INSTITUTIONAL INVESTOR COUNCIL EXECUTIVE COMMITTEE
INVESTOR TOOLKIT

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PREA Plan Sponsor Council Executive Committee
Investor Toolkit

Investors provide capital to managers to invest in real estate with the goal of maximizing return while mitigating risk consistent with the approved investment strategy. To achieve this goal, the general partner and limited partner need a relationship based upon the highest standards of alignment, governance, transparency and disclosure. To that end, the PREA Plan Sponsor Council Executive Committee has compiled this Investor Toolkit to assist LPs in manager underwriting and in negotiating appropriate terms and conditions.

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[1] The entire REIS Handbook may be found at www.prea.org.

SECTION 1

DUE DILIGENCE GUIDELINES
FOR REVIEW OF PROSPECTIVE MANAGERS

(THE "DUE DILIGENCE GUIDELINES")

Due Diligence Guidelines for Review of Prospective Managers

This section is designed for review of both separate account and commingled fund managers. For commingled fund reviews, please also refer to other tools such as the ILPA Private Equity Principles (Appendix 1) and the enclosed LPA Checklist and Model Provisions. Note that the term "Manager" refers to the fund's sponsor and investment manager. "GP" refers to entity that serves as the fund's general partner or managing member. "LP" refers to a fund investor that is unaffiliated with the Manager.

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1) Organization and Personnel

a) Document the history of the organization
   i) Growth in firm AUM[2]
   ii) Appropriateness of firm growth in response to AUM growth
   iii) Is real estate the only strategy of the firm?
      (1) If so, does Manager have multiple real estate strategies and how are resources allocated among those platforms?
      (2) If not, how does firm allocate resources to the real estate team?
      (3) If not, how critical is the real estate asset class to the firm?
   iv) Does the firm intend to grow into other asset classes?

b) Assess the organization's reputation

c) Competition and competitive advantage
   i) Identify Manager's competitive set
   ii) Identify Manager's competitive advantages

d) Understand the organization's legal structure
   i) Who owns the firm?
      (1) If privately owned, owned by the firm's principals?
      (2) How broad is the ownership of the firm among the investment professionals?
   ii) Strength of ownership/sufficiency of capital base
   iii) How is the firm financed?
      (1) Is there substantial corporate debt, or substantial debt that is recourse to the principals (excluding household debt)?
   iv) Do the firm and/or its principals possess substantial clawback liability to prior funds?

e) Determine if there are any criminal, civil, or administrative proceedings pending or threatened against the firm or its principals
   i) Understand the history of proceedings

f) Identify other office locations

g) Obtain an organization chart and employee tenure

h) Assess the appropriateness of
   i) Structure and size
   ii) Positions and experience level
   iii) Reasons for and level of turnover at each level

i) Assess Manager's current investment capacity

j) Assess internal communication

[2] Calculated in accordance with the October 2011 NCREIF Discussion Paper on Assets under Management Reporting

i) Decision-making
ii) Approval processes
iii) Other formal communications
iv) Other informal communications

k) Key principals including department heads
   i) Assess:
      (1) Educational backgrounds
      (2) Employment history
      (3) Applicable experience
      (4) Applicable knowledge
      (5) Leadership abilities
      (6) Communication styles
      (7) Market reputation

l) Administrative and back office personnel
   i) Assess
      (1) Level of resources
      (2) Organization of resources
      (3) Skill levels

m) Personal investment, compensation and profit participation
   i) Assess
      (1) The level of personal investment by each principal and employee
      (2) Determine what percentage of each principal's net worth is invested; meaningful to the principals and to the fund?
      (3) The compensation structure
         (a) Percentage of base, bonus, and carry respectively
      (4) The profit participation

n) Identify any current or potential conflicts of interest

o) Identify and assess outside support
   i) Legal counsel
   ii) Audit activities
   iii) Research activities
   iv) Other outsourced activities, if any

p) Social responsibility:
   i) Manager's sustainability policy
   ii) Manager's responsible contracting policy

2) Investment Strategy

a) Obtain a clear and concise understanding of the strategy
b) Determine what makes Manager qualified to execute it
c) Determine the risks
d) Describe the market conditions in which the strategy will perform best/worst
e) Identify the key determinants to successful implementation (timing, investment pace, diversification of geography/asset type/etc.)
f) Assess Manager's past performance and future abilities with regards to those key determinants
g) Verify Manager's implementation of the strategy with previous investors
h) Assess the potential of the strategy going forward
i) Identify Manager's problem-solving process and assess its ability to deal with unanticipated events
j) Assess any conflicts of interest, including competing strategies by Manager and how these have been/will be handled
k) Assess transaction sourcing capabilities
    i) Network
    ii) Off-market sourcing capabilities
    iii) Underwriting of expected return, risks, and exit
    iv) Speed of execution
l) Review exit strategy and liquidity mechanisms

3) Performance

a) Review historical returns
    i) Relative to peer / benchmark performance
    ii) Realized versus unrealized
    iii) Extraordinary events/items that affected returns
b) Recalculate sample of return history:
    i) Obtain fund return details:
        (1) IRR basis
        (2) Time-weighted return basis
        (3) Equity multiple basis
    ii) Recalculate project/company-level returns
    iii) Review fees and promotes paid to third parties
    iv) Review appropriateness of partnership level expenses
    v) Verify calculation of fees

vi) Recalculate net return to investors
vii) Verify historical returns with a previous investor
viii) Review auditor opinions on prior funds

c) Assess components of return:
i) Cash flow versus appreciation
ii) Alpha versus beta

d) Assess the level of risk taken to achieve the returns
i) Strategic
ii) Leverage
iii) Foreign exchange

e) Review the rate of contributions and distributions

4) Compensation

a) Document all fees to be paid to Manager during the life of the fund
i) Management fee level, timing and level of service included, plus any other fees
ii) Management fee per professional
iii) Determine fee drag (gross-to-net return spread) and impact on performance

b) Determine if any investor or outside party shares any of the fees including rebates

c) Assess the appropriateness of total fees to management's costs
i) Estimate and evaluate the management platform profit margin
ii) Contrast to level of expected/target performance-related income
iii) Consider appropriateness of fees relative to the risk/return profile (for example, REITs, debt, development, etc.)
iv) Determine alignment of Manager with LPs through fee structure (acquisition and management, origination fees, etc.)
(1) Incentives created by fees based on gross investment price versus equity invested versus market value of gross assets or equity
(2) Assess minimum base management fees
(3) Incentives created by acquisition versus disposition-based fees

5) Investor Base

a) Identify Manager's historic investor base and dollars committed
i) Length of investor relationships
ii) Investor dependency: Do one or two investors represent an inordinate amount of capital committed?
(1) Do those investors drive the decision-making, strategy, or exercise more control than other LPs, either directly or indirectly?

(2) If those investor(s) were to terminate Manager, would that pose a risk to the firm's survival?

b) Assess Manager's current and future fund investor base and dollars committed
   i) Obtain list of other LPs considering or who have committed to the fund being raised
   ii) If any prior investor is not planning a commitment to future funds, determine rationale
c) Review underwriting strength and transparency of other LPs
d) Review consistency of LP co-investor investment strategy and liquidity needs

6) Reporting and Investor Communications

a) Review Manager's historic reporting processes
   i) REIS compliant? (See Appendix 4)
   ii) Contributes data to industry-accepted indices such as the PREA/IPD Index?
b) Assess quality of communication and interaction between LPs and Manager
c) Assess the adequacy, completeness and timeliness of:
   i) Quarterly reports
   ii) Annual reports
   iii) Annual meetings
   iv) Legal communications
   v) Other communications
d) Assess communication process
   i) Web site access
   ii) Email distribution
   iii) Physical distribution
e) Obtain contact information for:
   i) Key principals
   ii) Investor relations
   iii) Accounting
   iv) Tax
   v) Legal

7) Office Site Visit

a) Meet with key department personnel
   i) Heads of acquisitions and underwriting/due diligence
   ii) Head of dispositions
   iii) Heads of asset management and portfolio management
   iv) Head of fund management

v) Head of finance
vi) Head of research
vii) Head of investor relations
viii) Head of back office/accounting
ix) Head of legal and/or tax
x) Internal and external investment committee members
xi) Internal representatives of advisory boards/committees

b) Meet with representative support personnel from relevant departments
c) Assess competency, motivation and collaboration
d) Assess general atmosphere of work environment
   i) Leadership style—team approach or single decision-maker
   ii) Formality/informality
   iii) Demeanor of office
   iv) As a place to work
e) Observe physical conditions of space:
   i) Layout of offices and personnel
   ii) General work flow within office
   iii) Overall organization of common spaces
   iv) Organized nature of individual offices
   v) Cleanliness of space and condition of furnishings
f) Assess location
   i) Appropriateness of city
   ii) Appropriateness of submarket
   iii) Importance of location to work
g) Observe computer systems and software capabilities
   i) Acquisition and asset management systems
   ii) Financial reporting and portfolio analysis tools
h) Understand lease arrangements
   i) Length of lease
   ii) Above- or below-market rent structure

8) Reference Checks

a) Perform investor reference checks with regard to the following:
   i) Prior fund performance (general and specifically returns)
   ii) Appropriateness of strategy
   iii) Ability to execute strategy

iv) History of Manager's sticking to articulated strategy
v) Overall assessment of Manager
vi) Competition and competitive advantages
vii) Conflict of interest issues
viii) Other risks
ix) Reporting and communication
x) General recommendation and intention to reinvest

b) Perform investment team and/or key person reference checks
c) Perform service provider reference checks
d) Perform operating partner reference checks

9) Background Checks

a) On key employees
i) County assessor
ii) Previous employment verification
iii) Education verification
iv) Federal bankruptcy court
v) Criminal court
vi) UCC, liens
vii) Terrorism
viii) Sex offender
ix) Drivers license verification
x) Vehicle registrations
xi) Civil courts
xii) News articles

b) On organization/entities
i) SEC
ii) Federal bankruptcy court
iii) Criminal court
iv) UCC, liens
v) Civil courts
vi) News articles

10) Legal

a) Refer to the LPA Checklist, the Model Provisions, and the ILPA Private Equity Principles
b) Obtain and conduct legal review of the following documents:
    i) Private placement or offering memorandum
    ii) Limited partnership agreement
    iii) Partnership incorporation documents
    iv) Subscription documents
    v) Management agreement
    vi) Side letters
    vii) Other legal documents
c) Review the legal structure for tax and UBIT issues
d) Identify permitted liquidity options
e) Identify investor blocks that can carry issues on which the investors will vote

11) Risk management

a) Assess vendor and operating partner selection process and oversight
b) Review cash management and reconciliation process
c) Review recordkeeping policy
d) Review formalized investment processes and procedures
e) Review business continuity plan
    i) Frequency tested
    ii) Existence of business resumption site
    iii) Crisis management
f) Review alignment of interests with other LPs
g) Review fund terms related to risk management:
    i) Scope of permitted investments and investment limitations
    ii) Existence of and limits on insurance coverage for Manager, GP and advisory committee (per-occurrence and aggregate bases)
    iii) Limitations on amounts and types of leverage (recourse, cross-collateralization, etc.)
    iv) Limitations on use of derivatives
    v) Interest hedging strategy
    vi) Cash and liquidity management
        (1) Minimum and maximum level of cash held by fund
        (2) Assess type and risk of permitted investment of cash
            (a) Low versus high risk/yield cash investment

(b) Distribution of interest income

(3) Assess dividend distribution and/or re-investment policy

vii) Currency/foreign exchange management

(1) Funding in foreign currency

(2) Hedging of investments in foreign currency

h) Review past and current arbitration, litigation or disputes with partners and/or investors

i) Assess nature, outcome and payments

i) Understand sponsor advisory board representation, structure and authority

j) Review copies of prior funds' advisory board and/or investment committee meeting minutes (topics discussed, areas of focus, meeting participants, etc.)

k) Assess qualifications of independent auditor

12) Valuations

a) Frequency and responsibility of internal / external valuations

b) If applicable, describe firm's approach to the FASB ASC 820 (Fair Value Measurements and Disclosures) and ASC 825-10 (Financial Instruments – The Fair Value Option) requirements relating to marking investments to market

c) Determine if policy differs from the policy used in prior funds

d) How have valuations been done historically in comparison to the industry (i.e., does Manager tend to implement valuation changes ahead of or behind the market in general)?

13) Financing

a) Assess use of debt in the fund's investment strategy

i) Maximum debt on asset and portfolio level; long-term target

ii) Assess use as return enhancer or cost (tax) reducer

b) Use of subscription facility

i) Review assess fees

ii) Review limits on size and restrictions as to use and time

iii) Assess whether and how the facility is included in reporting total levels of debt

c) Type of debt

i) Bullet versus amortizing loans

ii) Balance sheet versus conduit/securitized debt

d) Review debt terms

i) Assess diversification by debt maturity

ii) Interest rate base

iii) Review and evaluate margins

iv) Debt fees, including origination, pre-payment penalties, etc.

v) Covenants
   (1) DSCR and LTV
   (2) Soft versus hard covenants
   (3) Testing periods
   (4) Assess whether covenants are in line with asset risk

e) Collateral
   i) Recourse versus non-recourse financing
   ii) Master leases and other forms of implicit recourse
   iii) Cross-collateralization versus asset-by-asset financing

f) Origination
   i) Use of brokers versus use of internal team
   ii) Diversification of banking relationships
   iii) Experience of partner/team
   iv) Quality of lender relationships
   v) Origination cost/fees
   vi) Examples of debt sourced

g) Assess Manager's ability to deal with covenant/refinancing issues

14) Deal pipeline and seed assets

a) Blind pool versus seeded with assets
b) Review existing or pipeline assets
c) Assess pipeline in light of investment strategy and expected time to closing
d) If seeded
   i) Review ownership history
   ii) Acquisition/transfer process
   iii) Basis of transfer valuation (number and nature of valuations)

SECTION 2

CHECKLIST OF PREFERRED LIMITED PARTNERSHIP AGREEMENT TERMS

(THE "LPA CHECKLIST")

Checklist of Preferred Limited Partnership Agreement Terms

Note that in this section, the term "Manager" refers to the fund's sponsor and investment manager. "GP" refers to single-purpose entity that serves as the fund's general partner or managing member. "LP" refers to a fund investor that is unaffiliated with the Manager.

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1) Marketing and Capitalization

1.	The fund has a stated minimum and maximum equity capitalization that includes any parallel funds created for tax structuring purposes	□ Yes	□ No
2.	Any parallel funds share investment income and expenses with the fund on a pro-rata basis	□ Yes	□ No
3.	The final closing occurs within one year of the initial closing; LP consent via an LPA amendment is required to extend this deadline	□ Yes	□ No
4.	Subsequent investors purchase the fund's existing investments at cost plus a fixed interest rate that is paid to prior investors on their capital to be refunded	□ Yes	□ No
5.	There is no "reserve commitment" in addition to an LP's stated commitment	□ Yes	□ No
6.	An LP's financial exposure is limited to its capital commitment. The GP may not call capital outside of or in addition to an LP's commitment for any reason	□ Yes	□ No
7.	There is a stated limit to the organizational and marketing costs to be borne by the fund investors; costs exceeding the limit are borne by the GP	□ Yes	□ No
8.	Such costs are for actual third-party out-of-pocket expenses and do not include any internal costs of Manager or its affiliates		
9.	Such costs are allocated pro-rata to all investors	□ Yes	□ No
10.	A placement agent's compensation is a Manager expense. If capital may be called to pay this compensation, it is offset against future GP fees and subject to a clawback provision	□ Yes	□ No

2) Term, Capital Call Rights, and Investment Parameters

1.	The fund terminates within ten years of the initial closing, including any GP options to extend the fund's life; LP consent via an LPA amendment is required to extend beyond ten years. Any assets not liquidated by the fund's termination date will be placed in a liquidating trust	□ Yes □ No
2.	The investment period does not exceed four years after the initial closing; LP consent via an LPA amendment is required to extend. New investments for which binding commitments were executed during the investment period must be funded within the following six months (one year for development projects)	□ Yes □ No
3.	Capital that may be recycled during the investment period is limited to the equity invested in realized investments less any realized losses (i.e., excludes any sale profits)	□ Yes □ No
4.	The follow-on investment period does not exceed three years from the conclusion of the investment period	□ Yes □ No
5.	The investment parameters are narrowly defined and limited to the specific strategy being marketed and Manager's clearly demonstrable core competencies	□ Yes □ No
6.	There are reasonable diversification requirements consistent with the fund's investment strategy	□ Yes □ No
7.	There are stated limits to investment- and fund-level leverage (excluding subscription line) as a percentage of the current investment cost basis	□ Yes □ No
8.	The Advisory Committee must approve all recourse leverage, including de-facto recourse such as master leases, cross-collateralization, and preferred equity, but excluding preferred shares issued to meet a REIT's 100-shareholder test, the subscription line, and typical non-recourse loan carve-outs such as environmental liability and "bad-boy" actions	□ Yes □ No
9.	Any subscription line financing must be repaid within 90 days (equity portion of an investment's capital structure) or one year (debt portion). The subscription line terminates at the conclusion of the investment period	□ Yes □ No
10.	The investment strategy is exclusive to the fund during the investment period • If not, the Manager's allocation method is spelled out clearly, and the Advisory Committee may review the Manager's specific allocation decisions	□ Yes □ No
11.	If the Manager is investing for more than one capital source, the Advisory Committee must approve the allocation of dead deal costs to the fund; reasonableness standard	□ Yes □ No

12. There is a stated limit to dead deal costs that may be charged to the fund □ Yes □ No
13. Fund investments may not be shared with other Manager-controlled funds or accounts, excluding parallel funds created for tax structuring purposes □ Yes □ No
14. Each investment will be held in a separate bankruptcy-remote legal entity □ Yes □ No
15. The GP is separate bankruptcy-remote legal entity □ Yes □ No

3) Manager and GP

If the Manager is privately owned:

1. The GP co-investment:
   - Represents the principals' and employees' own capital, not borrowed funds or capital otherwise obtained from third parties — □ Yes □ No
   - Is material to the net worth of the principals — □ Yes □ No
   - Is in the form of cash, not foregone fee income — □ Yes □ No
   - May not be encumbered, although the economic and/or voting interest may be sold or transferred among active and retiring employees — □ Yes □ No
2. The co-investment and distribution allocations and vesting methodologies among the firm's principals and employees are disclosed to the LPs prior to the final fund closing — □ Yes □ No
3. Any future GP clawback liability to the fund is joint and several among the Manager's senior principals — □ Yes □ No

In all cases, the Manager and the GP:

4. Covenant to maintain adequate amounts of non-cancellable E&O and D&O insurance for the life of the fund; D&O insurance includes the Advisory Committee as a named insured — □ Yes □ No
5. May not withdraw from the fund during the investment period, and thereafter, only after Advisory Committee approval and LP approval via an amendment to the LPA — □ Yes □ No
6. Are held to a minimum standard for a) the fund's indemnification and exculpation provisions, and b) the removal conduct provision[3], that includes: — □ Yes □ No
   - a material breach of the GP's obligations under the LPA and/or other fund documents that is not cured within 30 days of the occurrence — □ Yes □ No
   - breach of fiduciary duty[4] — □ Yes □ No
   - gross negligence — □ Yes □ No
   - fraud — □ Yes □ No
   - bad faith — □ Yes □ No
   - willful misconduct — □ Yes □ No
   - misappropriation or waste of fund assets — □ Yes □ No

[3] See *Governance and LP Rights, #2*

[4] Also, neither the Manager nor the GP may use the LPA's indemnification and/or exculpation provisions to waive their fiduciary duties or otherwise dilute their fiduciary obligations

- felony indictment and/or unlawful conduct on the part of the Manager, GP, or any of their principals — □ Yes □ No
- voluntary or involuntary bankruptcy or insolvency — □ Yes □ No

7. May not engage in related party transactions or other conflicts of interest without Advisory Committee approval — □ Yes □ No
8. May not raise another commingled fund with substantially similar investment parameters until the current fund is at least 80% invested or committed for investment — □ Yes □ No
9. May not invest for another commingled fund if the current fund has sufficient capacity to make the proposed investment and the proposed investment won't violate the current fund's diversification requirements — □ Yes □ No

Also:

10. Via the fund's key man provision, the Manager's dedicated senior principals are obligated to spend a meaningful portion of their time on fund management — □ Yes □ No
    - If the key man provision is violated, the investment period is suspended until Advisory Committee and 75% of the non-GP-affiliated, non-defaulted LP interests approve a cure — □ Yes □ No
    - If cure is not approved, constitutes removal conduct per #6 above — □ Yes □ No
11. If the principals and employees may take interim distributions from the fund to pay tax created by "phantom income," such distributions must be repaid promptly from subsequent tax rebates or credits, and any amounts not repaid prior to the fund's termination represent a joint and several clawback obligation of the Manager and its senior principals — □ Yes □ No
12. Manager and GP indemnification and exculpation payments are limited to fund assets, and only after the Manager first exhausts applicable insurance and all potential claims against third parties — □ Yes □ No
13. The fund is not required to indemnify the Manager, the GP, or any of their affiliates, directors or employees for any dispute arising among themselves — □ Yes □ No
14. All payments and distributions to the GP except for the base management fee are to be reviewed by the Advisory Committee in advance and by the fund auditor in arrears. Any overpayments are to be refunded promptly — □ Yes □ No
    - If a Manager calculation has a discrepancy of 5% or more, the audit cost is a GP expense — □ Yes □ No

4) Manager Compensation and Alignment of Interests

Base management fees:

1. Properly reflect any economies of scale found in the size of the fund and the Manager's total AUM — □ Yes □ No
2. During the investment period, are based on committed capital only — □ Yes □ No
3. Thereafter, or upon the creation of a successor fund during the investment period, are calculated on capital invested, minus capital a) returned through dispositions or refinancing, and b) reduced through write-offs or permanent impairments — □ Yes □ No
4. Are offset by any transaction, financing, monitoring, investment banking or break-up fees generated by the Manager or its affiliates on fund investments — □ Yes □ No
5. Cover all of the Manager's internal costs of managing the fund including personnel recruitment, compensation and benefits; rent and other occupancy costs; investment and fund accounting; non-commercial employee travel; D&O insurance for the firm and its employees; firm marketing and publicity; information technology; and all other internal costs and overhead — □ Yes □ No
   - Third-party audit, tax, legal and appraisal fees and expenses may be charged to the fund, along with the portion of Manager's D&O insurance premium attributable to the Advisory Committee — □ Yes □ No
6. Are unaffected by any subsequent revisions to federal, state or local corporate or personal taxation — □ Yes □ No

Incentive compensation:

7. Is based on the full pooling of all fund cash flows to and from investors for whatever purpose — □ Yes □ No
8. Is based solely upon realized performance, i.e., has no investment valuation component[5]
9. Is subordinated to a) the return of all LP capital plus a hurdle rate (i.e., no deal-by-deal promote, no GP catch-up), and b) a minimum cash multiple on all LP capital — □ Yes □ No
10. For calculation purposes, does not include in fund cash flows a) "deemed distributions" for taxes withheld or paid by the fund, or b) tax distributions to the Manager's principals and employees — □ Yes □ No
11. Is unaffected by any subsequent revisions to federal, state or local corporate or personal taxation — □ Yes □ No

The hurdle rate for incentive compensation is:

[5] With the exception of Manager removal without cause – see *Governance and LP Rights, #5*

12. Defined as an IRR, not simple interest □ Yes □ No

13. An annualized rate calculated on daily, monthly or quarterly cash flows □ Yes □ No

14. Scaled to the riskiness of the investment strategy, including leverage limitations □ Yes □ No

Other compensation:

15. Other than the investment management fee and incentive compensation earned, the Manager and its affiliates may not charge fees or expenses to the fund or to the fund's investments without Advisory Committee approval □ Yes □ No

    - Such fees, for services such as leasing and property management, must be at or below market rates, with any subsequent changes to the initial fee schedule approved by the Advisory Committee in its sole discretion □ Yes □ No

GP clawback:

16. Encompasses all previous distributions, including incentive compensation and GP tax distributions (*Manager and GP, #11*), to which the GP or Manager are not entitled after a final summation of the fund's investment performance □ Yes □ No

17. Is calculated on a pre-tax basis[6] □ Yes □ No

18. Represents a joint and several obligation of the Manager and its senior principals □ Yes □ No

[6] If the LPs agree to an after-tax calculation methodology, the incentive compensation clawback calculation must take into account the GP's tax deduction that results from the clawback payment itself, and apply to losses and deductions the same tax rates attributed to income and gains. GP tax distributions should be calculated and repaid separately.

5) Governance and LP Rights

1. The Advisory Committee and a simple majority of non-GP-affiliated, non-defaulted LP interests may vote to a) remove the GP and/or the Manager for removal conduct, and/or b) to suspend, reinstate or terminate the investment period — □ Yes □ No

2. Removal conduct includes:

   - Any condition enumerated in *Manager and GP, #6* — □ Yes □ No
   - Investment activity outside of fund's permitted investment parameters — □ Yes □ No
   - A Manager conflict of interest not approved by the Advisory Committee — □ Yes □ No
   - Outside activity by the Manager or one of its principals not permitted in the LPA — □ Yes □ No
   - A breach of the key man provision not cured within 30 days — □ Yes □ No
   - If the Manager is privately owned, an encumbrance or an actual or de-facto sale or transfer of the economic and/or voting interest, except among the Manager's active and retiring employees — □ Yes □ No

3. The Manager and/or the GP may contest a finding of removal conduct only via an expedited arbitration process with a ruling required no more than 20 business days after filing, and only after an interim manager has been appointed by the Advisory Committee — □ Yes □ No

   - Once the Advisory Committee has made a finding of removal conduct, the GP may not make any capital calls, distributions, new investments or indemnification payments — □ Yes □ No

4. The Advisory Committee plus two-thirds of the non-GP-affiliated, non-defaulted LP interests may vote at any time to:

   - Remove the GP and/or the Manager without cause — □ Yes □ No
   - Dissolve the fund — □ Yes □ No

5. In event of Manager and/or GP removal:

   - The removed party must furnish all fund records to its replacement and cooperate reasonably in the transition — □ Yes □ No
   - The GP's interest in the fund converts to a passive LP interest — □ Yes □ No
   - If for removal conduct, the incentive compensation is forfeited — □ Yes □ No
   - If not for removal conduct, the GP's incentive compensation is calculated as of the date of removal, based upon investment net asset values determined by an independent appraisal of the fund's investments conducted by an appraiser(s) appointed by the Advisory Committee, less the costs of disposition (including mortgage — □ Yes □ No

prepayment fees) as if the investments are sold, and as adjusted for the fund's other assets and liabilities; and is paid as and when the fund generates sufficient cash after accounting for all of its other needs and liabilities

6. A two-thirds vote of the non-GP-affiliated, non-defaulted LP interests is required to amend the LPA (100% to amend the investment parameters) □ Yes □ No
   - In considering a GP proposal to amend the LPA, the LPs may retain a third-party advocate and/or legal, financial and valuation advisors at the fund's expense □ Yes □ No
7. The GP must disseminate contact information for all non-objecting LPs to all LPs, noting those LPs that are members of the Advisory Committee □ Yes □ No
8. Any LP side letter and/or most-favored-nation provisions granted by the GP that are not a) specific to the LP's regulatory, tax, or other investment structuring requirements, or b) specific to GP compensation, must be offered to all LPs □ Yes □ No
9. Copies of all LP side letters must be disseminated to all LPs □ Yes □ No
10. All LPs must be notified promptly of any material adverse change to the fund or to any investment, or of any lawsuit or SEC inquiry involving the fund, the GP and/or the Manager □ Yes □ No
11. The Manager must host an annual investor meeting at the fund's expense □ Yes □ No
    - At this meeting, the non-GP-affiliated, non-defaulted LPs may meet among themselves without the Manager present. Upon the prior request of any LP, the Manager must make time for such a meeting on the meeting agenda □ Yes □ No
12. Any defaulting LP's interest must be offered on pro-rata basis to all non-defaulting LPs at a material discount to NAV. When paid out, the defaulting LP must withdraw from the fund □ Yes □ No
    - The Manager may not charge the fund for a defaulting LP's share of the management fee from the default date through the date on which the defaulting LP withdraws from the fund □ Yes □ No
13. Consent to transfer of some or all of LP's interest to a purchaser may not be unreasonably withheld by the GP or the subscription lender. □ Yes □ No
14. Upon execution of a confidentiality agreement, including provisions reasonably requested by the Manager, an LP may share fund information generally available to all LPs with a potential purchaser of the LP's fund interest. The potential purchaser is permitted to conduct reasonable due diligence on the fund and the LP's interest, with the GP's reasonable cooperation □ Yes □ No

15. Co-investment opportunities must be offered to fund LPs on a pro-rata basis prior to being offered to third parties, along with a copy of the Manager's investment committee memorandum and other information that an LP might reasonably require in order to evaluate the opportunity properly — □ Yes □ No

16. All fees and all base and incentive compensation paid by co-investors are remitted to the fund, not to the Manager or GP — □ Yes □ No

17. In-kind distributions:

- Are not permitted without LP consent via an amendment to the LPA — □ Yes □ No
- Will be valued prior to distribution by an independent appraiser appointed by the Advisory Committee — □ Yes □ No
- May be refused by any LP, in which case the GP must use commercially reasonable efforts to liquidate the LP's interest within a reasonable period of time — □ Yes □ No
- If accepted by an LP, must also be taken in-kind by the GP — □ Yes □ No
- If accepted by the LP, the GP's incentive compensation is based upon the LP's share of appraised value less customary disposition costs. If declined by an LP, the GP's incentive compensation is based upon the LP's actual cash proceeds received from the eventual sale of the investment

6) Advisory Committee

1. Consists of experienced representatives of investors at or above a specified commitment size who are willing to commit the necessary time and attention to the fund — □ Yes □ No
2. Includes representatives of non-GP-affiliated, non-defaulted LPs only — □ Yes □ No

A Committee member:

3. Serves without compensation, although his third-party costs may be reimbursed as a fund expense — □ Yes □ No
4. Has no liability to the fund, the GP or the LPs. Is adequately covered by the Manager's D&O insurance and, except for fraud, is indemnified and held harmless to the fullest extent allowed by law — □ Yes □ No
5. May resign, in which case his replacement is selected by the LP that he formerly represented — □ Yes □ No
   - Must resign if the LP that he represents defaults on a capital call — □ Yes □ No
6. Must recuse himself in the event of a conflict of interest, e.g., a proposed transaction with another fund in which the LP also has an ownership interest — □ Yes □ No
7. In deciding how to vote, may consider whatever factors he or she wishes, including the self-interest of the LP represented — □ Yes □ No
8. May call a Committee meeting at any time, with or without the Manager present — □ Yes □ No

Committee protocol:

9. Makes all decisions during face-to-face or telephonic meetings during which a quorum is present (no proxy voting). A majority of Committee members is required for a quorum. — □ Yes □ No
10. A 75% vote of members present at a given meeting is necessary to approve a motion — □ Yes □ No
11. Operates on one man one vote principle — □ Yes □ No
12. May meet in executive session without the Manager present — □ Yes □ No
13. In order to evaluate a GP's proposal, is entitled to the Manager's recommendation, a detailed summary of the issues, benefits and risks, and whatever supporting information is required — □ Yes □ No
14. In evaluating a GP's proposal or considering another action within the purview of the Committee, may retain a third-party advocate and/or legal, financial and valuation advisors at the fund's expense — □ Yes □ No
15. May meet with the fund's auditor and the fund's appraiser(s) in executive session — □ Yes □ No

16. May hire an auditor to conduct an independent review of any portion of the fund's books at the fund's expense □ Yes □ No

17. May object to the Manager's determination of fair market value for one or more investments, and may secure an alternative determination by an appraiser retained at the fund's expense, in which case the alternative determination is binding □ Yes □ No

18. Through the Manager, distributes meeting minutes to all LPs □ Yes □ No

19. May call a meeting of all non-GP-affiliated LPs with or without the Manager present □ Yes □ No

Committee approval is required for:

20. Amending the LPA □ Yes □ No

21. Retaining or changing the fund's auditor and independent appraiser(s) □ Yes □ No

22. Incurring actual or de-facto recourse leverage (*Term, Capital Call Rights, and Investment Parameters, #8*) □ Yes □ No

23. If applicable, the allocation of dead deal costs to the fund (*Term, Capital Call Rights, and Investment Parameters, #11*) □ Yes □ No

24. Manager and/or GP withdrawal (*Manager and GP, #4*) □ Yes □ No

25. If applicable, Manager related-party transactions (*Manager and GP, #7*) □ Yes □ No

    - In addition, if a Manager-related party is purchasing or financing a fund asset or selling an asset to the fund, approval of 100% of the non-GP-affiliated, non-defaulted LP interests is required □ Yes □ No

26. Curing a key man default (*Manager and GP, #7*)

27. The calculations for all payments and distributions to the GP except the base management fee (*Manager and GP, #14*). Includes: □ Yes □ No

    - The calculations for tax distributions to the Manager's principals and employees (*Manager and GP, #11*) □ Yes □ No

    - Indemnification or exculpation payments to the Manager from fund assets (*Manager and GP, #12*) □ Yes □ No

    - Fees for Manager- or affiliate-provided services (*Manager Compensation and Alignment of Interests, #15*) □ Yes □ No

    - The Manager's incentive compensation □ Yes □ No

28. Appointing an interim or replacement GP and/or Manager in the event of resignation or removal (*Governance and LP Rights, #1 & #3)* □ Yes □ No

29. Appointing an independent appraiser in event of Manager or GP removal (*Governance and LP Rights, #5*) or a proposed in-kind distribution (*Governance and LP Rights, #17*) □ Yes □ No

30. Continuing Manager involvement in any asset to be sold by the fund □ Yes □ No

Other Committee responsibilities include formally reviewing, without approval rights:

31.	New investments, for compliance with the investment strategy and the fund's diversification requirements	□ Yes □ No
32.	Portfolio holdings and management strategy	□ Yes □ No
33.	Compliance with fund valuation policies, procedures and results	□ Yes □ No
34.	Audit results	□ Yes □ No

7) Transparency and Reporting

1. A quarterly report, including but not limited to unaudited fair value financial statements prepared in accordance with GAAP, will be furnished within 45 days of quarter-end □ Yes □ No
2. An annual report, including but not limited to audited fair value financial statements prepared in accordance with GAAP, will be furnished within 90 days of year-end □ Yes □ No
3. The year-end audit is conducted by an independent, nationally recognized accounting firm □ Yes □ No

All reports will contain:

4. A business plan update and a performance discussion for each investment, including its exit timetable and strategy □ Yes □ No
5. A report showing total funded and unfunded investor capital commitments and the capital commitment expiration date □ Yes □ No
6. The terms of each property and portfolio financing, including drawn and undrawn capacity, interest rate and loan maturity, as-of-right and contingent extension options, actual and de-facto recourse (*Term, Capital Call Rights, and Investment Parameters, #8*), and material loan covenants □ Yes □ No
7. A description and valuation of each interest rate swap or hedge □ Yes □ No
8. A description and USD valuation of each hedged or unhedged foreign currency position □ Yes □ No
9. The valuation and valuation methodology for each investment along with a discussion of any material difference from the prior quarter's value □ Yes □ No
10. A supplemental "look-through" market value fund balance sheet showing the fund's share, for each investment, of: □ Yes □ No
    - the investment's gross asset value
    - its financing and other obligations that are superior to the fund's position in the capital structure, noting actual and de-facto recourse amounts
    - if applicable, the estimated "in-the-money" carried interest accruing to an investment partner as if the investment is sold
    - its net asset value
    - the value of any positions in the capital structure that are subordinate to the fund's position
11. A detailed schedule and calculation of each fee and expense charged to fund by the Manager, its affiliates, or third parties □ Yes □ No

12.	A detailed schedule of the dead deal costs borne by the fund	□ Yes □ No
13.	A detailed schedule of all taxes paid to domestic and foreign jurisdictions	□ Yes □ No
14.	Any incentive fee/carried interest payments to the GP during the quarter, with the calculation thereof	□ Yes □ No
15.	A list of all tax distributions during the quarter	□ Yes □ No
16.	After the investment period, a forecast of annual capital calls and distributions during the remainder of the fund term	□ Yes □ No

Supplemental disclosures to the LPs from time to time will include:

17.	A detailed schedule of the organizational and marketing costs charged to the fund (*Marketing and Capitalization, #7 and #8*)	□ Yes □ No
18.	The amounts of D&O insurance carried on behalf of the Manager, the GP and the Advisory Committee (*Manager and GP, #4*)	□ Yes □ No
19.	Indemnification or exculpation payments to or from the Manager (*Manager and GP, #12*)	□ Yes □ No
20.	LP contact information (*Governance and LP Rights, #7*)	□ Yes □ No
21.	LP side letters (*Governance and LP Rights, #9*)	□ Yes □ No
22.	Any material adverse change to the fund or any investment, including a write-off or permanent impairment, or any lawsuit or SEC inquiry involving the fund, the GP and/or the Manager (*Governance and LP Rights, #10*)	□ Yes □ No
23.	A notice of any LP default, along with the right to purchase a pro-rata share of the defaulting LP's fund share (*Governance and LP Rights, #12*)	□ Yes □ No
24.	Proposed in-kind distributions (*Governance and LP Rights, #17*)	□ Yes □ No
25.	Advisory Committee meeting minutes (*Advisory Committee, #18*)	□ Yes □ No
26.	Annually, for each LP, a Schedule K-1 and any other information required to file its tax return	□ Yes □ No
27.	An annual GP certificate of compliance with the fund's governance documents, including the investment criteria	□ Yes □ No
28.	For each investment, the Manager's investment committee memorandum and other supplemental information	□ Yes □ No

SECTION 3

MODEL PROVISIONS FOR REAL ESTATE PARTNERSHIPS

(THE "MODEL PROVISIONS")

Model Provisions for Real Estate Partnerships

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A. Definitions.

"Advisory Board" means the advisory board of the Partnership.

"Advisory Board Indemnified Party" is defined in Section 2(h).

"Advisory Board Representative" is defined in Section 2(a).

"Affiliate(s) or Affiliated" means any Person managing, managed by, controlling, controlled by or under common control or management with such Person, through the ownership of voting interests, the ability to direct decision-making by contract or otherwise.

"Annual Meeting" is defined in Section 35.

"Asset Level Financing" is defined in Section 13(d).

"Capital Commitment" means, with respect to each Partner, the aggregate amount of cash agreed to be contributed as capital to the Partnership by such Partner.

"Capital Contribution" means, with respect to each Partner, the amount of cash received by the Partnership from such Partner pursuant to its Capital Commitment.

"Carried Interest" means any carried interest, promote or other performance fee otherwise payable to the General Partner or any GP Affiliate.

"Cause Event" is defined in Section 7(b).

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" is defined in Section 32(a).

"Covered Person" means the General Partner, the Manager, any Affiliate or any other person that is or may be entitled to indemnification under the Partnership Transaction Documents or otherwise.

"Deemed Liquidation" is defined in Section 10(b).

"Defaulted Give-Back Obligation" is defined in Section 28(b).

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974, the related provisions of the Code, and the respective rules and regulations promulgated thereunder, in each case as amended from time to time, and judicial rulings and interpretations thereof.

"FIRPTA" means the Foreign Investment in Real Property Tax Act of 1980, as amended.

"GAAP" means U.S. generally accepted accounting principles, consistently applied.

"General Partner" means the Person that acts as the general partner of the Partnership.

"GP Affiliate" means (i) an Investor who is a member, director, officer or employee of the General Partner or its Affiliates or (ii) any Affiliate of the General Partner.

"Individual Capital Commitment" is defined in Section 5.

"Interest" means all or any portion of an Investor's voting, economic and other interest in the Partnership.

"Interim Manager" is defined in Section 7(d).

"Investment" means an investment made by the Partnership in accordance with the Partnership Transaction Documents.

"Investment Period" means the period during which the General Partner is permitted to make Investments pursuant to the Partnership Transaction Documents.

"Investor" means any investor, including any of its Affiliates that manages such investor, that is a partner in the Partnership, together with any investor, including any of its Affiliates that manages such investor, that is a partner in a Parallel Fund, in each case for so long as such Person continues to be an investor in the Partnership.

"Investor Approval" is defined in Section 9.

"Investor Covered Person" means any Investor or any of its directors, officers, employees, agents or Affiliates.

"Investor Representative" means an Unaffiliated Investor designated as such by the holders of 10% or more of the Capital Commitments of the Unaffiliated Investors. If at any time an Investor Representative has not been designated, one or more Unaffiliated Investors may take actions specified to be taken by the Investor Representative pursuant to the terms of the Partnership Transaction Documents.

"Key Person Event" is defined in Section 6.

"Key Persons" is defined in Section 6.

"Liquidating Partner" is defined in Section 10(a).

"Liquidation" means a liquidation of the Investments and other assets of the Partnership in an orderly fashion, the liquidation and winding up of the affairs of the Partnership and then the distribution of the proceeds of such liquidation to the Investors in accordance with the Partnership Transaction Documents.

"Losses" is defined in Section 31.

"Management Fee" means the management fee or similar fee paid to the General Partner and/or the Manager by the Partnership (or the Investors directly) in connection with the management and operation of the Partnership.

"Manager" means the Person that acts as the investment manager of the Partnership.

"More Favorable Rights" is defined in Section 1.

"Other Fund" is defined in Section 2(f).

"Parallel Fund" means a so-called "side car" or "parallel" fund that invests ratably with the Partnership's Investments in accordance with the Partnership Transaction Documents.

"Partner" means, collectively, the General Partner and the Investors.

"Partnership" is defined in the Preamble.

"Partnership Agreement" means the **[**Amended and Restated**]** Agreement of Limited Partnership of the Partnership.

"Partnership Transaction Documents" means the Partnership Agreement, private placement memorandum (or equivalent) of the Partnership and any other document governing or relating to the Partnership.

"Permanently Impaired" means, with respect to an Investment, that the value of such Investment has been, in the good faith judgment of the General Partner or a Qualified Appraiser, reduced in value from its original basis with no expectation that such Investment will, on or before the expiration of the term of the Partnership, return to or exceed its original basis, including any reduction that results from a foreclosure, deed-in-lieu of foreclosure or similar remedies enforcement by a lender or that results from a credit event.

"Person" means any individual, corporation, partnership, limited liability company or other business entity.

"Plan Assets Regulations" means U.S Department of Labor rules and regulations, including 29 C.F.R. Section 2510.3-101 *et seq*, as amended by Section 3(42) of ERISA, that address the applicability of ERISA to entities in which employee benefit plans directly or indirectly invest.

"Principals" is defined in Section 5.

"Qualified Appraiser" means an independent nationally-recognized (or internationally-recognized, if Investments are outside of the U.S.) MAI appraiser having experience evaluating investments similar to the Investment(s) in question.

"Quarterly Leverage Certificate" is defined in Section 13(f).

"REIT" means a real estate investment trust.

"REIT Entity" means any Person in the structure of the Partnership (including any subsidiary(ies) or parent) intended to be classified as a REIT under the Code.

"Related Party" means any GP Affiliate or any account managed by the Manager or its Affiliates, or any Affiliate of any of the foregoing.

"Removal Committee" is defined in Section 9(c).

"Side Letter" is defined in Section 1.

"Subscription Agreement" means, with respect to each Investor, the Subscription Agreement entered into by such Investor in connection with its purchases of Interests.

"Subscription Line Financing" is defined in Section 13(d).

"Unaffiliated Investor" means an Investor that is not Affiliated with the General Partner or any GP Affiliate.

"Unfunded Follow On Investment" means any amounts payable with respect to follow on contributions for existing Investments or incomplete development projects which, in each case, are permitted pursuant to the terms of the Partnership Transaction Documents.

"VCOC" means "venture capital operating company" as such term is defined in the Plan Asset Regulations.

"Written Off" means, with respect to an Investment, that the equity value of the Partnership in such Investment (valued based on its fair market value determined in good faith by the General Partner or a Qualified Appraiser) has been written down to zero or less than zero.

1. More Favorable Rights. The General Partner shall, upon entering itself, the Partnership and/or any GP Affiliate into any side letter, subscription agreement, or other agreement, understanding or amendment thereto (collectively, a "Side Letter") with any Investor which grants rights or benefits that are in addition to or more favorable than those granted to any other Investor (collectively, the "More Favorable Rights"), provide copies of such Side Letters (unredacted) to all of the Investors and the More Favorable Rights set forth in such Side Letter will be extended to all of the Investors and, as promptly as possible, incorporated into the Partnership Transaction Documents unless: (a) such rights or benefits cannot be granted to an Investor because of legal requirements relating to such rights and benefits; (b) there is a regulatory, tax or other similar basis for distinguishing among the Investors; (c) an Investor elects not to receive the More Favorable Rights or (d) such rights relate solely to more favorable economic treatment (e.g., a lower Management Fee) based on the size of the particular Investor's Capital Commitment. Notwithstanding anything to the contrary contained in the foregoing, if rights (other than

economic rights) granted under any provision of a Side Letter conflict with either rights granted under other Side Letters or rights granted under the Partnership Transaction Documents, the rights that are most favorable to the Investors shall apply to all of the Investors. The General Partner hereby represents and warrants to each Investor that the General Partner has delivered to such Investor true, correct and complete copies of all Side Letters entered into by the Partnership on or before the date of the Partnership Agreement, and covenants to deliver to such Investor true, correct and complete copies of any Side Letters entered into by the Partnership following the date of the Partnership Agreement. Each Investor agrees to treat such Side Letters as Confidential Information under Section 32 but may share these Side Letters with other Investors.

2. Advisory Board.

(a) The maximum number of members of the Advisory Board (each such member, an "Advisory Board Representative") shall be **[●]**. To be eligible to appoint (and maintain) an Advisory Board Representative, an Investor must have committed to invest the greater of (i) $**[●]** million and (ii) **[●]**% of the total Capital Commitments, in each case, measured as of the date of such Investor's investment in the Partnership. All Advisory Board Representatives shall have a direct or indirect material interest in the Partnership as an Unaffiliated Investor or an employee, officer or director of an Unaffiliated Investor and shall not be an "independent" consultant or similar independent member. All Advisory Board Representatives shall serve without compensation and as volunteers (other than expense reimbursements to which they may be entitled pursuant to Section 2(g)). The General Partner (through not more than three of its representatives) shall chair all Advisory Board meetings but shall not be a member of the Advisory Board, shall not be entitled to appoint an Advisory Board Representative and shall not have an Advisory Board vote. Notwithstanding anything to the contrary in the Partnership Agreement, the General Partner will not be permitted to remove any Advisory Board Representative. Unless otherwise waived by such member, the General Partner shall provide each Advisory Board Representative with no less than 10 business days' prior written notice of each Advisory Board meeting and will provide, together with such written notice, all necessary materials relating to the matters to be discussed including the following:

(A) a description of each matter to be considered by the Advisory Board at such meeting;

(B) the recommendation(s) of the General Partner and/or the Manager with respect to each such matter and the argument(s) in support of such recommendation(s);

(C) a summary of all relevant facts pertaining to each such matter;

(D) the reasons for submitting each such matter to the Advisory Board;

(E) an explanation of why each requested matter is in the best interests of the Investors; and

(F) a detailed summary of any issues, benefits and/or risks that may affect the Partnership, the General Partner, the Manager or any Investor and, if applicable, a tax analysis of the impact to the Partnership, the General Partner, the Manager and the Investors as a result of taking any action recommended by the General Partner and/or the Manager.

(b) Any meeting of the Advisory Board shall be duly convened in accordance with all corporate formalities required in the Partnership documentation. Any meeting may be convened by telephone and any Advisory Board Representative may, at such Advisory Board Representative's option, participate in any meeting by telephone. Once called, a meeting shall actually be held unless all Advisory Board Representatives agree in writing not to hold the meeting and instead to vote by proxy. During the term of the Partnership, there shall be at least one meeting of the Advisory Board held each calendar year in person at a convenient business location in the continental U.S. which shall, if practicable, occur on the same day as the Annual Meeting. The General Partner shall take minutes for all meetings attended by the General Partner and, promptly following the meeting, shall circulate copies of the minutes to all Advisory Board Representatives for comment and approval and, once approved by all Advisory Board Representatives attending the meeting, the General Partner shall promptly distribute copies of the approved minutes to all of the Investors. The General Partner shall maintain a copy of all approved meeting minutes in the Partnership books and records. The Advisory Board Representatives shall be entitled to break out of meetings with the General Partner or to convene meetings without the General Partner, any of its representative(s) or any GP Affiliate being present in order to separately consider or discuss the matters being proposed at any meeting. Any Advisory Board Representative may convene a special meeting by directing the General Partner to give, or by such Advisory Board Representative giving, notice to all Advisory Board Representatives in the manner required by the Partnership Transaction Documents.

(c) A quorum for Advisory Board meetings shall consist of a majority of the Advisory Board Representatives, and the vote of 75% of the Advisory Board Representatives attending the meeting (whether by telephone or in person) and voting on a particular matter shall constitute approval of the Advisory Board with

respect to such matter. The Advisory Board may also approve a matter by unanimous written consent of all of the Advisory Board Representatives. The General Partner shall not initiate communications with any Advisory Board Representative regarding Advisory Board matters without inviting the participation of all other Advisory Board Representatives.

(d) Notwithstanding anything to the contrary in the Partnership Transaction Documents, and in addition to any other Advisory Board matters requiring approval in any Partnership Transaction Documents, the prior written approval of the Advisory Board shall be required to:

(A) change the auditor for the Partnership;

(B) select any appraiser or make any change in the appraiser or appraisers of the Partnership's assets;

(C) waive any potential conflicts of interest relating to the operation or management of the Partnership including the approval of certain Related Party agreements required by Section 3(a);

(D) approve any indemnification payment;

(E) approve the compliance by the General Partner of the policies and procedures for valuation of the Investments;

(F) approve any new Investments during any period that the Partnership is not in compliance with the leverage restrictions beyond the re-balancing period;

(G) approve any continued involvement (as asset manager, property manager or otherwise) of any GP Affiliate with respect to an Investment once such Investment has been disposed of by the Partnership;

(H) approve any Partnership financing provided by an Affiliate of an Investor pursuant to Section 13(d); or

(I) approve any waiver of investment or leverage limitations.

(e) An Advisory Board Representative who is in any way, whether directly or indirectly (including through relationships or arrangements that such Advisory Board Representative has, or would be reasonably expected to have, knowledge of with the Investor that appointed such Advisory Board Representative), interested in a contract or proposed contract or arrangement with the Partnership

(either directly or indirectly through arrangements with Affiliates of the Partnership or the General Partner) shall declare the nature of his or her interest at a meeting of the Advisory Board. Any Advisory Board Representative that is a member of any specified company or firm and is to be regarded as interested in any contract which may thereafter be made with that company or firm shall deliver written notice of such interest to the Advisory Board and such written notice shall be deemed a sufficient declaration of interest in regard to any contract so made. Such interested Advisory Board Representative may recuse himself or herself from the meeting at which any such contract or proposed contract or arrangement shall come before the Advisory Board for consideration and/or exclude himself or herself from the vote in respect of such contract or proposed contract or arrangement; but in the absence of such recusal and/or exclusion, such Advisory Board Representative may only vote in respect of such contract or proposed contract or arrangement, if, in the opinion of independent counsel, such Advisory Board Representative may vote notwithstanding that he or she may be interested therein.

(f) If an Advisory Board Representative is Affiliated with an investor in a fund that is sponsored by a GP Affiliate (the "Other Fund") and such investor in the Other Fund is on the advisory board or similar organization relating to such Other Fund and is faced with a vote or the consideration of a matter that may, directly or indirectly, present a conflict of interest with a matter being considered by the Advisory Board, such Advisory Board Representative shall recuse himself or herself (and his or her Affiliates) from voting on the Advisory Board matter and the matter being considered by the Other Fund.

(g) For avoidance of doubt, the Advisory Board may appoint independent legal counsel and financial advisors to assist it, and the costs of any such appointment shall be a Partnership expense. Neither the counsel nor the amount of the expense shall be subject to approval by the General Partner or the Partnership. In addition, Advisory Board Representatives will be reimbursed for their reasonable expenses (including travel expenses consistent with the travel policies imposed on the General Partner in the Partnership Agreement) for attending meetings of the Advisory Board, whether or not the General Partner attends such meeting.

(h) No Advisory Board Representative, or the Investor such Advisory Board Representative represents, nor any principal, partner, member, shareholder, employee, officer, director, manager, agent, advisor, representative, affiliate, heir, executor, administrator, successor or assign of any of the foregoing (each, an "Advisory Board Indemnified Party") shall be liable to the Partnership or any Investor for any action taken or omitted to be taken in connection with such

Advisory Board Representative's participation on the Advisory Board unless such action or inaction constitutes fraud. Under the laws of the State of Delaware, to the extent that, at law or in equity, an Advisory Board Representative or the Investor that such Advisory Board Representative represents has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or the Partners, each such Advisory Board Representative acting in connection with the Partnership's affairs and the Investor that such Advisory Board Representative represents shall not be liable to the Partnership or to any Partner for such Advisory Board Representative's good faith reliance on the provisions of the Partnership Agreement. The provisions of the Partnership Agreement, to the extent that they restrict or eliminate any of the duties (including fiduciary duties) and liabilities of an Advisory Board Representative or an Investor otherwise existing at law or in equity, are agreed by the General Partner, the Partnership and each Investor to replace such other duties and liabilities of such Advisory Board Indemnified Party.

(i) Each Advisory Board Representative shall be entitled to consider only such interests and factors that such Advisory Board Representative desires, including his or her own interests or those of the Investor such Advisory Board Representative represents, and shall have no fiduciary duty or other duty or obligation to give any consideration to any interests of or factors affecting any Person. The failure of an Advisory Board Representative to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the Partnership Agreement shall not be grounds for imposing personal liability on such Advisory Board Representative for the debts, obligations, or other liabilities of the Advisory Board.

(j) The Partnership shall at all times throughout the term of the Partnership maintain directors and officers (D&O) liability insurance covering the General Partner, all GP Affiliates and all Advisory Board Representatives (as additional insureds either by name or generally as a board member) and the cost thereof shall be a Partnership expense. Such insurance shall be (i) non-cancellable without notice to the Investors, (ii) on customary terms and conditions, (iii) in an amount not less than $25 million per occurrence and (iv) provided by an insurer having an AM Best Rating of A-/XII or better. A certificate of insurance shall be provided to each Investor at the initial closing and any subsequent closings, as applicable, and subsequently upon request.

(k) The Partnership shall indemnify and hold harmless any Advisory Board Indemnified Party to the fullest extent permitted by law from and against any and all losses, costs, damages, liabilities joint or several, expenses of any nature

(including attorneys' fees and disbursements, judgments, fines, settlements and other amounts) suffered or sustained by such Advisory Board Indemnified Party as a result of or in connection with any act or omission by such Advisory Board Indemnified Party under the Partnership Agreement and in connection with the defense of any and all actual or threatened claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which such Advisory Board Indemnified Party may be involved or threatened to be involved, as a party or otherwise. The indemnification provided by this Section 2(k) shall be in addition to any other rights to which such Advisory Board Indemnified Party may be entitled under any agreement, as a matter of law or otherwise, and shall apply regardless of whether the Advisory Board Indemnified Party continues to be an Advisory Board Indemnified Party or an Investor at the time any such loss, cost, damage, liability, or expense is paid or incurred, except when such action or failure to act constitutes fraud.

3. Related Party Transactions.

(a) The General Partner shall promptly notify the Advisory Board in writing if the Partnership desires to enter into any transaction, irrespective of its materiality,[7] with any Related Party to perform services for, or to otherwise contract with, the Partnership. Such notice shall be accompanied by a description of the nature and magnitude of such transaction and such transaction shall, if determined by the Advisory Board to be material, be subject to the prior approval of the Advisory Board. Any such request for approval by the Advisory Board shall be accompanied by a memorandum summarizing in sufficient detail the qualifications of such Related Party and evidence that any fees and expenses to be received by such Related Party are consistent with those that would be received by an unaffiliated third party for a substantially similar transaction.

(b) Notwithstanding the foregoing, if the Partnership desires to sell any Partnership asset to, or finance any Partnership asset with, any Related Party, (i) the General Partner shall promptly notify all of the Unaffiliated Partners of such desire, (ii) such notice shall be accompanied by a description of the nature and magnitude of such transaction and shall be accompanied by a memorandum summarizing in sufficient detail the qualifications of such Related Party and evidence that any fees and expenses to be received by such Related Party are consistent with those that would be received by an unaffiliated third party for a substantially similar transaction and (iii) if such sale or financing relates to a material Partnership

[7] All transactions should be reported to the Advisory Board to allow the Advisory Board to determine materiality. Additionally, a series of discrete, but linked or habitual transactions may not be material individually but may be material when aggregated, or may give rise to additional issues.

asset, such transaction shall require the prior approval of Unaffiliated Investors holding at least 90% of the Capital Commitments of those Unaffiliated Investors that actually vote.

4. Partnership Expenses; Audits.

(a) In no event shall the Partnership be required to bear, directly or indirectly (through payment of such expenses by portfolio companies, subsidiaries of the Partnership or otherwise), expenses of the General Partner or the Manager for entertainment, publicity, fund raising, office space, information technology, employment, personnel or other matters that are generally considered to be corporate overhead. All Partnership expenses shall be limited to those third party out-of-pocket expenses reasonably incurred directly in connection with the Partnership business (including dead deal costs not to exceed $**[●]** per transaction/in the aggregate) and properly allocated if relating to Partnership business and non-Partnership business. Travel shall be limited to commercial travel. Partnership expenses shall be budgeted each year and such budget, and any material deviations from such budget, shall be subject to Advisory Board approval. Any break up fees, monitoring fees, director fees, transaction fees and other similar payments received by the General Partner or Manager shall be paid to the Partnership. Organizational expenses reimbursed by the Investors or paid by the Partnership shall for all purposes, including for purposes of the distribution waterfall, be treated as a contribution of capital to the Partnership.

(b) Each time a Carried Interest payment is proposed to be made to the General Partner or any GP Affiliate the books and records of the Partnership shall be audited at the expense of the Partnership to confirm the amount of such payment in accordance with the specified procedures set forth on Schedule 4 attached hereto. The results of such audit shall be delivered to all of the Partners. The Advisory Board shall also, upon the request of Unaffiliated Investors holding 33% or more of the Capital Commitments of the Partnership, audit the books and records of the General Partner, the Manager and the Partnership to determine compliance with the Partnership expense provisions of clause (a) above. If such audit discloses a discrepancy of more than 5% to the detriment of the Investors, the cost of the audit shall be borne by the General Partner. If no such discrepancy is found, the cost of the audit shall be a Partnership expense. In addition, any Investor shall have the right at any time to audit the books and records of the Partnership, the General Partner or the Manager at such Partner's expense (unless such audit discloses a discrepancy of more than 5% to the detriment of the Investors, in which case the cost of the audit shall be borne by the General Partner) during business hours and upon reasonable advance notice.

(c) By the 30th day following the year-end, the General Partner shall deliver to the Investors an annual certification of the General Partner that states that the General Partner (i) complied in all material respects with the Partnership Transaction Documents during the preceding year and (ii) complied with the restrictions and covenants required by Section 13(e).

5. Co-investments by Principals. As of the date of the Partnership Agreement, the General Partner represents that each of the General Partner (together with any GP Affiliate) and the individuals listed on Schedule 5 attached hereto (the "Principals") has committed or funded the amount set forth opposite each such individual's name on Schedule 5 attached hereto (such Principal's "Individual Capital Commitment"), in the Partnership directly or indirectly. Each Principal hereby represents that its Individual Capital Commitment has been made, and will be funded, using the Principal's own funds and not borrowed funds (except as disclosed to and agreed to in writing by the Investors). Each Principal shall not syndicate, sell, encumber or otherwise transfer its Individual Capital Commitments, including those funded, except for estate planning purposes where the Principal retains decision-making control. Schedule 5 attached hereto also sets forth the percentage participations of all Persons sharing the Carried Interest payable pursuant to the Partnership Transaction Documents and the vesting schedule with respect thereto.

6. Key Personnel; Termination Event. The Manager will promptly notify all of the Investors in writing in the event that any officer of the Partnership, the General Partner, the Manager or any of the Principals (collectively, the "Key Persons") is terminated or gives notice of his or her departure or is no longer devoting substantially all of his or her business time and attention to the day-to-day management of the Partnership. In the event that **[●]** of the Principals are terminated or give notice of their departure or cease to be devoting substantially all of their business time to the day-to-day management of the Partnership during the term of the Partnership (each, a "Key Person Event"), (i) the Investment Period shall automatically be suspended. The Investment Period shall remain suspended until approval is received for replacements for such Key Person(s) from Unaffiliated Investors holding at least 75% of the Capital Commitments of those Unaffiliated Investors that actually vote; provided, however, that if all required replacements are not so appointed or have not commenced providing services to the Partnership within thirty (30) days of such Key Person Event then (i) the Investment Period shall terminate unless reinstated by Investor Approval within such time period and (ii) upon obtaining Investor Approval, (A) the Investor Representative shall have the right to replace the General Partner in the same manner, and subject to the same procedures, as a replacement of the General Partner occurs under Section 8 and/or (B) the Partnership shall be liquidated in accordance with Section 10(a).

7. Removal for Cause.

(a) The General Partner may be removed for a Cause Event following (i) Investor Approval and (ii) written notice to the General Partner from the Investor Representative removing the General Partner.

(b) A "Cause Event" means (i) a breach of the Partnership Agreement or any Partnership Transaction Document that is not cured within any cure period specified in such agreement or document or, if no cure period is specified, 30 days after written notice from any Unaffiliated Investor, or (ii) any of the following conduct: fraud, misappropriation of Partnership assets, breach of fiduciary duty, willful misconduct, gross negligence, waste of Partnership assets, a voluntary bankruptcy of the General Partner, the Manager, any GP Affiliate or any Principal that, if such Principal departed, would cause a Key Person Event, an involuntary bankruptcy with respect to any of the foregoing entities (where the involuntary bankruptcy is not dismissed within 20 days), insolvency, or felony indictment (other than a non-habitual DWI or DUI offense) by any of the Principals or any of their employees. Any of the foregoing acts committed by such other employees may be cured one time during the term of the Partnership by the General Partner and shall not constitute a Cause Event if, within three business days after written notice from any Unaffiliated Investor, the General Partner makes full restitution of the amount of all actual damages and expenses suffered by the Partnership in connection with the Cause Event and terminates the subject employee(s).

(c) The General Partner may contest whether a Cause Event has occurred solely by initiating expedited (i.e., the use of expedited commercial rules of evidence and procedure so that a decision is made not more than 20 days after the initiation of the proceeding) arbitration proceedings in the manner to be set forth in the Partnership Transaction Documents.

(d) If the General Partner contests an allegation by the Investor Representative (and the supporting Investors) that there has been a Cause Event, the Removal Committee shall have the right, effective upon the Investor Representative's delivery of notice to all of the Investors and notwithstanding that the General Partner is contesting such allegation, to propose to the Investors an interim Person (which may be an Affiliate of an Investor) ("Interim Manager") to act in the place of the General Partner if Investor Approval is obtained to appoint such Interim Manager. If appointed, the Interim Manager shall unilaterally make all decisions which the General Partner or the Manager is permitted or required to make under the Partnership Transaction Documents, including resolving disputes, negotiating with service providers and taking such other actions as may be necessary to effect

an orderly liquidation of the Partnership and its assets. The Interim Manager appointed by the Unaffiliated Investors shall not make any new Investments (excluding completion of any Unfunded Follow On Investments). Until the contest is finally resolved, the General Partner shall be excused from performing its obligations which the General Partner was unable to perform as a direct result of the Removal Committee's appointment of an Interim Manager. So long as the Removal Committee is acting under the authority of this provision, the Interim Manager shall be responsible to endeavor to act in accordance with the Partnership Transaction Documents with respect to all actions the Interim Manager takes, and the General Partner agrees that third parties shall have the right to rely on the authority of the Interim Manager to act unilaterally, without further consent or authorization by the General Partner, to the extent provided herein. In no event shall the Investor Representative, the Removal Committee or the Interim Manager have any liability to the General Partner, any Investor or the Partnership for actions taken in accordance with this Section 7 unless such actions would constitute a Cause Event with respect to such Person, and in no event shall such persons have any liability for consequential or punitive damages. The Interim Manager shall be added to the D&O insurance policy maintained by the Partnership and shall be indemnified by the Partnership to the same extent as the General Partner is indemnified under the Partnership Transaction Documents.

(e) If an Interim Manager is appointed to take over management of the Partnership pending the resolution of the General Partner's contest and the Interim Manager is determined that there was no Cause Event, the General Partner shall be reinstated as General Partner of the Partnership and the Interim Manager shall immediately resign. Irrespective of whether or not an Interim Manager is appointed during the pendency of a contest as to whether a Cause Event has occurred, if it is ultimately determined that a Cause Event occurred, the General Partner shall immediately resign or be removed, and the Investors shall by Investor Approval thereafter appoint a replacement General Partner (which may be the Interim Manager if the Interim Manager accepts such appointment) to either continue the Partnership or to cause a Liquidation of the Partnership as provided by such Investor Approval. If Investor Approval is not obtained to appoint a replacement General Partner within 120 days or if Investor Approval is obtained in favor of Liquidation, then a Liquidation of the Partnership shall be effected in accordance with Section 10(a).

(f) In the event that the General Partner is removed pursuant to this Section 7, the removed General Partner (and any GP Affiliate) (i) shall cooperate with all reasonable requests of the substitute General Partner or other Liquidating Partner, if applicable, to transfer the books and records of the Partnership and the other rights and duties of the General Partner so that an orderly transition can be

effected, (ii) shall be liable for (A) its share of any indemnification payments payable by the Partnership with respect to time periods prior to the General Partner's removal and (B) any liabilities arising out of any actions of the General Partner, (iii) shall become a passive Investor with all voting and approval rights of other Investors but with no right to appoint an Advisory Board Representative, and (iv) shall no longer be entitled to the Carried Interest payable to the General Partner under the Partnership Transaction Documents. The General Partner shall promptly return (and cause any GP Affiliates to return) any Carried Interest paid to the General Partner prior to its removal.

(g) The Investor Representative, the Removal Committee and other Investors shall be entitled to consult with counsel of their choice in connection with the possible removal of the General Partner for a Cause Event and the expenses of counsel for the Investor Representative, the Removal Committee and the proxy solicitation shall be a Partnership expense.

(h) During any period in which a Cause Event allegation has been made and remains unresolved, the General Partner shall not make any new Investments, indemnification payments, distributions or capital calls or take any actions that are beyond the scope of routine administration of Partnership business unless Investor Approval has been obtained.

8. Removal Without Cause.

(a) The General Partner may be removed without cause following (i) Investor Approval in support of removing the General Partner without cause and (ii) written notice to the General Partner from the Investor Representative removing the General Partner. If the General Partner is so removed, a new General Partner shall be proposed by the Removal Committee and shall upon Investor Approval be appointed to either continue the Partnership or to cause a Liquidation of the Partnership. If Investor Approval is not obtained to appoint a replacement General Partner within 120 days or if Investor Approval is obtained in favor of Liquidation, then a Liquidation of the Partnership shall be effected in accordance with Section 10(a).

(b) If the General Partner is removed pursuant to this Section 8, the removed General Partner (and any GP Affiliate) (i) shall cooperate with all reasonable requests of the substitute General Partner or other Liquidating Partner, if applicable, to transfer the books and records of the Partnership and the other rights and duties of the General Partner so that an orderly transition can be effected, (ii) shall become a passive Investor with all voting and approval rights of other Investors but with no right to appoint an Advisory Board Representative, (iii) shall be liable for

(A) its share of any indemnification payments payable by the Partnership with respect to time periods prior to the General Partner's removal and (B) any liabilities arising out of any actions of the General Partner and (iv) shall forfeit 50% of its right to receive Carried Interest with respect to all Investments made prior to the General Partner's removal (it being agreed that a removed General Partner shall in no event receive any Carried Interest for any Investments made after its removal). The Carried Interest payable on any pre-removal Investments will be calculated upon a final sale or monetization of such Investments. Any Carried Interest payable to the removed General Partner for such Investments shall be payable out of the net capital proceeds received with respect to pre-removal Investments after payment of any higher priority distributions provided in the Partnership Transaction Documents, and shall be payable after distribution of the forfeited 50% of the Carried Interest to the Partners or to a replacement General Partner, as applicable. Any restrictions on the removed General Partner's right to transfer its Interest in addition to those applying to other Investors shall continue to apply. During any period following delivery to the General Partner of a removal notice or a notice that a removal process is pending, the General Partner shall not make any new Investments, indemnification payments, distributions or capital calls or take any actions that are beyond the scope of routine administration of the Partnership unless Investor Approval has been obtained.

(c) If the General Partner is removed without cause but it is later determined pursuant to Section 7 that a Cause Event occurred, the Investors shall have all remedies available to them as if the removal of the General Partner had occurred pursuant to Section 7 and the General Partner shall promptly return (and cause any GP Affiliate to return any) Carried Interest paid to the General Partner prior to or following the General Partner's removal under this Section 8.

9. Investor Approval. As used herein, "Investor Approval" shall mean, and be deemed to have been given once the following process is followed:

(a) Either (i) the General Partner, if the General Partner is seeking Investor Approval, or (ii) the Investor Representative, if the General Partner is not seeking Investor Approval, shall deliver a written notice to all of the Unaffiliated Investors, as applicable:

(A) soliciting approval for a particular decision or matter;

(B) alleging that a Key Person Event has occurred and seeking related approvals;

(C) alleging that a Cause Event has occurred and seeking related approvals;

(D) seeking the removal of the General Partner without cause; or

(E) seeking the replacement of the General Partner following the General Partner's removal.

(b) The General Partner or the Investor Representative, as applicable, shall deliver to the Unaffiliated Investors a written notice describing in reasonable detail the circumstances surrounding the request for Investor Approval and providing each such Unaffiliated Investor the opportunity to vote in favor for or against or abstain from such matter. The ballot used for such vote shall contain language that provides the Unaffiliated Investors the ability to abstain or provide a yes or no response to the Investor Approval request. An Unaffiliated Investor not affirmatively responding within the prescribed voting period (which shall be not less than 10 business days) shall not have its voting Interest counted for such vote and the applicable percentage of voting Interests required under Section 9(d) shall be calculated without regard to any such non-responding or abstaining Unaffiliated Investor's Interest for the vote in question.[8]

(c) The Investor Representative's notice to the Unaffiliated Investors seeking Investor Approval for a Cause Event removal or a removal without cause shall also specify that upon Investor Approval of the removal, a three member committee (the "Removal Committee") shall be formed to effectuate the removal process. The Removal Committee shall be comprised of one representative designated by the Investor Representative (who shall chair the committee) and one representative from each of the two Unaffiliated Investors affirmatively voting in support of removal that have the greatest percentage of Capital Commitments and that have agreed to serve on the Removal Committee. If any such Unaffiliated Investor does not agree to so serve, the Unaffiliated Investor holding the next greatest percentage of Capital Commitments affirmatively voting in support of removal and agreeing to so serve shall designate a representative. The Removal Committee shall act upon a unanimous vote of its three members, which action shall be binding on all of the Investors.

(d) The affirmative approval (or deemed approval) of 66-2/3% of the Capital Commitments of those Unaffiliated Investors that actually vote shall be required to approve all matters requiring Investor Approval, and such affirmative approval shall be deemed to constitute Investor Approval. The General Partner or the

[8] Alternatively a non-responding or abstaining Investor could be deemed to be a vote in favor (or against) such matter recommended by the General Partner or the Investor Representative, as applicable, but not counting such vote appears less likely to produce an unintended result.

Investor Representative shall notify all of the Investors (including those Affiliated with the General Partner) of the result of the vote (but not the vote of any particular Unaffiliated Investor).

(e) The General Partner shall provide any Unaffiliated Investor eligible to be an Investor Representative with the names and addresses of all of the Unaffiliated Investors upon request and shall otherwise fully cooperate with the Investor Representative in connection with the voting process.

10. Liquidation.

(a) If Investor Approval is given to liquidate the Investments and other assets of the Partnership, the Investor Representative shall, unless a replacement General Partner has already been appointed following Investor Approval, propose a Person to effect a Liquidation. Upon Investor Approval of such Person (or any subsequent Person receiving Investor Approval) and the agreement pursuant to which such Person shall be compensated for undertaking the Liquidation, such Person (the "Liquidating Partner") shall commence and complete the Liquidation and, in doing so, shall have all of the rights of the "liquidating partner" under the Partnership Transaction Documents. The General Partner shall fully cooperate with the Liquidating Partner in connection with the Liquidation.

(b) In connection with the calculation of the Carried Interest pursuant to Section 8(b) or any other provision of the Partnership Transaction Documents where the liquidation value of the Partnership may be required and no actual Liquidation occurs in accordance with Section 10(a), the following procedure (a "Deemed Liquidation") shall be used: first, the fair market value of the Investments and other assets of the Partnership shall be determined as of the relevant date and then the net proceeds that would result from a sale of such Investments and assets at fair market value will be calculated as if the affairs of the Partnership were being wound up and such net proceeds were being distributed to one or more of the Investors or to the General Partner, or both, as applicable, pursuant to the Partnership Transaction Documents. To determine "fair market value", each of the General Partner and the Investor Representative (or affected Investor, if no Investor Representative is applicable) shall appoint a Qualified Appraiser and deliver written notice to each other simultaneously of such appointment within 10 business days after the need to conduct a Deemed Liquidation. Each appraiser shall conduct an appraisal of the Investments and other assets of the Partnership (based upon an agreed set of procedures to ensure that the appraisals are consistent) and shall not share any interim or final results of such appraisals with the Person appointing such appraiser or with any other Person. On the 45th day

after such appraisers' appointment, each appraiser shall simultaneously deliver to the General Partner and the Investor Representative a copy of its appraisal. The appraisals shall be sent by the General Partner to each of the Investors.

If such appraisals differ in value by 5% or less, the values shall be averaged and the average shall be the "fair market value" of the Investments and other assets. If such appraisals differ by more than 5%, the two appraisers appointed shall select a third Qualified Appraiser who shall conduct its own appraisal and then, based on such third appraisal, select one of the two original appraisals that such third appraiser believes most closely approximates "fair market value."

In determining "net proceeds" of the Deemed Liquidation, there shall be deducted from the fair market value of Investments and other assets the reasonable and customary out-of-pocket expenses of sale (excluding any liquidation, brokerage, disposition or other fees payable to the General Partner or any GP Affiliate) and all liabilities of the Partnership (with any debt being market to market). If marketable securities are evaluated, valuations of such securities shall be based on their 30 day subsequent daily average closing price and after deduction of any expense (whether or not incurred) of liquidating the position. Any such deductions to determine "net proceeds" shall be approved by the Advisory Board and the General Partner.

11. Service Providers and Enforcement of Third Party Contracts. The Partnership will promptly notify the Advisory Board in writing of any change in the identity of the accounting firm, property managers, servicers, special servicers, leasing agents, sales agents and/or appraisers of the Partnership and accompany such notice with a written explanation of the reason for such change. Notwithstanding anything to the contrary contained in the Partnership Transaction Documents, any expenses incurred by the General Partner or Manager in monitoring financial and legal affairs for the Partnership shall be on an arm's length basis on terms no less favorable than those terms that could be obtained from unaffiliated parties providing comparable services with regard to comparable investments for institutional owners and shall be approved by the Advisory Board. The enforcement of any Related Party contracts shall be performed by the General Partner or the Manager at the direction of the Advisory Board. If the General Partner is removed pursuant to Sections 6, 7 or 8, the General Partner hereby agrees that the General Partner shall, and its sole cost and expense, terminate any Related Party contract within ten (10) days after the effective removal of the General Partner.

12. Allocation of Investments. The General Partner, the Manager, the Principals and their Affiliates will ensure that all investment opportunities permitted under the Partnership Agreement, without regard to the investment concentration limitations therein will be made available to the Partnership on a first priority basis.

13. Restrictions on Investments; Buy/Sell Restrictions; Financing Restrictions.

(a) The Partnership will not invest any of the Capital Commitments in other commingled funds or other investments requiring payment of a carried interest or incentive fee without in each case obtaining the prior written approval of the Advisory Board.

(b) The General Partner will not enter into any buy/sell provisions with any Investor at any time or, on behalf of the Partnership, with any co-investor or other third party that would obligate the Investors to fund capital after the end of the Investment Period unless the General Partner has set aside a reserve from unfunded Capital Commitments to pay any amounts required if the Partnership is a "buyer" and allocates such reserve to a particular Investment prior to the end of the Investment Period.

(c) Other than with respect to Unfunded Follow-On Investments, the General Partner shall not, without the approval of the Advisory Board, invest capital in an Investment that exceeds the amount of capital projected to be invested in such Investment in the General Partner's initial pro forma or initial investment committee memorandum for such Investment prepared at the time of making the Investment.

(d) Subject to Section 3(b)(iii), any financing obtained by the Partnership shall be from third party lenders not Affiliated with the General Partner (unless approved by Unaffiliated Investors holding at least 66-2/3% of the Capital Commitments of those Unaffiliated Investors that actually vote) or any of the Investors (unless approved by the Advisory Board) and shall be recourse solely to the unfunded Capital Commitments of all the Investors (a "Subscription Line Financing") and/or to the Investments owned by the Partnership (an "Asset Level Financing"). No Asset Level Financing shall, except with respect to Investments that are acquired as part of a pool of assets, be cross-defaulted or cross-collateralized with any other Investment or Asset Level Financing and any such permitted cross-defaulting or cross-collateralization must be approved in advance by the Advisory Board. The Partnership shall not guarantee any Subscription Line Financing, Asset Level Financing or other financing, including a non-recourse carveout guarantee, and shall in no event utilize "repo financing".

(e) Any Subscription Line Financing draw utilized by the Partnership to acquire an Investment must be repaid fully within 365 days after it is drawn and the portion of any such draw that is attributable to the Partnership's equity in the Investment must be repaid within 60 days after it is drawn.

(f) On a quarterly basis, General Partner shall prepare a calculation (the "Quarterly Leverage Certificate") of the loan-to-cost of each Investment that is financed with Asset Level Financing and, if the loan-to-cost (taking into account any Investments that are Permanently Impaired) exceeds **[●]**%, the General Partner shall indicate that on the Quarterly Leverage Certificate and, if such excess occurs during the Investment Period, shall have 60 days from such date to bring such Investment into compliance with the loan-to-cost percentage limitation. The Quarterly Leverage Certificate shall also list, for each Asset Level Financing and any Subscription Line Financing, each lender, the outstanding principal balance, any available amounts, loan term, extension options, interest rate, prepayment rights and interest rate hedging, and the amount of debt that GP Affiliates have with any Affiliates of such lenders on Other Funds or investments where the debt exceeds $1 million.

14. Change in Investments. The General Partner shall provide all of the Investors with written notice of any material adverse change to any Investment and any lawsuits against the Partnership, the General Partner or involving any Partnership property that are not covered by insurance, in each case within five business days of the General Partner obtaining knowledge thereof.

15. Co-investment Opportunities. The General Partner agrees that insofar as the General Partner proposes to make a co-investment opportunity, the General Partner will provide all of the Investors written notice of any such opportunity and make such opportunity available to the Investors at least 15 business days' prior to making the investment available to third parties and such notice will be accompanied by a copy of the General Partner's internal investment memorandum and any other information used by the General Partner to evaluate the proposed investment. Any management fee or incentive fee payable to the General Partner or any GP Affiliate in connection with any co-investment opportunity (other than those to be paid by the Investors) shall be paid to the Partnership and distributed to the Investors pursuant to the distribution waterfall and the General Partner shall use its best efforts to structure the payment and nature of any such fee so as to eliminate any "effectively connected income" other than any such income that is classified under the Code as FIRPTA.[9]

16. In-Kind Distributions. Each of the General Partner and the Partnership agrees that no in-kind distributions of the assets of the Partnership will be made to any Investor without such Investor's prior written consent.

[9] Fees on co-investments need to be negotiated separately.

17. Transfers.

(a) Each Investor shall have the right to transfer, and the General Partner will provide its consent to such transfer, of all or any portion of its Interest in the Partnership to any Affiliate of such Investor or to any institutional investor; provided, however, that the General Partner may withhold its consent to any such assignment or transfer that would result in (i) the Partnership being required to register as an "investment company" under the U.S. Investment Company Act of 1940, as amended, (ii) the transferred Interest being registered under or the offering or sale thereof not being exempt from the U.S. Securities Act of 1933, as amended, (iii) the Interest being held by a competitor of the General Partner or (iv) the Partnership exceeding the 25% ERISA limit (unless the Partnership is a VCOC).[10] Upon the completion of any transfer, the Investor shall be relieved of any further obligation with respect to the Interest (or portion thereof) transferred, including any obligation to fund any unfunded Capital Commitment relating thereto; provided that the transferee has agreed to assume all of such obligations and the transferee meets certain specified standards with respect to its credit worthiness.

(b) With respect to any potential transfer, the General Partner hereby agrees that the Investors may share information relating to the Partnership with potential purchasers; provided, however, that the potential purchasers agree to maintain the confidentiality of such information substantially in accordance with the provisions of Section 32. The General Partner shall also provide assistance with respect to such transfer to the extent reasonably requested by an Investor, including providing additional information with respect to the Partnership, its assets and its liabilities. The General Partner and Manager agree that, at an Investor's written request, prospective purchasers of any or all of the Interests held by an Investor will be (i) provided the same written information about the Partnership that is then available to any or all of the Investors, and (ii) to the extent permitted by applicable law, permitted to perform such reasonable due diligence on the Partnership (including the opportunity to meet with personnel of the General Partner and Manager at a time and place reasonably acceptable to the General Partner and Manager) as similarly situated prospective purchasers of a like number of Interests directly from the Partnership are permitted to perform in connection with an investment in the Partnership (it being understood that in no event will any such prospective purchaser be entitled to any information in connection with such due diligence that is not then available to one or more other

[10] Note: clause (iv) additional language may no longer be necessary given the 2006 amendments to ERISA but some Partnerships may continue to retain the right to be a VCOC out of either an abundance of caution, historical practice or both.

Investors); provided, however, that each Investor acknowledges and agrees that (A) neither the General Partner nor the Manager shall have any liability whatsoever to such Investor, its purchaser or any other Person for any decision to sell the Investor's Interests at any particular time or for any specified price, or for the timing or price realized upon a sale of such Interests or for any failure to effect a sale of any of such Interests, (B) any agreement an Investor signs with a purchaser effecting a sale of its Interests shall provide that neither the Partnership, the General Partner, the Manager nor any of their respective Affiliates shall be liable to such purchaser in connection with its decision to purchase the Investor's Interests at any particular time or for any specified price and (C) in no event shall this Section 17 require the Partnership, the General Partner, the Manager or their respective Affiliates to incur out-of-pocket expenses.

18. Follow-on Funds.

(a) If the General Partner, Manager or any Principal sponsor a follow-on investment fund with investment parameters substantially similar to those of the Partnership, each Investor (other than a defaulting Investor) shall have the right to commit to purchase interests in such follow-on investment Partnership in an amount which is up to such Investor's then percentage interest (calculated with reference to the Investor's Capital Commitment) on substantially the same terms and conditions described herein and in the other documents governing the Investor's Interest in the Partnership as such documents exist on the date hereof (expressly excluding, however, any More Favorable Rights received by the Investor following the date hereof).

(b) The General Partner shall not, and shall cause any GP Affiliate to not, sponsor or market an investment fund with investment parameters substantially similar to those of the Partnership until the earlier to occur of (a) the end of the Investment Period and (b) the date on which not less than 75% of the Capital Commitments of the Investors have been invested, committed to potential Investments pursuant to a term sheet executed by the seller/borrower or committed to Unfunded Follow On Investments.

(c) From time to time, the General Partner shall notify the Investors of the Other Funds that a GP Affiliate may be marketing or raising, whether or not the investment strategy is similar to that of the Partnership.

19. Reserve following End of Investment Period. Notwithstanding anything to the contrary contained in the Partnership Transaction Documents, no Partner shall have any obligation to fund any amounts after the end of the Investment Period (other than on account of indemnification payments required in accordance with the terms of the Partnership

Agreement) unless the General Partner schedules such amounts in a written notice delivered to each Partner, not less than 60 days prior the end of the Investment Period (provided that if the Investment Period ends for any reason other than its natural expiration, the General Partner shall be required to deliver such schedule not less than 60 days after the end of the Investment Period), setting forth in reasonable detail the expected capital and capital-related requirements of the Partnership that would otherwise be permitted pursuant to the Partnership Transaction Documents for the period from and after the end of the Investment Period, including any amounts required to be reserved for a buy/sell provision pursuant to Section 13(b). If the capital is required for a new Investment or a forward commitment or option contained in an existing investment, the General Partner shall include a brief description of the investment, commitment or option and if applicable, shall cause the Partnership to enter into a binding contract to acquire any new Investment identified in such written notice within 90 days following the end of the Investment Period. In addition to other amounts listed in the schedule pursuant to the previous sentence, such schedule shall include any amounts required for the payment of Management Fees and amounts that the General Partner determines in its discretion are necessary to set aside as reserves for unaccrued or unforeseeable future expenses and contingent liabilities of the Partnership (including hedging arrangements), which amounts shall be at least 10% of the known amounts scheduled by the General Partner pursuant to the first sentence of this Section 19, and any amounts required to be reserved for a buy/sell provision pursuant to Section 13(b). Any commitments for the acquisition or origination of new Investments so scheduled must be invested within six months (12 months in the case of a development project) following the end of the Investment Period. Notwithstanding the foregoing, in no event shall an Investor be obligated to contribute more than its Capital Commitment.

20. Bridge Investments. If the Partnership invests capital in a so-called "bridge investment" in accordance with the terms of the Partnership Transaction Documents that remains outstanding for one year or more, such investment shall thereafter be considered to be a permanent investment of the Partnership for all purposes, including for purposes of the distribution of income and proceeds from such investment to the Investors pursuant to the distribution waterfall set forth in the Partnership Agreement. If, on the other hand, a bridge investment is outstanding for less than one year, income and proceeds from such investment shall not be distributed to the Investors pursuant to the distribution waterfall set forth in the Partnership Agreement, but instead shall be returned to the contributing Investors ratably based on their contributions.

21. Distributions.

(a) The Carried Interest shall be calculated on the basis of "full pooling" for all Investments, such that no Carried Interest will be payable until such time as the

Investors have received a return of all of their Capital Contributions, plus the preferred return thereon.

(b) The General Partner represents that Schedule 21 attached hereto provides an accurate example of the distributions as would be made to the Investors pursuant to the distribution provisions set forth in the Partnership Agreement. Each Investor's preferred return shall in all cases be calculated on an "after-tax" basis.

22. Placement Fees. The Investors' Capital Commitments will be fully invested in the Partnership and the Investors will not be responsible for payment of any placement, referral or other similar fees. No placement, referral or other similar fees shall be included in organizational expenses or Partnership expenses.

23. Certain Limitations on Management Fees.

(a) The General Partner shall, in connection with the payment of all Management Fees, provide to the Investors detailed documentation explaining the basis for the payment of the fee, the Section of the Partnership Agreement to which the payment relates, the calculation of the fee, whether the fee is being paid out of cash flow from the Investments or from Capital Contributions (or other sources), and a certification from the Chief Financial Officer (or equivalent) of the General Partner as to the foregoing.

(b) If an Investor defaults on its obligation to make a Capital Contribution to the Partnership, the Partnership shall not require a Capital Contribution from the non-defaulting Investors to cover such defaulting Investor's share of past or future Management Fees.

(c) Notwithstanding anything to the contrary contained herein, during the final 12 months prior to the scheduled termination of the Partnership **[**alternatively: if the remaining Partnership Investments are valued at less than $___ million/**[**5**]**% of the value of the Partnership's assets at the end of the Investment Period**]**, the Management Fee paid by the Investors shall be calculated on the basis of the lesser of cost or equity value of the Partnership in the remaining Investments owned by the Partnership (based on valuations that are consistent with the requirements of Sections 24 and 25 below) and shall be adjusted further by the General Partner or Manager, as applicable, subject to the approval of the Advisory Board, to take into account all then relevant factors bearing on the General Partner's or Manager's entitlement to the Management Fee given the Partnership's equity value and the type and number of Investments remaining including, without limitation, the lessened level of overhead required to manage the Investments, the lessened number and duties of dedicated personnel to asset

manage the Investments, the importance of asset management to the ultimate realization of maximum value for the disposition of the remaining Investments, and other relevant factors. The adjusted fee shall become the Management Fee for the remainder of the Partnership once such fee has been approved by the Advisory Board.

(d) To the extent that the Management Fee is calculated based on invested capital, if, during the term of the Partnership, an Investment is Written Off, sold or Permanently Impaired, the Management Fee payable with respect to such Investment shall be, if Written Off or sold, zero and, if Permanently Impaired, calculated on the basis of the remaining equity value of the Partnership in such Investment after such Investment becomes Permanently Impaired.

24. Information Reporting and Tax Filing Requirements.

(a) The General Partner or the Manager shall provide the Investors with the information set forth in, and in the manner and timeframes described in, Schedule 24 attached hereto. Any reports and/or valuations provided pursuant to the Partnership Transaction Documents (including Schedule 24 attached hereto) shall be an expense of the Partnership. All audited financial statements shall be prepared by a "Big Four" public accounting firm and will be presented in accordance with U.S. generally accepted accounting principles. Each of the General Partner and the Manager agrees that the General Partner or the Manager, as applicable, shall not knowingly and willfully take or fail to take any action that would cause the auditor's report on the annual financial statements provided by the General Partner or the Manager pursuant to the Partnership Transaction Documents to include any qualification due to scope limitation, lack of sufficient competent evidential matter, or a departure from U.S. generally accepted accounting principles.

(b) If any Investor fails to timely receive the information required by paragraphs 1.1, 2.1, 2.4 and 3.2 of Schedule 24 attached hereto, the General Partner (i) shall not be entitled to call capital from such Investor until such information is delivered and (ii) shall be obligated to pay, out of its own funds and not as a Partnership expense, to such Investor a delinquency fee for each day that such Investor fails to receive such information equal to $500 per day for the first 10 days of delay and $1,000 per day for each day of delay thereafter.

25. Valuations.

(a) The assets and liabilities of the Partnership shall be valued in accordance with FAS 157 and FAS 159 or such other procedures as may be required by any

Investor to meet any regulatory requirements to which such Investor is now or may in the future become subject.[11]

(b) The General Partner shall promptly notify all of the Investors if any Investment is Written Off or becomes Permanently Impaired. Any such notice shall include a reasonably-detailed description of the nature of the reason(s) for such Investment being Written Off or becoming Permanently Impaired, as applicable.

26. No Sub-Target Return Investments. The General Partner hereby agrees that it shall not cause the Partnership to acquire any Investment if such Investment has a projected internal rate of return **[**(unleveraged) OR (leveraged at not more than the maximum amount of leverage permitted for the Partnership or, if there is no maximum, not more than 50% loan-to-cost)**]** below 90% of the projected internal rate of return specified in the Partnership Transaction Documents (unless any such investment is part of a portfolio and the weighted average projected internal rate of return for the portfolio meets or exceeds the foregoing requirement). The Investors acknowledge that the foregoing does not amount to a guaranty or assurance from the General Partner or the Partnership as to the performance of any Investment.

27. Changes in Investment Strategy. The prior approval of Unaffiliated Investors holding at least 90% of the Capital Commitments of those Unaffiliated Investors that actually vote shall be required for any change to the Partnership's stated investment strategy.

28. Clawbacks. With respect to the clawback provisions in the Partnership Agreement:

(a) The General Partner agrees that its operating agreement (or equivalent organizational document) shall provide that each Person that receives direct or indirect distributions with respect to the Carried Interest (including, without limitation, all Persons that have a direct or indirect ownership interest in the General Partner) shall have the joint and several obligation to repay to the General Partner the amount owed by the General Partner pursuant to the clawback provision(s) of the Partnership Agreement within 30 days after the determination that such clawback payment is due. All clawback payments shall be payable in cash and not by way of a management fee rebate or distribution-in-kind.

(b) For the avoidance of doubt, if an Investor fails to return a distribution as required under the relevant Sections of the Partnership Agreement (a "Defaulted Give-Back Obligation"), the General Partner may not require other Investors to increase their contributions to the Partnership in order to recover such Defaulted Give-Back Obligation.

[11] If Management Fees are paid with reference to valuations, then valuations should take into account, inter alia, transaction costs and marking debt to market.

(c) This Section 28 shall survive the renewal of the General Partner and the termination of the Partnership Agreement.

29. Exculpation. No Investor Covered Person shall be liable to any Partner or the Partnership for any acts or omissions arising out of or in connection with the applicable Investor's Interest or any investment made or held by the Partnership unless such action or inaction constitutes fraud, willful misconduct, breach of fiduciary duty, or a material breach of a specific provision or representation in the Partnership Agreement or the applicable Investor's Subscription Agreement, nor shall any Investor Covered Person be liable for any act or omission of any agent of any Investor Covered Person, unless such agent was not selected, engaged or retained by the applicable Investor Covered Person with reasonable care. Each Investor Covered Person may consult with counsel and accountants in respect of the Partnership's affairs and be fully protected and justified in any action or inaction that is taken in accordance with the advice or opinion of such counsel or accountants; provided that such counsel or accountants shall have been selected with reasonable care.

30. Nonrecourse. In no event shall any Investor Covered Person have any liability to the Partnership, any Investor, any lender to the Partnership or any other Person (including pursuant to any indemnification obligation set forth in its subscription agreement or any other Partnership Transaction Document) for any amount in excess of its Capital Commitment.

31. Indemnification. In no event (a) shall the Partnership be required to directly or indirectly indemnify (or exculpate) any Covered Person for liabilities, claims, judgments or other losses (collectively, "Losses") resulting from such Covered Person's (i) unlawful act or a violation of any relevant state or Federal law, rule or regulation, or the rules and regulations of any self-regulatory organization to which such Covered Person is then the subject, (ii) breach of the Partnership Transaction Documents, (iii) breach of its fiduciary duty or (iv) fraud, gross negligence or willful malfeasance, (b) shall the Partnership be required to advance payment of any litigation expenses if the expense relates to a suit brought against a Covered Person by Unaffiliated Investors holding at least 33% of the Capital Commitments of the Partnership or (c) shall the Partnership be required to directly or indirectly indemnify any Covered Person with respect to a dispute between the General Partner, its Affiliates or any of their respective employees or agents.

32. Confidentiality.

(a) Each Partner shall keep confidential and shall not disclose, or permit any of its Affiliates, employees, agents, officers, directors, principals, partners, members, shareholders, managers, advisors, heirs, executors, administrators and representatives to disclose, all confidential or proprietary information

(collectively, the "Confidential Information") relating to the other Partners of which they become aware in connection with such Partner's investment in the Partnership, except when and to the extent that (i) such other Partners release them in writing from such obligation of confidentiality, (ii) the information to be disclosed is publicly known at the time of proposed disclosure by such Partner, other than through disclosure by a Person known to be bound by an obligation of confidentiality, (iii) the information otherwise is or becomes legally known to the such Partner, other than through disclosure by a Person known to be bound by an obligation of confidentiality, or (iv) such disclosure is required by law or requested by any regulatory authority that has jurisdiction, or by subpoena or other legal order. In the event of any disclosure required by law, each Partner shall use commercially reasonable efforts to promptly notify the applicable other Partner of such disclosure and, to the extent reasonably requested by such other Partner, shall seek to limit the scope of the required disclosure, subject to applicable legal requirements. The Confidential Information described in this Section 32 shall include, but not be limited to (A) the amount of an Investor's investment in the Partnership (except as may be disclosed to other Investors pursuant to Section 40), (B) the fact that an Investor is an actual or potential investor in the Partnership until such Investor has actually committed to invest in the Partnership or otherwise consented to such disclosure in writing, (C) information concerning any Partner's internal business affairs and the conduct of its business, (D) information concerning any Partner's business relations and (E) the contents, terms or provisions of the Partnership Transaction Documents; provided that each Partner shall be permitted to disclose the contents, terms and provisions of any side letter and the Partnership Transaction Documents to other Investors.

(b) Each Partner, as well as their officers, employees or agents, may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any of the investment structure or arrangements contained in the Confidential Information (including opinions or other tax analyses that are provided to such Person relating to such tax treatment and tax structure). However, any such information relating to the tax treatment or tax structure shall be kept confidential to the extent that such information is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws. For this purpose, tax treatment and tax structure shall not include (i) any specific pricing or portfolio information or (ii) other non-public business or financial information (including, without limitation, the amount of any fees, expense, rates or payments) that is not relevant to an understanding of the tax treatment and tax structure of the investment structure or arrangements related to the Partnership.

(c) No press releases shall be issued using any Investor's name without the prior written approval of that Investor.

(d) Notwithstanding the foregoing, in no event shall performance data for the Partnership be deemed Confidential Information and the Investors shall be free to share such information publicly.

33. Benefit Plan Investors; VCOC Status.

(a) No benefit plan Investor will be required to withdraw any of its Interest in order to permit another benefit plan investor to invest in the Partnership. In addition, in the event that the Partnership determines that it is necessary to require the withdrawal of Interests held by benefit plan investors, the Partnership will not require any Investor to withdraw a greater percentage of its Interest in the Partnership than that required of any other benefit plan Investor.

(b) Prior to such time as an Interest becomes a "publicly offered security" (as defined in the Plan Asset Regulations), the General Partner agrees that the General Partner shall provide each Investor, on the "initial valuation date" (as defined in the Plan Asset Regulations) of the Partnership, with an opinion of outside counsel that the Partnership either: (i) qualifies as a VCOC on such "initial valuation date," or (ii) qualifies for another exception under the Plan Asset Regulations such that the underlying assets of the Partnership should not be considered assets of investing ERISA Plans pursuant to the Plan Asset Regulations. The General Partner agrees that the General Partner shall provide each Investor, within the first 30 days of each "annual valuation period" (as defined in the Plan Asset Regulations) of the Partnership, with an opinion of counsel that the Partnership qualifies as a VCOC from the day following the end of such "annual valuation period" through the last day of the Partnership's next "annual valuation period."[12]

34. Fiscal Year. The fiscal year of the Partnership shall end on December 31 of each year. Accordingly, the first, second, third and fourth quarters shall end on March 31, June 30, September 30 and December 31, respectively.

35. Annual Meetings. The General Partner shall hold a general informational meeting for the Investors each year (the "Annual Meeting"). At each Annual Meeting, the Investors shall be given the opportunity to convene meetings without the General Partner, any of its representative(s) or any GP Affiliate being present in order to separately consider or discuss the matters being proposed at the Annual Meeting or otherwise.

[12] This Section 33(b) is only relevant if the fund strategy for exemption from ERISA requires that the fund maintain VCOC status. If this requirement does not exist, this clause (b) should be deleted.

36. Closing Binders. The General Partner shall cause its counsel to deliver to all of the Investors three sets of closing binders containing all material Partnership Transaction Documents (both bound volumes and CD-ROMs) not later than 60 days following the closing of each Investor's initial Capital Commitment.

37. Tax Notice Provisions. The General Partner shall provide each Investor with the same informational rights and benefits with respect to the Partnership as if each Investor were a "notice partner" (as defined in Section 6231(a)(8) of the Code) with respect to the Partnership.

38. Background Checks. The General Partner shall, and shall cause its and any GP Affiliates' employees, principals and other personnel (excluding independent consultants and independent directors) to, cooperate with any Investor in connection with background checks on such personnel as may be requested at the inception of such Investor's investment in the Partnership or at any time during the term of the Partnership, which cooperation shall include the execution of consent forms and the disclosure of information by such personnel as may be reasonably required to conduct such background checks. The information obtained in connection with any such checks shall be treated as Confidential Information subject to Section 32.

39. Further Assurances. Each party to the Partnership Transaction Documents agrees that, upon request, such Person shall do, execute, acknowledge and deliver such other documents and take such further actions as any other party to the Partnership Transaction Documents may reasonably request to implement the agreements made therein.

40. Other Investors. Within 30 days after each closing of Capital Commitments, the General Partner shall deliver to each Investor a notice containing the name, address, phone number and email address for each key contact person of each Investor and any Advisory Board Representative and the amount of such Investor's Capital Commitment. Such notice shall be updated from time to time upon the request of any Investor. Each Investor agrees to treat such notice and information disclosed in the notice as Confidential Information.

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Schedule 4

Specified Audit Procedures

Schedule 5

General Partner and Principals'
Individual Capital Commitments

	Individual	Capital Commitment	% of Carried Interest	Vesting Date and Percentage of Carried Interest Vested
1.	General Partner	$_____	___%	[date]/__%; [date]/__%; [date]/__%
2.	[Principal 1]	$_____	___%	_____
3.	[Principal 2]	$_____	___%	_____
4.	[Principal 3]	$_____	___%	_____

Schedule 21

Example of Distributions

[To Be Provided By the General Partner]

Schedule 24

Information Reporting Requirements

1. Quarter Reporting (all quarterly reporting shall be delivered by the 30th day following the end of the calendar quarter):

   1.1 Quarterly unaudited fair value financial statements prepared in accordance with GAAP for both the Partnership and, if requested by an Investor, each of its Investments. In each case, such statements shall include a written explanation of the difference between any estimated valuation reported pursuant to paragraph 3 below.

   1.2 Quarterly asset management reports, **[**leasing activity reports,] business plans (updated as necessary) and budget plans (with comparisons against the budgets from the previous **[●]** periods) for each Investment of the Partnership.

   1.3 An estimated valuation of the Partnership's Investments for such quarter. Such estimate shall include a written explanation of the difference between the estimated valuation and the final valuation set forth for such quarter in the previous annual audited financial statements.

   1.4 Quarterly detailed schedule of all fees and expenses charged to the Partnership or any of its direct or indirect subsidiaries by the General Partner, any GP Affiliate or any third party (e.g., asset level property management fees would be included).

   1.5 Quarterly Leverage Certificate required by Section 13(f).

   1.6 A quarterly description of any hedged and un-hedged currency positions with respect to any non-U.S. dollar investments (if applicable) in a form acceptable to each Investor; estimated FIRPTA dividends distributed to each Investor for the preceding quarter, if any.

2. Annual Reporting (except as otherwise noted, all annual reporting shall be delivered by March 31 following the year end):

   2.1 Annual audited fair value financial statements prepared in accordance with GAAP for the Partnership and each of its Investments. Such statement shall include a written explanation of the difference between any estimated valuation reported previously and the final valuation set forth in such annual audited financial statements.

   2.2 Third party valuations of each of the Partnership's Investments (after reductions for any accrued third party Carried Interest and/or other similar fees and Investments that are Permanently Impaired, Written Off and/or sold). Third party appraisals shall be performed by a firm to be approved by the Advisory Board and will be done no less than every year for each of the Investments.

2.3 Any information necessary for each Investor to prepare its annual tax returns.

2.4 For each year following the termination of the Investment Period, estimates of annual capital calls and dividend distributions for the remaining term of the Partnership, distribution models showing actual and projected cash flows for the remaining term of the Partnership.

2.5 By the 30th day following the year-end, the annual certification of the General Partner required pursuant to Section 4(c).

3. Other Reporting

3.1 Within 10 days after making an Investment, a copy of the investment committee submission and approval memoranda or similar information used by the General Partner.

3.2 Any other information as may be reasonably requested by any Investor.

NOTES: All reporting shall be delivered in writing/email, signed by the General Partner or Manager or the Partnership's appraiser or accounting firm (or other third party approved by each Investor) and, except in the case of reports described in paragraph 1 above, in form and in accordance with standards agreed to by each Investor. Business days follow the hours and holiday schedule of the New York Stock Exchange.

APPENDIX 1

ILPA PRIVATE EQUITY PRINCIPLES

VERSION 2.0 – JANUARY 2011

Institutional Limited Partners Association

Private Equity Principles

VERSION 2.0 ● JANUARY 2011

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ILPA Private Equity Principles

The Institutional Limited Partners Association ("ILPA") released the Private Equity Principles (the "Principles") in September 2009 to encourage discussion between Limited Partners ("LPs") and General Partners ("GPs") regarding fund partnerships. These Principles were developed with the goal of improving the private equity industry for the long-term benefit of all its participants by outlining a number of key principles to further partnership between LPs and GPs. Over the past year, ILPA has heard numerous success stories regarding improved communication between LPs and GPs. To that end, the Principles are off to a great start in achieving the goals that were originally envisioned.

In order to make ongoing improvements to the Principles, ILPA committed to solicit additional feedback from both the LP and GP communities throughout 2010. After reflecting on the extensive input from these discussions, the ILPA Best Practices Committee drafted a new version of the Principles. This release retains the key tenets of the first Principles release while increasing their focus, clarity and practicality.

We continue to believe three guiding principles form the essence of an effective private equity partnership:

1. Alignment of Interest

2. Governance

3. Transparency

The three guiding principles are elaborated upon further in the following sections to introduce the revised preferred private equity terms and best practices for Limited Partner Advisory Committees ("LPAC").

These preferred private equity terms and best practices may inform discussions between each GP and its respective LPs in the development of partnership agreements and in the management of funds. ILPA does not seek the commitment of any LP or GP to any specific terms. They should not be applied as a checklist, as each partnership should be considered separately and holistically. We recognize that a single set of terms cannot provide for the broad flexibility of market

circumstance and therefore we emphasize the importance of LPs and GPs working in concert to develop the same set of expectations when entering into any particular partnership. We believe that careful consideration to each of these preferred private equity terms and best practices will result in better investment returns and a more sustainable private equity industry.

In line with the spirit of the Principles, we encourage all LPs to be transparent in their consideration and application of these Principles. A list of organizations that endorse the ILPA Private Equity Principles is posted on the ILPA website (ilpa.org).

The remainder of the document comprises three sections on Alignment of Interest, Governance, and Transparency and three appendices on LPAC Best Practices (Appendix A), Carry Clawback Best Practice Considerations (Appendix B) and Financial Reporting (Appendix C).

Each section starts with a general discussion of the application of the three guiding principles and continues with detail on specific aspects or points of emphasis. The detail should always be seen as subordinate to the more general principles. The appendices are offered as "deeper dives" into specific topics of broad relevance or great complexity. The appendix on LPAC Best Practices is a completely redrafted version of the original Appendix A, reflecting considerable input from GPs. The appendix on Carry Clawback is new, and given the complexity of this subject, it was deemed worthy of outlining suggestions for what we all hope will be a rare contingency. Appendix C covers GP reporting best practices. "Standardized Reporting Templates" are being developed concurrently. Going forward, ILPA will consider issuing further appendices to address similar topics as industry best practices continue to evolve. Suggestions for such consideration should be submitted to the ILPA.

Alignment of Interest

Alignment of interest between LPs and GPs is best achieved when GPs' wealth creation is primarily derived from carried interest and returns generated from a substantial equity commitment to the fund, and when GPs receive a percentage of profits after LP return requirements are met.

GP wealth creation from excessive management, transaction or other fees and income sources, reduces alignment of interest. We continue to believe that a GP's own capital at risk serves as the greatest incentive for alignment of interests. GP equity interests in funds primarily made through cash contributions result in higher alignment of interest with LPs compared to those made through the waiver of management fees.

We continue to believe that an all-contributions-plus-preferred-return-back-first waterfall is best practice. In situations where a deal-by-deal waterfall is used, the accompanying use of significant carry escrow accounts and/or effective clawback mechanisms will help ensure LPs are fully repaid in a timely manner when the GP has received carry it has not earned.

We recognize alignment of interests can be achieved through many different combinations of the elements stated above or indeed, through new approaches. Alignment of interest must be evaluated in giving consideration to each of these elements in totality.

CARRY/WATERFALL

Waterfall Structure

- A standard all-contributions-plus-preferred-return-back-first model must be recognized as a best practice
- Enhance the deal-by-deal model:
  - Return of all realized cost for given investment with continuous makeup of partial impairments and write-offs, and return of all fees and expenses to date (as opposed to pro rata for the exited deal)
  - For purposes of waterfall, all unrealized investments must be valued at lower of cost or fair market value
  - Require carry escrow accounts with significant reserves (30% of carry distributions or more) and require additional reserves to cover potential clawback liabilities
- The preferred return should be calculated from the day capital is contributed to the point of distribution

Calculation of Carried Interest

- Alignment is improved when carried interest is calculated on the basis of net profits (not gross profits) and on an after-tax basis (i.e. foreign or other taxes imposed on the fund are not treated as distributions to the partners)

- No carry should be taken on current income or recapitalizations until the full amount of invested capital is realized on the investment

Clawback

- Clawbacks should be created so that when they are required they are fully and timely repaid

- The clawback period must extend beyond the term of the fund, including liquidation and any provision for LP giveback of distributions

- Appendix B serves as a model given this is an area of considerable complexity

MANAGEMENT FEE AND EXPENSES

Management Fee Structure

- Management fees should be based on reasonable operating expenses and reasonable salaries, as excessive fees create misalignment of interests

- During the formation of a new fund, the GP should provide prospective LPs with a fee model to be used as a guide to analyze and set management fees

- Management fees should take into account the lower levels of expenses generally incident to the formation of a follow-on fund, at the end of the investment period, or if a fund's term is extended

Expenses

- The management fee should encompass all normal operations of a GP to include, at a minimum, overhead, staff compensation, travel, deal sourcing and other general administrative items as well as interactions with LPs

- The economic arrangement of the GP and its placement agents should be fully disclosed as part of the due diligence materials provided to prospective limited partners. Placement agent fees are often required by law to be an expense borne entirely by the GP

TERM OF FUND

- Fund extensions should be permitted in 1 year increments only and be approved by a majority of the LPAC or LPs

- Absent LP consent, the GP must fully liquidate the fund within a one year period following expiration of the fund term

GENERAL PARTNER FEE INCOME OFFSETS

- Transaction, monitoring, directory, advisory, exit fees, and other consideration charged by the GP should accrue to the benefit of the fund

GENERAL PARTNER COMMITMENT

- The GP should have a substantial equity interest in the fund, and it should be contributed in cash as opposed to being contributed through the waiver of management fees
- GPs should be restricted from transferring their real or economic interest in the GP in order to ensure continuing alignment with the LPs
- The GP should not be allowed to co-invest in select underlying deals but rather its whole equity interest shall be via a pooled fund vehicle

STANDARD FOR MULTIPLE PRODUCT FIRMS

- Key-persons should devote substantially all their business time to the fund, its predecessors and successors within a defined strategy, and its parallel vehicles. The GPs must not close or act as a general partner for a fund with substantially equivalent investment objectives and policies until after the investment period ends, or the fund is invested, expended, committed, or reserved for investments and expenses
- The GP should not invest in opportunities that are appropriate for the fund through other investment vehicles unless such investment is made on a pro-rata basis under pre-disclosed co-investment agreements established prior to the close of the fund
- Fees and carried interest generated by the GP of a fund should be directed predominantly to the professional staff responsible for the success of that fund
- Any fees generated by an affiliate of the GP, such as an advisory or in-house consultancy, whether charged to the Fund or an underlying portfolio company, should be reviewed and approved by a majority of the LPAC

Governance

The vast majority of private equity funds are based on long-term, illiquid structures where the GP maintains sole investment discretion. LPs agree to such structures based on their confidence in a defined set of investment professionals and an understanding of the strategy and parameters for the investments.

Given that a Limited Partnership Agreement ("LPA") cannot make advance provision for all circumstances and outcomes, LPs need to ensure that the appropriate mechanisms are in place to work through unforeseen conflicts as well as changes to the investment team or other fund parameters. An effective LPAC enables LPs to fulfill their duties defined in the partnership agreement and to provide advice to the GP as appropriate during the life of the partnership. The role of the LPAC is discussed further in Appendix A.

TEAM

The investment team is a critical consideration in making a commitment to a fund. Accordingly, any significant change in that team should allow LPs to reconsider and reaffirm positively their decision to commit, through the operation of the key-man provisions:

- Automatic suspension of investment period, which will become permanent unless a defined super-majority of LPs in interest vote to re-instate within 180 days, when a key-man event is triggered or for cause (e.g. fraud, material breach of fiduciary duties, material breach of agreement, bad faith, gross negligence, etc.)
- Situations impacting a principal's ability to meet the specified "time and attention" standard should be disclosed to all LPs and discussed with, at a minimum, the LPAC
- LPs should be notified of any changes to personnel and immediately notified when key-man provisions are tripped
- Changes to key-man provisions should be approved by a majority of the LPAC or LPs

INVESTMENT STRATEGY

The stated investment strategy is an important dimension that LPs rely on when making a decision to commit to a fund. Most LPs commit to PE funds within the context of a broad portfolio of investments – alternative and otherwise – and select each fund for the specific strategy and value proposition it presents. The fund's strategy must therefore be well defined and consistent:

- The investment purpose clause should clearly and narrowly outline the investment strategy
- Any authority to invest in debt instruments, publicly traded securities, and pooled investment vehicles should be explicitly included in the agreed strategy for the fund
- Funds should have appropriate limitations on investment and industry concentration and may consider investment pace limitations, if appropriate
- The GP should accommodate a LP's exclusions policy, which may proscribe the use of its capital in certain sectors and/or jurisdictions. However, consideration of increased concentration effects on remaining LPs and transparency of process and policies must be requisite in the event of a non-ratable allocation

FIDUCIARY DUTY

Given the GP's high level of discretion regarding operation of the partnership, any provisions that allow the GP to reduce or escape its fiduciary duties in any way must be avoided:

- GPs should present all conflicts to the LPAC for review and seek prior approval for any conflicts and/or non arm's length interactions or transactions. As materiality is a subjective criterion, it is best to consult the LPAC in all instances. No GP should clear its own conflicts
- The high standard of fiduciary duty applicable to the GP should preclude provisions that allow for them to be exculpated in advance or indemnified for conduct constituting a material breach of the partnership agreement, breach of fiduciary duties, or other "for cause" events
- A majority of LPs must be able to remove the GP or terminate the fund for cause
- Conditions precedent and other removal mechanisms should be constructed so that LPs can act before there is irreparable damage to their interests. To the extent that there are mitigating factors, LPs will take these into consideration in evaluating their response to the "for cause" event
- To the extent that an all-partner clawback is appropriate in order for the fund to indemnify the GP, this should be limited to a reasonable proportion of the committed capital but in no case more than 25% and limited to a reasonable period, such as two years following the date of distribution

To assist in monitoring the GP in the performance of its fiduciary and other duties to the fund, LPs rely upon independent auditors and may need, in certain instances, other support from third parties. Independent auditors are engaged on behalf of the fund and should alert the LPAC to any known conflicts of interest in relation to performing such duties.

- The auditor should present their view on valuations and other relevant matters annually to the LPAC and be available to answer questions at the annual meeting of the fund. A list of the members of the LPAC should be provided to the auditors
- LPs should be notified of any change in the independent external auditor of the fund
- The auditors should review the capital accounts with specific attention to management fee, other partnership expenses, and carried interest calculations to provide independent verification of distributions to the GP and LP
- When considering important matters of fund governance or other matters where the GP's interests may not be entirely aligned with the LPs', a reasonable minority of the LPAC may engage independent counsel at the fund's expense

CHANGES TO THE FUND

Given the long-term nature of the PE partnership, the fund's terms and governance must be well defined upfront but also be flexible enough to adapt to changing circumstances. With appropriate protections for the interests of the GP, LPs should have the option to suspend or terminate the fund.

- Any amendment to the LPA should require the approval of a majority in interest of the LPs, and certain amendments should require a super-majority approval. Amendments that negatively affect the economics of a particular LP should require that LP's consent
- No fault rights upon two-thirds in interest vote of LPs for the following:
  - Suspension of commitment period
  - Termination of commitment period
- No fault rights upon three-quarters in interest vote of LPs for the following:
  - Removal of the GP
  - Dissolution of the Fund

RESPONSIBILITIES OF THE LPAC

The role of the LPAC has been evolving in recent years in response to (i) the requirement for increased transparency into the operations of the GP and the fund (driven by increasing emphasis on LPs' fiduciary duties); (ii) the increasing complexity brought by multi-product firms; and (iii) most recently, the strains of the financial crisis. The LPAC has no broad governance role in a PE limited partnership. Its formal responsibilities are defined by the LPA and are generally limited to reviewing and approving:

- Transactions that pose conflicts of interest, such as cross-fund investments and related party transactions
- The methodology used for portfolio company valuations (and in some cases, approving the valuations themselves)
- Certain other consents or approvals pre-defined in the LPA

The LPAC should engage with the GP on discussions of partnership operations, including but not limited to:

- Auditors
- Compliance (including CSR/ESG/PRI)
- Allocation of partnership expenses
- Conflicts
- Team developments
- New business initiatives of the firm

However, as indicated, the LPAC is not intended to serve as a representative or proxy for the broader base of LPs and should not replace frequent, open communications between the GP and all LPs.

Additionally, an effective LPAC depends on a high degree of trust and commitment among the various parties. LPs serving on the LPAC and receiving sensitive information must keep such information confidential. LPAC members should support the GP in taking appropriate sanctions against any LP that breaches this confidentiality.

LPs that accept a seat on the LPAC should commit the necessary time and attention to the fund. LPAC members should participate in all LPAC meetings, be properly prepared, and responsibly fulfill the duties of their role. LPAC members should be able to take into account their own interest in voting on the LPAC and should be appropriately indemnified.

Additionally, GPs should disclose the identity of certain LPs which they believe may have conflicts of interest with other LPs in a fund. The GP is in a position to determine if LP-LP conflicts may arise in selected situations, including but not limited to, (i) LPs participating in an investment "related" to the fund, such as a separate managed account which invests alongside the fund or a co-investment in one of the fund's portfolio companies, (ii) if an LP has an ownership in the GP or one of its affiliates, or vice-versa or (iii) if a LP has received preferential economic terms.

Transparency

GPs should provide detailed financial, risk management, operational, portfolio, and transactional information regarding fund investments. This enables LPs to effectively fulfill their fiduciary duties as well as to act on proposed amendments or consents. LPs acknowledge the important responsibility they bear with higher transparency in the form of confidentiality.

MANAGEMENT AND OTHER FEES

- All fees (i.e., transaction, financing, monitoring, management, redemption, etc.) generated by the GP should be periodically and individually disclosed and classified in each audited financial report and with each capital call and distribution notice
- All fees charged to the fund or any portfolio company by an affiliate of the GP should also be disclosed and classified in each audited financial report

CAPITAL CALLS AND DISTRIBUTION NOTICES

- Capital calls and distributions should provide information consistent with the ILPA Standardized Reporting Format
- The GP should also provide estimates of quarterly projections on capital calls and distributions

DISCLOSURE RELATED TO THE GENERAL PARTNER

The following should be immediately disclosed to LPs upon occurrence:

- Any inquiries by legal or regulatory bodies in any jurisdiction
- Any material contingency or liability arising during the fund's life
- Any breach of a provision of the LPA or other fund documents

Other activities related to changes in the actual or beneficial economic ownership, voting control of the GP, or changes or transfers to legal entities who are a party to any related document of the fund should be disclosed in writing to LPs. Such activities include but are not limited to:

- Formation of public listed vehicles
- Sale of ownership in the management company to other parties
- Public offering of shares in the management
- Formation of other investment vehicles

RISK MANAGEMENT

GP annual reports should include portfolio company and fund information on material risks and how they are managed. These should include:

- Concentration risk at fund level
- Foreign exchange risk at fund level
- Leverage risk at fund and portfolio company levels
- Realization risk (i.e. change in exit environment) at fund and portfolio company levels
- Strategy risk (i.e. change in, or divergence from, investment strategy) at portfolio company level
- Reputation risk at portfolio company level
- Extra-financial risks, including environmental, social and corporate governance risks, at fund and portfolio company level
- More immediate reporting may be required for material events

FINANCIAL INFORMATION

- **Annual Reports -** Funds should provide information consistent with the ILPA Standardized Reporting[1] for Portfolio Companies and Fund information at the end of each year (within 90 days of year-end) to investors
- **Quarterly Reports -** Funds should provide information consistent with the ILPA Standardized Reporting for portfolio companies and fund information at the end of each quarter (within 45 days of the end of the quarter) to investors

LP INFORMATION

- A list of LPs, including contact information, excluding those LPs that specifically request to be excluded from the list
- Closing documents for the fund, including the final version of the partnership agreement and side letters
- LPs receiving sensitive information as described above must keep such information confidential. Agreements should clearly state that LPs may discuss the fund and its activities amongst themselves. LPs should support the general partner in taking appropriate sanctions against any LP that breaches this confidentiality

1 Appendix C outlines current reporting best practices, however, as standardized reporting templates (available on ilpa.org) continue to evolve, they are intended to encompass all reporting best practices

Appendix A: Limited Partner Advisory Committee

These best practices are offered to provide a model for LPAC duties, its role in the partnership, and meeting protocol. We recognize the differing constituencies of individual partnerships and acknowledge that one standard may not fit every situation. We believe that LPs and GPs should explicitly establish the duties of the LPAC through the LPA and mutually adopt preferred meeting protocol upon establishment of the LPAC. The role of the LPAC is not to directly govern, nor to audit, but to provide a sounding board for guidance to the GP and a voice for LPs when appropriate.

Common objectives in relation to every board should include:

- Facilitating the performance of the responsibilities of the advisory board (as defined in the LPA or by mutual agreement), without undue burden to the general partner
- Creating an open forum for discussion of matters of interest and concern to the partnership while preserving confidentiality and trust
- Providing sufficient information to LPs so that they can fulfill these responsibilities

We note that the role of the advisory board may evolve during the term of the fund, depending on the environment, the specific situation of the fund, and other considerations. The focus should clearly be on substance over form and efficiency over formalistic mechanisms. To this end, there are two points of emphasis in this revised protocol:

- The LPAC should operate as a committee, not as a collection of individual members; to this end, GPs should seek to centralize important discussions within the advisory board context, and not on a bilateral basis
- Regular provisions for an *in camera* session should be made so that LPs can speak, when appropriate, with a unified voice

LPAC Formation

During the formation of the LPAC, the GP should generally adhere to the following protocol:

- The GP should issue a formal invitation to those LPs it has agreed to invite to serve on the LPAC. Such invitations should provide:
  - Information about the meeting schedule
  - Expense reimbursement procedures
  - An outline of the LPAC's responsibilities under the partnership agreement
  - A statement of indemnification
- Simultaneously with each closing, the GP should compile a list of LPAC members and their contact information and circulate this list to all LPs, providing an updated list if and when any information is changed

- The LPAC should be made up of a small number of voting representatives of LPs, with larger funds having as many as a dozen members, representing a diversified group of investors

- Upon initial constitution of the LPAC, any replacements of LPAC members should be determined by the GP with any additional or eliminated seats to be approved by mutual consent of a majority of the LPAC and general partner

- A standing LPAC meeting agenda should be developed and a calendar established as far in advance as possible. The meeting agenda and calendar should be available to all LPs

- Clear voting thresholds and protocols should be established, including requiring a quorum of 50% of LPAC members when votes are taken

- LPAC members should receive no remuneration, but the partnership should reimburse their reasonable expenses in serving on the LPAC

LPAC Meeting Suggested Best Practices

The GP and LPAC members in each fund will determine the best way to conduct the operations of the LPAC. The following best practices are suggested to aid in developing a joint approach in line with the objectives outlined above:

Convening a Meeting:

- LPAC meetings should be held in person at least twice a year with an option to dial-in telephonically

- The GP is encouraged to convene the LPAC more frequently to discuss time-sensitive matters of importance (e.g. conflicts); in these cases, LPAC members should be flexible and responsive. With the consent of the LPAC, certain matters may be handled by written consent

- After initially consulting the GP, a minority of three or more members using reasonable judgment and discretion should have the right to call for a LPAC meeting

Agenda:

- Any member of the LPAC may add an agenda item to the LPAC meeting agenda subject to a reasonable notice requirement to the GP
- With any request for consent or approval by a fund's LPAC, the GP will use best efforts to send each LPAC member background information on the matter at least 10 days in advance of the meeting
- A portion of each LPAC meeting will be set a side for an *in camera* session with only the LPs present. LPs may elect one or more members of the LPAC to lead the discussion and report back to the GP
- The LPAC should have *in camera* access to partnership auditors to discuss valuations. A representative from the audit firm should attend each year-end LPAC meeting or annual meeting

Voting:

- Any meeting requiring a vote of the LPAC should be held with only the members of that specific fund's LPAC in attendance. For convenience, LPAC meetings and/or members of other related funds may be pooled when general topics are discussed
- The partnership should indemnify members of the LPAC
- Each LPAC member should consider whether they have any potential conflicts of interest prior to voting in all circumstances. LPAC members should disclose actual conflicts to other LPAC members during discussions at LPAC meetings

Records:

- The GP should take minutes at all LPAC meetings. LPAC meeting minutes should be circulated to LPAC members within 30 days and submitted for approval at the next LPAC meeting. Once approved, LPAC minutes should be available upon request to all LPs within a reasonable time period
- The GP should record all votes taken during conference calls or at meetings and maintain a copy of consents obtained in writing, by facsimile, or by email. Detailed voting records should promptly be made available by the GP to any LPAC member upon request

Appendix B: Carry Clawback Best Practice Considerations

While fortunately rare, carry clawback situations represent one of the greatest challenges to the GP/LP relationship. Appropriate processes and remedies should therefore be defined at the start of the fund, as alignment between GP and LP will usually be at a low point when they occur. The following "building blocks" should be considered with regard to clawbacks:

Seek to Avoid Clawback Situations

- Best approach is all capital back waterfalls ("European style") as this will minimize excess carry distributions
- If deal-by-deal carry, then
  - NAV coverage test (generally at least 125%) to ensure sufficient "margin of error" on valuations
  - Interim clawbacks should apply, triggered both at defined intervals and upon specific events (e.g., key-man, insufficient NAV coverage)

Ensure GPs Backstop Themselves

ILPA strongly recommends joint and several liability of individual GP members as a best practice as LPs contract with the GP as a whole rather than individual members. In cases where joint and several liability is not provided, a potential substitution would be a creditworthy guarantee of the entire clawback repayment by any of:

- a substantial parent company; OR
- an individual GP member; OR
- a subset of GP members

However, in general, repayment obligations should directly track the carry distributions. An escrow account (generally of at least 30%) may also provide an effective mechanism for clawback guarantee.

LPs should have robust enforcement powers, including direct ability to enforce the clawback against individual GPs. Actual and potential GP clawback liabilities should be disclosed to all LPs annually along with a plan to address as additional disclosure in the audited financial statements.

Ensure Fair Treatment of Tax Burden

GPs receive tax distributions from the fund in order to pay their tax liabilities on carry (capital gains tax treatment). To the extent that the GP either does not receive (or must return) carry, there is a loss of the tax paid since there are limitations on the GP's ability to carry back losses to offset the gains on which tax was previously paid. Historically, LPs have absorbed this loss on behalf of GPs. The initial release of Principles stated that all carry clawbacks should be gross of tax, but after extensive discussions with GPs, we believe that it would be impractical to ask them to bear the cost.

However, current practice in some cases does not take into account the GP's ability to reduce the tax burden through carrying losses forward, offsetting a gain against a loss, or living in a favorable tax jurisdiction. GPs clearly should not make a profit from the LPs' willingness to bear their tax payments in clawback situations. Accordingly, instead of assuming the highest hypothetical marginal tax rate in a designated location, the rate should be based on the actual tax situation of the individual GP member and should take into account:

- Loss carryforwards and carrybacks
- The character of the fund income and deductions attributable to state tax payments
- Any ordinary deduction or loss as a result of any clawback contribution or related capital account shift
- Any change in taxation between the date of the LPA and the clawback

Any tax advances made to the GP should be returned immediately if in excess of the actual tax liability.

Fix the Clawback Formula

In essence, the clawback amount should be the lesser of excess carry or total carry paid, net of actually paid taxes. However, there are often errors in the stipulated formulas which have a material impact on fund cash flows:

- The tax amount should not simply be subtracted from the amount owed under the clawback
- The clawback formula should take the preferred return into account

Appendix C: Financial Reporting

- **Annual Reports -** Funds should provide the following information at the end of each year (within 90 days of year-end) to investors:
  - Audited financial statements (including a clean opinion letter from auditors and a statement from the auditor detailing other work performed for the fund);
  - Internal Rate of Return ("IRR") calculations prepared by the fund manager (that clearly set forth the methodology for determining the IRR);
  - Schedule of aggregate carried interest received;
  - Breakdown of fees received by the manager as management fees, from portfolio companies or otherwise;
  - Breakdown of partnership expenses;
  - Certification by an auditor that allocations, distributions and fees were effected consistent with the governing documentation of the fund;
  - Summary of all capital calls and distribution notices;
  - Schedule of fund-level leverage, including commitments and outstanding balances on subscription financing lines or any other credit facilities of the fund;
  - Management letter describing the activities of the fund directed to the LPAC but distributed to all investors;
  - Political contributions made by placement agents, the manager or any associated individuals to trustees or elected officials on investor boards.
- **Quarterly Reports -** Funds should provide the following information at the end of each quarter (within 45 days of the end of the quarter) to investors:
  - Unaudited quarterly profit and loss statements also showing year-to-date results;
  - Schedule showing changes from the prior quarter;
  - Schedule of fund-level leverage, including commitments and outstanding balances on subscription financing lines or any other credit facilities of the fund;
  - Information on material changes in investments and expenses;
  - Management comments about changes during the quarter;
  - If valuations have changed quarter-to-quarter, an explanation of such changes;
  - A schedule of expenses of the general partner

- **Portfolio Company Reports -** A fund should provide quarterly a report on each portfolio company with the following information:
  - Amount initially invested in the portfolio company (including loans and guarantees);
  - Any amounts invested in the portfolio company in follow-on transactions;
  - A discussion by the fund manager of recent key events in respect of the portfolio company;
  - Selected financial information (quarterly and annually) regarding the portfolio company including:
    - Valuation (along with a discussion of the methodology of valuation;
    - Revenue (Debt terms and maturity);
    - EBITDA;
    - Profit and loss;
    - Cash position;
    - Cash burn rate
- **Capital Call and Distribution Notices –** A standardized reporting template has been developed by ILPA and is available at ilpa.org
  - Under development – standardized reporting templates to cover annual and quarterly reporting as well as supporting financial schedules

About the ILPA

The Institutional Limited Partners Association (ILPA) is a member-led not-for-profit association committed to serving limited partner investors in the global private equity industry. ILPA's mission is to provide a forum for facilitating value-added communication, enhancing education in the asset class and promoting research and standards in the private equity industry.

ILPA has grown substantially since its inception in the early 1990s to include more than 240 member organizations from around the globe. While membership is comprised exclusively of limited partners, the variety of member institutions makes the ILPA a dynamic organization representing a diverse range of interests.

The ILPA membership is united by a common goal: to enhance the professional interests of its affiliates, and ultimately, to enable them to achieve strong portfolio performance. ILPA member organizations collectively manage approximately $1 trillion of private equity assets.

For more information on the ILPA
visit ilpa.org or call (416) 941-9393

55 YONGE STREET, SUITE 1201 ● TORONTO, ONTARIO M5E 1J4 ● (416) 941-9393 ● ILPA.ORG

APPENDIX 2

A PRINCIPLED APPROACH TO COMMINGLED FUND DOCUMENTATION

BY BARDEN GALE AND STEVE HASON

PREA QUARTERLY, FALL 2007

From time to time, PREA members submit commentary on issues they are focusing on within their businesses. Transparency, disclosure, governance, and other non-financial terms are important issues to both investors and managers contemplating an investment in a real estate partnership. Here is one investor's view on what model provisions would look like in fund documentation.

Barden Gale and **Steve Hason,** *ABP Investments US, Inc.*

A Principled Approach to Commingled Fund Documentation

Indirect investment in real estate through private, commingled vehicles (Funds) has become a widespread, global practice for many institutional investors over the past decade. In fact, from 2002 through 2007 alone, there have been over 850 high-yield real estate funds which have raised approximately $400 billion for investment in commercial real estate on behalf of public and private pension funds, endowments, insurance companies and other institutional investors.[1] In the mid-to-late '90's, fund documentation was often heavily negotiated between the manager (or sponsor) and one or more lead investors. As funds have grown larger, real estate returns have outperformed and capital has become more available; however, some managers have shown an increasing reluctance to engage in negotiations with investors, especially insofar as the non-financial terms and conditions are concerned. In many cases, this is interpreted as "take it or leave it; there are other customers waiting in the hall." To be sure, not all managers are so obdurate, but this is how many investors feel they are treated.

The purpose of this article is not to bemoan the fees associated with investment in some real estate funds or to take exception to the unvaried, non-differentiated strategies of many of them. Rather, this article will attempt to open a principled dialogue on other issues of key concern to investors such as:

- Governance
- Transparency and Disclosure
- Fiduciary Obligations
- Alignment of Interests
- Mechanics

1. Real Estate Alert, March 21, 2007. High-yield funds include Opportunity, Value-Added, Core-Plus, High-Yield Debt, and Fund of Funds.

Getty Images

We will also explore a miscellany of other concepts that Investors should consider when agreeing to invest in a commingled Fund.

Sample Provisions

Annexed to this article is a set of provisions which embodies many of the concepts discussed here. [Editor's note: Due to space constraints, the provisions are not attached, but may be found on PREA's website, www.prea.org.] The wording of these provisions is arbitrary as we are certain there are many other ways to voice the same concepts. However, without actually seeing an actual example of a well thought out provision which one might see in a limited partnership agreement, it may be difficult for the reader to understand fully the import or mechanics of the principles we discuss. Otherwise, it would be a bit like trying to describe a spiral staircase without a diagram. As the provisions have already undergone many refinements reflecting the comments of numerous investors, we are equally sure that further examination and discussion among investors or between investors and managers will result in variations, new provisions, or elimination of some. In short, they are not to be taken as gospel. They are, however, substantially similar to provisions the authors have used in numerous fund investment negotiations (but not all), and are not purely theoretical. We acknowledge that even if documentation does not reflect all (or even any) of these principles, it does not mean an Investor should not invest in a Fund; however, failure to address them could bring risks of one kind or another.

The provisions go beyond the principles outlined in this text, taking positions on less fundamental, but still important, issues, such as numbers of members of an Advisory Board and notice periods. Some investors and managers may find them useful as well as form a mental checklist in drafting or negotiating fund documentation, regardless of where they come out on the issues.

The numbers in parentheses following each header refer to the applicable paragraph of the provisions. Some provisions clearly achieve multiple objectives (such as better governance and a higher degree of fiduciary obligations); for simplicity sake, we put the note in the most appropriate section.

Governance

The guiding principles behind these provisions are to provide Fund investors with higher standards of governance, transparency, and disclosure, similar to those provided by a public company, while maintaining a high level of Manager discretion. For example, Fund investors should be entitled to independent Advisory Boards (similar to corporate boards) that are empowered to enforce and maintain Investor rights. These rights are not dissimilar from the rights which are typically afforded to public shareholders, such as the ability to approve material transactions and the right to approve conflicts. The sections which follow address the important role of Advisory Boards as they relate to Fund governance.[2]

- Advisory Boards (1): *Most Funds' primary mechanism for governance vis-à-vis their Investors is through an Advisory Board or similar body.* Typically Advisory Boards are charged with resolving conflicts of interest or approving auditors and appraisers and the like. Increasingly, they are being utilized to provide flexibility in the delineation and execution of investment strategies, for example to approve or waive leverage limits or geographic investment limitations. In some cases, they are even being used to confirm that the Sponsor is in compliance with the Fund's documentation. Whatever the ultimate powers of an Advisory Board are, the mechanics of making decisions are critical to the execution of the Advisory Board's fiduciary duties. Accordingly,
  - *Advisory Boards should consist of Limited Partners who are experienced fund investors who understand the importance of their role and the nature of their participation. They must be free to acquit their obligations in full compliance with their duties as an Advisory Board member as a fiduciary (to its own stakeholders but not necessarily to other investors).*[3] *All investors, whether or not represented on the Advisory Board, must also be assured that the Advisory Board is able to function independently and free of any conflicts of the Manager and must not engage in self-dealing such that the interests of all Advisory Board members are closely aligned with those of unrepresented investors. As such, Advisory Boards and their members must be:*
    - *Independent of the Manager and only Investors.* We see no reason for the Manager to have members on the Advisory Board. The Manager makes proposals to the Advisory Board, so it is natural that he would support it. The Manager's vote adds nothing and is, by definition, conflicted. Further, given that many proposals involve conflicts of interest, having a Manager who also serves on the Advisory Board vote (especially if not forced to recuse himself) might lead to a situation where a majority of independent members might disagree with a proposal but it gets passed anyway. We are also not in favor of so-called "independent" (i.e. non-Manager and non-investor) Advisory Board members. These members are often hand-picked by the Manager and may not be truly independent. Also, almost all are not significant investors in the Fund and as such are not fully aligned with the other investors as they have no vested interest in the success or failure of the Fund.

2. IPLA Memorandum re: Advisory Committees—Best Practices Note, February 19, 2004 was part of the research that was utilized in the creation of the provisions and this article.
3. To the extent that a Fund is not governed by either Delaware or Maryland law, counsel for the investors should be consulted to ensure that there is no fiduciary duty to other investors.

- *Free of conflicts.* Not only may the Manager be conflicted, but so may Investor members. For example, from time to time (and too frequently for our tastes) we are asked to approve the transfer of an asset from one fund sponsored by the Manager to another fund sponsored by the same Manager. If any Investors are invested in both funds and others aren't (or not in the same proportions), a conflict may arise. Investor members should be required to disclose such conflicts and recuse themselves unless independent counsel opines otherwise.
- *Available and willing to commit sufficient time to their participation.* To the extent that an Investor does not have or is not willing to spend the time to understand the issues at hand and vote his position, the Investor should not accept an Advisory Board position.
- *Required to engage in open discussion and reach open agreements.* Except under extraordinary circumstances and with the consent of all members, Advisory Board actions should only be taken at formal meetings (whether by phone or in person) with a quorum of participation of the non-conflicted Advisory Board members. Too often, Managers contact and solicit the votes of Advisory Board members one by one. Needless to say, this is not in the spirit of good governance.
- *Able to access independent counsel and advisors.* As Advisory Board members are often asked to opine on conflicts of interest or approve valuations or related party fees, it makes sense that they should have access to independent advice, at the expense of the Fund. In our experience, the failure of a Manager to offer this provision (or provide it upon request) can be seen as a litmus test of probity. Of course, this may slow down a process and add a layer of expense, but it is the responsibility of the Manager to foresee this and plan accordingly. The added expense should be marginal to any material decision and the layer of validation to the process quite significant.
- *Provided with all requisite information to enable them to make decisions and given enough time to analyze and discuss that information among themselves and with the Manager.* A request for approval is the solicitation of a vote. In respect of this and shareholder votes as well, we take the view that they are akin to proxy solicitations. That is, whoever is soliciting the approval must give sufficient advance notice and supporting documentation to make his case, highlighting both the positives and the risks or issues. Also, it is critical that the Advisory Board members be able to discuss matters amongst themselves without the potentially "chilling" presence of the Manager. Management will always have ample time to present its case, but any opposition always seems, at least initially, to be at a disadvantage and needs consideration in the appropriate forum to redress the imbalances.

- Removal for Cause (6): *Investors must be able to remove a Manager whose actions* may *adversely affect their investment, without delay.* Most Investors and Managers would agree that a member of the Manager (at least a senior professional) being convicted of a crime should allow investors to terminate not only the investment period of a Fund, but also the Fund itself. Inevitably, though, negotiations degenerate into issues as to what type of crime, expiration of appeals periods, level of personnel, and so forth. We feel this all misses the point. The real question is whether the occurrence of certain events, regardless of their ultimate outcome, in themselves, gives rise to a removal event.

- Removal Without Cause (7): *Investors should be able to remove a Manager in whom a substantial majority of investors have lost confidence.* Trust is the essence of a partnership. Loss of that trust should permit the dissolution of the partnership. This principle is embodied in common law, although it may be contracted away. To the authors, this is a common sense right which would only be exercised in extreme circumstances, with the only real question being what compensation is owed to the Manager in such a circumstance. The attached provisions take one position, but there are clearly others as well.

- Key-Person Event (5): *In many instances, the loss of certain investment professionals of the Manager—upon whose track record Investors relied upon when making their decision to invest in the Fund—should allow investors either to terminate the investment period or liquidate the Fund, or both.* This provision is analogous to removal with and without cause: an underlying basis of the investment proposition has been lost and the Investor may or may not have confidence in a proposed replacement (nor should he be forced to accept one). This is therefore both a matter of trust and fulfillment of express or implied expectations. In such a case, Investors should have defined options, which may vary. The attached provisions take one tack.

Transparency and Disclosure

- Partnership Expenses; Audits (3): *Investors should be fully aware of all expenses which they are obligated to bear and have the right to audit them.* Depending on the situation, either the Fund will bear the expense of the audit or the individual Investor will. In either event, the Investors, acting alone or as a group, should have the right to audit themselves or call for an audit.

- Service Providers (10): *Investors must be fully apprised of any party standing in a fiduciary position to the Investors.* In the event of a change to an existing service provider or the provision of a related-party service provider, these changes or provisions must be approved by the Investors or through the Advisory Board, as the case may be.

■ Change in Investments (13): *Investors are entitled to prompt and accurate disclosure of material adverse changes to their investment.* A detailed explanation of the change and a course of action to mitigate loss is a reasonable expectation of the Investors.

■ Reserves Following the End of the Investment Period (15): *Investors are entitled to certainty regarding the duration of their financial commitments.* We recognize that in certain cases Managers may need to reserve capital or call capital after the expiration of the Investment Period. However, these cases need to be defined and limited and should not create an open-ended, infinite forward equity commitment by the Investors.

■ Distributions (17): *Investors are entitled to an adequate degree of specificity regarding the categorization, definition and calculation in the reporting of distributions.* In fact, each waterfall calculation that results in a promoted interest payment to the Manager should be audited and affirmed by a third party.

■ Placement Fees (18): *Investors are entitled to transparency and clarity on the allocation of all costs and expenses of the formation of the Fund.* Although many Investors take the position that placement fees are most properly borne by the Manager, most Investors do recognize the appropriateness of bearing a share of certain other out-of-pocket formation costs, such as legal fees. Whether or not Investors are being asked to bear any of these costs and expenses and the magnitude of them should be adequately disclosed and clearly treated as a capital contribution for waterfall calculation purposes.

■ Reporting Requirements (20): *Investors are entitled to prompt, detailed reporting regarding the performance of the Fund.* We hope that there will be some degree of industry standardization of minimum reporting requirements and format, led by industry groups such as PREA and INREV. Differences in accounting requirements based on the focus of the Fund or Investor in question as well as idiosyncratic requirements will always lead to variations, regardless of the standard. In all cases, we believe it important that both the Investor and Manager agree on the level of detail and frequency of reporting prior to making the investment, not after.

Fiduciary Obligations

■ Exclusivity (11):

◆ *A Manager's investment strategy should be exclusive to a Fund during its investment period.*

◆ *A Manager should complete substantially all of its obligations to a Fund prior to initiating the marketing or investing of another fund with a similar investment strategy.*

◆ *To the extent that an investment strategy is not exclusive, a Manager must disclose how it plans to fairly allocate investment opportunities among competing or overlapping funds.*

In a perfect world, Managers would have just one Fund and no competing or overlapping funds or strategies. Only then may Investors be assured of no adverse selection of investment opportunities. Investors should also be assured that the Manager's attention is heavily weighted toward the fulfillment of the current Fund's investment plan and not overly concerned with the launch of subsequent funds or stockpiling or sharing investments for such funds. If a Manager does have competing funds or mandates, measures need to be in place to allow the Investor to audit and ensure that any allocation policies that are promised are implemented.

■ Related Party Transactions (2) (10):

◆ The cost and qualifications of related-party service providers must be competitive to highly qualified unrelated service providers. In an ideal world, these services would be provided as part of the overall fee structure or "at cost" and the qualifications of the providers, unassailable. In reality, the Investor often doesn't have a choice, as the Managers believe that their affiliates' qualifications are competitive. Still, the authors believe that there is no substitute for a competitive selection process. To the extent the contract, personnel and qualifications of such related providers is not mandated by Fund documentation, Advisory Board assent on both the competitive fee levels and qualification is critical.

◆ A Manager should not enter into capital transactions (i.e. buy, sell, finance) with a related party. Although this proposition is self-evident, many Funds actually provide that they will do so. Accordingly, if an Investor wishes to accept such a proposition he should at a minimum be entitled to have Advisory Board consent.

■ Co-investment Opportunities—Fees and Promotes (14): *Fees and promotes generated by co-investments by third parties, whether or not investors in the Fund, should inure to the benefit of all the Fund investors, not solely to the Manager.* Co-investment income represents a partnership opportunity and the benefits derived belong to the Fund, not the Manager. But for the existence of the Fund, there would be no co-investment income. Additionally, the Manager should only be incentivized to maximize Fund returns, not personal income. The Manager still benefits through his participation in the promote as it is passed through the Fund's economic waterfall.

■ Change in Investments (13): *Investors are entitled to timely notification of a significant adverse change to a Fund investment.* Investors are entitled to know what is happening to their investments on more than a quarterly basis if something material (on a reputational basis or an absolute or relative dollar basis) occurs. Not only does this make sense from a fiduciary point of view, but also a Manager should recognize that many Investors expect timely and pertinent market information from their standing investments to aid them in other endeavors.

Alignment of Interest

■ Co-investments by Principals (4): *Investors are entitled to know which principals are providing the capital for the co-investment, how the individuals will benefit by the performance of the Fund, and how those benefits will vest.* Co-investments by principals of the Manager are important in creating and maintaining alignment with the Investors and ensuring that the Fund will be adequately managed throughout its life. Moreover, the principal's investment should be maintained throughout the life of the Fund. These principles dictate disclosure to create an understanding and, if needed, discussion on these issues.

Mechanics

■ Limited Partner Approval (8): *There must be a clear process for seeking and obtaining Investor approvals, to the extent they are sought, and the process must ensure that investors are adequately apprised regarding the matter at hand, including disclosure of all material benefits and risks.* Most Fund documentation is silent on how Investor approvals are solicited. Without a clear process, there is the potential for abuse. The attached provisions take the basic positions that Investors are entitled to adequate notice and the same level of disclosure as in the original PPM, if not more.

■ Liquidation (9): *Investors are entitled to a clearly defined process of liquidation to protect their investment in the event of an early termination of the Fund.* Although many Funds provide for liquidation upon the occurrence of certain events, there is rarely any clear process as to how this would be accomplished, thereby rendering the right (or obligation) null or very weak. Once again, the attached provisions attempt to address this process surrounding this issue.

■ No Buy-Sell (12): *A Manager should not be able to obligate the Fund or its Investors to fund a buy-sell provision which could be triggered beyond the Fund's investment period. Surprisingly, many Funds enter into joint ventures which do not provide for an absolute right of sale and instead rely on a buy-sell process.* To the extent that these provisions provide for time frames which are outside the investment period or invoked after all commitments are funded, the Fund could be at a serious negotiation disadvantage or at risk of defaulting on its Fund guidelines.

■ Co-investment Opportunities (14): *Investors should be given ample time and information to make decisions regarding co-investment opportunities.* As Investors are given ample time to make their initial Fund investment decisions, they should be given enough time to make subsequent co-investment decisions for significant transactions that are beyond the investment parameters of the Fund and the discretion of the Manager.

■ Bridge Fundings (16): *A Manager should not be able to exclude low-return temporary investments from his promote calculation for an unreasonable period of time.* Bridge investments are entered into to facilitate a Fund transaction before a permanent capital structure can be put in place. For example, a Manager may draw down excess equity capital to bridge the closing of a debt financing; it is anticipated that this funding is short-term. Typically, any return associated with this temporary financing will be distributed to Investors on a pro rata basis. To the extent that these funds do not get repaid within a short time period (e.g. one year), they should be considered a permanent investment and treated as capital for waterfall calculations.

As mentioned at the outset, these provisions are not aimed at interfering with the business strategy or economics of a Manager. Rather, the purpose of these provisions is to address the imbalance typically present in the negotiation of Fund documents. We believe there are managers who don't even know what their own documents say, let alone understand their consequences in practice. Even the Manager's lawyers drafting a Fund's documents have not given a great deal of thought to the implications for Investors or how to implement the provisions mechanically. This article and the referenced provisions attempt to remedy this situation and provide for equitable fund documentation which is ultimately principle based. ■

APPENDIX 3

SAMPLE INVESTMENT PROCESS

Sample Investment Process

1. Receive investment proposal from investment manager and logs it in to database

2. Staff completes initial screening of investment proposal[1]
    a. If the proposal has merit, then proceed to Step #4
    b. If the proposal does not have merit, then distribute a formal decline letter to the investment manager and update deal log

3. Staff conducts preliminary analysis of investment manager and investment proposal

4. Staff prepares investment memorandum (IM)[2] for an internal Investment Review Committee (IRC)

5. Present to IRC
    a. If IRC declines the investment proposal then distribute decline letter to investment manager and update deal log
    b. If IRC requests additional information or research, then fulfill the IRC request and repeat Step #5
    c. If IRC approves utilizing an independent consultant to pursue further due diligence (refer to the Due Diligence Checklist), then proceed to Step #6[3]
        i. Request legal and tax consultant if necessary

6. Independent consultant and/or staff conducts due diligence on the investment manager and the investment proposal and develops a written analysis and recommendation
    a. If a due diligence questionnaire would be helpful, consultant or staff submits it to the investment manager at this stage

7. If applicable, staff and internal and external legal counsel negotiate term sheet (refer to the Model Provisions and the LPA Checklist)[4]

8. Independent consultant provides staff with a written analysis and recommendation

9. Legal provides staff with a memo summarizing the key terms of the agreement

10. Staff prepares presentation to IRC
    a. Presentation documents may include:
        i. Staff memo with recommendation
        ii. Draft consultant memo with recommendation and corresponding analysis

[1] Initial screening should be cursory in nature.
[2] This may include the following: proposed investment manager, size of the investment, risk classification, proposed investment structure, proposed alignment of interests and governance terms, investment time horizon, potential exit strategies, expected return versus benchmarks, risk analysis, consistency with internal policies/strategic plans, etc.
[3] Depending upon the LP, staff may be responsible for all manager due diligence.
[4] Based upon the LP's preference, Step # 7 (term sheet negotiation) can occur either at the same time as Step #6 or sequentially.

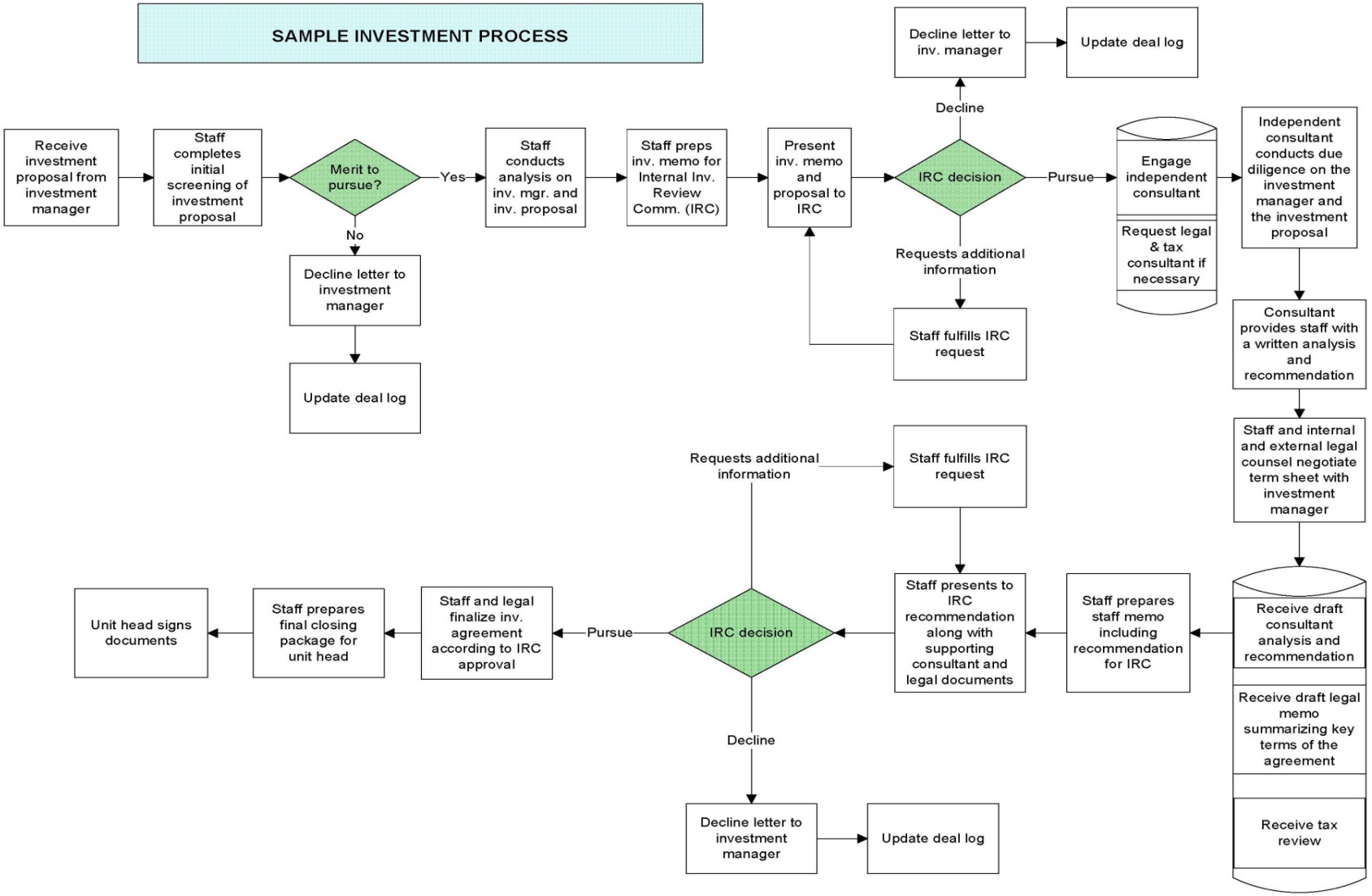
iii. Draft legal memo summarizing key terms of the agreement

b. If the IRC approves then proceed to Step #9
c. If the IRC declines then distribute a formal decline letter to the investment manager and update deal log

11. Staff and legal finalize the investment agreement according to what has been approved by the IRC[5]

12. Prepare the agreement for signature, if applicable

[5] If staff informs the unit head that the key terms and conditions have changed materially from what was approved by the IRC, the unit head can make the decision as to whether the investment is to be routed back through the IRC process or whether to move forward with the closing.


SAMPLE INVESTMENT PROCESS
Receive investment proposal from investment manager
Staff completes initial screening of investment proposal
Merit to pursue?
Yes
No
Decline letter to investment manager
Update deal log
Staff conducts analysis on inv. mgr. and inv. proposal
Staff preps inv. memo for Internal Inv. Review Comm. (IRC)
Present inv. memo and proposal to IRC
IRC decision
Decline
Decline letter to inv. manager
Update deal log
Requests additional information
Staff fulfills IRC request
Pursue
Engage independent consultant
Request legal & tax consultant if necessary
Independent consultant conducts due diligence on the investment manager and the investment proposal
Consultant provides staff with a written analysis and recommendation
Staff and internal and external legal counsel negotiate term sheet with investment manager
Receive draft consultant analysis and recommendation
Receive draft legal memo summarizing key terms of the agreement
Receive tax review
Staff prepares staff memo including recommendation for IRC
Staff presents to IRC recommendation along with supporting consultant and legal documents
IRC decision
Requests additional information
Staff fulfills IRC request
Pursue
Staff and legal finalize inv. agreement according to IRC approval
Staff prepares final closing package for unit head
Unit head signs documents
Decline
Decline letter to investment manager
Update deal log

APPENDIX 4

REPORTING STANDARDS CHECKLISTS
FROM REIS HANDBOOK VOLUME I, AUGUST 4, 2011

REVISED – September 24, 2020

NCREIF PREA Reporting Standards: Open-end Fund Checklist

Account Report Name: _____
Account Report Date: _____

NCREIF PREA Reporting Standards Open-end Fund Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
Portfolio management	Name or identifier	Quarterly	Required	PM.01		
	Contact	Quarterly	Required	PM.02		
	Inception date	Quarterly	Required	PM.03		
	Structure	Annually	Required	PM.04		
	Style and strategy	Annually	Required	PM.05		
	Portfolio diversification by: • Investment/property type • Region/location • Nature of investment (life cycle) • Investment structure	Quarterly	Required	PM.06		
	Management discussion of performance relative to objective	Quarterly	Recommended	PM.09		
Performance and Risk	Total and Component Time-Weighted Return (TWR) – Gross of Fees and Total TWR Net of Fees. Periods: quarterly, 1yr., 3yr., 5yr., 10yr., and since-inception (SI)	Quarterly	Required	PR.01		
	Disclosures accompanying TWR (modified)	Required when TWR is reported		PR.01.1-01.7		
	Benchmark comparisons	Quarterly	Required	PR.02		
	Net Asset Value	Quarterly	Required	PR.03		
	Fund Tier 1 (T1) Total Leverage-at cost	Quarterly	Required	PR.04		
	Fund T1 Leverage Percentage	Quarterly	Required	PR.05		
	Fund T1 Leverage Yield	Quarterly	Recommended	PR.14		
	Weighted average interest rate of Fund T1 Leverage	Quarterly	Recommended	PR.15		
	Weighted average remaining term of fixed-rate Fund T1 Leverage	Quarterly	Recommended	PR.16		
	Weighted average remaining term of floating rate Fund T1 Leverage	Quarterly	Recommended	PR.17		
	Redemptions for quarter	Quarterly	Recommended	PR.20		
	Total subscribed commitments	Quarterly	Recommended	PR.21		
	Total redemption requests	Quarterly	Recommended	PR.22		
	Total Global Expense Ratio (TGER)	Annually	Required	PR.23		

NCREIF PREA Reporting Standards Open-end Fund Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
	Disclosures accompanying TGER	Required when TGER is reported		PR.23.1-23.4		
Asset management	Occupancy level by property type	Quarterly	Required	AM.01		
	Portfolio lease expiration statistics	Quarterly	Required	AM.02		
	Top 10 tenants	Quarterly	Recommended	AM.03		
Financial Reporting	Condensed Fair Value (FV) GAAP-based financial reporting	Quarterly	Required	FR.01		
	Fair Value (FV) GAAP-based financial statements	Annually	Required	FR.02		
	Financial statement audits	Annually	Required	FR.03		
	Schedule of investments	Annually	Required	FR.04		
Valuation	Valuation policy statement	Annually	Required	VA.01		
	Valuation policy	Required to be maintained		VA.02		
	Internal Valuations	Quarterly	Required	VA.03		
	External Valuations	Annually	Required	VA.04		

Reporting Standards: Closed-end Fund Checklist

Account Report Name: _____
Account Report Date: _____

Reporting Standards Closed-end Fund Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
Portfolio management	Name or identifier	Quarterly	Required	PM.01		
	Contact	Quarterly	Required	PM.02		
	Inception date	Quarterly	Required	PM.03		
	Structure	Annually	Required	PM.04		
	Style and strategy	Annually	Required	PM.05		
	Portfolio diversification by: • Investment/property type • Region/location • Nature of Investment (life cycle) • Investment structure	Quarterly	Required	PM.06		
	Final closing date	Annually	Required	PM.07		
	Scheduled termination date	Annually	Required	PM.08		
	Management discussion of performance relative to objective	Quarterly	Recommended	PM.09		
Performance and risk	Total and Component Time-Weighted Return (TWR) – Gross of Fees and Total TWR Net of Fees. Periods: quarterly, 1yr., 3yr., 5yr., 10yr., and since-inception (SI)	As requested by investor		PR.01		
	Disclosures accompanying TWR	Required when TWR is reported		PR.01.1-01.7		
	Benchmark comparisons	Quarterly	Required	PR.02		
	Net Asset Value	Quarterly	Required	PR.03		
	Fund Tier 1 (T1) Total Leverage-at cost	Quarterly	Required	PR.04		
	Fund T1 Leverage Percentage	Quarterly	Required	PR.05		
	Since-inception Internal Rate of Return (IRR) – Gross and Net of Fees	Quarterly	Required	PR.06		
	Disclosures accompanying IRR	Required when IRR is reported		PR.06.1-06.5		
	Paid in Capital Multiple	Quarterly	Required	PR.07		
	Investment Multiple	Quarterly	Required	PR.08		
	Realization Multiple	Quarterly	Required	PR.09		
	Residual Multiple	Quarterly	Required	PR.10		
	Distributions since-inception	Quarterly	Required	PR.11		
	Aggregate Capital Commitments	Quarterly	Required	PR.12		
	Since-inception paid-in capital	Quarterly	Required	PR.13		
	Fund T1 Leverage Yield	Quarterly	Recommended	PR.14		

Reporting Standards Closed-end Fund Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
	Weighted average interest rate of Fund T1 Leverage	Quarterly	Recommended	PR.15		
	Weighted average remaining term of fixed-rate Fund T1 Leverage	Quarterly	Recommended	PR.16		
	Weighted average remaining term of floating rate Fund T1 Leverage	Quarterly	Recommended	PR.17		
	Unfunded commitments	Quarterly	Recommended	PR.19		
	Total Global Expense Ratio (TGER)	Annually	Required for Funds formed in 2020 and beyond	PR.23		
	Disclosures accompanying TGER	Required when TGER is reported		PR.23.1-23.4		
Asset management	Occupancy level by property type	Quarterly	Required	AM.01		
	Portfolio lease expiration statistics	Quarterly	Required	AM.02		
	Top 10 tenants	Quarterly	Recommended	AM.03		
Financial Reporting	Condensed Fair Value (FV) GAAP-based financial reporting	Quarterly	Required	FR.01		
	Fair Value (FV) GAAP-based financial statements	Annually	Required	FR.02		
	Financial statement audits	Annually	Required	FR.03		
	Schedule of investments	Annually	Required	FR.04		
Valuation	Valuation policy statement	Annually	Required	VA.01		
	Valuation policy	Required to be maintained		VA.02		
	Internal Valuations	Quarterly	Required	VA.03		
	External Valuations	As provided in governance agreements		VA.05		

Reporting Standards: Separately Managed Accounts Checklist

Account Report Name: _____
Account Report Date: _____

Reporting Standards Separately Managed Accounts Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
Portfolio management	Name or identifier	Quarterly	Required	PM.01		
	Contact	Quarterly	Required	PM.02		
	Inception date	Quarterly	Required	PM.03		
	Structure	Annually	Required	PM.04		
	Style and strategy	Annually	Required	PM.05		
	Portfolio diversification by: • Investment/property type • Region/location • Nature of investment (life cycle) • Investment structure	Quarterly	Required	PM.06		
	Management discussion of performance relative to objective	Quarterly	Recommended	PM.09		
Performance and Risk	Total and Component Time-Weighted Return (TWR) - Gross of Fees and Total TWR Net of Fees. Periods: quarterly, 1yr., 3yr., 5yr., 10yr., and since-inception (SI)	Quarterly	Recommended	PR.01		
	Disclosures accompanying TWR	Required when TWR is reported		PR.01.1-01.7		
	Benchmark comparisons	Quarterly	Required	PR.02		
	Net Asset Value	Quarterly	Required	PR.03		
	Fund Tier 1 (T1) Total Leverage-at cost	Quarterly	Required	PR.04		
	Fund T1 Leverage Percentage	Quarterly	Required	PR.05		
	Since-inception Internal Rate of Return (IRR) - Gross and Net of fees	Quarterly	Recommended	PR.06		
	Disclosures accompanying IRR	Required when IRR is reported		PR.06.1-06.5		
	Fund T1 Leverage Yield	Quarterly	Recommended	PR.14		
	Weighted average interest rate of Fund T1 Leverage	Quarterly	Recommended	PR.15		
	Weighted average remaining term of fixed-rate Fund T1 Leverage	Quarterly	Recommended	PR.16		
	Weighted average remaining term of floating rate Fund T1 Leverage	Quarterly	Recommended	PR.17		

Reporting Standards Separately Managed Accounts Checklist						
Disciplines	**Element description**	**Frequency**	**Required or recommended element**	**Handbook Reference**	**Report Name**	**Notes**
Asset management	Occupancy level by property type	Quarterly	Required	AM.01		
	Portfolio lease expiration statistics	Quarterly	Required	AM.02		
	Top 10 tenants	Quarterly	Recommended	AM.03		
Financial Reporting	Condensed Fair Value (FV) GAAP-based financial reporting	Quarterly	Required	FR.01		
	Fair Value (FV) GAAP-based financial statements	Annually	Required	FR.02		
	Financial statement audits	Annually	Required	FR.03		
	Schedule of investments	Annually	Required	FR.04		
Valuation	Valuation policy statement	Annually	Required	VA.01		
	Valuation policy	Required to be maintained		VA.02		
	Internal Valuations	Quarterly	Required			
	External Valuations	As provided in governance agreements		VA.05		
	External Valuations	Once every three years minimum	Recommended	VA.06		