

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 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 or upon dissolution of the Partnership pursuant to Article Nine.

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 whatsoever 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 Contribution shall have been paid, subject to the provisions of Sections 3.6B and 3.6C, 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 limited 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 obli-

gated, 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 3.4A(1) through (5).

B. All Distributable Cash from Investments for each fiscal quarter of the Partnership shall, subject to the provisions of Section 4.1C, 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 4.1C;

(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 4.1C shall be deferred until payable pursuant to Section 4.1B(2)(b).

D. All cash distributions to Limited Partners whose subscriptions were solicited by MLPF&S will be credited to such Limited Partners' customer securities accounts maintained with MLPF&S. Other Limited Partners and Limited Partners who choose not to have their distributions credited to their accounts will be given the opportunity to so instruct the Fund Administrator.

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 order of 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 of 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;

[For purposes of the above, Financing Fees and Financing Expenses (whether or not associated with a Capital Transaction) shall be treated as obligations or expenses of the Partnership during an accounting period only to the extent attributable under the Partnership's method of accounting to the accounting period in which the applicable Capital Transaction occurs.]

(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 original invested 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 4.2A, subject to the provisions of Section 4.2C, 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 Managing 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; and

(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 4.2C, 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 4.2B(d), 4.2B(e) or 4.2C;

(c) third, to the Managing 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% 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 the lesser of (i) 20% of the excess of all Enhanced Yield Distributions over all Enhanced Yield Distributions constituting Returns of Capital and (ii) the excess of 20% 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 such Enhanced Yield Distributions made pursuant to Section 4.2 previously paid to the Managing General Partner. 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); and

(e) fifth, thereafter, 80% to the Limited Partners, as a class, and the lesser of (i) 20% and (ii) the excess of 20% 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 such Enhanced Yield Distributions made pursuant to Section 4.2 previously paid to the Managing General Partner pursuant to Section 4.2, to the Managing General Partner (all but 1% 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 4.2B which, if paid pursuant to the terms thereof, would result in the receipt by the Managing General Partner of cumulative distributions from Sales [and Refinancings] 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 4.2C shall be deferred until payable pursuant to Section 4.2B(2)(b).

D. All cash distributions to Limited Partners whose subscriptions were solicited by MLPF&S will be credited to such Limited Partners' customer securities accounts maintained with MLPF&S. Other Limited Partners and Limited Partners who choose not to have their distributions credited to their accounts will be given the opportunity to so instruct the Fund Administrator.

#### 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 75 days after the end of, such Fiscal Year.

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

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 and any scheduled distributions taken into account 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 and any scheduled distributions taken into account 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 and any scheduled distributions taken into account 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) 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 and any scheduled distribution taken into account 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 3.1D, 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 and financial advisory fees, any discount in sales commissions and financial advisory fees or any sales commissions and financial advisory fees waived with respect to any sale of Units to any Limited Partner shall be specially allocated to those Limited Partners whose Units generated such sales commissions and financial advisory fees, discounts or waivers so that each Limited Partner's Capital Account will be reduced by total sales commissions and financial advisory fees 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 4.4A, 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 all purposes of this Agreement, to the extent of the principal amount of the MGP Note, the Managing General Partner shall be treated as obligated to restore a deficit balance in its Capital Account;

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 4.4C 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 4.4A, 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 4.4A.

**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 the Managing 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.2A and shall allocate Profit and Loss and cause the Capital Accounts of all Limited Partners (including Limited Partners admitted at such Closing) to be equalized and adjusted by booking-up expenses in a manner consistent with Section 4A.2D.

**Section 4.10. Minimum Gain Chargeback.**

Notwithstanding anything to the contrary in this Article Four, if there is a net decrease in Partnership minimum gain (as such term is defined by Section 1.704-1T(d)(4)(iv)(c) of the Treasury Regulations) during a Partnership taxable year, then each Partner shall be allocated items of Partnership income and gain for such year (and, if necessary, for subsequent years) in the manner provided in Section 1.704-1T(b)(4)(iv) of the Treasury Regulations. This provision is intended to be a "minimum gain chargeback" within the meaning of Section 1.704-1T(b)(4)(iv) of the Treasury Regulations and shall be interpreted and implemented as therein provided.

**ARTICLE FOUR-A**

**MULTIPLE CLOSINGS**

**Section 4A.1. Subsequent Closing.** In the event of any Closing at which Units are sold for a per Unit price other than \$1,000 (a "Subsequent Closing") after an initial Closing or series of Closings at which Units are sold for a per Unit price of \$1,000 (the "Initial Closing"), the following provisions of this Article Four-A shall apply.

**Section 4A.2. Distributions of Cash; Allocations of Profits and Losses.**

A. There shall be an interim closing of the books of the Partnership on the day before a Subsequent Closing as provided in Section 12.2C and Profits and Losses shall be determined for the portion of the year ending prior to such Subsequent Closing ending on such day. Such Profits and Losses shall be allocated to those Persons who are Partners on such date in accordance with Section 4.3. To the extent of the aggregate of Distributable Cash from Investments and Distributable Capital Proceeds, there shall be distributed within 45 days after the end of the quarter in which such Subsequent Closing occurs to each of the Partners admitted to the Partnership in the Initial Closing or any prior Subsequent Closing an amount of cash equal to the accrued and undistributed Net Profit, determined as of the day before such Subsequent Closing, in accordance with the provisions of Article Four. Any Net Profit accrued prior to the Subsequent Closing and not previously distributed shall be distri-

buted from Distributable Capital Proceeds and Distributable Cash from Investments to the extent necessary to first equalize the Capital Accounts of all Limited Partners on a per Unit basis.

B. On the day before any Subsequent Closing, consistent with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(f), the Capital Accounts of all Limited Partners and the Managing General Partner and the Carrying Values of all Partnership properties immediately prior to any Subsequent Closing shall be adjusted (consistent with the provisions hereof) upwards or downwards to reflect any Unrealized Gain or Unrealized Loss attributable to each Partnership property (as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such property and had been allocated to the Limited Partners and the Managing General Partner, at such time, pursuant to Sections 4.3 through 4.8). Such Unrealized Gain or Unrealized Loss shall be determined by the Managing General Partner using such methods of valuation as it in its sole discretion deems appropriate. As used herein, Carrying Value shall initially mean with respect to any property the adjusted basis of such property for federal income tax purposes, and following any Subsequent Closing shall mean the value as adjusted from time to time in accordance with the provisions of this Section 4A.2B. Unrealized Gain shall mean as of any date of determination, the excess, if any, of the fair market value of property (as determined under this Section 4A.2B) as of such date of determination over the Carrying Value of such property as of such date of determination (prior to any adjustment to be made pursuant to this Section 4A.2B as of such date), and Unrealized Loss shall mean as of any date of determination, the excess, if any, of the Carrying Value of property as of such date of determination (prior to any adjustment to be made pursuant to this Section 4A.2B as of such date) over the fair market value of such property (as determined under this Section 4A.2B) as of such date of determination. Any Profit or Loss attributable to the subsequent taxable disposition of any property, and any Deemed Distribution Amount with respect to any property, shall be determined by the Partnership as if the adjusted basis of such property as of such date of disposition or deemed disposition was equal in amount to the Partnership's Carrying Value with respect to such property as of such date.

C. Upon the Partnership's taxable disposition of any property with respect to which there has been an adjustment of the Carrying Value, items of taxable gain and loss attributable thereto shall first be allocated among the Partners (in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(f)(4) and a manner consistent with the principles of Section 704(c) of the Code) to take into account the Unrealized Gain or Unrealized Loss attributable to such property in the same manner as the Capital Accounts of such Partners were previously adjusted to reflect Unrealized Gain or Unrealized Loss. A Partner's Capital Account shall not be adjusted to reflect allocations made pursuant to this Section 4A.2C.

D. The Managing General Partner shall use its best efforts (i) to effect the revaluations required by Paragraph B hereof so that, immediately after any Subsequent Closing, taking into account distributions required by Paragraph A of this Section 4A.2, the Capital Accounts of all Limited Partners are equal, and (ii) to reconcile the revaluation with the price paid by the most recently admitted Additional Limited Partners for Units. Upon a revaluation under Paragraph B of this Section 4A.2, (i) (x) in the case of a sale of Units registered under the Securities Act of 1933, as amended, pursuant to the Registration Statement, Organizational and Offering Expenses (other than sales commissions or financial advisory fees) or (y) in the case of the sale of Units to a Non-U.S. Partner, organizational expenses (as defined in Treasury Regulation Section 1.709-2(a)), (either of such expenses referred to hereinafter as "Booked-up Expenses") shall be treated as assets and revalued on the books of the Partnership to their original cost, (ii) the subscription price per Unit for the then occurring Subsequent Closing shall reflect the treatment of Booked-up Expenses as assets of the Partnership, and (iii) the Capital Accounts of the previously admitted Limited Partners shall be booked up to reflect the revaluation of Booked-up Expenses and, in the case of the sale of Units registered under the Securities Act of 1933, as amended, pursuant to the Registration Statement, the Capital Accounts of all Limited Partners (other than any Non-U.S. Partner) shall be charged with a pro rata share of the Partnership syndication expenses (as defined in Treasury Regulation Section 1.709-2(b)) other than Sales Commissions. Thereafter, the Booked-up Expenses that are Organizational and Offering Expenses other than syndication expenses shall be amortized (solely for book

purposes) over the remaining amortization period of such expenses and charged against the Profits and Losses of the Partnership in accordance with Sections 4.3 through 4.8. The Managing General Partner may make such further allocations of Profit and Loss as may be necessary, as determined by the Managing General Partner in its sole discretion, to equalize as quickly as possible after a Subsequent Closing the Capital Accounts of all the Limited Partners.

Section 4A.3. Return of Capital Contribution. If any Capital Contributions are returned to the Partners pursuant to Section 3.4 or 3.5C, such amounts shall be returned to the Managing General Partner and to the Limited Partners as a class, pro rata in proportion to the respective Capital Contributions of each such class, and the amount distributed to the Limited Partners as a class shall be allocated among them pursuant to Section 4.5A.

## ARTICLE FIVE

### RIGHTS, POWERS AND DUTIES OF THE GENERAL PARTNERS

Section 5.1. Management and Control of the Partnership.

A. Subject to the Consent of the Limited Partners where required by this Agreement, the General Partners, within the authority granted to them under and in accordance with the provisions of this Agreement, shall have the full, exclusive and complete discretion in the management and control of the business and affairs of the Partnership and shall make all decisions regarding the business of the Partnership and shall have all of the rights, powers and obligations of a general partner of a limited partnership under the laws of the State. The Independent General Partners shall provide overall guidance and supervision with respect to the operations of the Partnership, shall perform all duties imposed on the directors of business development companies by the 1940 Act or by any exemptive order of the Securities and Exchange Commission granted to the Partnership and shall monitor the activities of Persons in which the Partnership has invested. Except as otherwise expressly provided in this Agreement, the General Partners are hereby granted the right, power and authority to do on behalf of the Partnership all things which, in their sole judgment, are

necessary or appropriate to manage the Partnership's affairs and fulfill the purposes of the Partnership.

B. No Limited Partner shall participate in the management of or have any control over the Partnership's business nor shall any Limited Partner have the power to represent, act for, sign for or bind the General Partners or the Partnership. The Limited Partners hereby Consent to the exercise by the General Partners of the powers conferred on them by this Agreement.

Section 5.2. Authority of the General Partners.

A. In addition to any other rights and powers that the General Partners may possess under this Agreement and the Act, the General Partners shall, except to the extent otherwise provided herein, have all specific rights and powers required or appropriate to their management of the Partnership business which, by way of illustration but not by way of limitation, shall include the following rights and powers:

(1) to acquire, hold, manage, sell, dispose of and otherwise deal with and invest in any security or securities (of any class or nature) of any Person and any real or personal property of any nature; provided, however, that:

(a) each Mezzanine or Other Investment made by the Partnership shall either be approved by the Independent General Partners, or shall, in the determination of the Independent General Partners, meet the Guidelines for preapproval and each Bridge Investment shall be approved by the Independent General Partners, prior to the purchase by the Partnership of such Mezzanine, Other or Bridge Investment, as the case may be;

(b) the Independent General Partners shall not approve the Partnership's acquisition of an Enhanced Yield Investment in a Non-Managed Company or certify that such Investment meets the Guidelines and the Managing General Partner shall not invest the assets of the Partnership in Temporary Investments that are not Exempt Investments, if more than 30 percent of the value of the total assets of the Partnership, as computed pursuant to Section 55(b) of the 1940

Act, is invested in Enhanced Yield Investments in Non-Managed Companies and Temporary Investments that are not Exempt Investments;

(c) the Partnership shall not invest more than 10 percent of Available Capital in any one Mezzanine Investment, except that the Partnership may, with the approval of the Independent General Partners, make two Mezzanine Investments each utilizing up to 20 percent of Available Capital (the "Diversification Requirement");

(d) the Partnership shall not invest more than 20 percent of Available Capital in any one Bridge Investment (or such Bridge Investment taken together with a Mezzanine Investment in the same Portfolio Company), except that the Partnership may, with the approval of the Independent General Partners, make one Bridge Investment (or such Bridge Investment taken together with a Mezzanine Investment in the same Portfolio Company) utilizing up to 25 percent of Available Capital, and in addition, the Partnership shall not make any Bridge Investment that would result in more than 50 percent of Available Capital being invested in Bridge Investments;

(e) the Partnership shall not invest more than 10% of Available Capital in Other Investments;

(f) the Partnership shall not invest more than 15% of the Partnership's Available Capital in securities constituting senior debt that are not purchased as a permanent component of a Mezzanine or Other Investment and the Partnership shall not invest more than 15% of the Partnership's Available Capital in securities constituting senior subordinated debt that are not purchased as a permanent component of a Mezzanine or Other Investment; and

(g) the Partnership and the Other Partnership together will have the right to an allocation of at least 25% of any Enhanced Yield Investment which meets their investment objective during the period that the Equitable

Capital Partners I Partnerships are entitled to a 25% allocation right to any such proposed investment (i.e. from the date that each of the Equitable Capital Partners I Partnerships has become 75% invested until each of the Equitable Capital Partners I Partnerships is fully invested), pursuant to an exemptive order from the Securities and Exchange Commission under the 1940 Act.

(2) to incur all expenditures permitted by this Agreement;

(3) to employ and dismiss from employment any and all employees, agents, attorneys, consultants, custodians of the assets of the Partnership, transfer agents or servicing agents, including employment of the General Partners and their Affiliates and to designate employees or agents of the Partnership, who may be employees or agents of a General Partner, as officers with titles including but not limited to "vice-president", "president", "treasurer", "secretary", "assistant secretary", "assistant treasurer", "managing director" and "chairman" and who in such capacity may act for and on behalf of the Partnership, as and to the extent authorized by the General Partners;

(4) to enter into, execute, amend, supplement, acknowledge, deliver and perform any and all agreements, contracts, documents, certifications and instruments, including, but not limited to, contracts with banks, trust companies or other investment advisers, including General Partners and any of their Affiliates for the performance of such functions, including the investment and reinvestment of all or part of the Partnership's assets, execution of portfolio transactions, and any or all administrative functions and make regulatory filings necessary or convenient in connection with the acquisition, holding, and disposition of and dealing with the Investments of the Partnership;

[(5) to borrow money and issue evidences of indebtedness, including multiple classes of senior indebtedness or a single class of limited partnership interests senior to the Units to the extent permitted by the 1940 Act, in furtherance of any or all of the

purposes of the Partnership, and to secure the same by mortgage, pledge or other lien on the Partnership's Investments or any other assets of the Partnership, and to refinance and/or repay, in whole or in part, any such borrowings, indebtedness or security and repurchase or retire, in whole or in part, any such interests senior to the Units;]

[(6)] [5] to protect and preserve the title and interest of the Partnership with respect to the assets at any time owned or acquired by the Partnership;

[(7)] [6] to collect all amounts due to the Partnership, and otherwise to enforce all rights of the Partnership, and in that connection to retain counsel and institute such suits or proceedings, in the name and on behalf of the Partnership, or, if the Independent General Partners shall so determine, in the name of the Partners;

[(8)] [7] to the extent permitted by the 1940 Act, to designate and appoint one or more agents for the Partnership who shall have such authority as may be conferred upon them by the Independent General Partners, and who may perform any of the duties, and exercise any of the powers and authority, conferred upon the Independent General Partners hereunder, including, but not limited to, designation of one or more agents as authorized signatories on any bank account maintained by the Partnership;

[(9)] [8] to establish and maintain one or more bank accounts for the Partnership in such bank or banks having assets of at least \$50,000,000 as the Independent General Partners may, from time to time, designate as depositories of the funds of the Partnership;

[(10)] [9] to cause securities owned by the Partnership to be registered in the Partnership's name or in the name of a nominee or to be held in street name, as they shall elect and to cause the assets of the Partnership to be held in custody in compliance with the requirements of the 1940 Act;