 are for a Partnership using targeted capital accounts. Note that, as of the date of the Model, the IRS has not issued a revenue ruling regarding targeted allocations. SBA does not support or endorse any specific allocation method, and encourages applicants to discuss these provisions with their accountants and attorneys. An applicant is free to use other accounting systems and related alternative provisions.

Section 6.03. Target Accounts.

To aid in the determination of the Capital Accounts of the Partners, and the proper allocation of Net Profit and Net Loss, the Partnership shall compute a Target Account for each Partner from time to time as required by this Agreement to allocate Net Profits and Net Losses.

Section 6.04. Overall Intention of Capital Account Provisions.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulation §1.704- 1(b), and shall be interpreted and applied in a manner consistent with such regulations. In the event that the General Partner shall determine in its reasonable discretion that it is prudent to modify the manner in which Capital Accounts or any debits or credits thereto are computed in order to comply with such Treasury Regulations and to reflect appropriately the Partners’ relative interests in distributions from the Partnership, the timing thereof, and the taxable character of items of income, gain, loss or deduction, the General Partner may make such modifications without the consent of the Limited Partners, provided that such modifications are not likely to have a material effect on the amounts distributed or distributable to the Limited Partners upon or prior to the dissolution of the Partnership.

Section 6.05. Allocations of Net Profits and Net Losses.

After giving effect to the special allocations and limitations set forth in Section 5.04(e), Section 5.04(f), Section 6.06 and Section 6.07 of this Agreement, and subject to Section

* 1. (Other Allocation Rules), Net Profits and Net Losses (and if the General Partner determines in its reasonable discretion that it is necessary or appropriate, individual items of gross income or loss) shall be allocated at the end of each fiscal year (and such other times as it is necessary or appropriate to allocate Net Profits and Net Losses) in such a manner that, after the allocations are made, the Capital Account balance of each Partner shall equal the Target Account for each Partner, minus such Partner’s share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain and minus the amount such Partner is obligated (or is deemed to be obligated), in its capacity as a Partner, to restore to the Partnership.

Section 6.06. Special/Regulatory Allocations.

priority.

The following special allocations shall be made in the following order and

* + 1. Partner Nonrecourse Debt Minimum Gain Chargeback. Except as otherwise provided in §1.704-2(i)(4) of the Treasury Regulations, notwithstanding any other provision of this [Article 6](#_bookmark128), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to Partner Nonrecourse Debt during any fiscal year, each Partner who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with §1.704-2(i)(5) of the Treasury Regulations, 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 such Partner’s share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in

accordance with Treasury Regulation §1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with

§§1.704-2(i)(4) and 1.704-2(j)(2) of the Treasury Regulations. This Section 6.06(a) is intended to comply with the minimum gain chargeback requirement in §1.704-2(i)(4) of the Treasury Regulations and shall be interpreted consistently therewith.

* + 1. Minimum Gain Chargeback. Except as otherwise provided in §1.704-2(f) of the Treasury Regulations, notwithstanding any other provision of this [Article 6,](#_bookmark128) if there is a net decrease in Partnership Minimum Gain 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 such Partner’s share of the net decrease in Partnership Minimum Gain, determined in accordance with Treasury Regulation §1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with §§1.704-2(f)(6) and 1.704(j)(2) of the Treasury Regulations. This Section 6.06(b) is intended to comply with the minimum gain chargeback requirement in §1.704-2(f) of the Treasury Regulations and shall be interpreted consistently therewith.
    2. Qualified Income Offset. In the event any Limited Partner unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulations

§§1.704-1(b)(2)(ii)(d)(4), (5), or (6), items of Partnership income and gain shall be specially allocated to such Partners in an amount and manner sufficient to eliminate the deficit balances in their Capital Accounts created by such adjustments, allocations, or distributions as quickly as possible. Any special allocations of items of income or gain pursuant to this provision shall be taken into account in computing subsequent allocations of Net Profits so that the net amount of any items so allocated and the Net Profits, Net Losses and all other items allocated to each Partner shall, to the extent possible, be equal to the net amount that would have been allocated to each such Partner pursuant to the other provisions of this Agreement if such unexpected adjustments, allocations or distributions had not occurred. This Section 6.06(c) is intended to qualify as a “qualified income offset” within the meaning of Treasury Regulation §1.704- 1(b)(2)(ii)(d).

* + 1. Loss Limitation / Gross Income Allocation. The Net Losses allocated pursuant to Section 6.05 shall not exceed the maximum amount of such items that can be so allocated without causing any Partner to have an Adjusted Capital Account Deficit at the end of any fiscal year. In the event that some, but not all, of the Partners would have an Adjusted Capital Account Deficit as a consequence of an allocation of Net Losses pursuant to Section 6.05, the limitation set forth in the preceding sentence shall be applied on a Partner by Partner basis so as to allocate the maximum permissible Net Losses to each Partner consistent with Section 6.05, as modified to comply with Treasury Regulation §1.704-1(b)(2)(ii)(d). In the event that any Partner would have an Adjusted Capital Account Deficit at the end of any fiscal year (for any reason) which is in excess of the sum of any amount, if any, that such Partner is obligated to restore to the Partnership under Treasury Regulation §1.704-1(b)(2)(ii)(c) and such Partner’s share of the Partnership Minimum Gain as defined in Treasury Regulation §1.704- 2(g)(1) and Partner minimum gain as determined pursuant to Treasury Regulation §1.704-2(i) (which are also treated as obligations to restore in accordance with Treasury Regulation §1.704-

49

1(b)(2)(ii)(d)), the Capital Account of such Partner shall be specially credited with items of the Partnership income (including gross income) and gain in the amount of such excess as quickly as possible.

* + 1. Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any fiscal year shall be specially allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i)(1).
    2. Nonrecourse Deductions. Nonrecourse Deductions shall be allocated among the Partners in proportion to their respective interests in the Partnership.
    3. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(m)(2) or Treasury Regulation

§1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as the result of a distribution to a Partner in complete liquidation of its Partnership interest, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in accordance with their interests in the Partnership in the event Treasury Regulation §1.704-1(b)(2)(iv)(m)(2) applies, or to the Partner to whom such distribution was made in the event Treasury Regulation §1.704-1(b)(2)(iv)(m)(4) applies.

Section 6.07. Curative Allocations.

The allocations set forth in Section 6.06 (the “*Regulatory Allocations*”) are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Partners that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Partnership income, gain, loss, or deduction pursuant to this [Section 6.07.](#_bookmark136) Therefore, notwithstanding any other provision of this [Article 6](#_bookmark128) (other than the Regulatory Allocations), the General Partner shall make such offsetting special allocations of Partnership income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Partner’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Partner would have had if the Regulatory Allocations were not part of the Agreement and all Partnership items were allocated pursuant to [Section 6.05.](#_bookmark134) In exercising its discretion under this Section 6.07, the General Partner shall take into account future Regulatory Allocations under Section 6.06(a) and Section 6.06(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 6.06(e) and Section 6.60(f).

Section 6.08. Other Allocation Rules.

1. Accounting Periods. Net Profits, Net Losses and any other items of income, gain, loss or deduction shall be allocated to the Partners pursuant to this [Article 6](#_bookmark128) as of the last day of each fiscal year; provided that Net Profits, Net Losses and such other items shall also be allocated at such times as the Gross Asset Values of Partnership property are adjusted

50

pursuant to the definition of Gross Asset Value. For purposes of determining the Net Profits, Net Losses, or any other items allocable to any period, Net Profits, Net Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

1. Consistency. The Partners are aware of the income tax consequences of the allocations made by this [Article 6](#_bookmark128) and hereby agree to be bound by the provisions of this [Article 6](#_bookmark128) in reporting their shares of Partnership income and loss for income tax purposes, except to the extent otherwise required by law.
2. Basis Sharing of Certain Nonrecourse Liabilities. Solely for purposes of determining a Partner’s proportionate share of the “excess nonrecourse liabilities” of the Partnership within the meaning of Treasury Regulation §1.752-3(a)(3), the Partners’ interests in Partnership profits are in proportion to their interests in the Partnership.
3. Debt Financed Distributions. To the extent permitted by Treasury Regulation §1.704-2(h)(3), the General Partner shall endeavor to treat distributions of cash as having been made from the proceeds of a nonrecourse liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Limited Partner.

Section 6.09. Tax Allocations.

For each fiscal year, items of taxable income, deduction, gain, loss or credit shall be allocated for income tax purposes among the Partners in the same manner as their corresponding book items were allocated pursuant to Section 5.04(e), Section 5.04(f), Section 6.05, Section 6.06, and Section 6.07, as modified by the following principles:

1. In-Kind Contributions. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for 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 initial Gross Asset Value.
2. Revalued Property. In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to paragraphs (c) or (d) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.
3. Tax Allocation Decisions. Any elections or other decisions relating to such allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of this Agreement.
4. Scope. Allocations pursuant to this Section 6.09 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in

computing, any Partner’s Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any other provision of this Agreement.

Section 6.10. Negative Capital Accounts.

Except as may be required by law or this Agreement, no Partner shall be required to reimburse the Partnership for any negative balance in such Partner’s Capital Account or restore any negative Capital Account of another Partner; provided, however, each Partner shall remain fully liable to make Capital Contributions to the extent of such Partner’s unfunded Commitment.

Section 6.11. Tax Matters.

1. Tax Controversies. The General Partner is the “tax matters partner,” as the term is used in the Code, and to the extent authorized or permitted under applicable law, the General Partner is authorized and required to represent the Partnership and each Limited Partner in connection with all examinations of Partnership items, as defined in Section 6231(a) of the Code, by tax authorities, including resulting administrative and judicial proceedings, and to expend Partnership funds for professional services and costs connected therewith. Each Limited Partner agrees to cooperate with the General Partner and to do or refrain from doing any and all such things reasonably required by the General Partner to conduct such proceedings.
2. Proceedings. The General Partner must keep the Partners informed of all administrative and judicial proceedings with respect to Partnership tax returns or the adjustment of Partnership items. Any Partner who enters into a settlement agreement with respect to Partnership items must promptly give the General Partner notice of the settlement agreement and terms that relate to Partnership items.
3. Classification and Tax Elections. The General Partner is expressly authorized to (i) elect that the Partnership be classified as a partnership for federal tax purposes, and (ii) to make and revoke (to the extent permitted by law) any election or other action on behalf of the Partnership for federal, state and local tax purposes with respect to that tax classification, including any election with respect to the preparation and filing of tax returns or any other election which the Partnership may be entitled to make, and including the election referred to in Code Section 754 or any successor provision. The Partners shall supply all information reasonably requested by the General Partner that is related to any such tax elections.
4. Fiscal Year / Taxable Year. The fiscal year and taxable year of the Partnership shall be a calendar year unless a different taxable year is required to be used by the Partnership pursuant to Section 706 of the Code, in which case such different taxable year will be both the taxable year, and for purposes of [this Article 6,](#_bookmark128) the fiscal year of the Partnership.
5. Admissions or Transfers. In the event of any admission of any Additional Limited Partner or transfer by any Limited Partner of its Partnership interest, the General Partner will allocate items of income, credit, gain or loss in accordance with the Code and may make such elections under the Code as the General Partner determines to be necessary or appropriate.

# ARTICLE 7

**Distributions**

Section 7.01. Distributions to Partners.[79](#_bookmark145)

1. **The Partnership may make distributions of cash and/or property, if any, at such times as the SBIC Act permits and at such times and in such amounts as set forth in this Agreement. Distributions shall be made only from Retained Earnings Available for Distribution and as otherwise permitted by the SBIC Act.** In lieu of making any distribution, the Partnership may pay or prepay Leverage and any other amounts owed to SBA.[80](#_bookmark146)
2. All distributions must be made in the following order and amounts:
   1. [*specify order and amounts*]

[*add any additional provisions for distributions among the General Partner and the Limited Partners*]

Section 7.02. Distributions of Noncash Assets in Kind.[81](#_bookmark147)

(a) Subject to the provisions of the SBIC Act and the provisions of this Section 7.02, the Partnership at any time may distribute Noncash Assets in kind.

[*add provisions with respect to Noncash Assets if desired*]  Section 7.03. Distributions for Payment of Tax.

1. Subject to the SBIC Act, the General Partner may elect to make a distribution pursuant to Section 7.01(b)([*indicate clause*]) for payment of tax liability of Partners. Upon such election, the Partnership will distribute to the Partners from Retained Earnings Available for Distribution or as otherwise permitted by the SBIC Act no later than [*ninety (90)*] days after the close of each fiscal year and such additional times as may be permitted by the SBIC Act up to an amount, determined in the discretion of the General Partner, that is equal to a percentage of such Partner’s share of the taxable income allocated to such Partner for such fiscal year or other period. Such percentage shall be determined by the General Partner in its sole discretion based upon an estimate of the highest marginal federal income tax rates for corporations or individuals, whichever is higher, applicable to ordinary income and capital gain income and the proportions of such types of income earned by the Partnership during such fiscal

79 RULPA permits an agreement to provide how distributions to partners will be made, and provides a general provision in the event no provision is made in the agreement. See RULPA §17-504.

80 See 13 CFR §107.585 relating to voluntary decreases in a Licensee’s Regulatory Capital.

81 RULPA §17-605 specifically addresses non-cash distributions to partners. Applicant may prohibit the distribution of Noncash Assets. See 13 CFR §107.585 relating to voluntary decreases in a Licensee’s Regulatory Capital.

year or such other period, plus the highest marginal [*state of principal office*] income tax rates for corporations or individuals, whichever is higher, applicable to ordinary income and capital gain income and the proportions of such types of income earned by the Partnership during such fiscal year or other period (the “*Maximum Tax Liability*”). Such distributions will be debited to the Capital Accounts of the Partners receiving such distributions.[82](#_bookmark149)

1. Subject to the SBIC Act, the Partnership will at all times be entitled to make payments with respect to any Partner in amounts required to discharge any legal obligation of the Partnership to withhold or make payments to any governmental authority with respect to any federal, state or local tax liability of the Partner arising as a result of the Partner’s interest in the Partnership. All such amounts shall be treated as a tax distribution to the Partner pursuant to Section 7.03(a).

Section 7.04. Distributions that Violate the Act Are Prohibited.[83](#_bookmark150)

**Anything contained in this Agreement to the contrary notwithstanding, no distribution may be made by the Partnership if and to the extent that such distribution would violate Section 17-607 of the Act.**[**84**](#_bookmark151)

[*add provisions if desired with respect to distributions relating to transferred interests*]

82 If an applicant does not include a clause in Section 7.01(b) relating to tax distributions, this sentence should clarify that tax distributions not only debit Capital Accounts but are also treated as an advance against, and therefore reduce, distributions to be made under Section 7.03(b).

83 Generally RULPA prohibits distributions which would cause a Partnership to become insolvent. See RULPA §17-607.

84 If the applicant is organized in a state other than Delaware, cite the corresponding section of the state of organization’s RULPA.

# ARTICLE 8

**Dissolution, Liquidation, Winding Up and Withdrawal**

Section 8.01. Dissolution.[85](#_bookmark154)

**following**:

1. **The Partnership will be dissolved upon the first to occur of the**
   1. subject to Section 8.04 of this Agreement, the withdrawal, dissolution or bankruptcy of the General Partner or the occurrence of any other event of withdrawal (as defined in Sections 17-101(3) and 17-402 of the Act) of the General Partner;
   2. **the later of:** [**86**](#_bookmark155)
      1. **ten (10) years from the formation of the Partnership; or**

**and**

* + 1. **two years after all Outstanding Leverage has matured;**
  1. **the election of** the General Partner and **at least [ Percent ( %)] in Interest of the Limited Partners to dissolve the Partnership, notice of which election must be given to each Partner and SBA. Such election will be effective on the date stated in the dissolution notice, provided that:**
     1. **the dissolution date is a date least ten (10) years after the formation of the Partnership;**

**redeemed; and**

* + 1. **all Outstanding Leverage has been repaid or**

**paid.**

* + 1. **all amounts due SBA, its agent or trustee have been**

1. **The Partnership will not dissolve upon the withdrawal, dissolution, bankruptcy, death or adjudication of incompetence or insanity of any Limited Partner.**
2. **If the General Partner withdraws or is removed as provided in Section 8.03 and no replacement General Partner is appointed, then a [*Majority*] in**

85 RULPA §§17-801 and 17-802 address issues related to the dissolution of a limited partnership.

86 See 13 CFR §107.160(c)(1) which prescribes the minimum duration for an SBIC in limited partnership form. Notwithstanding such minimum duration requirements, 13 CFR §107.1900 permits an SBIC to surrender its license at any time with SBA’s prior written approval. A partnership seeking to dissolve prior to the expiration of the time periods set forth in Section 8.01 may request approval from SBA to surrender its license, which request must be accompanied by an offer of immediate repayment of all Outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the SBIC. If SBA approves such a request, then the partnership would have the rights provided in this Agreement and the Act, including with respect to dissolution.

**Interest of the Limited Partners may, with the consent of SBA, elect to dissolve the Partnership provided (i) all Outstanding Leverage has been repaid or redeemed; and (ii) all amounts due SBA, its agent or trustee have been paid.**

1. If the Partnership will terminate upon the occurrence of an event set forth in 8.01(a)(ii)(A) or (B), the General Partner may elect to extend the duration of the Partnership for two (2) successive one (1) year periods.

Section 8.02. Winding Up.

1. Subject to the SBIC Act, when the Partnership is dissolved, the property and business of the Partnership will be liquidated by the General Partner or if there is no General Partner or the General Partner is unable to act, a person designated by [ Percent ( %)] in Interest of the Limited Partners.
2. Within a reasonable period[87](#_bookmark157) (and subject to the requirements of Treasury Regulations §§1.704-1(b)(ii)(g) and 1.704-1(b)(2)(ii)(b)(2)) after the effective date of dissolution of the Partnership, the affairs of the Partnership will be wound up and the Partnership’s assets will be distributed as provided in the SBIC Act and the Act. The liquidation shall be carried out as promptly as practicable consistent with obtaining the fair value of the Partnership’s Assets. The General Partner or liquidator shall take full account of the Partnership’s Assets and liabilities and shall determine which Assets shall be distributed in kind and which Assets shall be liquidated. Notwithstanding the foregoing, the General Partner or liquidator shall notify any Limited Partner that is a banking institution prior to making any distributions in kind and, upon written direction from such Limited Partner, shall sell such Portfolio Securities to be distributed to such Limited Partner for the account of such Limited Partner and distribute the net proceeds from such sale to such Limited Partner. Subject to the SBIC Act and the Act, including, without limitation, SBA’s prior consent to any Wind-up Plan under 13 CFR §107.590, Assets of the Partnership or the proceeds therefrom shall be applied and distributed in the following order and priority:
   1. To the payment and discharge of all the Partnership’s debts and liabilities that consist of: (A) Leverage obligations, including all amounts due SBA, its agent or trustee; (B) secured debt which has received SBA’s prior written approval, to the extent that such approval is required by the SBIC Act; and (C) payables accrued in the normal course of business and unsecured debt (excluding any unsecured debt owed to a Limited Partner, unless such debt is evidenced by a written record, executed contemporaneously with the extension of credit, and maintained continuously from the time of its execution as a record of the Partnership).
   2. To the setting up of such reserves as the General Partner or the liquidator, as applicable, may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership arising out of or in connection with the Partnership’s business, provided that any such reserve will be held by the General Partner or the liquidator, as applicable, for the purpose of disbursing such reserves in payment of any such liabilities or

87Specify if any fixed period or deadline for a liquidating distribution is intended. Note that the RULPA specifies the general order of distributions or liquidation; see Delaware RULPA §§17-803 and 17-804.

obligations and at the expiration of such period as the General Partner or liquidator, as applicable, shall deem advisable (but in no event to exceed eighteen (18) months from the date of dissolution, unless an extension of the time is consented to by a Majority in Interest of the Limited Partners), to distribute the balance remaining as provided in this Section 8.02(b).

* 1. The balance of such Assets or proceeds shall be distributed to the General Partner and Limited Partners in accordance with Section 7.01.

1. Subject to the SBIC Act and SBA’s prior written consent, and after payment of all of the Partnership’s debts and liabilities as set forth in Section 8.02(b)(i) (including, for the avoidance of doubt, Leverage obligations and all amounts due SBA, its agent or trustee), distributions pursuant to this Section 8.02 may be distributed to a trust established for the benefit of the Partners for the purposes of liquidating Partnership Assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership arising out of or in connection with the Partnership. The Assets of any such trust shall be distributed to the Partners from time to time, in the reasonable discretion of the General Partner or the liquidator, as applicable, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the Partners pursuant to this Agreement. An individual or entity that is a creditor of the Partnership by reason of its withdrawal as a Limited Partner shall be entitled to receive distributions pursuant to this Section
   1. only at the time of and from funds available for distribution to the Limited Partners and shall not have any priority in receipt of such funds senior to that of the Partners.

[*add additional provisions, if desired, dealing with such issues as final distribution, allocations and any General Partner repayment obligation*]

Section 8.03. Withdrawal or Removal of the General Partner.[88](#_bookmark159)

* + 1. The General Partner may not withdraw as the general partner of the Partnership without the approval of [ Percent ( %)] in Interest of the Limited Partners. **No voluntary withdrawal by the General Partner shall be permitted without the consent of SBA.**
    2. **No transfer of the interest of the General Partner in the Partnership, or any portion of such interest, will be effective without the consent of SBA.**
    3. Subject to Section 4.03, Section 8.03(b), Section 10.01(b), Section 10.01(d) and Section 10.01(f), to the extent applicable, any person who acquires the interest of the General Partner, or any portion of such interest, in the Partnership, will not be a General Partner but will become a special limited partner (a “*Special Limited Partner*”) upon the acquirer’s written acceptance and adoption of all the terms and provisions of this Agreement, pending SBA’s approval of such transfer or succession. A Special Limited Partner will acquire no more than the interest of the General Partner in the Partnership as it existed on the date of the transfer, and will not be entitled to any priority given to the Limited Partners (or their successors

and assigns) in respect of the interest, and no such person will have any right to participate in the management of the affairs of the Partnership or to vote with the Limited Partners. The interest acquired by such person will be disregarded in determining whether any action has been taken by any percentage of the limited partnership interests.[89](#_bookmark160)

* + 1. If the General Partner (i) withdraws as a general partner of the Partnership under Section 8.03(a) or as otherwise permitted by the SBIC Act, (ii) is removed pursuant to, Section 4.03, Section 8.03(f), Section 8.03(g), or as otherwise permitted by the SBIC Act, or (iii) otherwise ceases to act as the General Partner, then the entire interest of the General Partner in the Partnership will be converted into an interest as a Special Limited Partner on the terms provided in Section 8.03(c).
    2. Upon an event of withdrawal of the General Partner without continuation of the Partnership as provided in Section 8.04, the affairs of the Partnership will be wound up in accordance with the provisions of Section 8.02.[90](#_bookmark161)
    3. The General Partner may be removed for Cause upon the affirmative vote of not less than [ Percent ( %)] in Interest of the Limited Partners, provided the SBA consents to such removal.[91](#_bookmark162) The removal of the General Partner pursuant to this Section shall not relieve any Partner of its obligation to make Capital Contributions to the Partnership.
    4. The General Partner may be removed without Cause by the affirmative vote of not less than [*supermajority*] Percent ( %) in Interest of the Limited Partners, provided the SBA consents to such removal.[92](#_bookmark163) The removal of the General Partner pursuant to this Section shall not relieve any Partner of its obligation to make Capital Contributions to the Partnership.
    5. If the General Partner is removed as such, the Partnership shall, with SBA consent, be dissolved and wound up in accordance with Sections 8.01 and 8.02 (including, without limitation, the provision for repayment of Leverage and other liabilities of the Partnership), unless the Limited Partners, with consent of SBA, determine to continue the Partnership as provided in Section 8.04.

89 This is a protective provision that is intended to prevent any party who gains ownership of the General Partner’s interest other than under this Agreement (e.g., a creditor) from asserting any claim that they have any rights as a general partner of the Partnership. See 13 CFR §107.160(c)(3) concerning transferees of and successors in interest to the General Partner. See also 13 CFR §107.420 regarding SBA approval for exercise of control rights by a new owner, and 13 CFR §§107.400 through 107.450 generally regarding changes of ownership or control of an SBIC.

90 See RULPA §17-801(3).

91 See 13 CFR §107.160(c)(2). SBA consent is mandatory.

92 See 13 CFR §107.160(c)(2). SBA consent is mandatory. If this section is used, consider adding

Section 8.04. Continuation of the Partnership After the Withdrawal or Removal of the General Partner.

Upon the occurrence of an event of withdrawal (as defined in the Act) of the General Partner or the removal of the General Partner pursuant to Section 8.03, the Partnership will not be dissolved, if, within [*ninety (90)*] days after the event of withdrawal, [ Percent ( %)] in Interest[93](#_bookmark168) of the Limited Partners agree in writing to continue the business of the Partnership and to the appointment of one or more additional general partners (each subject to the prior approval of SBA), effective as of the date of withdrawal of the General Partner.

Section 8.05. Withdrawals of Capital.

**Except as specifically provided in this Agreement, withdrawals by a Partner of any amount of its Capital Account are not permitted.**[94](#_bookmark169)

Section 8.06. Withdrawal by ERISA Regulated Pension Plans.[95](#_bookmark170)

**Notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, any Limited Partner that is an Employee Benefit Plan may elect to withdraw from the Partnership in whole or in part, or upon demand by the General Partner must withdraw from the Partnership in whole or in part, if either such Limited Partner or the General Partner obtains an opinion of counsel to the effect that, as a result of ERISA, (i) the withdrawal of the Limited Partner from the Partnership to such extent is required to enable the Limited Partner to avoid a violation of, or breach of the fiduciary duties of any person under ERISA or any provision of the Code related to ERISA or (ii) all or any portion of the Assets of the Partnership (as opposed to the Limited Partner’s partnership interest) constitute Assets of the Limited Partner for purposes of ERISA and are subject to the provisions of ERISA to substantially the same extent as if owned directly by the Limited Partner.**

Section 8.07. Withdrawal by Governmental Plans Complying with State and Local Law.

**Notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, any Limited Partner that is a Governmental Plan may elect to withdraw from the Partnership in whole or in part, or upon demand by the General Partner must withdraw from the Partnership in whole or in part, if either such Limited Partner or the General Partner obtains an opinion of counsel to the effect that as a result of state statutes, regulations, case law, administrative interpretations or similar authority applicable to the Governmental Plan the withdrawal of such Limited Partner from the**

93 RULPA generally allows the limited partners to continue a limited partnership after the withdrawal of the general partner. See RULPA §17-801(3).

94 This provision addresses the general RULPA provisions on withdrawal; see Delaware RULPA §§17-602, 17-603 and 17-604.

95 The provisions of Sections 8.06-8.11 are the only withdrawal provisions for a Limited Partner that SBA permits and must be used without modification. See Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

**Partnership to such extent is required to enable the Limited Partner or the Partnership to avoid a violation of the applicable state law.**

Section 8.08. Withdrawal by Governmental Plans Complying with ERISA.

**Notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, any Limited Partner that is a Governmental Plan may elect to withdraw from the Partnership in whole or in part, if the Governmental Plan obtains an opinion of counsel to the effect that, as a result of ERISA, (i) the withdrawal of the Governmental Plan from the Partnership to such extent would be required if it were an Employee Benefit Plan to enable the Governmental Plan to avoid a violation of, or breach of the fiduciary duties of any person under, ERISA or any provision of the Code related to ERISA or (ii) all or any portion of the Assets of the Partnership would constitute Assets of the Governmental Plan for the purposes of ERISA if the Governmental Plan were an Employee Benefit Plan and would be subject to the provisions of ERISA to substantially the same extent as if owned directly by the Governmental Plan.**

Section 8.09. Withdrawal by Tax Exempt Limited Partners.

**Notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, any Limited Partner that is exempt from taxation under Section 501(a) or Section 501(c)(3) of the Code may elect to withdraw from the Partnership in whole or in part, if the Limited Partner obtains an opinion of counsel to the effect that as a result of applicable statutes, regulations, case law, administrative interpretations or similar authority, the withdrawal of the Limited Partner from the Partnership to such extent is required to enable the tax exempt Limited Partner to avoid loss of its tax exempt status under Section 501(a) or Section 501(c)(3) of the Code.**

Section 8.10. Withdrawal by Registered Investment Companies.

**Notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, any Limited Partner that is an “investment company” subject to registration under the Investment Company Act may elect to withdraw from the Partnership in whole or in part, or upon demand by the General Partner must withdraw from the Partnership in whole or in part, if either such Limited Partner or the General Partner obtains an opinion of counsel to the effect that, as a result of the Investment Company Act, the withdrawal of the Limited Partner from the Partnership to such extent is required to enable such Limited Partner or the Partnership to avoid a violation of applicable provisions of the Investment Company Act or to avoid the requirement that the Partnership register as an investment company under the Investment Company Act.**

Section 8.11. Withdrawal by Banks.[96](#_bookmark175)

1. **If, pursuant to Section 10.06(c), a Limited Partner which is subject to regulation under the Banking Acts has requested an amendment to this Agreement in**

96 Nothing in Sections 8.06 through 8.11 affects or impairs any right a Limited Partner has to sell its interest in the Partnership subject to the terms of this Agreement. SBA encourages any Limited Partner considering withdrawing from a Partnership under Sections 8.06 through 8.11 to first consider a sale of its interest.

**order to permit such Limited Partner to be in compliance with the provisions of the Banking Acts (following a change thereto after the date hereof) and if the General Partner has not effected the amendment, then notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, such Limited Partner may elect to withdraw from the Partnership in whole or in part, or on demand from the General Partner must withdraw from the Partnership in whole or in part, provided either such Limited Partner or the General Partner delivers to the General Partner an opinion of counsel (which opinion may be an attorney general’s opinion or an opinion from the regulatory authority to which the Limited Partner is subject) to the effect that, as a result of the Banking Acts applicable to it, the withdrawal of the Limited Partner from the Partnership is required to enable such Limited Partner to be in compliance with the Banking Acts unless the requested amendment is effected. Upon receipt of such opinion, the General Partner, subject to SBA approval, shall (i) effect such amendments as would enable such Limited Partner to be in compliance with the Banking Acts (as hereafter changed) without withdrawing from the Partnership; (ii) permit the withdrawal of the Limited Partner and apply the provisions of Section 8.12; or (iii) dissolve the Partnership.**

1. **If there is a change in governmental laws, rules, regulations and written interpretations which results or will result in the withdrawal of one or more Limited Partner from the Partnership, or if there is a withdrawal pursuant to Section 8.06 through Section 8.10, and if a Limited Partner which is a bank, bank holding company, savings and loan association, savings association holding company or an Affiliate obtains an opinion of counsel to the effect that as a result of any such withdrawal or withdrawals such Limited Partner is or would be in violation of the Banking Acts (an “Adversely Affected Banking Entity”), then, unless the Partnership within a reasonable period of time avoids such violation through action, including, but not limited to, amending the Agreement, having the interests of the withdrawing Limited Partner purchased, and/or disposing of Portfolio Securities (which action or actions must be approved by SBA to the extent required by the SBIC Act), notwithstanding any other provision of this Agreement, but subject to Sections 5.06, 5.07 and 5.08, such Adversely Affected Banking Entity may reduce its Commitment by the smallest amount that would permit that Limited Partner to be in compliance with the Banking Acts and/or withdraw from the Partnership the smallest portion of its Limited Partner interest that, after such withdrawal, would result in that Limited Partner being in compliance with the Banking Acts.**

Section 8.12. Distributions on Withdrawal.[97](#_bookmark177)

1. **Subject to the provisions of the SBIC Act and Sections 8.12(b) and 8.12(c), upon withdrawal by a Limited Partner under any provision of this Agreement, the General Partner will value the interest of the withdrawing Limited Partner and that value will be paid to the withdrawing Limited Partner when determined by the General Partner in the exercise of its sole discretion either (i) at the times and in the amounts that the withdrawing Limited Partner would have been entitled had it remained a Limited Partner with an interest (including a Capital Account) in the Partnership equal to its interest at the time of withdrawal or (ii) at such times after withdrawal and in such amounts as the**

97 RULPA addresses distributions on withdrawal. See RULPA §17-604.

**General Partner determines would permit the Partnership to make a reasonable distribution.**

1. **The Partnership will not make any distribution to any Partner in connection with its withdrawal under any provision of this Agreement or the Act, unless the distribution is permitted by the SBIC Act and SBA has given its consent to such distribution before the distribution is made.**
2. **Except in the case of distributions made as permitted under subsection (b), the right of any Partner to receive any distribution from the Partnership as a result of such Partner’s withdrawal, including any right any Partner may have as a creditor of the Partnership with respect to the amount of any such distribution, is subordinate to any amount due to SBA by the Partnership.** [98](#_bookmark178)

98Unless the Agreement otherwise provides, RULPA provides that, at the time a withdrawing partner becomes entitled to receive a distribution, the withdrawing partner has the status of and is entitled to all remedies available to a creditor of the partnership. See RULPA §17-606.

# ARTICLE 9

**Accounts, Reports and Auditors**

Section 9.01. Books of Account.

1. **The Partnership must maintain books and records in accordance with the provisions of the SBIC Act**[**99**](#_bookmark182) **regarding financial accounts and reporting and, except as otherwise provided in this Agreement, generally accepted accounting principles**.
2. **The books and records of the Partnership, including, without limitation, (i) all Partnership accounting and other financial records, (ii) any minutes of meetings of the General Partner, Limited Partners or Advisory Committee, and (iii) all documents and supporting materials related to the Partnership’s business transactions, shall be kept at the principal place of business of the Partnership.**[**100**](#_bookmark183)

[*Applicant may add provisions dealing with access and type of records available and other related matters*.[101](#_bookmark184) *In addition, applicant may add provisions addressing confidential information, if desired, but must exempt from any disclosure limitations disclosures required by the SBIC Act*.][102](#_bookmark185)

Section 9.02. Audit and Report.

1. **The financial statements of the Partnership must be audited and certified as of the end of each fiscal year by a firm of independent certified public accountants selected by the Partnership.** [*Applicant may provide that in addition to the audit performed in accordance with the accounting practices prescribed or permitted by SBA, it may also provide an audit in accordance with generally accepted accounting principles.*]
2. The General Partner must provide notice to each Partner within five (5) business days of a transfer of the Partnership to SBA’s Office of Liquidation. [*Applicant may include additional events for which notice is required.*]
3. Within ( ) days of the end of each fiscal year, the Partnership must provide to each Partner a report prepared in accordance with the provisions of the SBIC Act regarding financial reporting, setting forth as at the end of the fiscal year:
   1. a balance sheet of the Partnership;
   2. a statement of operations for the year;

99 See 13 CFR §107.600 with respect to recordkeeping requirements for an SBIC.

100 See 13 CFR §107.600(b).

101 RULPA discusses partners’ access to a partnership’s books and records; see Delaware RULPA §17-305.

102 RULPA specifically addresses partners’ access to confidential information held by the partnership; see Delaware RULPA §17-305(b).

* 1. a statement of cash flows;
  2. a statement of changes in partners’ capital, and such Partner's Closing Capital Account;

Agreement;

* 1. a statement of the Assets, valued as provided under this
  2. the amount of such Partner's share in the Partnership's taxable income or loss for the year, in sufficient detail to enable it to prepare its Federal, state and other tax returns;
  3. any other information the General Partner, after consultation with any Limited Partner requesting the same, deems necessary or appropriate;
  4. upon request by any Partner, such other information as is needed by such Partner in order to enable it to file any of its tax returns; and
  5. such other information as any Partner may reasonably request for the purpose of enabling it to comply with any reporting or filing requirements imposed by any statute, rule, regulation or otherwise by any governmental agency or authority.

1. The items set forth in clauses (i), (ii), (iii), (iv) and (v) [*add any other financial information which will be certified*] will be certified by the firm of independent certified public accountants selected by the Partnership.
2. Within ( ) days of the end of each of the [*e.g., first three*] fiscal [*specify fiscal quarters or other fiscal period*], the Partnership will provide to each Partner a report of the General Partner prepared in accordance with the provisions of the SBIC Act regarding financial reporting setting forth the information described in Section 9.02(c) [*indicate clauses*], identifying the securities held by the Partnership and stating the amount of each security held and the cost and value thereof as determined under Section 3.08.
3. The General Partner shall be entitled, in its sole discretion, to transmit the reports and statements described in this Section 9.02 (the “*Financial Reports*”), capital call notices, distribution notices, K-1s, and other information required by one or more Limited Partners (“*Investor Information*”) solely by means of granting such Limited Partners access to a database or other forum hosted on a website designated by the General Partner (the “*Investor Portal*”), with such parameters regarding access and availability of information for review as the General Partner deems reasonably necessary to protect the confidentiality and proprietary nature of the information contained therein (including, but not limited to, establishing password protections for access to the Investor Portal, preventing the Financial Reports and Investor Information posted on the Investor Portal from being copied or otherwise print capable and having such Financial Reports and Investor Information available for review for a restricted period of time (but in no event less than [*thirty (30)*] days from the first date such Financial Reports and Investor Information are posted on the Investor Portal)). The General Partner shall provide each Limited Partner to which it will transmit Financial Reports and Investor Information pursuant to this Section 9.02 notice on the date on which a new Financial Report or

Investor Information is posted on the Investor Portal for such Limited Partner’s review. The Financial Reports and Investor Information shall be posted on the Investor Portal within the same number of days after the end of the applicable fiscal quarter or Fiscal Year as is required pursuant to Section 9.02(a) and (c), as applicable.

Section 9.03. Fiscal Year.

**The fiscal year of the Partnership will be a twelve-month year (except for the first and last partial years, if any) ending on December 31 or as may otherwise be required by the Code.**[**103**](#_bookmark187) **The Partnership shall provide notice to SBA within thirty (30) days of any determination that the Code requires a fiscal year ending on a date other than December 31.**

103 SBA may permit an SBIC to adopt a different fiscal year, as in the case of an SBIC with a parent entity, where the different year is desired to conform to the parent’s fiscal year or if required by the Code.

# ARTICLE 10

**Miscellaneous**

Section 10.01. Assignments and Transfers.[104](#_bookmark190)

1. No Limited Partner may assign, pledge or otherwise grant a security interest in the Limited Partner’s interest in the Partnership or in this Agreement, [105](#_bookmark191) except:
   1. by operation of law;
   2. to a receiver or trustee in bankruptcy for that Partner; or
   3. with the prior written consent of the General Partner (which consent may be withheld in the reasonable discretion of the General Partner), as provided herein; provided that, if any Limited Partner, or Limited Partners acting in concert, assigns, pledges or grants a security interest as collateral for indebtedness (under any of clauses (a)(i), (a)(ii) or (a)(iii) of this Section 10.01) any interest of ten percent (10%) or more of the Partnership’s Regulatory Capital, the General Partner must provide notice to SBA within thirty (30) calendar days of the date of such transaction, or, if the General Partner does not have knowledge of such transaction, promptly after the General Partner obtains actual knowledge of such transaction.[106](#_bookmark192)

[*add any additional conditions for transfers*]

1. **No General Partner or Limited Partner may transfer any interest of ten percent (10%) or more in the capital of the Partnership without the prior approval of SBA.**[**107**](#_bookmark193)
2. **The General Partner may not transfer, assign, pledge or otherwise grant a security interest in its interest in the Partnership or in this Agreement, except with the prior consent of SBA** and the prior approval of [ Percent ( %)] in Interest of the Limited Partners. In those instances where such Limited Partner and SBA approvals have been obtained: (i) a transferee of all or a part of the interest of a General Partner shall be admitted to the Partnership as a general partner of the Partnership only if [*sixty-six and two- thirds Percent (66-2/3%)*] or more in Interest of the Limited Partners approves in writing the admission of such transferee; (ii) the admission shall be effective upon the filing of an amendment to the Certificate of Limited Partnership with the [*Secretary of State of the State of Delaware*] that indicates such transferee has been admitted to the Partnership as a general partner of the Partnership; and (iii) for all purposes the admission shall be deemed to have occurred

104RULPA discusses the effects of assignment of an interest in a limited partnership; see RULPA §7-702.

See 13 CFR §§107.400 through 107.450 regarding changes of ownership or control of an SBIC.

105Note that some restrictions on transfer may be needed for the Partnership to avoid tax classification as a publicly traded limited partnership.

106 See 13 CFR §107.450 with respect to pledges of 10% or more of Regulatory Capital.

107See 13 CFR §107.400(a) with respect to transfers of 10% or more of the partnership capital of an SBIC.

immediately prior to the time the transferor General Partner ceases to be a general partner of the Partnership. Such additional or successor General Partner is hereby authorized to and shall continue the Partnership without dissolution. Upon the filing of an amendment to the Certificate of Limited Partnership with the [*Secretary of State of the State of Delaware*] that indicates that a General Partner is no longer a general partner of the Partnership, such General Partner shall at that time cease to be a general partner of the Partnership. Any transferee of or successor in interest to a General Partner shall have only the rights and liabilities of a Special Limited Partner pending SBA’s written approval of such transfer or succession.[108](#_bookmark194)

1. **No transfer of any interest in the Partnership is permitted if such transfer or the actions to be taken in connection with that transfer would:**
   1. **result in any violation of the SBIC Act, including, without limitation, 13 CFR §107.585;**

**Partnership;**

* 1. **result in a violation of any law, rule or regulation by the**
  2. **cause the termination or dissolution of the Partnership**;
  3. **cause the Partnership to be classified other than as a partnership for Federal income tax purposes;**
  4. result in a violation of the Securities Act by the Partnership;

Act; and

* 1. require the Partnership to register under the Investment Company
  2. require the General Partner or the Investment Adviser/Manager to register as an exempt reporting adviser or as an investment adviser under the Investment Advisers Act.

[*add other restrictions, if desired*]

1. A Limited Partner with a beneficial or of record ownership interest of less than ten percent (10%) of the Partnership’s capital may transfer all or a portion of such interest without prior SBA approval, provided:

Section 10.01;

1. such transfer complies with the requirements set forth in this
2. such transfer does not result in the transferee and its Affiliates owning 10% or more of the aggregate interest in the Partnership; and

108 See RULPA §§17-401 and 17-202(c) dealing with admissions of general partners.

1. the Partnership provides notice to SBA within thirty (30) days after the effectiveness of such transfer.[109](#_bookmark195)
2. Any transferee of any Limited Partner interest in the Partnership by a transfer in compliance with this Section 10.01 will become a substituted Limited Partner under this Agreement,[110](#_bookmark196) will have the same rights and responsibilities under this Agreement with respect to such interest as its transferor with respect to such interest prior to the transfer and will succeed to the Capital Account and balances thereof (including, for the avoidance of doubt, assumption of 100% of the unpaid Commitment relating to the transferred interest), provided:
   1. the transferee elects to become a substituted Limited Partner by delivering a written notice of such election to the General Partner;
   2. the General Partner consents to the substitution;
   3. the Transferee executes and acknowledges such other agreements and instruments as the General Partner may deem necessary or advisable to effect the admission of such person as a substituted Limited Partner, including, without limitation the execution and delivery of a counterpart of this Agreement; and
   4. in the discretion of the General Partner, the transferee and/or transferor pays a reasonable transfer fee to the Partnership which is sufficient to cover all reasonable expenses connected with the admission of the transferee as a substituted Limited Partner within the meaning of the Act; and if all steps shall be taken which, in the opinion of the General Partner, are reasonably necessary to admit such person under the Act and this Agreement as a substituted Limited Partner, then such person shall thereupon become a substituted Limited Partner within the meaning of the Act.[111](#_bookmark197)
3. If a transferee becomes a substitute Limited Partner pursuant to Section 10.01(f), the transferor shall be released from all obligations to the Partnership with respect to the portion of the Limited Partner interest transferred.
4. If a natural person Limited Partner dies or become incapacitated, his or her legal representative will, upon execution of a counterpart of this Agreement, be substituted as a Limited Partner, subject to all the terms and conditions of this Agreement, provided the

109 See 13 CFR §107.680 regarding actions which require SBA approval, but not prior approval. This regulation requires an SBIC to provide notice to SBA of any transfer of an interest in an SBIC that does not require prior SBA approval (i.e., a transfer of 10% or more of its partnership interests or a transfer that results in any transferee and its Affiliates owning 10% or more of the SBIC). If the SBIC provides proper notice pursuant to 13 CFR §107.680(a), the transfer is deemed approved unless SBA objects within the time period specified in 13 CFR

§107.680(b).

110 Any such Limited Partner is not an “Additional Limited Partner” described under Section 5.04.

111 RULPA addresses the rights of transferees of limited partnership interests; see RULPA §17-704.

substitution does not result in any decrease in the Partnership’s Regulatory Capital and both the General Partner and SBA have consented.[112](#_bookmark200)

Section 10.02. Binding Agreement.

**Subject to the provisions of Section 10.01, this Agreement is binding upon, and inures to the benefit of, the heir, successor, assign, executor, administrator, committee, guardian, conservator or trustee of any Partner.**

Section 10.03. Notices.

1. **All notices under this Agreement must be in writing. With the exception of notices to SBA as set forth in Section 10.03(d)**, notices may be given by personal delivery, private courier service, facsimile, email or U.S. mail.
2. A notice is deemed to have been given:
   1. by personal delivery or private courier service, as of the day of delivery of the notice to the addressee;
   2. by facsimile, as of the first (1st) business day following receipt of notice of transmission by sender;
   3. by electronic means, other than facsimile, as of the first (1st) business day following the day on which the electronic notice is sent to the address which has been designated; and
   4. by mail, as of the fifth (5th) day after the notice is mailed.
3. **Notices must be sent to:**
   1. **the Partnership and the General Partner at the address of the Partnership set forth in Section 1.03(a), or such other address or addresses as to which the Partners have been given notice;**
   2. **a Limited Partner, at its addresses (including email address) on Schedule A attached to this Agreement (as Schedule A may be amended from time to time) or such other addresses as to which the Partnership has been given notice by the Limited Partner; and**
   3. **SBA, at the address of the Office of Investment and Innovation of SBA and, if so required under any Section of this Agreement, in duplicate at the address of the Office of the General Counsel of SBA.**
4. **Notwithstanding any other provision of this Section 10.03, notice to SBA will be deemed given:**

112 RULPA addresses the effect of a limited partner’s incapacity; see RULPA §17-705.

* 1. **by personal delivery or private courier on the U.S. Government business day of delivery to SBA;**
  2. **by overnight mail, as of the first (1st) U.S. Government business day after the notice is mailed;**

**notice is mailed; or**

* 1. **by registered or certified mail, as of the fifth (5th) day after the**
  2. **by email, to an address designated by SBA, as of the first (1st)**
  3. **Government business day following transmission, provided that such notice will only be effective as of that date if:**
     1. **SBA acknowledges receipt of the email, other than by automatic reply email, within three (3) U.S. Government business days; or**
     2. **followed by delivery as provided in clause (i), (ii) or (iii) of this Section 10.03(d) within five (5) U.S. Government business days.**

Section 10.04. Consents and Approvals.

1. **A consent or approval required to be given by any party under this Agreement will be deemed given and effective for purposes of this Agreement only if the consent or approval is:**
   1. **given by such party in writing; and**
   2. **delivered by such party to the party requesting the consent or approval in the manner provided for notices to such party under Section 10.03.**
2. No Limited Partner that is subject to the Bank Holding Company Act will have the right to vote on any matter for so long as such right to vote, in the opinion of counsel to such Limited Partner, would be inconsistent with the requirements of such act, or any rules or regulations promulgated thereunder. If any Limited Partner has so limited its right to vote, then the calculation of the percentage of Limited Partners required to approve any particular action under this Agreement shall be adjusted so that the percentage in question is based on the Limited Partnership interests that can then be voted at that time.
3. Any action to be taken by the Partners may be taken at any time upon the written consent of such Partners holding at least the minimum interest in the Partnership that would be necessary to authorize or take that action.

Section 10.05. Counterparts.

This Agreement and any Amendment to this Agreement may be executed in counterparts, each of which shall be an original, but all of which together constitute one and the same instrument.

Section 10.06. Amendments.

1. **This Agreement may not be amended except by an instrument in writing executed by the holders of [ *Percent ( %)/ a Majority*] in Interest of the Limited Partners who have not withdrawn as of the effective date of that Amendment and the General Partner, and approved by SBA.**[**113**](#_bookmark204)
2. In addition to the requirements in Section 10.06(a), any Amendment that:

that Partner’s consent;

1. increases the amount of a Limited Partner’s Commitment requires
2. may cause a Limited Partner to become liable as a general partner of the Partnership requires the written consent of that Partner; and
3. amends this Section 10.06(b) requires the consent of all Partners. [*add other restrictions on or requirements for Amendments to this Agreement*]
4. Notwithstanding anything in this Agreement to the contrary, upon the request of any Limited Partner, the General Partner may, in its discretion, but subject to SBA approval, effect the following Amendments:
   1. such Amendments as shall be needed in order to permit the requesting Limited Partner to remain in compliance with the provisions of the Banking Acts (following a change thereto after the date hereof) and any similar laws or regulations, including state laws and regulations thereunder, applicable to such Limited Partner with respect to the investment of such Limited Partner in the Partnership; provided, however, that no such Amendment shall be made by the General Partner without the consent of Limited Partners representing a majority of the aggregate Commitments of all Limited Partners subject to regulation under the Banking Acts; provided, further that in the event the General Partner considers the Amendments to be onerous for the Partnership, the General Partner need not effect the Amendments; or
   2. such Amendments (A) as shall be needed in order to permit the requesting Limited Partner to remain in compliance with the provisions of ERISA and regulations thereunder, applicable to such Limited Partner with respect to the investment of such Limited Partner in the Partnership or (B) to preclude the Assets of the Partnership from being considered to be “plan assets” for purposes of Section 3 of ERISA and regulations thereunder and Section 4975 of the Code; provided, however, that no such Amendment shall be made by the General Partner without the consent of Limited Partners representing a majority of the aggregate Commitments of all Limited Partners subject to regulation under ERISA; provided, further that in the event the General Partner considers the Amendments to be onerous for the Partnership, the General Partner need not effect the Amendments;

113 Note that SBA approval is required for all Amendments to this Agreement. However, with respect to certain Amendments, including transfers permitted pursuant to Section 10.01(e), only post-transfer approval is required. See 13 CFR §107.680.

* 1. No Amendments shall be made pursuant to this Section 10.06(c) unless the General Partner reasonably shall have determined that such Amendment will not

(A) subject any Limited Partner to any material adverse economic consequences or (B) alter or waive in any material respect the duties and obligations of the General Partner to the Partnership or the Limited Partners. In the event the General Partner does not effect an Amendment under Section 10.06(c)(i) or (ii) after a request to do so by a Limited Partner, then to the extent applicable the Limited Partner or the General Partner may pursue the remedies set forth in Section 8.06 through Section 8.11, as applicable.

1. Each Limited Partner consents to Amendments necessary to reflect:
   1. The admission of any Additional Limited Partner and the increase in any other Partner’s Commitment in accordance with Section 5.04;
   2. the transfer of any other Partner’s interest in accordance with Section 10.01 and the admission of a substituted Partner under such transfer;
   3. the admission to the Partnership of any Special Limited Partner or the withdrawal of any Limited Partner or General Partner, in the manner prescribed in this Agreement;
   4. the incorporation of such changes as are required by SBA or the SBIC Act prior to receipt of an SBIC license by the Partnership; and
   5. any amendment of this Agreement or the Certificate of Limited Partnership necessary to comply with or conform to any amendments of applicable laws governing the Partnership.
2. The General Partner shall, with the prior approval of the SBA, amend the Certificate of Limited Partnership to the extent reasonably required to implement any Amendment.
3. **The General Partner must distribute to each Limited Partner and SBA a copy of (i) any Certificate of Amendment to the Certificate of Limited Partnership, and (ii) any Amendment.**

Section 10.07. Power of Attorney.

1. Appointment. Each Limited Partner appoints the General Partner, and each general partner of the General Partner, as its true and lawful representative and attorney-in- fact, for it and in its name, place and stead, to make, execute, sign and file:

[*if the Limited Partners have granted a power of attorney to the General Partner pursuant to any separate power of attorney documentation, subscription agreement or otherwise, replace Section 10.07(a) with the following language: “The General Partner hereby certifies under penalty of perjury that each Limited Partner has appointed each Principal, the General Partner, and each general partner of the General Partner, as the true and lawful representative and attorney-in- fact, for each Limited Partner and in its name, place and stead, to make, execute, sign and file:”*]

* 1. any amendments of this Agreement necessary to reflect the consents granted by each Limited Partner in Section 10.06;
  2. all instruments, documents and certificates necessary or appropriate to implement any of the powers granted to the General Partner under this Agreement, including, without limitation, amendments of this Agreement adopted by the Partners; and
  3. all instruments, documents and certificates which, from time to time, may be required by the law of the United States of America, the State of [*Delaware*] or any other state in which the Partnership determines to do business, or any political subdivision or agency thereof, to execute, implement and continue the valid and subsisting existence of the Partnership and in conformance to the provisions of this Agreement.

1. Further Authorization. Each Limited Partner authorizes each such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in and about the foregoing as fully as such Limited Partner might or could do if personally present, and hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. The authorization set forth in this power of attorney includes the right to amend this Agreement to respond to comments from SBA in connection with the Partnership’s SBIC license application, provided, however*,* that no amendment shall be made pursuant to this Section 10.07(b) unless the General Partner reasonably shall have determined that such amendment will not (1) subject any Limited Partner to any material adverse economic consequences or (2) alter or waive in any material respect the duties and obligations of the General Partner to the Partnership or the Limited Partners.
2. Attributes. The power of attorney granted pursuant to this Section 10.07:
   1. is a special power of attorney coupled with an interest and is irrevocable except that such power shall terminate with respect to any particular person so appointed at the time such person ceases to be the General Partner or a general partner of the General Partner;
   2. if allowed by applicable law, may be executed by such attorney-in- fact by listing all of the Limited Partners executing any agreement, certificate, instrument or document with the single signature of any such attorney-in-fact acting as attorney-in-fact for all of them; and
   3. shall survive the delivery of an assignment by a Limited Partner of its interest in the Partnership, except that where the purchaser, transferee or assignee thereof has the right to be, or with the consent of the General Partner is admitted as, a substituted Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling such attorney-in-fact to execute, acknowledge and file any such agreement, certificate, instrument or document necessary to effect such substitution.

Section 10.08. Applicable Law.

**This Agreement is governed by, and construed in accordance with, applicable Federal laws and the laws of the State of [***name of state of organization***].**

Section 10.09. Severability.

**If any one or more of the provisions contained in this Agreement, or any application of any such provision, is invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement and all other applications of any such provision will not in any way be affected or impaired.**

Section 10.10. Entire Agreement.

1. **This Agreement, and all other written agreements executed by or on behalf of the General Partner and/or the Limited Partners and approved by SBA (such other written agreements, collectively, the “*SBA Agreements*”), state the entire understanding among the parties relating to the subject matter of this Agreement and the SBA Agreements. Any and all prior conversations, correspondence, memoranda or other writings are merged in, and replaced by this Agreement and the SBA Agreements, and are without further effect on this Agreement and the SBA Agreements.**[**114**](#_bookmark209)
2. The General Partner may, on its own behalf or on behalf of the Partnership, without the approval of any Limited Partner or other person, but subject to the written approval of SBA, enter into side letter agreements or similar agreements with one or more Limited Partners that have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement (“*Side Letters*”);[115](#_bookmark210) however, no Side Letter may modify the obligation of a Partner to contribute its Commitment as provided in this Agreement.[116](#_bookmark211)

114 SBA does not review or approve substantive provisions of subscription agreements, with the exception of power of attorney provisions and executed signature pages of such agreements in the event that Limited Partners intend to execute this Agreement through a power of attorney. To the extent that an applicant desires to retain specific representations and warranties from such documents, such applicant should include those provisions in Section 1.06 of this Agreement.

115 SBA approval of every Side Letter is required.

116 SBA discourages the use of side letters. Nonetheless, SBA recognizes that side letters can be important in forming the basis of the understanding of the investment in an SBIC for many investors, and particularly for banks, financial institutions, pension funds, and other entities subject to significant regulatory requirements. If the parties to a side letter intend for any provision of that side letter to control, alter or supplement a section or sections of the partnership agreement, they must ensure that each such provision specifically identifies the section or sections in the partnership agreement over which the provision of the side letter controls. As part of SBA’s review and approval process, if a provision of a side letter does not identify a conflicting section in the partnership agreement, that provision will be deemed to be superseded by the conflicting section of the partnership agreement. For example, if an investor intends to limit by side letter the powers of attorney set forth in an Applicant’s partnership agreement, the relevant provision of the investor’s side letter must expressly identify the conflicting provision in the partnership agreement (i.e., the provision in the side letter should begin with a phrase similar to the following: “Notwithstanding Section 10.07 of the Partnership Agreement [ . . . ]”). If a side letter provides rights or

Section 10.11. Terms.

As used in this Agreement, masculine, feminine and neuter pronouns include the masculine, feminine and neuter; and the singular includes the plural.

Section 10.12. Venue.

Except as provided in Section 4.06, venue in any legal proceedings arising under, or in connection with, this Agreement or the transactions contemplated hereby shall be exclusively in a state court of the State of [*insert state*].

[*Applicant may include additional language regarding submission to personal jurisdiction, objections to venue, arbitration (which provision shall be subject to Section 4.07), waiver of right to jury trial, etc*.]

Section 10.13. Miscellaneous.

1. Section Headings. Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provisions hereof.
2. Description of Partnership. The terms of this Agreement supersede any description of the Partnership appearing in any other document, including any offering documents.
3. Partition. Each Partner agrees that it shall not cause a partition of any of the Partnership’s property, whether by court action or otherwise, it being agreed that any such action would cause a substantial hardship to the Partnership and would be in breach and contravention of this Agreement.

responsibilities that are not addressed by the terms of an Applicant’s partnership agreement, however, the side letter would not be expected to identify any conflicting terms in the partnership agreement. For example, a side letter might address Community Reinvestment Act (“CRA”) credit. If CRA credit is not addressed in an Applicant’s partnership agreement (it is not addressed in the Model), any side letter between an investor and that Applicant addressing CRA credit would not need to identify any conflicting terms of the Applicant’s partnership agreement. Applicants should not submit any side letter that contains a general or blanket conflict of terms provision (e.g., “In the event of any conflict between the side letter and the partnership agreement, the side letter shall control.”).

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of .

# General Partner:

*(print name of General Partner)*

By:\_

Its:

# Limited Partners:

*(print name of Limited Partner)*

*(signature)*

*(title if applicable)*

76

#16395196 v6 (999988.42002)

# SCHEDULE A

Partners and Commitments

|  |  |
| --- | --- |
| **Partners:** | **Commitments** |
|  |  |
|  |  |
| Limited Partners: |  |
| **[*Name and address of Limited Partner*]** | $ **[*Commitment Amount of Limited Partner*]** |
|  |  |
| **[*Name and address of Limited Partner*]** | $ **[*Commitment Amount of Limited Partner*]** |
|  |  |
| Subtotal | $ |
|  |  |
| General Partner: |  |
| **[*Name and address of General Partner*]** | $ **[*Commitment Amount of General Partner*]** |
|  |  |
| Subtotal | $ |
| TOTAL | $ |
|  |  |

# EXHIBIT I

**Valuation Guidelines**[**117**](#_bookmark215)

**General**

**The General Partner has sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.**

**Loans and Investments shall be valued individually and in the aggregate at least semi-annually – as of the end of the second quarter of the fiscal year-end and as of the end of the fiscal year. Fiscal year-end valuations are audited as set forth in SBA’s Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies.**

**This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.**

**Interest-Bearing Securities**

**Loans shall be valued in an amount not greater than cost with Unrealized Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern’s current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.**

**When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.**

**Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is presumed to be in doubt when one or both of the following conditions occur: (i) interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.**

117 The Model Valuation Guidelines are published as Section III of the SBA’s Valuation Guidelines for SBICs, available at SBA’s Internet web site, [www.sba.gov/INV](http://www.sba.gov/INV) under “Valuation Guidelines for SBICs.”

**The carrying value of interest bearing securities shall not be adjusted for changes in interest rates.**

**Valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.**

**Equity Securities – Private Companies**

**Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.**

**Valuation should be reduced if a company’s performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.**

**The anticipated pricing of a Small Concern’s future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee’s current valuation, then that prospective offering price should be weighed in the valuation process.**

**Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent significant equity financing that includes substantially the same group of investors as the prior financing should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of the prior securities.**

**If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.**

**Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or if of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.**

**With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.**

**Warrants should be valued at the excess of the value of the underlying security over the exercise price.**

**Equity Securities – Public Companies**

**Public securities should be valued as follows: (a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, take the average of the close for the valuation date and the preceding two days.**

**The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.**

**When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.**

# ANNEX FOR DROP-DOWN SBIC PROVISIONS

Add the following required provisions for drop-down structures:

**Definitions**

**“*Class A Limited Partner*” means [*name of parent fund*].**

**“*Class B Limited Partner*” means those individuals and entities so designated on Schedule A and such other individuals and entities admitted as Class B Limited Partners pursuant to this Agreement. Class B Limited Partners shall be all the [*partners/members*] of the Class A Limited Partner.**

**“*Limited Partners*” means the Class A Limited Partners and the Class B Limited Partners.**

**“*Proportionate Share*” means, for each Class B Limited Partner, its Commitment to the Partnership, expressed as a percentage of the Class A Limited Partner’s Commitment to the Partnership, as set forth in the Proportionate Share column on Schedule A of this Agreement. Proportionate Shares must total one hundred percent (100%). The Proportionate Share of a Class B Limited Partner shall be set forth as both a percentage and dollar amount.**

**§5.02(b) Capital Contributions of the Class A Limited Partner. The Class A Limited Partner will contribute to the capital of the Partnership in cash or, subject to SBA’s prior written approval, securities of portfolio companies, in the aggregate amount that is set forth opposite its name on Schedule A, payable in such installments, as specified by the General Partner, from time to time, upon not less than days’ prior notice.**

**§5.02(e) Capital Contributions of the Class B Limited Partners. If, at any time, the Class A Limited Partner fails to make a Capital Contribution as required by this Agreement, then, notwithstanding any dissolution of the Class A Limited Partner or release by the Class A Limited Partner of any Class B Limited Partner from its obligations to the Class A Limited Partner, the Class B Limited Partners shall contribute to the capital of the Partnership in cash an amount equal to the Class A Limited Partner’s Capital Contribution then in default, with each such Class B Limited Partner being required to contribute its Proportionate Share of the Capital Contribution then in default, *provided, however,* that the obligation of each Class B Limited Partner to contribute to the capital of the Partnership shall be several, and not joint, and in no event shall any Class B Limited Partner be required to contribute to the Partnership an amount greater than the amount listed for it in the Amount column on Schedule A, less (i) all Capital Contributions made by the Class B Limited Partner to the Partnership and (ii) its Proportionate Share of all Capital Contributions made by the Class A Limited Partner to the Partnership, provided that the Class B Limited Partner is not in default in the payment of any Capital Contribution to the Class A Limited Partner. The amount of each such Capital Contribution by a Class B Limited Partner shall be made to the Partnership upon ten (10) business days’ advance written notice by the General Partner with respect to each contribution. Simultaneously with a contribution to the Partnership of any capital by a Class B Limited Partner, the Class B Limited Partner shall transfer to the defaulting Class A Limited Partner the interest in the Partnership so acquired with a corresponding credit to the Class A Limited Partner’s Capital Account and reduction in the Class A**

**Limited Partner’s unpaid capital commitment to the Partnership, and the Class A Limited Partner shall in turn credit the Class B Limited Partner with an additional Capital Contribution to the Class A Limited Partner pursuant to the Class A Limited Partner’s [*partnership/limited liability company*] agreement (which shall serve to correspondingly reduce the amount of such Class B Limited Partner’s capital commitment to the Class A Limited Partner). No Capital Contribution by a Class B Limited Partner pursuant to this Agreement shall give it any right to receive any distributions or allocations pursuant to this Agreement or give rise to a Capital Account for the Class B Limited Partner.**

**Add to §10.01. Additional, Substitute and Transferee Limited Partners. The General Partner may not admit additional Class A Limited Partners. No person or entity shall be admitted as a substitute Class A Limited Partner nor shall any Class A Limited Partner transfer any interest in the Partnership without the prior written approval of SBA and, further, unless the limited partners or equity owners of the substituted Class A Limited Partner or of the transferee Class A Limited Partner simultaneously become Class B Limited Partners.**

**Add to §10.01. Assignability of Class B Partnership Interests. In addition to the other requirements of this Agreement, no Class B Limited Partner may transfer, sell, pledge, assign or otherwise dispose of its interest in the Partnership or in this Agreement unless such Class B Limited Partner simultaneously transfers its interest in the Class A Limited Partner to the transferee of such interest.**