
**MODEL EARLY STAGE SBIC LIMITED PARTNERSHIP
AGREEMENT**

Version 2.1

**SBA MODEL FORM OF
AGREEMENT OF LIMITED PARTNERSHIP
FOR AN EARLY STAGE SBIC**

Dated as of _____, _____

The basis for this document was originally drafted for SBA under contract by Christopher Lane Davis.

By recognizing this document as a model agreement, SBA intends
no endorsement of Mr. Davis or his firm as a legal services provider.

A NOTE ON THE MODEL

Introduction

Model Early Stage SBIC Limited Partnership Agreement is a model agreement of limited partnership for an Early Stage SBIC. Early Stage SBICs are permitted to use debenture leverage only. The Model has been prepared by SBA to assist applicants for Early Stage SBIC licenses. The Model is designed to provide a basic form of agreement that an Early Stage SBIC applicant can use by adding a limited number of provisions to adapt the Model to their own individual situation.

SBA has developed the Model as part of its effort to make the SBIC program more accessible to new applicants and 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 Early Stage SBIC, by providing applicants and their advisors with a working model of this complex legal agreement that they can use to create their own document. This should prove particularly helpful to new applicants who are not familiar with legal agreements of this type.

For applicants who use the Model in the manner described in this Note, 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 customary basic provisions required in a limited partnership agreement, SBA staff will be able to focus their attention on the more limited number of specific provisions added to the Model by an applicant.

The Model

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

- ◆ basic procedural and other standard provisions needed for an effective 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, and
- ◆ the specific provisions that SBA requires be included in limited partnership agreements for Early Stage SBICs.

To make the Model easier to use, footnotes and bracketed instructions have been added at relevant points in the Model, and a separate bold font has been used to indicate those provisions of the Model that are required in all agreements of limited partnership for Early Stage SBICs.

The specific features of the Model are described briefly below:

Use of Fonts and Brackets. Multiple fonts are used in this version of the Model for illustrative purposes. Except as discussed below, a person using the model to prepare an agreement of limited partnership for an Early Stage SBIC is not required to use multiple fonts in their agreement. This version of the Model uses different fonts to assist readers in identifying (i) points in the Model where information must be added by a user, and (ii) points in the Model where additional provisions may be added by a user:

- ◆ Regular Times New Roman type indicates optional provisions of the Model.
- ◆ **Bold Arial** type indicates provisions required by SBA.
- ◆ [***Bold, underscored and italicized Times New Roman type in brackets***] indicates that the user is required to insert information into a provision of the Model.
- ◆ [*Italic 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 and other relevant statutes. A person using the model to prepare an agreement of limited partnership for an Early Stage SBIC is not required to use footnotes in their agreement.

Cross-references. The electronic word processing file for this document uses Microsoft Word's automatic cross-reference function for all cross-references to articles, sections, subsections and clauses in the Model. A user, however, should carefully review the cross-references in their own agreement to assure that they are correct.

Citations. The citations to the Delaware Revised Uniform Limited Partnership Act are taken from the "Delaware Code On-Line" (maintained by Lexis Law Publishing) available through the "Delaware's Home Page" Internet web site maintained by the State of Delaware (www.state.de.us). The SBA regulations cited are available on the SBA Internet web site (www.sba.gov).

Word Processing. The electronic version of this document in Microsoft Word format for use in word processing is available on request from the SBA Investment Division.

Using the Model

The Model provides applicants with SBA's prescribed approach for preparing an agreement of limited partnership for an Early Stage SBIC. Rather than developing their own form of limited partnership agreement, the Model allows applicants to streamline the process by using the Model's standardized general provisions and focusing on just those provisions that are unique to their own situation.

As discussed above, the Model indicates in brackets points at which an applicant should add information (such as the partnership's name) to the agreement. The Model also indicates some points at which an applicant may wish to add additional provisions to the agreement. Applicants may add additional provisions and delete or modify those provisions of the Model other than the provisions indicated in the Model by use of a **bold Arial** font. Applicants should consider additions, deletions and modifications to the Model carefully, however, since such changes will reduce the benefits of using the Model's standardized form.

The footnotes, brackets, and different fonts that appear in the Model are not required to be used by applicants and may be deleted or modified when an applicant uses the Model as the basis for its own agreement of limited partnership. Note, however, that the provisions in the Model in **bold Arial** type must be shown in **bold Arial** type in copies of the applicant's agreement submitted to SBA for review.

Because the Model is a general form, all of its provisions may not be appropriate for a particular applicant. Applicants and their advisors should carefully review the standard provisions of the Model to make sure that those provisions are appropriate for the applicant's specific situation.

Submitting an Agreement Using the Model to SBA

Early Stage SBIC applicants must use the Model as a template and follow the format and section numbering style of the Model, keeping the provisions of their agreement in the same order as the provisions in the Model. Applicants should also be aware that SBA will not accept changes in the text of those provisions of the Model set out in **bold Arial** type.

Submissions which contain changes in format, numbering, order of provisions or in the provisions set out in bold Arial type will not be accepted.

Applicants must include with their submission:

- ◆ a copy of the applicant's agreement marked to show all additions and deletions from the Model, using legislative marking, showing additions by underscoring and deletions by strikethrough,
- ◆ a copy of both the applicant's agreement and the marked version of the applicant's agreement, in electronic form on a CD, 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.

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MODEL DEBENTURE SBIC, L.P.

AGREEMENT OF LIMITED PARTNERSHIP dated and effective as of _____ __, ____, among [*general partner*], a [*state of organization and type of entity*] (in its capacity as a general partner of the Partnership) and the Limited Partners, as amended from time to time.¹

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, licensed by SBA for the period and upon the terms and conditions stated in this Agreement. The parties further agree as follows:

ARTICLE 1

General Provisions

Section 1.01 Definitions.

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

"Act" means [*the state statute under which the Partnership is organized*].

"Additional Limited Partners" has the meaning stated in Section 5.04.

"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.

"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".

¹ The General Partner and Limited Partners are those persons admitted as provided in Section 1.05. The names of the General Partner and Limited Partners are listed for convenience on Schedule A.

"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 (as such term is used in the SBIC Act), 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 SBA Leverage" means the amount of Leverage which the Partnership plans to draw from the SBA during the life of the Partnership, as reflected in the Partnership's business plan approved by the SBA.

"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, or 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; and 13 C.F.R. §107.460.

"Capital Account" means the account of each Partner that reflects its interest in the Partnership determined in accordance with Section 6.03.

"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].²

"Charges" has the meaning stated in the SBIC Act.

"Closing Capital Account" means, with respect to any fiscal period, the Opening Capital Account of each Partner for the fiscal period after allocations have been made to the Capital Account in accordance with Section 6.03.

"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.

"Commitments" means the capital contributions to the Partnership that the Partners have made or are 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.

² This Agreement has been drafted to conform to the Revised Uniform Limited Partnership Act (RULPA), as currently enacted in the State of Delaware.

"Control Person" has the meaning stated in the SBIC Act.

"Debentures" has the meaning stated in the SBIC Act.

"Designated Party" means any of the General Partner, any Investment Adviser/ Manager, and any partner, member, manager, stockholder, director, officer, employee or Affiliate of the General Partner and any Investment Adviser/ Manager.

"Distributable Security" shall have the meaning stated in the SBIC Act.

"Early Stage SBIC" means an early stage small business investment company licensed under the SBIC Act, as more particularly described in 13 CFR §107.310.

"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.

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

"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 a claim, action, suit, proceeding or investigation, by or before any court or administrative or legislative body or authority.

"Initial Investment Period" for the Partnership commences on the earliest of the following: (a) date of license approval; (b) the first date of financing of a portfolio concern; or (c) the first date any management fee based on Assumed SBA Leverage begins to accrue or is paid; and ends on the date five (5) years from the start of the Initial Investment Period, or any earlier date specified in herein.

"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 Adviser/Manager" has the meaning stated in the SBIC Act.

"Leverage" has the meaning stated in the SBIC Act.

"Limited Partners" means any limited partners of the Partnership.

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

"Management Fee Base" means: (a) during the Initial Investment Period, the sum of the Partnership's Unreduced Regulatory Capital plus Assumed SBA Leverage; and (b) after the Initial Investment Period, the aggregate cost of loans and investments as of the first day of the fiscal quarter in which Management Compensation is paid or begins to accrue (whichever occurs earlier) for all of the Partnership's "Active Portfolio Companies". The term "Active Portfolio Companies" shall mean any ongoing concerns in which the Partnership has invested and as to which the Partnership has not written off its investment, subject to SBA review.

"Management Fee Rate" means a maximum of: (a) 2.5% per annum (0.625% per quarter), if the Management Fee Base is equal to or less than \$60 million; (b) 2% per annum (0.5% per quarter), if the Management Fee Base is equal to or greater than \$120 million; and (c) if the Management Fee Base is greater than \$60 million and less than \$120 million, the per annum rate derived from the following formula: $2.5\% - (.5\% \times ((\text{Management Fee Base} - \$60 \text{ million}) / \$60 \text{ million}))$.

"Net Losses" means, with respect to any fiscal period, the excess, if any, of:

- (i) all expenses and losses incurred during the fiscal period by the Partnership from all sources over
- (ii) the aggregate revenue, income and gains realized during the fiscal period by the Partnership from all sources.

For purposes of determining Net Losses:

- (A) items will be taken into account to the extent that (1) they are includable as items of income, credit, loss or deduction for Federal income tax purposes (including items described in Section 705(a)(2)(B) of the Code, or treated as so described in Treasury Regulation § 1.704-1(b)(2)(iv)(i)) or, (2) in the case of items of income, they constitute income that is exempt from Federal income tax; and
- (B) if any Noncash Asset is distributed in kind, it will be deemed sold at the value established at the most recent

valuation of the Noncash Asset under this Agreement (or such other valuation date as is required under the SBIC Act) and any unrealized appreciation or depreciation with respect to the Noncash Asset will be deemed realized and included in the determination of Net Losses.

"Net Profits" means, with respect to any fiscal period, the excess, if any, of:

- (i) the aggregate revenue, income and gains realized during the fiscal period by the Partnership from all sources over
- (ii) all expenses and losses incurred during the fiscal period by the Partnership from all sources.

For purposes of determining Net Profits:

- (A) items will be taken into account to the extent that (1) they are includable as items of income, credit, loss or deduction for Federal income tax purposes (including items described in Section 705(a)(2)(B) of the Code, or treated as so described in Treasury Regulation § 1.704-1(b)(2)(iv)(i)) or, (2) in the case of items of income, constitute income that is exempt from Federal income tax; and
- (B) if any Noncash Asset is distributed in kind, it will be deemed sold at the value established at the most recent valuation of the Noncash Asset under this Agreement (or such other valuation date as is required under the SBIC Act) and any unrealized appreciation or depreciation with respect to the Noncash Asset will be deemed realized and included in the determination of Net Profits.

"Noncash Asset" means any Asset of the Partnership other than cash.

"Opening Capital Account," with respect to any fiscal period, means:

- (i) with respect to any Partner admitted during the fiscal period, the Partner's initial capital contribution (or in the case of any Partner admitted as a transferee of all or part of the interest in the Partnership of another Partner, with respect to such transferred interest in the Partnership, that portion of the transferor's initial capital contribution transferred to the transferee); and
- (ii) with respect to any Partner admitted during any prior fiscal period (other than a Partner who has withdrawn as of the last day of the preceding fiscal period), the Partner's Closing Capital Account for the preceding fiscal period (or in the case of any Partner admitted as a transferee of all or part of the interest in the Partnership of another

Partner, with respect to such transferred interest in the Partnership, that portion of the transferor's Closing Capital Account transferred to the transferee).

"Optionor" shall have the meaning set forth in Section 5.15.

"Optionees" shall have the meaning set forth in Section 5.15.

"Optioned Partnership Interest" shall have the meaning set forth in Section 5.15.

"Option Price" shall have the meaning set forth in Section 5.15.

"Outstanding Leverage" means the total amount of outstanding securities (including, but not limited to, Debentures) issued by the Partnership, which qualify as Leverage and have not been redeemed or repaid as provided in the SBIC Act.

"Partners" means the General Partner and the Limited Partners.

"Partnership" means the limited partnership established by this Agreement.

"_____ percent (___%) in interest of the Limited Partners" means Limited Partners whose capital contributions represent such percentage of the capital contributions of all Limited Partners as of the time of determination.

"Remaining Portion" shall have the meaning set forth in Section 5.15.

"SBA" means the United States Small Business Administration.

"SBA Agreements" has the meaning stated in Section 10.11.

"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.

"Special Limited Partner" has the meaning stated in Section 4.06 and Section 8.03(c).

"Unreduced Regulatory Capital" means the sum of: (i) Regulatory Capital at the time that the Management Compensation for a particular period of time is paid or begins to accrue, whichever occurs earlier (increases to Regulatory Capital that occur within a quarter will be recognized on the first day of that quarter in

which the Partnership provides the SBA with an executed Capital Certificate evidencing such increase); and (ii) any distributions previously made under 13 CFR §107.585 which reduced Regulatory Capital by no more than two percent (2%) or which the SBA approves for inclusion in the calculation of Management Compensation.

[Insert any additional defined terms in the above list in alphabetical order.]

Section 1.02 Name.

- (a) The name of the Partnership will be "*insert name of partnership*".
- (b) Subject to the prior approval of SBA, the General Partner has the power at any time to:
 - (i) change the name of the Partnership; and
 - (ii) 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.
- (c) The General Partner will give prompt notice of any action taken under this Section to each Partner and SBA.

Section 1.03 Principal Office; Registered Office; and Qualification.³

- (a) 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.
- (b) The registered office of the Partnership in the State of *name of state* will be located at *address of registered office*. The name of the registered agent for the Partnership will be *name of registered agent*. The General Partner may from time to time change the registered agent and registered office of the Partnership.
- (c) The General Partner will qualify the Partnership to do business in each jurisdiction where the activities of the Partnership make such qualification necessary.
- (d) The General Partner will give prompt notice of any action taken under this Section to each Partner and SBA.

³ RULPA addresses the requirements for a registered domestic office and agent; see Delaware RULPA § 17-104. See also 13 C.F.R. § 107.680 regarding actions which require SBA approval, but not prior approval.

Section 1.04 Commencement and Duration.

- (a) The Partnership will commence upon the filing for record of the Certificate of Limited Partnership in the office of the [name of office] of the State of [name of state].

[Add any additional conditions precedent to the commencement of the Partnership.]

- (b) The Partnership will be dissolved and wound up at the time and in the manner provided for in Article 8.⁴

Section 1.05 Admission of Partners.

- (a) 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:
 - (i) the name and address of the Partner,
 - (ii) the Commitment of the Partner, and
 - (iii) the agreement of the Partner to be bound by the terms of this Agreement.
- (b) **Without the prior approval of SBA, no person may be admitted as:**
 - (i) **a General Partner, or**
 - (ii) **a Limited Partner with an ownership interest of ten percent (10%) or more of the Partnership's capital.**⁵
- (c) The General Partner will compile, and amend from time to time as necessary, Schedule A attached to this Agreement, which will list:
 - (i) the name and address of the General and each Limited Partner, and
 - (ii) the Commitment of the General Partner and each Limited Partner to the Partnership.
- (d) 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.

⁴ See 13 C.F.R. § 107.160(c)(1) which prescribes the minimum duration for an SBIC.

⁵ See 13 C.F.R. § 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.

Section 1.06 Representations of Partners.

- (a) **This Agreement is made with the General Partner in reliance upon the General Partner's representation to the Partnership and SBA, that:**
- (i) **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;**
 - (ii) **it has full power and authority to execute and deliver this Agreement and to act as General Partner under this Agreement;**
 - (iii) **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 according to its terms; and**
 - (iv) **the execution and delivery of this Agreement and the performance of its obligations under this Agreement 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.**
- (b) **This Agreement is made with each Limited Partner in reliance upon each Limited Partner's representation to the General Partner, the Partnership and SBA, that:**
- (i) **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;**
 - (ii) **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;

- (iii) **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 surplus⁶;**
- (iv) unless otherwise disclosed to the Partnership in writing, the 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 trade or business within the United States; and
- (v) unless otherwise disclosed to the Partnership in writing, the Partner is not subject to Title I of ERISA.

[Add any other investor representations.]

- (c) Each Partner who has disclosed to the Partnership in writing that it is not a person described in Section 1.06(b)(iv), 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.

- (a) **If any representation made by a Limited Partner in Section 1.06(b) ceases to be true, then the Limited Partner will promptly provide the Partnership with a correct separate written representation as provided in each such Section.**
- (b) **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.

- (a) Losses, liabilities and expenses incurred by the Partnership during any fiscal year will be allocated among the Partners in accordance with the procedures for allocating Net Losses as provided in Section 6.03.

⁶ See Section 302(b) of the Small Business Investment Company Act of 1958, as amended.

- (b) 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:
 - (i) 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
 - (ii) have any greater obligation with respect to any Outstanding Leverage than is required by the SBIC Act or by SBA.
- (c) Except as otherwise provided under 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.
- (d) 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.
- (e) **Nothing in this Agreement limits any liability of any Partner under any agreement between the Partner and SBA.**

Purpose and Powers

Section 2.01 Purpose and Powers.

- (a) **The Partnership is organized solely for the purpose of operating as an Early Stage SBIC under the SBIC Act and conducting the activities described under Title III of the SBIC Act. The Partnership has the powers and responsibilities, and is subject to the limitations, provided in the SBIC Act. The operations of the Partnership and the actions taken by the Partnership and the Partners will be conducted and taken in compliance with the SBIC Act.**
- (b) **Subject to Section 2.01(a), the Partnership may make, manage, own and supervise investments of every kind and character in conducting its business as a small business investment company.**
- (c) **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:**
 - (i) **to engage in any lawful act or activity for which limited partnerships may be organized under the Act.**

[Specify any individual powers, which the Partnership wishes to explicitly identify.]

Section 2.02 Restrictions on Powers.⁷

Notwithstanding any provision of Section 2.01(b), the Partnership will not:

[Specify any restrictions on the powers that the Partnership may exercise.]

Section 2.03 Venture Capital Operating Company.⁸

At any time that a Limited Partner is subject to Title I of ERISA and 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

⁷ This Section can be used to highlight restrictions required by Limited Partners or restrictions contained in the SBIC Act to which the Partnership wishes to call attention.

⁸ This covenant is suggested, but not required. The phrase "use its best efforts to" in this covenant is optional and may be omitted.

Department of Labor Regulation § 2510.3-101(d), 51 Fed. Reg. 41,281 (November 13, 1986) or any amendment or successor regulation).

ARTICLE 3

Management

Section 3.01 Authority of General Partner.

- (a) **The management and operation of the Partnership and the formulation of investment policy is vested exclusively in the General Partner.**
- (b) **The act of the General Partner in carrying on the business of the Partnership will bind the Partnership.**
- (c) **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.⁹**
- (d) **So long as the General Partner remains the general partner of the Partnership:**
 - (i) **it will comply with the requirements of the SBIC Act, including, without limitation, 13 C.F.R. § 107.160(a) and (b),¹⁰ as in effect from time to time; and**
 - (ii) **in the case of any General Partner other than a natural person, except as set forth in Section 3.01(d)(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.¹¹**
 - (iii) **The General Partner may, however:**
 - (A) **act as the general partner or Investment Adviser/Manager for one or more other SBICs, and**

⁹ Note that 13 C.F.R. § 107.410 requires that any transaction resulting in control by any person not previously approved by SBA requires prior approval by SBA.

¹⁰ These regulations describe the organizational requirements for the General Partner.

¹¹ See 13 C.F.R. § 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.

- (B) **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).**

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.¹²

Section 3.03 The Investment Adviser/Manager.¹³

- (a) Subject to the SBIC Act, the General Partner may delegate any part of its authority to an Investment Adviser/Manager.
- (b) **Any agreement delegating any part of the authority of the General Partner to an Investment Adviser/Manager will:**
 - (i) **be in writing, executed by the General Partner, the Partnership and the Investment Adviser/Manager,**
 - (ii) **specify the authority so delegated, and**
 - (iii) **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.**

¹² This language follows language of the RULPA provision regarding limited partner liability to third parties as currently enacted in Delaware; see Delaware RULPA § 17-303(a). Note that in some other versions of RULPA, the statutory provision may refer to "management or control," rather than "control."

¹³ This Section is applicable if there will be an Investment Adviser/Manager other than or in addition to the General Partner of an SBIC. See 13 C.F.R. § 107.50 for the definition of Investment Adviser/Manager, 13 C.F.R. § 107.510 for the basic requirements for a management contract and 13 C.F.R. §§ 107.140 and 107.510 for the requirements for SBA approval of Management Expenses.

- (c) 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.
- (d) **Each agreement with an Investment Adviser/Manager, and any material amendment to any such agreement, is subject to the prior approval of SBA.**¹⁴
- (e) [name of investment adviser/manager] is the initial Investment Adviser/Manager.

[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 Advisor/Manager.]

Section 3.04 Restrictions on Other Activities of the General Partner and its Affiliates.¹⁵

- (a) 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, general partner, member, manager or stockholder of any 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.
- (b) Investments may be made by the Partnership through the [anniversary of the final closing] (the “Investment Period”), unless terminated earlier upon the affirmative vote of [supermajority percentage] in interest of the Limited Partners (excluding any Limited Partner that is an Affiliate or Associate of the General Partner). Upon the termination of the Investment Period, the General Partner shall be prohibited from making calls for capital contributions to fund investments in Persons that were not portfolio companies at the termination of the Investment Period; provided that nothing herein shall prohibit the General

¹⁴ This Section relates to 13 C.F.R. § 107.510(b), which requires SBA approval for any material amendment of a management contract. Note that even if a change does not require advance approval, 13 C.F.R. § 107.680(a) may still require a non-material amendment to be reported to SBA.

¹⁵ Note that SBA regulations address the terms on which an SBIC and its affiliates can receive fees from, and conduct other transactions with, portfolio companies. See, for example, 13 C.F.R. §§ 107.860 and 107.900.

Partner from making calls for capital contributions to (i) complete investments that were in process or committed to at the termination of the Investment Period; (ii) make investments to preserve, protect or enhance the value of existing investments, (iii) pay costs, expenses and liabilities of the Partnership, including Leverage, Management Fees, expenses and indemnification obligations; and (iii) make payments required by SBA or otherwise required by the SBIC Act.

- (c) Upon the death, disability or other event which causes [*name of principal*] to cease to be actively involved in the affairs and activities of the Partnership (a “Key Person Event”), the General Partner will promptly notify SBA and the Limited Partners that a Key Person Event has occurred and the investment activities of the Partnership will be automatically suspended for up to [180] days. During the continuation of such suspension, [___%] in interest of the Limited Partners (excluding any Limited Partner that is an Affiliate or Associate of the General Partner) may elect to reinstate the Investment Period. If no such election is made prior to the [180]th day following the commencement of such suspension, then the Investment Period will be deemed to have been terminated automatically on the [180]th day following the commencement of such suspension.

During any suspension period following a Key Person Event, the General Partner shall be prohibited from making calls for capital contributions to fund investments in Persons that were not portfolio companies at the commencement of such suspension; provided that nothing herein shall prohibit the General Partner from making calls for capital contributions to (i) complete investments that were in process or committed to at the commencement of such suspension; (ii) make investments to preserve, protect or enhance the value of existing investments, (iii) pay costs, expenses and liabilities of the Partnership, including Leverage, Management Fees, expenses and indemnification obligations; and (iii) make payments required by SBA or otherwise required by the SBIC Act.

- (d) Without the consent of [*supermajority %*] in interest of the Limited Partners (excluding any Limited Partner that is an Affiliate or Associate of the General Partner), no Principal may act as general partner or principal or in a 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 [__%] 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.

[Any restrictions on the investment or other activities of the General Partner, Limited Partners or Investment Adviser/Manager should be stated.]

Section 3.05 Management Compensation.

- (a) As compensation ("Management Compensation") for services rendered in the management of the Partnership, during the period beginning on [beginning date] and ending on [ending date or event], the Partnership will pay an annual management fee computed on a daily basis equal to [state formula for computing fee].¹⁶
- (b) 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 an Investment Adviser/Manager.
- (c) **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.**¹⁷

Section 3.06 Payment of Management Compensation.

- (a) Management Compensation will be paid in [number of installments per year] installments on the [specify day] business day of each [fiscal period] with each installment to be equal to [state formula for installments].¹⁸
- (b) Within _____ (__) days after (i) the end of each fiscal year of the Partnership, (ii) the date of its dissolution and (iii) the date a person ceases to be Investment Adviser/Manager, appropriate adjustment (by way of payment or refund) will be made so that the management fee 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) will be equal to the management fee calculated on a daily basis under Section 3.05(a) for such period.

¹⁶ See 13 C.F.R. §§ 107.50, 107.140 and 107.520 which relate to management expenses. Also see 13 C.F.R. §§ 107.860 and 107.900 which relate to fees paid to an SBIC by a portfolio company, and SBIC TechNote 7A (revised April 2008), "Guidelines Concerning Allowable Management Expenses for Leveraged SBICs".

¹⁷ 13 C.F.R. § 107.520 provides that SBA consent is required for increases in Management Expenses if an SBIC has Outstanding Leverage or Earmarked Assets, and § 107.520(c) discusses required SBA approval of Management Expenses.

¹⁸ SBA does not permit payment of more than one quarter's management fees in advance.

Section 3.07 Partnership Expenses.¹⁹

- (a) The [name of entity responsible for paying these expenses, e.g., General Partner, Investment Adviser/Manager or its Affiliates] will pay:
- (i) 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;
 - (ii) except as provided in Section 3.07(b), the cost of providing support and general services to the Partnership, including, without limitation:
 - (A) office expenses,
 - (B) travel,
 - (C) business development,
 - (D) office and equipment rental,
 - (E) bookkeeping, and
 - (F) the development, investigation and monitoring of investments; and
 - (iii) all other expenses of the Partnership not authorized to be paid by the Partnership under Section 3.07(b).
- (b) The Partnership will pay the following Partnership expenses:
- (i) all interest and expenses payable by the Partnership on any indebtedness incurred by the Partnership;
 - (ii) all amounts payable to SBA under the SBIC Act, and all amounts payable in connection with any Leverage commitment and any Outstanding Leverage;
 - (iii) taxes payable by the Partnership to Federal, state, local and other governmental agencies;
 - (iv) Management Compensation;

¹⁹ 13 C.F.R. § 107.520 defines the types of expenses that will be considered Management Expenses, and certain types of expenses that are not considered Management Expenses.

- (v) 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;
- (vi) legal, insurance (including any insurance as contemplated in Section 3.10(m)), accounting and auditing expenses;
- (vii) all expenses incurred by the Partnership in connection with commitments for or issuance of Leverage; and
- (viii) fees or dues in connection with the membership of the Partnership in any trade association for small business investment companies or related enterprises.

*[Add any other expenses to be paid for by the Partnership.]*²⁰

- (c) **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.²¹

- (a) **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.**
- (b) **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.**
- (c) **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**

²⁰ Note that not all expenses may qualify as Management Expenses under 13 C.F.R. § 107.520. Also note that not all expenses paid by the Partnership may be deductible in computing the Partnership's Net Income (Loss) under 13 C.F.R. § 107.1510(d).

²¹ 13 C.F.R. § 107.503 discusses how an SBIC must value its portfolio investments.

more often, as SBA may require) at any time that the Partnership has Outstanding Leverage.²²

Section 3.09 Standard of Care.

- (a) **No Designated Party will be liable to the Partnership or any Partner for any action taken or omitted to be taken by it or any other Partner or other person in good faith and in a manner it reasonably believed to be in or not opposed to the best interests of the Partnership, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful.**
- (b) **Neither any Limited Partner, nor any member of any Partnership committee or board who is not an Affiliate of the General Partner, 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.**
- (c) **Any Designated Party, any Limited Partner and any member of a Partnership committee or board, may consult with independent legal counsel 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.**
- (d) **This Section does not constitute a modification, limitation or waiver of Section 314(b) of the SBIC Act, or a waiver by SBA of any of its rights under Section 314(b).²³**
- (e) **In addition to the standards of care stated in this Section, this Agreement may also provide for additional (but not alternative) standards of care that must also be met.**

²² See 13 C.F.R. §§ 107.503(d) and 107.650, regarding the timing of valuations and reports.

²³ Section 314(b) of the SBIC Act reads:

"(b) 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 damages."

Section 3.10 Indemnification.²⁴

- (a) **The Partnership will indemnify and hold harmless, but only to the extent of Assets Under Management (less any Outstanding Leverage not included as a liability in the computation of Assets Under Management), any Designated Party, from any and all Indemnifiable Costs which may be incurred by or asserted against such person or entity, by reason of any action taken or omitted to be taken on behalf of the Partnership and in furtherance of its interests.**
- (b) **The Partnership will indemnify and hold harmless, but only to the extent of Assets Under Management (less any Outstanding Leverage not included as a liability in the computation of Assets Under Management), the Limited Partners, and members of any Partnership committee or board who are not Affiliates of the General Partner or any 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.**
- (c) **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.**
- (d) **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 by judgment, order, settlement, conviction, or upon a 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.**
- (e) **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**

²⁴ RULPA addresses the power of a limited partnership to indemnify; see Delaware RULPA § 17-108.

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 Section 3.09(b).

- (f) A determination that a person to be indemnified under this Section has met the applicable standard stated in Section 3.09(a) or Section 3.09(b) 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) a committee of the Partnership whose members are not affiliated with the General Partner or any Investment Adviser/Manager with respect to indemnification of any person indemnified under Section 3.10(a) or (iii) 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.
- (g) In making any determination with respect to indemnification under (f), the General Partner, a committee of the Partnership whose members are not affiliated with the General Partner or any 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 any Investment Adviser/Manager to the Partnership 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.
- (h) 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.
- (i) 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.
- (j) 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.

- (k) **The Partnership may not enter into any agreement with any person (including, without limitation, any Investment Advisor/Manager, 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).**
- (l) **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.**
- (m) 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.

Section 3.11 Partnership Committees.²⁵

[Add any provisions for Advisory boards or committees here.]

²⁵ Note that committee powers should conform to the applicable RULPA provisions for powers which may be granted to limited partners without exposing them to liability to third parties; see Delaware RULPA § 17-303. Committee powers should also be evaluated in the context of the definition of "Control Person" (13 C.F.R. § 107.50) in the SBIC regulations, to avoid unintentionally causing committee members to become "Control Persons" and consequently "Associates" of as SBIC.

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.

- (a) **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.²⁶**
- (b) **Except as provided in the SBIC Act²⁷, 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:**
 - (i) **given by SBA in writing, and**
 - (ii) **delivered by SBA to the party requesting the consent or approval in the manner provided for notices to such party under Section 10.04.**

²⁶ 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.

²⁷ 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 C.F.R. § 107.680(c).

Section 4.03 Provisions Required by the SBIC Act for Issuers of Debentures.²⁸

- (a) **The provisions of 13 C.F.R. § 107.1810(i) are incorporated by reference in this Agreement as if fully stated in this Agreement.**
- (b) **The Partnership and the Partners consent to the exercise by SBA of all of the rights of SBA under 13 C.F.R. § 107.1810(i), and agree to take all actions that SBA may require in accordance with 13 C.F.R. § 107.1810(i).**
- (c) **This Section 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.**
- (d) **Nothing in this Section 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.²⁹

- (a) **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 C.F.R. §§ 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.**
- (b) **Section 4.04(a) will not be construed to apply to:**
 - (i) **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**
 - (ii) **the rights of SBA under any other agreement between the Partnership and SBA.**
- (c) **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.**

²⁸ This Section incorporates regulations relating to the special rights of SBA when the Partnership has outstanding Debentures.

²⁹ See 13 C.F.R. § 107.1140 regarding the automatic agreement to and incorporation of 13 C.F.R. §§ 107.1800 through 107.1820 by an SBIC at the time of any issuance of Leverage.

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 Interest of the General Partner After Withdrawal.

If the General Partner withdraws as a general partner of the Partnership by notice from SBA as provided in the SBIC Act or otherwise, 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).

Section 4.07 Interest Reserve Requirements.

For each Debenture issued by the Partnership which requires periodic interest payments to SBA during the first five years of its term, the Partnership shall maintain a reserve sufficient to pay the interest and Charges on such Debenture for the first 21 payment dates following the date of issuance of such Debenture, pursuant to and in accordance with 13 C.F.R. § 107.1181. Such reserve may consist of any combination of (i) binding unfunded commitments from the Partnership's Institutional Investors, as such term is defined in 13 C.F.R. § 107.50, that cannot be called for any purpose other than the payment of interest and Charges to SBA, or the payment of any amounts due to SBA, and (ii) cash maintained in a separate bank account or separate investment account permitted under 13 C.F.R. § 107.530 and separately identified in the Partnership's financial statements as "restricted cash" available only for the purpose of paying interest and Charges to SBA, or for the payment of any amounts due to SBA.

ARTICLE 5

Partners' Capital Contributions

Section 5.01 Capital Commitments.

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 the signature pages of this Agreement (and its counterparts) executed by each such Partner.

Section 5.02 Capital Contributions by Limited Partners.

- (a) **All capital contributions to the Partnership by Limited Partners must be in cash.**
- (b) Each Limited Partner will pay as its initial capital contribution to the Partnership, an amount equal to _____ percent (___%) of the Limited Partner's Commitment. The initial capital contribution will be made on the date of formation of the Partnership or on such other date as determined by the General Partner in its sole discretion. The General Partner will give the Limited Partners written notice of the amount and due date of the initial capital contribution. Such notice shall be given at least _____ (___) days before the date on which such capital contribution is due.³⁰
- (c) After the date of the initial capital contribution, the Limited Partners will pay the remaining balance 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 the Limited Partners notice before each such payment is due. Each such notice will be given not more than _____ (___) nor 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 of the Limited Partners' Commitments then due.

[Add any provision limiting the amount of Limited Partners' Commitments that may be called in any specified period, e.g., not more than 30% during the first 12 months.]³¹

Section 5.03 Capital Contributions by the General Partner.

- (a) **All capital contributions to the Partnership by the General Partner must be in cash.**

³⁰ If Section 1.4 requires a capital contribution on formation, this Section should be conformed.

³¹ 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 the Partnership's Capital Certificate filed with SBA.

- (b) The General Partner must pay its Commitment in installments at the same times and in the same percentage amounts as the Limited Partners.
- (c) If the Commitment of the General Partner is increased as a result of an increase in the Commitment of the Limited Partners 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.³²
- (d) When the Partnership is liquidated, the General Partner will contribute to the Partnership within the time period provided in Treasury Regulation § 1.704-1(b)(2)(ii)(b)(3) an amount equal to any deficit balance in its Capital Account after giving effect to its contribution of its Commitment as provided in Section 5.03(a) and (a).³³

Section 5.04 Additional Limited Partners and Increased Commitments.

From time to time after the date of this Agreement and on or before [state last date, if any, for admission of additional limited partners], the General Partner may admit one or more new Limited Partners (the "Additional Limited Partners") or permit any Limited Partner to increase its Commitment under the following terms and conditions:

- (a) Each Additional Limited Partner (and Limited Partner increasing its Commitment) must execute and deliver to the Partnership a counterpart of this Agreement, or other written instrument, which sets forth:
 - (i) the name and address of the Partner,
 - (ii) the Commitment of the Partner, and
 - (iii) in the case of an Additional Limited Partner, the agreement of the Partner to be bound by the terms of this Agreement.

³² Sections Section 5.03(b) and (c) address a situation where the Commitment of the General Partner is set at a percentage (e.g., 1%) of the Commitments of the limited partners. In this situation, the Commitment of the General Partner may increase when new Limited Partners are admitted or Limited Partners' Commitments otherwise increase. Section 5.04(a) deals with increases in the Commitments of Limited Partners.

³³ The General Partner's deficit restoration provision conforms to the safe harbor provisions of Treasury Regulation § 1.704-1(b) to ensure that the allocations are respected for tax purposes.

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).

[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.

- (a) **Notwithstanding any provision in this 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.**
- (b) **The provisions of this Section 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 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.

- (a) **Any Limited Partner 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 8.10 [or Section 8.12].**
- (b) **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.

- (a) **A copy of any opinion of counsel issued as described in Section 5.06 or Section 8.06 through Section 8.10 [or Section 8.12] 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.**
- (b) **An opinion rendered to the Partnership as provided in Section 5.06 or Section 8.06 through Section 8.10 [or Section 8.12] 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.

- (a) **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.**
- (b) **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.³⁴**
- (c) 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 8.11 .

³⁴ Note that § 17-502 of the Delaware RULPA 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.

Section 5.09 Failure to Make Required Capital Contributions.³⁵

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.³⁶

Section 5.10 Notice and Consent of SBA.

- (a) **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.**
- (b) **Unless SBA has given its prior consent or the provisions of subsection (c) of this Section 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 subsection (c) of this Section) no such agreement, release, settlement or action taken will be effective with respect to the Partnership or any Partner.**
- (c) **If the Partnership has given SBA thirty (30) days prior written notice of any proposed legal proceeding, arbitration or other action described under subsection (b) of this Section 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.**
- (d) **Any notice given by the Partnership to SBA under this Section must:**
 - (i) **be given by separate copies directed to each of the Investment Division and the Office of the General Counsel of SBA;**
 - (ii) **explicitly state in its caption or first sentence that the notice is being given with respect to a specified default by a Limited**

³⁵ 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.

³⁶ See also the rights of SBA as a third party beneficiary under Section 4.10.

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

- (iii) **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.**

[Sections 5.11 through 5.15 are optional and any of these provisions may be deleted in their entirety at the applicant's option.]

Section 5.11 Interest on Overdue Contributions.

In the event that any Limited Partner fails to make a contribution required under this Agreement within _____ (__) days after the date such contribution is due, then the General Partner may, in its sole discretion, elect to charge such Limited Partner interest at an annual rate equal to _____ percent (___%) on the amount due from the date such amount became due until the earlier of (i) the date on which such payment is received by the Partnership from such Limited Partner or (ii) the date of any notice given to such Limited Partner by the General Partner pursuant to Section 5.12 or Section 5.13 or (iii) the date on which such payment is received by the Partnership under Section 5.14 or Section 5.15. Any distributions to which such 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.

Section 5.12 Termination of a Limited Partner's Right to Make Further Capital Contributions.

In the event that any Limited Partner fails to make a contribution required under this Agreement within _____ (__) days after the date such contribution is due, 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 such Limited Partner, that:

- (a) Such Limited Partner's Commitment shall be deemed to be reduced to the amount of any contributions of capital timely made pursuant to this Agreement; and
- (b) Upon such notice (i) such 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 (ii) this Agreement shall be deemed amended to reflect such reduced Commitment.

Section 5.13 Forfeiture of a Limited Partner's Interest in the Partnership.³⁷

In the event that any Limited Partner fails to make a contribution required under this Agreement within _____ (__) days after notice by the General Partner to such Limited Partner that it has failed to make its contribution on the date such contribution was due, 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 such Limited Partner, that _____ percent (___%) of the interest of such 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 Limited Partner's failure to make such required contribution. As of the date such notice of forfeiture is given (i) the Limited Partner shall cease to be a Partner with respect to such forfeited interest; provided, however, that such forfeited Limited Partner shall cease to have any liability for the payment of the forfeited percentage of any capital contributions due at such time or in the future and (ii) the forfeited percentage of such Limited Partner's Capital Account shall be held by the Partnership and reallocated among the Capital Accounts of the Partners _____ percent (___%) to the General Partner and _____ percent (___%) to the Limited Partners (other than such forfeited Limited Partner) to be apportioned among such Limited Partners in accordance with their respective aggregate capital contributions.

Section 5.14 Withholding and Application of a Limited Partner's Distributions.

No part of any distribution shall be paid to any Limited 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 the amount then due to the Partnership from such Limited Partner or (ii) withhold such distribution until all amounts then due are paid to the Partnership by such Limited 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 Limited Partner. No interest shall be payable on the amount of any distribution withheld by the Partnership pursuant to this Section.

³⁷ The sum of the percentages of the forfeited interest which go to the Limited Partners and the General Partner must equal 100%. In addition, the elimination of a defaulting Limited Partner's liability for capital contributions after forfeiture is optional; if this liability is not expressly eliminated the defaulting Limited Partner will remain liable for capital contributions notwithstanding the forfeiture.

Section 5.15 Required Sale of a Limited Partner's Interest in the Partnership.³⁸

In the event that any Limited Partner fails to make a contribution required under the Agreement within _____ (__) days after notice by the General Partner to such Limited Partner that it has failed to make its contribution on the date such contribution was due, unless the General Partner has acted pursuant to Section 5.12 or Section 5.13, 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 default to such Limited Partner that such Limited Partner is in default. If the General Partner so elects to declare such Limited Partner in default (such Limited Partner being hereinafter referred to as the "Optionor"), then the other Limited Partners of the Partnership which are not in default (the "Optionees") and the General Partner shall have the right and option to acquire _____ percent (___%) of the Partnership interest, which shall include _____ percent (___%) of the Capital Account (the "Optioned Partnership Interest") of the Optionor on the following terms:

- (a) The General Partner shall give the Partners notice promptly after declaration of any such default. Such notice shall advise each Optionee of the portion of the Optioned Partnership Interest available to it and the price therefor. The portion available to each Optionee shall be that portion of the Optioned Partnership Interest that bears the same ratio to the Optioned Partnership Interest as each Optionee's capital contributions to the Partnership bears to the aggregate capital contributions to the Partnership, exclusive of the capital contributions to the Partnership of the Optionor. The aggregate price for the Optioned Partnership Interest shall be the assumption of the unpaid Commitment obligation (both that portion then due and amounts due in the future) of the Optionor (the "Option Price"). The Option Price for each Optionee shall be prorated according to the portion of the Optioned Partnership Interest purchased by each such Optionee so that the percentage of the unpaid Commitment assumed by each Optionee is the same as the percentage of the Optioned Partnership Interest purchased by such Optionee. The option granted hereunder shall be exercisable by each Optionee in whole only at any time within _____ (__) days of the date of the notice from the General Partner by the delivery to the General Partner of (i) a notice of exercise of option, and (ii) the capital contribution due in accordance with clause (e)(i). The General Partner shall forward the above notices of exercise of option received to the Optionor.
- (b) Should any Optionee not exercise its option within the period provided in subsection (a), the General Partner, within _____ (__) days of the end of such period, shall notify the other Optionees who have previously exercised their options in full, which Optionees shall have the right and option ratably

³⁸ The following items may be modified by the user: the option price (the assumption of the unpaid Commitment obligation in the Model).

among them to acquire the portion of the Optioned Partnership Interest not so acquired (the "Remaining Portion") within _____ (__) days of the date of the notice specified in this subsection on the same terms as provided in subsection (a).

- (c) The amount of the Remaining Portion not acquired by the Optionees pursuant to subsection (b) may be acquired by the General Partner within _____ (__) days of the expiration of the period specified in subsection (b) on the same terms as set forth in subsection (a).
- (d) The amount of the Remaining Portion not acquired by the Optionees and the General Partner pursuant to subsection (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 Optionees' option (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 Optionor's interest in the Partnership in excess of the Option Price therefor shall be retained by the Partnership and allocated among the Partners' Capital Accounts in proportion to the respective Partners' capital contributions.
- (e) Upon exercise of any option hereunder, such Optionee (or the General Partner, if it has exercised its rights pursuant to subsection (c)) shall be deemed to have assumed the portion of the Optionor's unpaid Commitment that constitutes the Option Price for the portion of the Optioned Partnership Interest purchased by such Optionee, and shall be obligated (i) to contribute to the Partnership the portion of the capital contribution then due from the Optionor equal to the percentage of the Optioned Partnership Interest purchased by such Optionee and (ii) to pay the same percentage of any further contributions which would have otherwise been due from such Optionor.
- (f) Upon the purchase by the General Partner of any portion of the Optioned Partnership Interest in the Partnership pursuant to subsection (c), the General Partner shall also become a Limited Partner to the extent of such interest.
- (g) Upon the purchase of any portion of any Optioned Partnership Interest by an Optionee, the General Partner or other person pursuant to this Section, the Optionor shall have no further rights or obligations under this Agreement with respect to such portion.
- (h) Upon the purchase of any portion of the Optioned 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 Optionee, 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 Optioned 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.

ARTICLE 6

Adjustment of Capital Accounts

Section 6.01 Establishment of Capital Accounts.

There will be established on the books of the Partnership an Opening Capital Account for each Partner in accordance with the definitions and methods of allocation prescribed in this Agreement.

Section 6.02 Time of Adjustment of Capital Accounts.

Allocations will be made to the Opening Capital Account of each Partner in accordance with Section 6.03, as of the following dates:

- (i) the close of each fiscal year of the Partnership;
- (ii) the day before the date of the admission of an Additional Limited Partner or increase in any Limited Partner's Commitment;
- (iii) the day before the dissolution of the Partnership;
- (iv) the date of a distribution; and
- (v) such other dates as this Agreement may provide.

Section 6.03 Adjustments to Capital Accounts.³⁹

- (a) As of the times stated in Section 6.02, allocations will be made to the Opening Capital Accounts of the Partners to arrive at each Partner's Closing Capital Account for the period in the following order and amounts:
 - (i) The amount of any capital contributions paid by each Partner during such period will be credited to the Partner's Opening Capital Account (other than capital contributions referred to in clause (i) of the definition of "Opening Capital Account" in Article 1); provided, however, that any such capital contribution will be credited to the Partner's Opening Capital Account on the later of the date the capital contribution was due or the date on which the capital contribution was actually received by the Partnership;

³⁹RULPA permits an agreement to provide how profits and losses will be allocated to partners, and provides a general provision in the event no provision is made in the agreement; see Delaware § 17-503.

- (ii) The amount of any distributions made to each Partner during the period will be debited against the Partner's Opening Capital Account;
- (iii) Net Profits will be credited and Net Losses will be debited to the Opening Capital Accounts of the Partners as follows:

[State allocations among the General and Limited Partners.]

- (b) Notwithstanding the provisions of Section 6.03(a)(iii):
 - (i) at such time as the Capital Account of the General Partner or any Limited Partner is reduced to an amount equal to the aggregate capital contributions of such Partner (less all distributions to such Partner), the balance of all Net Losses will be allocated:
 - (A) first, to the remaining Capital Accounts of the General Partner and Limited Partners which have not been reduced to zero (to be apportioned among them in accordance with their respective positive Capital Accounts); and
 - (B) second, after the Capital Accounts of all Limited Partners have been reduced to zero, then the balance to the General Partner.
 - (ii) If Net Losses are allocated in accordance with the foregoing clause (i), any Net Profits that are required to be allocated after such special allocation of Net Losses as provided in the foregoing clause will be allocated:
 - (A) first, to the General Partner until the effect of the special allocation of Net Losses under clause (i)(B) is reversed and eliminated; and
 - (B) second, to the General Partner and Limited Partners to whom the allocation of such Net Losses has been made under clause (i)(A) until the effect of such special allocation of Net Losses has been reversed and eliminated.
- (c) To the extent not otherwise accomplished by the provisions of Section 6.03(a) and Section 6.03(b) , the Opening Capital Accounts of the Partners will be adjusted to effect any allocation of any item of income, gain, loss, deduction or credit to a Partner required by the Code.

Section 6.04 Tax Matters.

- (a) If at the end of a fiscal year of the Partnership, a Limited Partner unexpectedly receives an adjustment, allocation, or distribution described in

clauses (4), (5) and (6) of Treasury Regulation § 1.704 - 1(b)(2)(ii) and that adjustment, allocation, or distribution reduces that Limited Partner's Opening Capital Account below zero (0), then the Limited Partner will be allocated all items of income and gain of the Partnership for that year and for all subsequent fiscal years until the deficit balance has been eliminated as provided in Treasury Regulation § 1.704 - 1(b)(2)(ii)(d), as quickly as possible. If any such unexpected adjustment, allocation or distribution creates a deficit balance in the Opening Capital Accounts of more than one Limited Partner in any fiscal year, all items of income and gain of the Partnership for the fiscal year and all subsequent fiscal years will be allocated among all such Limited Partners in proportion to their respective deficit balances until such balances have been eliminated. If any allocation is made pursuant to this paragraph, subsequent allocations shall be made (in a manner consistent with this paragraph) to offset the effects of such prior allocation. This provision is intended to qualify as a "qualified income offset" within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(d).⁴⁰

- (b) For Federal, state and local income tax purposes, each item of Partnership income, credit, gain or loss will be allocated among the Partners as provided in Section 6.03.
- (c) The General Partner has the power to make such allocations and to take such actions necessary under the Code or other applicable law to effect and to maintain the substantial economic effect of allocations made to the Partners under Section 704(b) of the Code. All allocations made and other actions taken by the General Partner under this paragraph will be consistent to the maximum extent possible with the provisions of this Agreement.
- (d) The General Partner is the "tax matters partner," as the term is used in the Code.
- (e) 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 any election or other action on behalf of the Partnership permitted under the Code with respect to the election of that tax classification.
- (f) 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.

⁴⁰This is a "qualified income offset" provision intended to conform to the provisions of Treasury Regulation § 1.704-1(b), to ensure that the Partnership allocations are respected for tax purposes.

- (g) 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.

- (h) Anything contained in this Agreement to the contrary notwithstanding, if the Partnership is deemed liquidated within the meaning of Treasury Regulation § 1.704-1(b) (2)(ii)(g) but has not dissolved under Section 8.01(a), then the assets of the Partnership will, after provision for payment to creditors, be deemed distributed to the Partners in accordance with Treasury Regulation § 1.704- 1(b)(2)(ii)(b)(2) and immediately recontributed to the Partnership and the General Partner must make the contributions contemplated by Section 5.03(d).

ARTICLE 7
Distributions

Section 7.01 **Distributions to Partners.**⁴¹

- (a) **The Partnership must make distributions of cash at such times as the SBIC Act requires and may make distributions of cash and/or property at such other times as the SBIC Act permits and as are determined under this Agreement.**⁴²

- (b) **All distributions must be made in the following order and amounts:**
 - (i) **to SBA in an amount equal to the interest and Charges due and payable on the Partnership's outstanding Debentures;**

 - (ii) **if all amounts required to be distributed under clause (i) have been distributed, then to SBA and the Partners, to be apportioned between SBA on the one hand and the General Partner and the Limited Partners on the other hand, as required by 13 C.F.R. § 107.1180(d);**

 - (iii) **provided that, if as of the date of the distribution, there is no Outstanding Leverage or other amounts due SBA, then any amount to be distributed under this clause (iii) will be distributed one hundred percent (100%) to the General Partner and the Limited Partners.**

Section 7.02 **Distributions of Noncash Assets in Kind.**⁴³

- (a) Subject to the provisions of the SBIC Act and the provisions of this Section, the Partnership at any time may distribute to the General Partner and the Limited Partners, under Section 7.01(b)(ii) or (iii), Noncash Assets in kind.⁴⁴

- (b) Any distribution of Noncash Assets will be made pro rata among the Partners (based upon the respective amounts which each Partner would be entitled to

⁴¹RULPA 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 Delaware § 17-504.

⁴²See 13 C.F.R. § 107.585 relating to voluntary decreases in a Licensee's regulatory capital.

⁴³RULPA specifically addresses noncash distributions to partners; see Delaware RULPA § 17-605.

⁴⁴See 13 C.F.R. § 107.585 relating to voluntary decreases in a Licensee's regulatory capital.

receive if the distribution were made in cash) with respect to the distribution of each Noncash Asset.

- (c) Distributions of Noncash Assets in kind under Section 7.01(b)(ii) will be made only (i) if the Noncash Assets are Distributable Securities and (ii) with the prior written approval of SBA.
- (d) Distributions of Noncash Assets in kind under Section 7.01(b)(iii) before the dissolution of the Partnership will be made only (i) if the Noncash Assets are Distributable Securities or (ii) with the prior approval of _____ percent (___%) in interest of the Limited Partners.
- (e) Subject to the SBIC Act, Noncash Assets distributed in kind under this Section 7.02 will be subject to such conditions and restrictions as are legally required, including, without limitation, such conditions and restrictions required to assure compliance by the Partners and/or the Partnership with the aggregation rules and volume limitations under Rule 144 promulgated under the Securities Act.

[Add any other restrictions related to distributions of Noncash Assets.]

Section 7.03 Apportionment of Distributions Among the General Partner and Limited Partners

All amounts to be distributed to the General Partner and the Limited Partners under Section 7.01(b)(ii) and (iii) will be apportioned among the General Partner and the Limited Partners as follows:

[State provisions for distributions among General and Limited Partners.]

Section 7.04 Distributions Violative of the Act Prohibited.⁴⁵

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 [*cite section of state RULPA*] of the Act.

⁴⁵Generally RULPA prohibits distributions which would cause a Partnership to become insolvent; see Delaware RULPA § 17-607.

ARTICLE 8

Dissolution, Liquidation, Winding Up and Withdrawal

Section 8.01 Dissolution.⁴⁶

- (a) **The Partnership will be dissolved upon the first to occur of the following:**
- (i) subject to Section 8.04 of this Agreement, an event of withdrawal (as defined in Section [*cite section of state RULPA*] of the Act)⁴⁷ of the General Partner;
 - (ii) **the later of:**
 - (A) **the close of business on [*initial date for dissolution*] ; or**
 - (B) **ten (10) years from the formation of the Partnership; or**
 - (C) **two years after all Outstanding Leverage has matured; or**⁴⁸
 - (iii) the determination of the Partners to dissolve and terminate the Partnership as provided in Section 8.01(c).
- (b) **The Partnership will not dissolve upon the withdrawal, dissolution, bankruptcy, death or adjudication of incompetence or insanity of any Limited Partner.**
- (c) _____ percent (___ %) in interest of the Limited Partners may elect to dissolve the Partnership by giving notice to each Partner and SBA of the election. Any notice of an election to dissolve the Partnership may only be given:
- (i) **on or after the later to occur of: (A) [*initial date for dissolution*] or (B) ten (10) years from the formation of the Partnership;**
 - (ii) **if all Outstanding Leverage has been repaid or redeemed; and**

⁴⁶RULPA addresses issues related to the dissolution of a limited partnership; see Delaware RULPA §§ 17-801 and 17-802.

⁴⁷Generally RULPA provides a definition of events which result in the automatic withdrawal of the General Partner; see Delaware RULPA §§ 17-101(3) and 17-402.

⁴⁸See 13 C.F.R. § 107.160(c)(1) which prescribes the minimum duration for an SBIC in limited partnership form.

- (iii) **if all amounts due SBA, its agent or trustee have been paid.**⁴⁹

Any election to dissolve the Partnership given under this Section 8.01(c) will not be effective until the later of: (A) _____ (____) days from the date the notice is given to all parties or (B) the effective date of dissolution stated in the notice.

- (d) _____ percent (____ %) in interest of the Limited Partners and the General Partner may elect to extend the date set forth in Section 8.01(a)(ii)(A) and Section 8.01(c)(i) at any time within [*state period*] prior to such date. Such date can be extended by any such election for an additional period of up to [*state period*], but may not be extended by this clause beyond [*state maximum date, if any*].

Section 8.02 Winding Up.

- (a) Subject to the SBIC Act and Section 8.03, 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 the holders of _____ percent (____ %) in interest of the Limited Partners.
- (b) Within a reasonable period⁵⁰ (and subject to the requirements of Treasury Regulation §§ 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.

Section 8.03 Withdrawal of the General Partner.⁵¹

- (a) Except as provided in Section 4.03, the General Partner may not withdraw as the general partner of the Partnership without the approval of _____ percent (____ %) in interest of the Limited Partners.

⁴⁹See 13 C.F.R. § 107.160(c)(1) which specifies the minimum duration and other requirements that must be met before an SBIC in limited partnership form can elect to dissolve.

⁵⁰Specify 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.

⁵¹RULPA specifically addresses the issues related to withdrawal by a general partner; see Delaware RULPA §§ 17-602 and 17-801(3).

- (b) **To the extent required by the SBIC Act, no transfer of the interest of the General Partner, or any portion of such interest, will be effective without the consent of SBA.**
- (c) Except as provided in Section 8.03(b), Section 10.01(b), Section 10.01(d), or Section 10.01(f), 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 his written acceptance and adoption of all the terms and provisions of this Agreement. Such person will acquire no more than the interest of the General Partner in the Partnership as it existed on the date of the transfer, but will not be entitled to any priority given to the Limited Partners, their successors and assigns, in respect of the interest. 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, and 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.⁵²
- (d) 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.
- (e) The General Partner may be removed for Cause upon the affirmative vote of a [insert applicable percentage vote] in interest of the Limited Partners (excluding any Limited Partner that is an Affiliate or Associate of the General Partner). For purposes of this Agreement, "Cause" shall mean [DEFINITION – subject to SBA approval].

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.

⁵²This 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 also 13 C.F.R. § 107.420 regarding SBA approval for exercise of control rights by a new owner, and 13 C.F.R. §§ 107.400 through 107.450 generally regarding changes of ownership or control of an SBIC.

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

Upon the occurrence of an event of withdrawal (as defined in the Act) of the General Partner, the Partnership will not be dissolved, if, within ninety (90) days after the event of withdrawal, ___ percent (___%) in interest⁵³ 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 (subject to the 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.⁵⁴

Section 8.06 Withdrawal by ERISA Regulated Pension Plans.⁵⁵

Notwithstanding any other provision of this Agreement, any Limited Partner that is an "employee benefit plan" within the meaning of, and subject to the provisions of, ERISA, 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 (other than a breach of the fiduciary duties of any such person based upon the investment strategy or performance of the Partnership) 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.

⁵³RULPA generally allows the limited partners to continue a limited partnership after the withdrawal of the general partner; see Delaware RULPA § 17-801(3).

⁵⁴This provision addresses the general RULPA provisions on withdrawal; see Delaware RULPA §§ 17-602, 17-603 and 17-604.

⁵⁵See also Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

Section 8.07 Withdrawal by Government Plans Complying with State and Local Law.⁵⁶

Notwithstanding any other provision of this Agreement, any Limited Partner that is a "government plan" within the meaning of ERISA 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 "government plan", the withdrawal of such Limited Partner from the Partnership to such extent is required to enable the Limited Partner or the Partnership to avoid a violation (other than a violation based upon the investment performance of the Partnership) of the applicable state law.

Section 8.08 Withdrawal by Government Plans Complying with ERISA.⁵⁷

Notwithstanding any other provision of this Agreement, any Limited Partner that is a "government plan" within the meaning of ERISA may elect to withdraw from the Partnership in whole or in part, if the "government plan" obtains an opinion of counsel to the effect that, as a result of ERISA, (i) the withdrawal of the "government plan" from the Partnership to such extent would be required if it were an "employee benefit plan" within the meaning of, and subject to the provisions of, ERISA, to enable the "government plan" to avoid a violation of, or breach of the fiduciary duties of any person under ERISA (other than a breach of the fiduciary duties of any such person based upon the investment strategy or performance of the Partnership) 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 "government plan" for the purposes of ERISA, if the "government plan" were an "employee benefit plan" within the meaning of, and subject to the provisions of, ERISA and would be subject to the provisions of ERISA to substantially the same extent as if owned directly by the "government plan."

Section 8.09 Withdrawal by Tax Exempt Limited Partners.⁵⁸

Notwithstanding any other provision of this Agreement, any Limited Partner that is exempt from taxation under Section 501(a) or 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

⁵⁶See also Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

⁵⁷See also Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

⁵⁸See also Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

exempt Limited Partner to avoid loss of its tax exempt status under Section 501(a) or 501(c)(3) of the Code.

Section 8.10 Withdrawal by Registered Investment Companies.⁵⁹

Notwithstanding any other provision of this Agreement, 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 the requirement that the Partnership register as an investment company under the Investment Company Act.

Section 8.11 Distributions on Withdrawal.⁶⁰

- (a) **Subject to the provisions of this Section, upon withdrawal under any provision of this Agreement, a Limited Partner will have the rights to distributions provided in the Act with respect to distributions to be made to limited partners upon withdrawal from a limited partnership.**
- (b) **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.**
- (c) **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.**⁶¹

[State any additional provisions relating to distributions to the General Partner or Limited Partners on withdrawal.]

⁵⁹See also Sections 5.06, 5.07 and 5.08 with respect to the requirements for an opinion of counsel to be effective.

⁶⁰RULPA addresses distributions on withdrawal; see Delaware RULPA § 17-604.

⁶¹Unless an agreement otherwise provides, RULPA provides that at the time a partner is entitled to receive a distribution the partner has the rights of a creditor with respect to the amount of the distribution. See Delaware RULPA § 17-606.

Section 8.12 Withdrawal by Banks

(a) If pursuant to Section 10.07(b) a Limited Partner which is subject to regulation under the Banking Acts has requested an amendment to this Agreement in 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, 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 (including 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 shall, subject to SBA approval, either (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; or (ii) permit the withdrawal of the Limited Partner and apply the provisions of Section 8.12; or (iii) dissolve the Partnership. Any opinion delivered to the General Partner pursuant to this Section 8.11 must be acceptable to the General Partner (which acceptance shall not be unreasonably withheld) and SBA.

(b) In addition, 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 or Section 8.12, and if a Limited Partner which is a bank, bank holding company, savings and loan association, savings association holding company or an Affiliate thereof delivers to the General Partner pursuant to Section 8.10 an opinion of counsel acceptable to the General Partner and the SBA 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, approved by SBA to the extent required by the SBIC Act, by, for example, amending the Agreement, having the interests of the withdrawing Limited Partner purchased, disposing of Portfolio Securities, or otherwise, then the Adversely Affected Banking Entity shall be entitled to reduce its Commitment by the smallest amount which would permit that Limited Partner to be in compliance with the Banking Acts and/or to withdraw from the Partnership the smallest portion of its Limited Partner interest which after such withdrawal would result in that Limited Partner being in compliance with the Banking Acts. Alternatively, the Adversely Affected Banking Entity may, but shall not be required to, subject to compliance with the other provisions of this Agreement and assisted by the Partnership, sell that portion of its Limited Partnership interest which after the sale would result in the Adversely Affected Banking Entity being in compliance with the Banking Acts.

(c) If a Limited Partner which is a bank holding company or a savings association holding company or an Affiliate thereof must rely on Section 4(k) of the Bank Holding Company Act of 1956, as amended, to qualify its investment in the Partnership as a legally permitted investment, then that Limited Partner can reduce its ownership interest in the Partnership by withdrawal to the minimum extent necessary so as not to be an "affiliate" of the Partnership under Section 23A

of the Federal Reserve Act, as amended.

(d) If a Limited Partner withdraws pursuant to Section 8.12, the provisions of Section 8.11 governing withdrawal shall apply.

Accounts, Reports and Auditors

Section 9.01 Books of Account.

- (a) **The Partnership must maintain books and records in accordance with the provisions of the SBIC Act⁶² regarding financial accounts and reporting and, except as otherwise provided in this Agreement, generally accepted accounting principles.**
- (b) The books and records of the Partnership must be kept at the principal place of business of the Partnership. Each Partner will have access, upon reasonable notice and during regular business hours, to all books and records of the Partnership for all proper purposes as a Partner of the Partnership. Each Partner will have the right to receive copies of such books and records, subject to payment of the reasonable costs of such copies.⁶³
- (c) The Partnership will not be required to disclose, however, any confidential or proprietary information received by the Partnership in connection with its investment operations, except for any disclosure to SBA required by the SBIC Act.⁶⁴

Section 9.02 Audit and Report.

- (a) **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.**
- (b) Within ____ (__) days of the end of each fiscal year, the Partnership must prepare and mail 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:⁶⁵
 - (i) a balance sheet of the Partnership;
 - (ii) a statement of operations for the year;

⁶²See 13 C.F.R. § 107.600 with respect to recordkeeping requirements for an SBIC.

⁶³RULPA discusses partners' access to a partnership's books and records; see Delaware RULPA § 17-305.

⁶⁴RULPA specifically addresses partners' access to confidential information held by the partnership; see Delaware RULPA § 17-305(b).

⁶⁵Specify any additional financial reports.

- (iii) a statement of cash flows;
- (iv) a statement of changes in partners' capital, and such Partner's Closing Capital Account;
- (v) a statement of the Assets, valued as provided under this Agreement;
- (vi) 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;
- (vii) any other information the General Partner, after consultation with any Limited Partner requesting the same, deems necessary or appropriate;
- (viii) 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
- (ix) 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.

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

- (c) Within _____ (___) days of the end of each of the [*e.g., first three*] fiscal [*specify fiscal quarters or other fiscal period*], the Partnership will prepare and mail 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(b) [*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.

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.

ARTICLE 10

Miscellaneous

Section 10.01 Assignability.⁶⁶

- (a) No Limited Partner may assign, pledge or otherwise grant a security interest in its or his interest in the Partnership or in this Agreement, except:
 - (i) by operation of law;
 - (ii) to a receiver or trustee in bankruptcy for that Partner; or
 - (iii) with the prior written consent of the General Partner (which consent may be withheld in the reasonable discretion of the General Partner).⁶⁷

[Add any additional specifically permitted transfer]

- (b) **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.**⁶⁸
- (c) **The General Partner may not 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.**
- (d) **No transfer of any interest in the Partnership will be allowed if such transfer or the actions to be taken in connection with that transfer would:**

⁶⁶RULPA discusses the effects of assignment of an interest in a limited partnership; see Delaware RULPA § 17-702. See 13 C.F.R. §§ 107.400 through 107.450 regarding changes of ownership or control of an SBIC.

⁶⁷Restricted transferability is no longer required for classification of the Partnership as a partnership for federal tax purposes and alternative language may be substituted if necessary. Note that some restrictions on transfer may be needed for the Partnership to avoid tax classification as a publicly traded limited partnership.

⁶⁸See 13 C.F.R. § 107.400(a) with respect to transfers of 10% or more of the partnership capital of an SBIC.

- (i) **result in any violation of the SBIC Act;**
- (ii) **result in a violation of any law, rule or regulation by the Partnership;**
- (iii) **cause the termination or dissolution of the Partnership;**
- (iv) **cause the Partnership to be classified other than as a partnership for Federal income tax purposes;**
- (v) result in the transfer of a limited partnership interest with a cost of less than \$20,000 or cause the Partnership to be classified as a "publicly traded partnership" within the meaning of Section 469(k)(2) of the Code or for the purposes of Section 512(c)(2) of the Code;
- (vi) result in a violation of the Securities Act;
- (vii) require the Partnership to register as an investment company under the Investment Company Act;
- (viii) require the Partnership, the General Partner or the Investment Adviser/Manager to register as an investment adviser under the Investment Advisers Act; or
- (ix) result in a termination of the Partnership for Federal or state income tax purposes.

[Add other restrictions desired.]

- (e) 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.⁶⁹
- (f) Any transferee of any interest in the Partnership by a transfer in compliance with this Section will become a substituted Partner under this Agreement upon delivery and execution of a counterpart of this Agreement, will have the same rights and responsibilities under this Agreement as its assignor and will succeed to the Capital Account and balances thereof.⁷⁰

⁶⁹RULPA addresses the effect of a limited partner's incapacity; see Delaware RULPA § 17-705.

⁷⁰RULPA addresses the rights of transferees of limited partnership interests; see Delaware RULPA § 17-704.

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 Gender.

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

Section 10.04 Notices.

- (a) **All notices under this Agreement must be in writing and may be given by personal delivery, express delivery service, private courier service or registered or certified mail.**
- (b) **A notice is deemed to have been given:**
 - (i) **by personal delivery, express delivery service, or private courier service, as of the day of delivery of the notice to the addressee; and**
 - (ii) **by mail, as of the fifth (5th) day after the notice is mailed.**
- (c) **Notices must be sent to:**
 - (i) **the Partnership, at the address of the General Partner in the Certificate of Limited Partnership, or such other address or addresses as to which the Partners have been given notice;**
 - (ii) **the Limited Partners, at the addresses in 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; and**
 - (iii) **SBA, at the address of the Investment Division 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.**

Section 10.05 Consents and Approvals.

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:

- (i) **given by such party in writing, and**

- (ii) **delivered by such party to the party requesting the consent or approval in the manner provided for notices to such party under Section 10.04.**

Section 10.06 Counterparts.

This Agreement and any amendment to this Agreement may be executed in more than one counterpart with the same effect as if the parties executed one counterpart as of the day and year first above written on this Agreement or any such amendment. To be effective, each separate counterpart must be executed by the General Partner.

Section 10.07 Amendments.

- (a) **This Agreement may not be amended except by an instrument in writing executed by the holders of _____ percent (__ %) 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.**
- (b) In addition to the requirements in Section 10.06 and Section 10.07(a), any amendment that:
 - (i) increases the amount of a Limited Partner's Commitment requires that Partner's consent;
 - (ii) may cause a Limited Partner to become liable as a general partner of the Partnership requires the written consent of all Partners; or
 - (iii) amends this Section requires the consent of all Partners.

[Add any other restrictions on or requirements for amendments to this Agreement.]

- (c) Each Limited Partner consents to:
 - (i) the admission of Additional Limited Partners and the increase in any Limited Partner's Commitment in accordance with Section 5.04;
 - (ii) the transfer of a Partner's interest in accordance with Section 10.01 and the admission of a substituted Partner under such transfer;
 - (iii) any amendment of this Agreement or the Certificate of Limited Partnership necessary to effect such transfer or admission; and
 - (iv) any amendment of this Agreement or the Certificate of Limited Partnership to comply with or conform to any amendments of applicable laws governing the Partnership.
- (d) **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 to this Agreement.**
- (e) **Copies of any Certificate of Amendment to the Certificate of Limited Partnership, and any amendment to this Agreement must be distributed in the same manner as provided for notices in Section 10.04.**
- (f) 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 such amendments to this Agreement and the Certificate of Limited Partnership 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. No amendment shall be made pursuant to Section 10.07(f) 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. In the event the General Partner does not effect the amendment in accordance with Section 10.07(b) 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 8.10 and Section 8.12, as applicable.

Section 10.08 Power of Attorney.

- (a) 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, in its name, place and stead, to make, execute, sign and file:
 - (i) any amendments of this Agreement necessary to reflect:
 - (A) the transfer of a Partner's interest in accordance with Section 10.01;
 - (B) the admission of a substituted Limited Partner under Section 10.01;

- (C) the admission of an Additional Limited Partner under Section 5.04;
 - (D) an amendment of this Agreement adopted by the Partners under Section 10.07; and
- (ii) 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 [*name of state of organization*] 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.
- (b) The General Partner and its partners, as representatives and attorneys-in-fact, do not have any rights, powers or authority to amend or modify this Agreement when acting in such capacity, except as expressly provided in this Agreement. This power of attorney is coupled with an interest and will continue in full force and effect notwithstanding the subsequent death or incapacity of such party.

Section 10.09 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 10.10 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 10.11 Entire Agreement.

This Agreement, and all other written agreements executed by or on behalf of the General Partner and/or the Limited Partners and executed or approved in writing by SBA, up to and including the date of this Agreement (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. No promises, covenants, representations or warranties of any character or nature other than those expressly stated in this Agreement and the SBA Agreements have been made to induce any party to enter into this Agreement or any SBA Agreement.

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

General Partner:

[Name of General Partner]

By: _____
General Partner

Commitment Amount:

\$ _____

Limited Partner:

[Name of Limited Partner]

By: _____
Name:
Title:

Commitment Amount:

\$ _____

Address of Limited Partner:

Federal Tax I.D. Number:

SCHEDULE A

Partners and Commitments

<u>Partners:</u>	<u>Commitments</u>
<u>Limited Partners:</u>	
[<u>Name and address of Limited Partner</u>]	\$ [<u>Commitment Amount of Limited Partner</u>]
[<u>Name and address of Limited Partner</u>]	\$ [<u>Commitment Amount of Limited Partner</u>]
<u>Subtotal</u>	\$ _____
<u>General Partner:</u>	
[<u>Name and address of General Partner</u>]	\$ [<u>Commitment Amount of General Partner</u>]
<u>Subtotal</u>	\$ _____
<u>TOTAL</u>	\$ _____

EXHIBIT I

Valuation Guidelines⁷¹

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. [...at least annually - 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)

⁷¹The 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 under "Valuation Guidelines for SBICs."

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.

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 PROVISIONS

Add the following 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 limited partners 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 capital 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.

§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 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(d) *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 commitment 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 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 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.

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.

Assignability of Class B Partnership Interests. 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.