

this Agreement as such limited partnership may from time to time be constituted.

"Person" means any individual, corporation, partnership, trust, unincorporated organization or association, or other entity.

"Portfolio Company" means a Person in which the Partnership has made an Enhanced Yield Investment.

"Prime Rate" means the rate per annum from time to time announced by The Chase Manhattan Bank, N.A. in New York, New York as its base lending rate.

"Priority Return" means the amount equal to a cumulative, noncompounded return of 10% per annum on the average daily amount of the Gross Capital Contributions represented by Enhanced Yield Investments.

"Profits" and "Losses" means the profits or losses of the Partnership as determined in accordance with Federal income tax principles, but (i) taking into account any item of income or gain which is exempt from taxation and any expenditures which under the Code and Treasury Regulations thereunder would be deemed to be described in section 705(a)(2)(B) of the Code and (ii) treating the cost of any Investment as its Carrying Value.

"Prospectus" means at the time of reference thereto the prospectus contained in the Registration Statement at the time in effect; except that if any prospectus filed by the Partnership pursuant to Rule 497(b) or (d) under the Securities Act of 1933 differs from the prospectus contained in the Registration Statement, and no post-effective amendment to the Registration Statement has been filed subsequent to the filing of such Rule 497(b) or (d) prospectus, then the term "Prospectus" refers to the Rule 497(b) or (d) prospectus from and after the time it is delivered to the Securities and Exchange Commission for filing.

["Refinancing" means any borrowing incurred or made to recapitalize or refinance the Partnership's investment in any specified Enhanced Yield Investment or any component thereof after the Investment Period and any Reinvestment Period applicable to such Enhanced Yield Investment.]

**["Refinancing Fee" means any fee or commission borne by the Partnership and paid to any other Person for placing or arranging any Refinancing.]**

**"Registration Statement" means the registration statement filed by the Partnership and the Other Partnership with the Securities and Exchange Commission on Form N-2 registering units of limited partner interest in the Partnership to be sold to the Additional Limited Partners and units of limited partner interest in the Other Partnership under the Securities Act of 1933 at the time such registration statement becomes effective; except that if the Partnership files a post-effective amendment to the registration statement or a new registration statement the prospectus included in which may be used by the Partnership pursuant to Rule 429 under the Securities Act of 1933 (or any corresponding provision of succeeding rules or regulations of the Securities and Exchange Commission), then the term "Registration Statement" shall, from and after the declaration of the effectiveness of such post-effective amendment or such new registration statement, refer to the registration statement as amended by such post-effective amendment thereto or the then effective registration statement, as the case may be.**

**"Reinvestment Period" means, with respect to the proceeds of an Investment liquidated within the Investment Period the period ending at the later of (1) the last day of the twelve-month period beginning on the date of such liquidation and (2) the last day of the Investment Period.**

**"Return of Capital" means (1) any return of capital pursuant to Section 3.4 or 3.5.C, (2) with respect to Enhanced Yield Investments, any Enhanced Yield Distributions pursuant to Section 4.2 not in excess of Net Capital Contributions represented by Enhanced Yield Investments then or theretofore liquidated and not reinvested, (3) with respect to Temporary Investments, any distributions, other than Enhanced Yield Distributions, pursuant to Section 4.2 not in excess of Net Capital Contributions represented by Temporary Investments then or theretofore liquidated and not reinvested and (4) the return to the Managing General Partner upon liquidation of the principal amount of any MGP Notes contributed by the Managing General Partner to the Partnership.**

**"Sale" means any sale, exchange, disposition or realization upon any Temporary Investment or Enhanced**

Yield Investment (other than receipt of Capital Contributions), provided, however, that [(i)] the receipt by the Partnership of any amount derived from interest or dividends on investments (including on investment of any Capital Contributions or Partnership borrowings) or otherwise shall not be considered a Sale for the purpose of this Agreement [and (ii) the receipt by the Partnership of any proceeds of a Financing or Refinancing shall not be considered a Sale for the purpose of this Agreement].

"Sales Commission" means any fee or commission paid by or on behalf of the Partnership in connection with the sale or other disposition of any Enhanced Yield Investments, whether designated as a sales commission, disposition fee, nonrecurring advisory fee or any fee, commission or compensation of similar nature however designated and however treated for tax or accounting purposes, but does not include Refinancing Fees.

"State" means the State of Delaware.

"Subsequent Closing" has the meaning given in Section 4A.1.

"Substituted Limited Partner" means any Person admitted to the Partnership as a Limited Partner pursuant to the provisions of Section 8.3 and shown as a Limited Partner on the books and records of the Partnership.

"Tax-Exempt Investor" means any individual retirement account, any trust formed as part of a Keogh or corporate pension or profit-sharing plan qualified under section 401(a) of the Code, any organization described in section 501(c) of the Code and any governmental entity tax-exempt under section 115 of the Code.

"Temporary Investments" means U.S. government securities, certificates of deposit with maturities of less than one year, commercial paper (rated or unrated) and other short-term securities.

"Treasury Regulation" means any regulation promulgated under the Code, as in effect on the date hereof.

"Unit" means an Interest sold at the Initial Closing for a subscription price of \$1,000 (less any Deemed Sales Commission) or an Interest sold at any other

Closing having rights (other than any right to equalizing distributions pursuant to Section 4A.2.A) to share in distributions and allocations of Profit and Loss equivalent to the rights attributable to a Unit sold at the Initial Closing.

## ARTICLE TWO

### CONTINUATION; NAME, PLACE OF BUSINESS AND OFFICE; PURPOSE; TERM

Section 2.1. Continuation. The parties hereto hereby continue the limited partnership heretofore formed pursuant to the provisions of the Act, and agree that the rights and liabilities of the Partners shall be as provided in the Act, except as herein otherwise expressly provided.

Section 2.2. Name, Place of Business and Office. The name of the limited partnership formed and continued hereby is [Equitable Capital Partners, L.P.] [Equitable Capital Partners (Retirement Fund), L.P.] The business of the Partnership may be conducted upon compliance with all applicable laws under any other name designated in writing by the Independent General Partners provided that such name shall include the words "limited partnership" or the abbreviation "L.P.". The principal place of business of the Partnership shall be at 1285 Avenue of the Americas, New York, New York 10019. The Managing General Partner may at any time change the location of such office, may establish such additional offices as it shall deem advisable and may maintain offices at the place of business of the Fund Administrator.

Section 2.3. Purpose. The Partnership is authorized and empowered to carry out any business activities permitted under the Act including, without limitation, to elect to operate, and to operate, as a business development company under the 1940 Act. The Partnership's investment objective is to provide the Partners with current income and capital appreciation potential by investing in Enhanced Yield Investments as set forth in the Prospectus. The Partnership may engage in any and all activity necessary, convenient or incidental to the accomplishment of the foregoing to the extent permitted under the Act.

**Section 2.4. Term.** The Partnership commenced on February 2, 1988 and shall continue in full force and effect until ten years from September 30, 1988 or from the date of the Final Closing if later, unless extended by the Independent General Partners for up to two additional one-year periods from such date, if the Independent General Partners determine in each instance that each such extension is in the best interests of the Partnership, or until dissolution prior thereto pursuant to the provisions hereof.

**Section 2.5. Registered Agent and Registered Office.** The Partnership shall maintain a registered office in the State at c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name and address of the registered agent for service of process on the Partnership in the State is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

**Section 2.6. Qualification in Other Jurisdictions.** The General Partners shall cause the Partnership to be qualified, formed, reformed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Partnership owns property or transacts business if such qualification, formation, reformation or registration is necessary in order to protect the limited liability of the Limited Partners or to permit the Partnership lawfully to own property or transact business. The Independent General Partners shall execute, file and publish all such certificates, notices, statements or other instruments necessary to permit the Partnership to conduct business as a limited partnership in all jurisdictions where the Partnership elects to do business and to maintain the limited liability of the Limited Partners. The Independent General Partners may cause the Partnership to obtain in each such jurisdiction opinions of local counsel satisfactory to the Independent General Partners as to such organization or qualification and as to the maintenance of the limited liability of the Limited Partners under the laws of each such jurisdiction.

## ARTICLE THREE

### PARTNERS AND CAPITAL

#### Section 3.1. General Partners.

A. The General Partners shall consist of such number of Independent General Partners as shall be fixed pursuant to Section 3.1B and a Managing General Partner. The names, residence, business or mailing addresses and Capital Contributions of the General Partners are set forth on the books and records of the Partnership, as amended from time to time.

B. The number of Independent General Partners shall be fixed from time to time by the Independent General Partners then in office, provided, however, that the number of Independent General Partners shall in no event be less than two or more than nine (except prior to the initial public offering of Units). A majority of the General Partners shall at all times be Independent General Partners. If at any time the number of Independent General Partners is less than a majority of the General Partners, within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more successor Independent General Partners so as to restore the number of Independent General Partners to a majority of the General Partners.

C. Any Person elected or appointed to the office of General Partner shall thereafter hold office until his removal pursuant to Section 6.3 or withdrawal pursuant to Section 6.1 or 6.2, as the case may be, or until his successor shall have been elected and admitted at a meeting of Limited Partners called for the purpose of electing General Partners. General Partners may succeed themselves in office. If at any time the number of Independent General Partners is less than a majority of the General Partners, the Independent General Partners shall appoint and admit such number of Independent General Partners as shall be necessary to constitute such a majority. The Independent General Partners may designate and admit successor Independent General Partners to fill vacancies created by the retirement or withdrawal of an Independent General Partner pursuant to Section 6.1 or by the removal of an Independent General Partner by the Independent General Partners pursuant to Section 6.3 and the Independent General Partners may also designate and

admit Independent General Partners to fill any vacancies created by an increase in the number of Independent General Partners pursuant to Section 3.1B. In the event that no Independent General Partner remains, the Managing General Partner shall perform all duties of an Independent General Partner under this Agreement to the extent permitted by the 1940 Act and shall, within 90 days, call a special meeting of Limited Partners for the purpose of electing and admitting Independent General Partners. Each Limited Partner hereby Consents to the admission of any successor Independent General Partner pursuant to this Section 3.1C and pursuant to Section 3.1B, and no further Consent shall be required.

D. On any date of admission of the Additional Limited Partners pursuant to Section 3.3A, and thereafter, the Managing General Partner shall make contributions to the capital of the Partnership in the form of one or more non-interest bearing demand notes (each an "MGP Note") so that the aggregate principal amount of such notes held by the Partnership shall be at all times at least equal to the excess, if any, of 1.01% of the aggregate Net Capital Contributions of all Limited Partners, over the amount of any Capital Contributions theretofore made by the Managing General Partner. In the event any Limited Partner receives a Return of Capital, the aggregate principal amount of the MGP Notes shall be reduced by an amount equal to the excess of 1.01% of such Return of Capital to such Limited Partner over the Return of Capital, if any, to the Managing General Partner upon such event.

E. No General Partner, as such, shall be required to lend any funds to the Partnership or to make any additional capital contribution to the Partnership except that the Managing General Partner shall be obligated to make payments of principal on any MGP Note in accordance with the terms thereof.

### Section 3.2. Initial Limited Partner.

A. The name, business, mailing or residence addresses of the Initial Limited Partner are set forth on the books and records of the Partnership.

B. Upon the admission of the Additional Limited Partners pursuant to Section 3.3A, the Initial Limited Partner shall withdraw from the Partnership and shall be

entitled to receive forthwith his Capital Contribution, without interest or reduction.

**Section 3.3. Additional Limited Partners.**

A. The Managing General Partner is authorized to admit Additional Limited Partners to the Partnership. The Capital Contributions of the Additional Limited Partners shall be made in cash. The manner of the offering of the Units, the terms and conditions under which subscriptions for such Units will be accepted, and the manner of and conditions to the sale of Units to subscribers therefor and the admission of such subscribers as Additional Limited Partners will be as provided in the Prospectus in all material respects (except with respect to any Additional Limited Partner purchasing Units not registered under the Registration Statement) and subject to any provisions hereof. Sales Compensation paid to Affiliates of the Managing General Partner in connection with the offering of Units shall be consistent with applicable laws, rules and regulations.

B. The names, residence, business or mailing addresses and Capital Contributions of the Additional Limited Partners are set forth on the books and records of the Partnership, as amended from time to time.

C. No Limited Partner, as such, shall be required or authorized to lend any funds to the Partnership or to make any additional capital contribution to the Partnership.

**Section 3.4. Certain Returns of Capital.**

A. Subject to Section 4A.3, any portion of the Capital Contributions of the Partners that has not been invested or committed for investment initially in Enhanced Yield Investments within the Investment Period or any portion of those Capital Contributions which were invested in Enhanced Yield Investments and then liquidated within the Investment Period and which have not been reinvested or committed to reinvestment in Enhanced Yield Investments within the applicable Reinvestment Period (except for any amount of such Capital Contribution (i) utilized by the Partnership to pay Organization and Offering Expenses, as provided in the Prospectus, or (ii) utilized or reserved to pay Operating Cash Expenses of the Partnership), shall be distributed as soon as practicable after the end of the

Investment Period or such Reinvestment Period, as the case may be, to the Partners, together with interest actually earned thereon and not theretofore distributed, pro rata in proportion to their Capital Contributions, by the Partnership as a return of capital. For the purpose of this Agreement, funds will be deemed to have been committed to investment or reinvestment and will not be returned to the Limited Partners to the extent that:

(1) such funds have been utilized or set aside to pay Acquisition Fees, Acquisition Expenses, [Financing Fees or Financing Expenses,] if any, in connection with (a) any Partnership funds invested or committed for investment in Enhanced Yield Investments within the Investment Period or (b) in connection with any Partnership funds which were invested in Enhanced Yield Investments and then liquidated within the Investment Period and were reinvested or committed for reinvestment in Enhanced Yield Investments within the applicable Reinvestment Period;

(2) such funds have been set aside for working capital;

(3) such funds have been set aside to pay amounts payable, or expected to be payable, under written agreements or under agreements in principle, commitment letters, letters of intent or understanding, option agreements or any similar contracts or understandings which have been executed and (a) are in effect at the end of the Investment Period or, (b) as to funds which were invested in Enhanced Yield Investments and then liquidated within the Investment Period, are in effect at the end of the applicable Reinvestment Period;

(4) such funds have been set aside and reserved at the end of the Investment Period to make contingent payments in connection with any Enhanced Yield Investment, including for Follow-on Investments; or

[(5) such funds have been utilized or set aside to provide compensating balances, reserve funds, escrow funds, advance payments or other similar funds or set-asides required, or reasonably anticipated by the Managing General Partner to be required, by lenders in connection with any Financing the proceeds of which are to be applied with, or to recapitalize,

any Partnership funds invested or committed for investment within the Investment Period or, as to funds which were invested in Enhanced Yield Investments and then liquidated within the Investment Period, any such funds invested or committed for investment within the applicable Reinvestment Period.]

[To the extent that the Independent General Partners shall, in their sole discretion, elect, the net cash proceeds of the Partnership from a Financing and remaining after such applications of such proceeds as are considered appropriate by the Independent General Partners may be treated as a portion of the Limited Partners' Capital Contributions and, to the extent and under the conditions provided in this Section 3.4A, distributed to the Limited Partners by the Partnership as a return of capital.]

B. In the event that at the end of the Interim Investment Period less than 65% of the assets of the Partnership are invested or are committed for investment in Enhanced Yield Investments, the Partnership shall, as soon as practicable thereafter, distribute such remaining Capital Contributions [or repay such amount of principal of any Outstanding Debt] to the Partners, together with interest earned thereon and not theretofore distributed, pro rata in proportion to their Capital Contributions, as a return of capital so that after such distribution [or repayment] at least 65% of the assets of the Partnership are invested or committed for investment in Enhanced Yield Investments. Assets will be deemed to have been committed for investment in accordance with the terms of Section 3.4A.

C. In the event that

(1) within any period specified in the approval or certification of an Enhanced Yield Investment by the Independent General Partners, or if none is stated, within a 120-day period from such approval or certification, unless such investment is reapproved or recertified prior to the expiration of such period, (a) any agreement in principle or commitment letter referred to in Section 3.4A(3) related to such

Enhanced Yield Investment shall not be reduced to a definitive agreement, (b) any option agreement or similar agreement referred to in Section 3.4A(3) related to such Enhanced Yield Investment shall expire unexercised, (c) any agreement referred to in Section 3.4A(3) related to such Enhanced Yield Investment shall be terminated, or (d) the transaction contemplated by any agreement referred to in Section 3.4A(3) related to such Enhanced Yield Investment shall not be consummated, any funds set aside to pay amounts payable, or expected to be payable, under any such agreements or commitments, shall, as promptly as practicable thereafter, subject to Section 4A.3, be distributed by the Partnership to the Partners as a return of capital, pro rata in proportion to their Capital Contributions, or

(2) the Independent General Partners shall determine that any funds referred to in Section 3.4A(1), 3.4A(3), 3.4A(4) [and/or 3.4A(5)] have not been and will not be applied to the uses for which such funds were set aside and reserved, such funds shall, as promptly as practicable thereafter, subject to Section 4A.3, be distributed by the Partnership to the Partners as a return of capital, pro rata in proportion to their Capital Contributions.

D. If at any time it is determined by the General Partners that any further investments of the Partnership would cause the Partnership to be treated as an association taxable as a corporation for Federal income tax purposes (either with respect to ownership of assets subsequently acquired, or otherwise) any portion of the Capital Contributions of the Partners not "invested or committed for investment" as described in Section 3.4A herein shall, as promptly as practicable, be distributed to the Partners, pro rata in proportion to their Capital Contributions as a return of capital.

E. Under the circumstances requiring a return of any Capital Contribution, no Partner shall have the right to receive property other than cash.

F. Any return of any Capital Contribution under this Section 3.4 shall be deemed to be a compromise within the meaning of Section 17-502(b) of the Act and the Limited Partners receiving any such return shall not be obligated to return any such money or property to the

Partnership or any creditor of the Partnership. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to make any such payment, such obligation shall be the obligation of such Limited Partner and not of the General Partner.

**Section 3.5. Partnership Capital.**

A. No Partner shall be paid interest on any Capital Contribution to the Partnership or on such Partner's Capital Account, notwithstanding any disproportion therein as between Partners.

B. The Partnership shall not redeem or repurchase any Partner's Interest, except to the extent permitted by the 1940 Act, and no Partner shall have the right to withdraw from the Partnership, except as provided in Section 6.1, 6.2 or Article Eight, or receive any return of any Capital Contribution, except as provided in Sections 3.4 and 4A.3.

C. No Partner shall have any right to demand the return of his Capital Contribution, except upon dissolution of the Partnership pursuant to Article Nine, and except as provided in Section 3.2B. The Independent General Partners may, however, from time to time elect to make partial returns of Capital Contributions to Partners, in addition to the returns provided in Section 3.4, provided that at the time of such partial returns: (1) all liabilities of the Partnership to Persons other than Partners have been paid or, in the good faith determination of the Independent General Partners, there remains property of the Partnership reasonably sufficient to pay them and (2) the Independent General Partners cause the books and records of the Partnership to be amended to reflect a reduction in Capital Contributions. In the event that the Independent General Partners elect to make partial return of Capital Contributions to Limited Partners, subject to Section 4A.3, such distribution shall be made pro rata to all of the Limited Partners in proportion to the number of Units held by each such Limited Partner and any such return shall be deemed to be a compromise within the meaning of Section 17-502(b) of the Act and the Limited Partners receiving such return shall not be obligated to return any such money or property to the Partnership or any creditor of the Partnership. Each Partner, by becoming such, consents to such pro rata

distribution made in accordance with this Section 3.5C without further Consent required.

**Section 3.6. Liability of Partners.**

A. Except as provided in Sections 3.6B and 3.6C, no Limited Partner shall have any personal liability whatever in his capacity as a Limited Partner, whether to the Partnership, to any of the Partners or to the creditors of the Partnership, for the debts, liabilities, contracts or any other obligations of the Partnership or for any losses of the Partnership. A Limited Partner shall be liable only to make his Capital Contribution and shall not be required to lend any funds to the Partnership or, after his Capital Contributions shall have been paid, subject to the provisions of Section 3.6B, to make any further capital contributions to the Partnership or to repay to the Partnership, any Partner, or any creditor of the Partnership all or any portion of any negative amount of such Limited Partner's Capital Account.

B. In accordance with State law, a limited partner of a partnership may, under certain circumstances, be required to return amounts previously distributed to such partner. It is the intent of the Partners that no return or distribution to any Limited Partner of Distributable Cash from Investments pursuant to Section 4.1 or of Distributable Capital Proceeds pursuant to Section 4.2B(1) or 4.2B(2) shall be deemed a return or withdrawal of capital, and that no Limited Partner shall be obligated to pay any such amount to, or for the account of, the Partnership or any creditor of the Partnership. The payment of any such money or distribution of any such property to a Limited Partner, whether or not deemed to be a return of Capital Contribution, shall be deemed to be a compromise within the meaning of Section 17-502(b) of the Act, and the Limited Partner receiving any such money or property shall not be required to return any such money or property to the Partnership or any creditor of the Partnership. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Limited Partner is obligated to make any such payment, such obligation shall be the obligation of such Limited Partner and not of the General Partners.

C. If any Limited Partner is deemed to have received a distribution from the Partnership pursuant to Section 4.6, and the aggregate of such distributions

exceeds the distributions to which such Limited Partner is otherwise entitled, such Limited Partner shall be obligated, as provided in Section 4.6, to repay such excess to the Partnership.

D. Neither the General Partners nor any of their Affiliates shall have any personal liability for the return or repayment of the Capital Contribution of any Limited Partner. The General Partners shall not be liable to any Limited Partner by reason of any change in the federal income tax laws as they apply to the Partnership and the Limited Partners, whether such change occurs through legislative, judicial or administrative action, so long as the General Partners have acted in good faith and in a manner reasonably believed to be in the best interests of the Limited Partners.

E. Neither the General Partners nor any of their Affiliates shall have any personal liability to repay to the Partnership any portion or all of any negative amount of the General Partner's Capital Account, except as otherwise provided by law or this Agreement.

Section 3.7. General Partner as Limited Partner. A General Partner shall also be a Limited Partner to the extent that it purchases or becomes a transferee of all or any part of the Interest of a Limited Partner, and to such extent shall be treated in all respects as a Limited Partner, and the Consent of any Limited Partner to such transfer to a General Partner need not be obtained. The Managing General Partner's contribution to the capital of the Partnership referred to in Section 3.1D and any payment made by it on any MGP Note will be made in its capacity as Managing General Partner and such contribution will not entitle the Managing General Partner to any rights of a Limited Partner, including, without limitation, those rights set forth in Article Seven.

Section 3.8. Lender as Partner. No creditor who makes a loan to the Partnership may have or acquire, at any time as a result of making the loan, any direct interest in the profits, capital or property of the Partnership other than as a secured creditor or other than as a result of the exercise of the rights thereof.

ARTICLE FOUR

DISTRIBUTIONS OF CASH;  
ALLOCATIONS OF PROFITS AND LOSSES

Section 4.1. Distributions of Distributable Cash from Investments.

A. The investment or reinvestment by the Partnership of Available Cash from Investments or Distributable Cash from Investments, other than in Temporary Investments, is prohibited, except that any Available Cash from Investments for any fiscal period of the Partnership in excess of the Federal Tax Allowance for such period may be invested in Follow-on Investments or applied to any purpose (other than making Enhanced Yield Investments that are not Follow-on Investments) described in Sections 3.4.A(1) through (5).

B. All Distributable Cash from Investments for each fiscal quarter of the Partnership shall, subject to the provisions of Section 4.1.C, be distributed by the Partnership, as authorized by the Independent General Partners, within 45 days after the close of such quarter, as follows:

(1) From any source other than Enhanced Yield Investments, 99% to the Limited Partners, as a class, and 1% to the Managing General Partner.

(2) From Enhanced Yield Investments:

(a) first, 99% to the Limited Partners, as a class, and 1% to the Managing General Partner, until the Limited Partners, as a class, shall have received Enhanced Yield Distributions (other than Returns of Capital with respect to Enhanced Yield Investments) in an amount equal to the sum of the Priority Return and any outstanding unpaid Compensatory Payment balance;

(b) second, 100% to the Managing General Partner until the Managing General Partner shall have received pursuant to this clause (b) an amount equal to any outstanding Deferred Distribution Amount resulting from the application of Section 4.1.C;

(c) third, 70% to the Limited Partners, as a class, and 30% to the Managing General Partner (29% being an MGP Distribution), until the Managing General Partner shall have received Enhanced Yield Distributions in an amount equal to 20% of the excess of all Enhanced Yield Distributions over all Enhanced Yield Distributions constituting Returns of Capital; and

(d) fourth, thereafter, 80% to the Limited Partners, as a class, and 20% to the Managing General Partner (19% being an MGP Distribution).

C. The foregoing provisions of this Section 4.1 notwithstanding, distributions shall not be made pursuant hereto to the extent that such distributions are prohibited by restrictions contained in the 1940 Act or the Advisers Act applicable to distributions by the Partnership. The payment of any amount not paid to the Managing General Partner pursuant to this Section 4.1.C shall be deferred until payable pursuant to Section 4.1.B(2)(b).

Section 4.2. Distributions of Proceeds Arising from a Capital Transaction.

A. (1) All cash receipts of the Partnership arising from a Capital Transaction shall, as soon as practicable after the occurrence of such a Capital Transaction, be applied, in the priority set forth, as follows:

(a) first, in the priority, provided by law or any applicable agreement or undertaking of the Partnership, to

(i) payment, to the extent applicable, of all amounts required to be disbursed in connection with such Capital Transaction (which shall include, [(x) in connection with any Refinancing, the related Refinancing Fee or Fees payable to any Person, and (y)] in connection with any sale or disposition of Temporary Investments or Enhanced Yield Investments, the related Sales Commission payable to any Person (including, subject to the restrictions of the 1940 Act, the General Partners and their Affiliates));

(ii) payment of all debts and obligations of the Partnership then due, related to the

particular Capital Transaction [(including, in the case any Refinancing of existing Partnership borrowings, repayment of the principal of and premium, if any, and interest on, such existing borrowings)];

(iii) creation of reasonable cash reserves for and provision for the payment of the taxes, debt service, brokerage fees and/or other costs, expenses and liabilities related to the Capital Transaction or the assets affected thereby;

(iv) payment of all other debts and obligations of the Partnership then due, other than to any Partner; and

(v) creation of reasonable cash reserves considered appropriate in the good faith judgment of the Managing General Partner to provide for payment of and to pay taxes, debt service, insurance, repairs, replacements or renewals and/or other costs, expenses and liabilities, contingent or otherwise, of the Partnership, payment of which is not then due and for which other cash receipts are not expected by the Managing General Partner to be received prior to the time such payments are required to be made;

(b) second, to payment of all debts and obligations of the Partnership to any Partners, prorated if such remaining amounts are not sufficient to pay all such debts and obligations.

The amount of cash receipts from Capital Transactions remaining after the foregoing applications is, in this Agreement, called "Available Capital Proceeds".

(2) The investment or reinvestment by the Partnership of Available Capital Proceeds, other than in Temporary Investments, is prohibited, except that:

(a) any Available Capital Proceeds in excess of the Federal Tax Allowance resulting (i) from the sale in the Investment Period of a Temporary Investment or an Enhanced Yield Investment or (ii) from the sale prior to the expiration of the Investment Period of an Enhanced Yield Investment or of a Temporary Investment representing the proceeds of such an

Enhanced Yield Investment may be invested in Enhanced Yield Investments up to the amount of capital of the Partnership invested in such Temporary Investment or Enhanced Yield Investment, as the case may be, prior to the expiration of the applicable Reinvestment Period; and

(b) at any time, any Available Capital Proceeds in excess of the Federal Tax Allowance, resulting from the sale of any Temporary Investment or any Enhanced Yield Investment may be invested in or reserved for making Follow-on Investments.

The amount of Available Capital Proceeds remaining after any applications permitted by the foregoing subparagraphs is[, together with any amount of any Financing proceeds remaining after the Investment Period or applicable Reinvestment Period in this Agreement] called "Distributable Capital Proceeds".

B. Distributable Capital Proceeds shall, as promptly as practicable after the applications provided for in Section 4.2.A, subject to the provisions of Section 4.2.C, be distributed by the Partnership, as authorized by the Independent General Partners, as follows:

(1) From any source other than Enhanced Yield Investments

(a) first, to the General Partner and the Limited Partners, as a class in proportion to their respective Net Capital Contributions until each class of Partners shall have received from distributions other than Enhanced Yield Distributions an amount equal to the amount of their respective Net Capital Contributions represented by Temporary Investments then or theretofore liquidated and not reinvested;

(b) second, thereafter, 99% to the Limited Partners, as a class, and 1% to the Managing General Partner.

(2) From Enhanced Yield Investments

(a) first, 99% to the Limited Partners, as a class, and 1% to the Managing General Partner, until the Limited Partners, as a class, shall

have received Enhanced Yield Distributions in an amount equal to the sum of the Priority Return and any outstanding unpaid Compensatory Payment balance;

(b) second, subject to Section 4.2.C, 100% to the Managing General Partner until the Managing General Partner shall have received an amount pursuant to this clause (b) equal to any outstanding Deferred Distribution Amount resulting from the application of Sections 4.2.B(d), 4.2.B(e) or 4.2.C;

(c) third, to the General Partner and the Limited Partners, as a class, in proportion to their respective Net Capital Contributions, until each class of Partners shall have received Enhanced Yield Distributions in an amount equal to the amount of their respective Net Capital Contributions represented by Enhanced Yield Investments then or theretofore liquidated and not reinvested plus an amount equal to the sum of the Priority Return and any outstanding unpaid Compensatory Payment balance;

(d) fourth, 70 percent to the Limited Partners, as a class, and 30 percent to the Managing General Partner (29 percent being an MGP Distribution), until the Managing General Partner shall have received Enhanced Yield Distributions in an amount equal to the lesser of (i) 20 percent of the excess of all Enhanced Yield Distributions over all Enhanced Yield Distributions constituting Returns of Capital and (ii) the excess of 20 percent of cumulative capital gains based on actual costs of investments then or theretofore realized by the Partnership (net of realized capital loss and unrealized net capital depreciation based on actual costs of investments) over the aggregate of Enhanced Yield Distributions previously paid to the Managing General Partner pursuant to Section 4.2. Any amount that would have been distributed to the Managing General Partner pursuant to clause (i) of the previous sentence but that is not distributed because of the limitation contained in clause (ii) of such

sentence shall be deferred until payable pursuant to Section 4.2.B(2)(b).

(e) fifth, thereafter, 80 percent to the Limited Partners, as a class, and the lesser of (i) 20 percent and (ii) the excess of 20 percent of cumulative capital gains based on actual costs of investments then or theretofore realized by the Partnership (net of realized capital loss and unrealized net capital depreciation based on actual costs of investments) over the aggregate of Enhanced Yield Distributions previously paid to the Managing General Partner pursuant to Section 4.2, to the Managing General Partner (19 percent being an MGP Distribution). Any amount that would have been distributed to the Managing General Partner pursuant to clause (i) of the previous sentence but that is not distributed because of the limitation contained in clause (ii) of such sentence shall be deferred until payable pursuant to Section 4.2.B(2)(b).

C. The foregoing provisions of this Section 4.2 notwithstanding, distributions pursuant to Section 4.2.B which, if paid pursuant to the terms thereof, would result in the receipt by the Managing General Partner of cumulative distributions from Sales in excess of 20% of the cumulative capital gains based on actual costs of investments then or theretofore realized by the Partnership (net of realized capital losses and unrealized net capital depreciation based on actual costs of investments), shall not be made pursuant hereto. The distribution of any amount not paid to the Managing General Partner pursuant to the terms of this Section 4.2.C shall be deferred until payable pursuant to Section 4.2.B(2)(b).

#### Section 4.3. Allocations of Profits and Losses.

A. The Profits and Losses of the Partnership, whether ordinary or capital in nature, shall be determined on an accrual basis in accordance with the method of accounting followed by the Partnership for Federal income tax purposes, and allocated with respect to each Fiscal Year of the Partnership as of the end of, and within 60 days after the end of, such Fiscal Year.

**B. Profits of the Partnership other than Liquidation Profits shall be allocated among the Partners:**

**first**, to each Partner who has received or is scheduled to receive distributions pursuant to Sections 4.1 and 4.2 in the aggregate (exclusive of any distributions representing a Return of Capital) in excess of the amount of Net Profit previously allocated to such Partner, to the extent of such excess and in accordance with the ratio that such excess bears to the aggregate excess of all such Partners;

**second**, to each Partner having an excess of its Deemed Distribution Amount over the Capital Account of such Partner (determined after giving effect to any allocation of Profit under clause **first** above and, in the case of the Managing General Partner, including an amount equal to the outstanding principal amount of any MGP Notes), to the extent of such excess and in accordance with the ratio that such excess bears to the aggregate excess of all such Partners; and

**third**, to the Partners in proportion to the positive balances in their Capital Accounts (determined after giving effect to any allocation of Profit under clauses **first** and **second** above and, in the case of the Managing General Partner, including an amount equal to the outstanding principal amount of any MGP Notes).

**C. Losses of the Partnership other than Liquidation Losses shall be allocated among the Partners:**

**first**, to each Partner who has been allocated Net Profit in excess of the aggregate amount of distributions received or scheduled to be received by such Partner (exclusive of any distributions representing a Return of Capital), to the extent of such excess and in accordance with the ratio that such excess bears to the aggregate excess of all such Partners;

**second**, to each Partner having an excess in its Capital Account (determined after giving effect to any allocation of Loss under clause **first** above and, in the case of the Managing General Partner, includ-

ing an amount equal to the outstanding principal amount of any MGP Notes) over the Deemed Distribution Amount of such Partner, to the extent of such excess and in accordance with the ratio that such excess bears to the aggregate excess of all such Partners;

third, to the Partners to the extent of and in proportion to the positive balance in the Capital Accounts of all such Partners (determined after giving effect to any allocation of Loss under clauses first and second above and, in the case of the Managing General Partner, including an amount equal to the outstanding principal amount of any MGP Notes); and

fourth, the balance, if any, to the Managing General Partner.

D. All Profits or Losses with respect to any period prior to the Initial Closing shall be allocated 99% to the Managing General Partner and 1% to the Initial Limited Partner. Such Profits or Losses shall be determined on the basis of an interim closing of the Partnership's books on an accrual basis on each such date.

E. Notwithstanding any other provision of this Agreement, if the Partnership shall realize an amount of imputed interest income with respect to the note of the Managing General Partner contributed to the Partnership pursuant to Section 3.1.D, there shall be allocated to the Managing General Partner an amount of gross income of the Partnership equal to the amount of such imputed interest income.

F. All sales commissions, any discount in sales commissions or any sales commissions waived with respect to any sale of Units to any Limited Partner shall be specially allocated to those Limited Partners whose Units generated such commissions, discount or waiver so that each Limited Partner's Capital Account will be reduced by total commissions paid with respect to its Units.

Section 4.4. Qualified Income Offset Allocations. Notwithstanding Section 4.3:

A. There shall be allocated to the Managing General Partner any Losses that, but for this Section 4.4, would have been allocated to any Limited Partner

or Independent General Partner that is not obligated to restore any deficit balance in such Partner's Capital Account to the extent such Losses would have thereupon caused or increased a deficit balance in such Partner's Capital Account as of the end of the Partnership's Fiscal Year to which such allocation related;

B. Except as provided in Section 4.4.A, no Losses shall be allocated to any Partner that is not obligated to restore any deficit balance in such Partner's Capital Account to the extent such Loss would create or increase a deficit balance in such Partner's Capital Account (determined after making appropriate adjustments to reflect (1) all distributions, allocations and Capital Contributions made during such fiscal year and (2) reasonably expected allocations of loss and deductions described in Section 1.704-1(b)(2)(ii)(d)(5) of the Treasury Regulations and reasonably expected distributions described in Section 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations) and the amount of any such loss shall be allocated to the remaining Partners to the extent of, and in proportion to, the positive balances in such Partners' Capital Accounts. For purposes of Section 4.4.B and 4.4.C, and for no other purposes of this Agreement except as otherwise expressly provided in this Agreement, the Managing General Partner's Capital Account shall include the principal amount of the MGP Note;

C. If any Partner that is not obligated to restore any deficit balance in such Partner's Capital Account unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(f)(5) or 1.704-1(b)(2)(ii)(d)(6), or otherwise has a deficit balance in its Capital Account, items of Partnership Profits shall be specially allocated to such Partner in an amount and manner sufficient to eliminate a deficit in its Capital Account created by such adjustments, allocations or distributions as quickly as possible. This Section 4.4.C is intended to constitute a "qualified income offset" as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(d); and

D. In the event any allocations of Losses are made to the Managing General Partner pursuant to Section 4.4.A, the Managing General Partner shall be subsequently allocated Profits until the aggregate amount of such allocations of Profits is equal to the aggregate amount of any such allocations of Losses to the Managing General Partner pursuant to Section 4.4.A.

**Section 4.5. Determination of Distributions and Allocations Among Partners.**

A. All Distributable Cash from Investments, and Distributable Capital Proceeds distributable to the Limited Partners, as a class, and all Profits and Losses allocable to the Limited Partners, as a class, shall be made to each Limited Partner entitled to such distribution or allocation in the ratio which the number of Units owned by such Limited Partner bears to the total number of Units owned by all Limited Partners entitled to such distribution or allocation.

B. All Distributable Cash from Investments distributable to the Limited Partners, as a class, shall be distributed, and all Profits or Losses not arising from a Capital Transaction shall be allocated, as the case may be, to the Persons who were Limited Partners as of the last day of the fiscal quarter for which such distribution or allocation is to be made. All such Profits and Losses shall be earned or incurred ratably throughout the year and allocated on a quarterly basis to those Partners who were Partners on the last day of such month.

C. Subject to the provisions of Article Seven, all Distributable Capital Proceeds shall be distributed, and all Profits and Losses arising from a Capital Transaction shall be allocated, to the persons who were Partners as of the date of such Capital Transactions.

**Section 4.6. Withholding.** Notwithstanding the provision of Sections 4.1 through 4.5, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership or any of its Affiliates with respect to such Partner or as a result of such Partner's participation in the Partnership; if and to the extent that the Partnership shall be required to withhold or pay any such taxes, such Partner shall be deemed for all purposes of

this Agreement to have received a payment from the Partnership as of the time such withholding or tax is required to be paid, which payment shall be deemed to be a distribution with respect to such Partner's Interest to the extent that the Partner (or any successor to such Partner's Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which such Partner is entitled for such period, the amount of such excess shall be considered a loan from the Partnership to such Partner, with interest at the lesser of the maximum rate permitted by law or at a rate equivalent to the Prime Rate, as determined from time to time which interest shall be treated as an item of Partnership Profit, until discharged by such Partner by repayment, which may be made in the sole discretion of the Managing General Partner out of distributions to which such Partner would otherwise be subsequently entitled. Any withholdings referred to in this Section 4.6 shall be made at the maximum applicable statutory rate under the applicable tax law unless the Managing General Partner shall have received an opinion of counsel or other evidence, satisfactory to the Managing General Partner, to the effect that a lower rate is applicable, or that no withholding is applicable.

**Section 4.7. Tax Allocations.** For United States Federal, state and local income tax purposes, except as otherwise provided in Section 4A.2, the income, gains, losses and deductions of the Partnership shall be allocated among the Partners in the same manner that each such item is allocated among the Capital Accounts.

**Section 4.8. Minimum Allocation to General Partner.** Notwithstanding any other provision of this Agreement, there shall be allocated to the Managing General Partner no less than 1% of each item of income, gain, loss, deduction or credit of the Partnership.

**Section 4.9. Series of Closings.** In the event of any Closing after a first Closing at which later Closing Units are sold for a per Unit price of \$1,000 (without regard to discounts), there shall be an interim Closing of the books of the Partnership and the Managing General Partner shall distribute previously accrued Net Profit in a manner consistent with Section 4A.2.A and shall allocate Profit and Loss and cause the Capital Accounts of all Limited Partners (including Limited