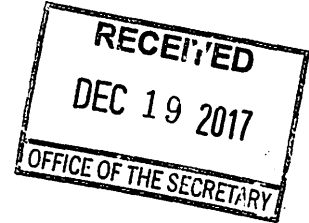


UNITED STATES OF AMERICA  
Before the  
U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17387



In the Matter of

DONALD F. LATHEN, JR.,  
EDEN ARC CAPITAL MANAGEMENT, LLC,  
EDEN ARC CAPITAL ADVISERS, LLC.

AFFIRMATION OF DONALD F. LATHEN IN SUPPORT OF THE  
APPLICATION OF EDEN ARC CAPITAL ADVISORS, LLC AND EDEN  
ARC CAPITAL MANAGEMENT, LLC FOR RECOVERY OF LEGAL FEES  
AND EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT

DONALD F. LATHEN hereby affirms under the penalty of perjury that the following statements are true and correct:

1. I am a resident of the State of New York. I am one of the respondents in the referenced matter.
2. I submit this affirmation in support of the Application of Eden Arc Capital Advisors, LLC and Eden Arc Capital Management, LLC for Recovery of Legal Fees and Expenses Pursuant to the Equal Access to Justice Act, dated December 4, 2017.
- 3.e The statements contained in this affirmation are based on my personal knowledge, except as otherwise indicated.

### General Background

4.e Eden Arc Capital Partners, LP (the "Fund") is a Delaware limited partnership.e

5.e Eden Arc Capital Management, LLC ("EACM") is a limited liability companye registered in Delaware. It is the Fund's Investment Advisor.

6.e Eden Arc Capital Advisors, LLC ("EACA") is a limited liability companye registered in Delaware. It is the general partner of the Fund.

### Net Worth of EACA and EACM

7.e On or about February 17, 2017 (during the course of the administrative hearinge herein), EACA and EACM submitted SEC Form D-As with the Court. Copies of those Form D-As are attached hereto as Exhibits 1 and 2, respectively.

8.e Those Form D-As evidence that each of EACA and EACM had a net worth as ofe on or about February 17, 2017 of less than \$7 million.

9.e On August 15, 2016, the date upon which the Division filed the Order Instituting Proceedings herein (the "OIP"), both EACA and EACM had substantially the same net worth as shown on Exhibits 1 and 2, respectively. In other words, the net worths of each of EACA and EACM were less than \$7 million as of August 15, 2016, the date upon which the Division filed the OIP herein.

### Indemnification and Repayment Agreements Between the Fund and EACA/EACM

10.e Attached hereto as Exhibit 3 is a copy of the Fund's Amended Limitede Partnership Agreement, dated April 13, 2015 (the "LPA").

11.e Pursuant to Paragraph 12.2 of the LPA the Fund advanced all of the legal fees ande expenses that EACA and EACM incurred in defending against the charges in the OIP.

12. e Specifically, the LPA defines “Indemnified Persons” as the Fund’s Generale Partner (that is, EACA), the Fund’s “Investment Manager” (that is, EACM) and their “respective Affiliates” (including myself), and provides with respect to indemnification that the Fund:

will, out of [Fund] assets, including, without limitation, any insurance proceeds, to the fullest extent permitted by applicable laws, indemnify and hold harmless each Indemnified Person from and against any and all claims, damages, losses, penalties, expenses, judgments or liabilities of any nature whatsoever, including but not limited to legal fees, expenses and costs associated with investigating or preparing the defense of any proceeding or investigation, giving testimony or furnishing documents in response to a subpoena (collectively, the “Losses”), as incurred to which any such Indemnified Person may become subject in connection with, or rising out of or related to this Agreement or to the operation and affairs of the [Fund] . . . .

13.e Thus, the legal fees and expenses that EACA and EACM incurred in defendinge against the charges in the OIP were paid from the Fund’s bank and securities accounts.

14.e Attached hereto as Exhibit 4 is a copy of the Agreement Regarding Recovery of e Fees and Expenses Under EAJA, dated December 2, 2017. It provides that “all recoveries that [EACA], [EACM] and/or Donald F. Lathen, Jr. may receive from a court of competent jurisdiction in connection with an EAJA claim, shall be immediately paid to the [Fund].”

15.e Thus, EACA and EACM are contractually obliged to remit to the Fund any fundse that they may recover in connection with their claims herein under the EAJA.

Dated: December 15, 2017  
New York, NY

  
\_\_\_\_\_  
Donald F. Lathen

# **EXHIBIT 3**

**EDEN ARC CAPITAL PARTNERS, LP**

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**AMENDED**

**LIMITED PARTNERSHIP AGREEMENT**

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**General Partner**

**EDEN ARC CAPITAL ADVISORS, LLC**

**APRIL 13, 2015**

**EDEN ARC CAPITAL PARTNERS, LP  
AMENDED  
LIMITED PARTNERSHIP AGREEMENT**

**TABLE OF CONTENTS**

<b>ARTICLE 1. ORGANIZATION .....</b>	<b>4</b>
1.1. Formation .....	4
1.2. Name of General Partner .....	4
1.3. Offices .....	5
1.4. Fiscal Year and Fiscal Period .....	5
1.5. Limited Partner's Ownership of Partnership Property .....	5
<b>ARTICLE 2. PARTNERSHIP STRATEGY AND POWERS .....</b>	<b>5</b>
2.1. Partnership Investment Objectives. The objectives of the Partnership are as follows: .....	5
2.2. Partnership Powers .....	5
<b>ARTICLE 3. MANAGEMENT .....</b>	<b>6</b>
3.1. Authority of the General Partner .....	6
3.2. Activities of the General Partner/Investment Manager .....	6
3.3. Powers of the General Partner .....	7
3.4. Reliance by Third Parties .....	9
3.5. Partner's Transaction in Securities .....	9
3.6. Interested Limited Partner .....	9
3.7. Registration of Securities .....	9
3.8. Determination by the General Partner of the Investment Manager of Matters not Provided for in this Agreement .....	9
<b>ARTICLE 4. CAPITAL ACCOUNTS .....</b>	<b>9</b>
4.1. Contributions .....	9
4.2. Opening Capital Accounts .....	10
4.3. Partnership Percentages .....	10
4.4. Closing Capital Account .....	10
4.5. Maximum Capital Account .....	10
4.6. General Partner's Performance Allocation .....	11
4.7. Interim Dates, Contributions and Admissions .....	11
4.8. Valuation of Partnership Assets .....	11
4.9. Allocation for Tax and Related Purposes .....	12
4.10. New Issues Account .....	13
4.11. New Issues Account: Investment Banking Services .....	14
4.12. Allocation of Prior Fiscal Year or Fiscal Period Items .....	15
<b>ARTICLE 5. TRANSFER OF PARTNERSHIP INTERESTS .....</b>	<b>15</b>
5.1. Assignment of Interest by Limited Partner .....	15
<b>ARTICLE 6. WITHDRAWAL OF PARTNERS .....</b>	<b>16</b>
6.1. Withdrawal in General Including Withdrawal of Capital .....	16

**EDEN ARC CAPITAL PARTNERS, LP  
AMENDED  
LIMITED PARTNERSHIP AGREEMENT**

**TABLE OF CONTENTS (cont'd)**

6.2.	Withdrawal of a General Partner/Investment Manager.....	16
6.3.	Redemption by a Limited Partner.....	19
6.4.	Required Withdrawal of a Limited Partner.....	20
<b>ARTICLE 7. TERM AND DISSOLUTION OF THE PARTNERSHIP.....</b>		<b>20</b>
7.1.	Term.....	20
7.2.	Dissolution.....	21
<b>ARTICLE 8. REPORTS TO LIMITED PARTNERS.....</b>		<b>21</b>
8.1.	Books of Account.....	21
8.2.	Annual Reports.....	21
8.3.	Interim Reports.....	22
<b>ARTICLE 9. ORGANIZATIONAL AND PARTNERSHIP EXPENSES AND MANAGEMENT FEE.....</b>		<b>22</b>
9.1.	Organization Expenses.....	22
9.2.	Management Fees and Partnership Expenses.....	22
<b>ARTICLE 10. SPECIAL POWER OF ATTORNEY.....</b>		<b>23</b>
10.1.	Power of Attorney.....	23
10.2.	Irrevocability.....	23
<b>ARTICLE 11. WARRANTIES AND REPRESENTATIONS.....</b>		<b>24</b>
11.1.	Investment Purposes.....	24
11.2.	Exemption Acknowledgment.....	24
<b>ARTICLE 12. LIABILITY AND INDEMNITY.....</b>		<b>24</b>
12.1.	Limited Partner's Liability.....	24
12.2.	Standard of Liability and Indemnification for General Partner and the Investment Manager.....	25
<b>ARTICLE 13. MISCELLANEOUS.....</b>		<b>25</b>
13.1.	Amendment of the Partnership Agreement.....	25
13.2.	Partnership Name.....	26
13.3.	Notices.....	26
13.4.	Interim Limited Partner.....	26
13.5.	General.....	26

**EDEN ARC CAPITAL PARTNERS, LP**

**AMENDED**

**LIMITED PARTNERSHIP AGREEMENT**

**April 13, 2015**

This Amended Agreement of Limited Partnership (the "Agreement") by and among EDEN ARC CAPITAL ADVISORS, LLC as the General Partner (hereinafter referred to, together with any additional General Partner or Partners admitted to the Partnership identified below, as the "General Partner") and the persons who have become parties to this Agreement by affixing their names hereto as Limited Partners, including any General Partner who elects to invest as a Limited Partner (all of whom are hereinafter sometimes collectively referred to as the "Limited Partners" and each of whom is hereinafter sometimes referred to individually as a "Limited Partner").

**DEFINITIONS**

**Definitions.** As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the provisions following such terms:

**1933 Act:** shall refer to the Securities Act of 1933, as amended.

**1934 Act:** shall refer to the Securities and Exchange Act of 1934, as amended.

**Act:** shall refer to the Chapter 17 of Title 6 of the Delaware Code, and any successor statute, as amended from time to time.

**Active Trading Market:** shall have the meaning assigned to it in Sub-Paragraph 4.8.3.1.

**Additional Closing:** shall have the meaning assigned to in Paragraph 4.13.

**Adjusted Opening Capital Account:** shall have the meaning assigned to it in Sub-Paragraph 4.5.3.

**Advisers Act:** shall refer to the Investment Advisers Act of 1940, as amended.

**Affiliate(s):** shall refer to the principal(s), affiliate(s), manager(s), member(s), officer(s), employee(s) or next of kin related to the General Partner and/or the Investment Manager.

**Agreement:** shall have the meaning assigned to it in the introductory paragraph.

**Business Day:** shall refer to any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of New York are closed.

**Calendar Month:** shall have the meaning assigned to it in Sub-Paragraph 4.1.3.

**Calendar Quarter:** shall have the meaning assigned to it in Sub-Paragraph 1.4.3.



**Capital Account:** shall refer to an account which shall be established for each Limited Partner upon receiving such Limited Partner's initial (or lesser initial) Capital Contribution in accordance with Sub-Paragraph 4.1.1.

**Capital Contribution:** refers to a contribution to the Partnership by a Limited Partner in accordance with Sub-Paragraph 4.1.1.

**Closing Capital Account:** the calculated amount of the Capital Account of each Partner as of the last day of each Fiscal Period or on an Interim Date in accordance with Paragraph 4.4.

**Code:** refers to the Internal Revenue Code of 1986, as amended.

**Designated Liquidator:** shall mean the person(s) designated in writing by the General Partner who shall act on behalf of the Partnership, to terminate the Partnership and liquidate its assets pursuant to Sub-Paragraph 6.2.3.

**Disabled:** shall refer to physical or mental disease, illness, injury or otherwise in accordance with Sub-Paragraph 6.2.3.2.

**Effective Withdrawal Date:** shall have the meaning ascribed to it in Sub-Paragraph 6.2.1.1.

**FINRA:** shall refer to the Financial Industry Regulatory Authority.

**Fiscal Period:** shall have the meaning assigned to it in Sub-Paragraph 1.4.2.

**Fiscal Year:** shall begin on January 1 and end on December 31 or such date as the General Partner selects in accordance with Paragraph 1.4.

**GAAP:** shall refer to Generally Accepted Accounting Principles in effect from time to time in the United States applied on a consistent basis.

**Gating Provision:** shall have the meaning assigned to it 6.3.5.

**General Partner:** shall refer to **EDEN ARC CAPITAL ADVISORS, LLC** – a Delaware limited liability company, and any successor general partner which is admitted to the Partnership in accordance with the provisions of this Agreement, in its capacity as the General Partner of the Partnership.

**Indemnified Persons:** shall have the meaning ascribed to it in Sub-Paragraph 12.2.1.

**Initial Capital Contribution:** shall have the meaning assigned to it in Sub-Paragraph 4.1.1.

**Initial Closing:** shall have the meaning ascribed to it in Paragraph 4.12.

**Initial Limited Partner:** shall have the meaning ascribed to it in Sub-Paragraph 4.1.2.

**Initial Offering Period:** shall have the meaning ascribed to it in Sub-Paragraph 4.1.2.

**Investment Manager:** shall refer to **EDEN ARC CAPITAL MANAGEMENT, LLC**- a Delaware limited liability company, and any successor investment manager which is admitted to the Partnership in accordance with the provisions of this Agreement, in its capacity as the Investment Manager of the Partnership. The Investment Manager is a registered investment adviser with the SEC, as defined below.

**Interim Date:** shall have the meaning ascribed to it in Paragraph 4.7.

**Limited Partners:** shall refer to all Partners in the Partnership other than the General Partner.

**Liquidation of the General Partner's interest in the Partnership:** shall be determined in accordance with Sub-Paragraph 7.2.4.1.

**Lock-Up Period:** shall have the meaning ascribed to it in Paragraph 6.3.

**Losses:** shall have the meaning ascribed to it in Sub-Paragraph 12.2.2.

**Majority in Interest:** Limited Partners having in excess of fifty-one percent (51%) of the Partnership Percentages.

**Management Fee:** shall have the meaning ascribed to it in Sub-Paragraph 9.2.1.

**Managing Member:** shall refer to Mr. Donald F. ("Jay") Lathen.

**Maximum Capital Account:** shall have the meaning ascribed to it in Paragraph 4.5.

**Net Asset Value:** shall mean the value of all of the assets of the Partnership determined in accordance with this Agreement, less all Partnership liabilities and reserves established by the General Partner in its sole discretion.

**New Issues:** refers to equity securities that are issued in initial public offerings, in accordance with the Conduct Rules of FINRA, including the Rule.

**New Issues Account:** shall have the meaning assigned to it in Sub-Paragraph 4.10.1.

**New Issues Account-Investment Banking Services:** shall have the meaning assigned to it in Paragraph 4.11

**Offering Period:** shall have the meaning ascribed to it in Paragraph 4.1.

**Opening Capital Account:** an account which shall be established for each Partner on the books of the Partnership as of the first day of each Fiscal Period in accordance with Paragraph 4.2.

**Participant:** shall have the mean ascribed to it in Paragraph 2.1.

**Participating Partners:** shall have the meaning ascribed to it in Sub-Paragraph 4.10.3.

**Partner(s):** shall have the meaning ascribed to it in Sub-Paragraph 4.10.

**Partnership:** refers to **EDEN ARC CAPITAL PARTNERS, LP** - a Delaware limited partnership.

**Partnership Percentages:** shall be determined by dividing the amount of each Partner's Opening Capital Account by the sum of the Opening Capital Accounts for all Partners at the beginning of each Fiscal Period in accordance with Paragraph 4.3.

**Performance Allocation:** an amount equal to twenty percent (20 %) of the difference between the Closing Capital Account at the end of a Calendar Quarter and the Maximum Capital Account at the beginning of the Calendar Quarter in accordance with Paragraph 4.6.

**Redemption Request:** shall have the meaning ascribed to it in Sub - Paragraph 6.3.1.

**Redemption Valuation Date:** shall have the meaning ascribed to it in Sub – Paragraph 6.3.2.

**Reimbursable Expense:** shall have the meaning assigned to it in Sub-Paragraph 9.2.2.

**Required Withdrawal:** shall occur as set forth in Paragraph 6.4.

**Redemption Fee(s):** shall refer to the amounts set forth in Paragraph 6.3.

**Restricted Partners:** shall have the meaning ascribed to in Sub-Paragraph 4.10.3.

**Rule(s):** shall refer to FINRA Rule(s) 5130 or FINRA Rule 5131.

**SEC:** shall refer to the Securities and Exchange Commission.

**Side Letters:** shall have the meaning as set forth in Sub-Paragraph 3.3.2.10.

**Special Powers of Attorney:** shall be appointed pursuant to Article 10.

**SO Investments:** shall have the meaning assigned in Paragraph 2.1.

**Starting Balance:** shall have the meaning assigned in Paragraph 6.3.5.

**Tax Matters Partner:** shall be Donald F. (“Jay”) Lathen, the Managing Member of the General Partner of the Partnership pursuant to the requirements of the Code in accordance with Sub-Paragraph 4.9.7.

**Term:** shall have the meaning assigned to it in Paragraph 7.1.

**Unrestricted Partners:** those Partners, whether General or Limited, who do not fall within the proscription of Conduct Rules of FINRA as set forth in Sub-Paragraph 4.10.3.

## ARTICLE 1.

### ORGANIZATION

1.1. **Formation.** The parties hereto have formed a limited partnership under the Act, as amended, and in effect on the date hereof. The General Partner has:

1.1.1. executed and filed a Certificate of Limited Partnership in accordance with the provisions of the Act and will execute, file and record, as appropriate, all amendments, assumed name certificate and other documents as are or become necessary or advisable as determined by the General Partner; and

1.1.2. taken and will take all steps deemed necessary or advisable by the General Partner to allow the Partnership to conduct business in any jurisdiction where the General Partner elects for the Partnership to conduct business.

1.2. **Name of General Partner/Investment Manager** The name of the Partnership is Eden Arc Capital Partners, LP, a Delaware limited partnership, and the General Partner is Eden Arc Capital Advisors, LLC, a Delaware limited liability company. Eden Arc Capital Management, LLC, a Delaware limited liability company is the Investment Manager of the Partnership and is registered with the SEC as an investment

adviser. Mr. Donald F. ("Jay") Lathen is the Managing Member of the General Partner and the Investment Manager.

1.3. Offices. The principal office of the Partnership is One Penn Plaza, 36<sup>th</sup> Floor, New York, N.Y. 10199 or such other places as the General Partner may designate from time to time.

1.4. Fiscal Year and Fiscal Period. The "Fiscal Year" of the Partnership shall begin on January 1 and end on December 31 or such other date as the General Partner selects, subject to all applicable laws and regulations pertaining thereto. For purposes of this Agreement:

1.4.1. the first Fiscal Year shall commence on the date of the formation of the Partnership;

1.4.2. a "Fiscal Period" shall be the interval between the first day of a Fiscal Year or any Interim Date and the earlier of: (i) the date before the next Interim Date; (ii) the date of the complete or partial withdrawal of a Limited Partner; or (iii) the beginning of the next Fiscal Year; and

1.4.3. a "Calendar Quarter" shall begin on January 1, April 1, July 1 and October 1 and end on the day before the beginning of the next Calendar Quarter.

1.5. Limited Partner's Ownership of Partnership Property. Each Limited Partner shall have and own during any Fiscal Period an indivisible interest in the Partnership equal to its respective Partnership Percentage.

## ARTICLE 2.

### PARTNERSHIP STRATEGY AND POWERS

2.1. Partnership Investment Objectives. The objectives of the Partnership are as follows:

2.1.1. The Partnership will principally focus on making investments in securities which contain a "survivor's option" or similar feature. Survivor's option investments ("SO Investments") contain special redemption rights, typically in the form of a par put, which allows the investment to be sold back to the issuer at par prior to the maturity date in the event of the death of an owner. The Partnership will purchase the SO Investments in joint accounts with terminally ill individuals ("Participants").

2.1.2. The General Partner reserves the right to change or modify the Partnership's objective, as set forth above, upon notice to each Limited Partner; provided however, that prior to the effectiveness of such change in the principal Investment Objectives, each Limited Partner shall be given the right to withdraw from the Partnership.

2.2. Partnership Powers. The Partnership's investment objectives under Paragraph 2.1, the General Partner and/or the Investment Manager, under the supervision of the General Partner, may enter into, make and perform all contracts and other undertakings, and engage in all activities and transactions, as may be necessary or advisable to carry out the foregoing objectives and purposes, including without limitation:

2.2.1. to engage in all forms of domestic and foreign securities transactions, including, but not limited to, purchasing, acquiring, holding, selling or otherwise disposing of, exchanging, writing, receiving, and generally investing in, trading in, and selling short, on margin or otherwise, and otherwise dealing in and with: (i) securities and other types of investments, whether or not publicly traded, including, without limitation, rights and options (including puts and calls or any combination thereof and over-the-counter options), stocks, bonds, notes, debentures (whether subordinated, convertible, or other), warrants,

trust receipts and other obligations, stock index futures and contracts involving financial instruments, purchase and repurchase agreements; (ii) securities arbitrage, risk arbitrage (in connection with mergers, consolidations, acquisitions, transfers of assets, tender offers, exchange offers, recapitalization, reorganizations or other transactions), hedge arbitrage, option arbitrage and international arbitrage; and (iii) investing in special situations, including among other things, companies involved in liquidation, bankruptcies or without an established record of performance or with assets or businesses believed to be undervalued; and to otherwise acquire and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to foregoing;.

2.2.2. to open, maintain and close bank and brokerage accounts, including accounts with provision for joint tenancy with rights of survivorship and draw checks or other orders for the payment of money;

2.2.3. to maintain one or more offices within or outside the States of Delaware, New York or elsewhere and in connection therewith, to rent or acquire office space, engage personnel and do such other acts as may be advisable or necessary in connection with such offices and personnel; and

2.2.4. to engage in any other activities deemed lawful or otherwise permitted under the Act.

### ARTICLE 3.

#### MANAGEMENT

3.1. Authority of the General Partner. The management, operation and power to select and pursue the investment objectives of the Partnership shall be vested exclusively in the General Partner and/or the Investment Manager under the supervision of the General Partner, who shall have the power, in the name of the Partnership, to carry out any and all of the objectives and powers of the Partnership, including those set forth in Article 2, and to perform all acts and enter into and perform all contracts and other undertakings which the General Partner and/or the Investment Manager may deem necessary, advisable or incidental thereto. The Limited Partners shall take no part in the conduct or control of the Partnership's business and shall have no authority or power to act for or bind the Partnership.

3.2. Activities of the General Partner/Investment Manager.

3.2.1. Although nothing herein requires the General Partner, the Investment Manager and/or their respective Affiliate(s) to devote full time to the Partnership, the General Partner and the Investment Manager hereby agree to use best efforts in connection with the purposes and objectives of the Partnership and to devote such of its time and activity during normal business days and hours as each, in their sole discretion, deem necessary for the management of the affairs of the Partnership. Nothing contained in this Article precludes the General Partner, the Investment Manager and/or their respective Affiliate(s) from acting, consistent with the foregoing, as a consultant, director, officer or employee of any corporation, a trustee of any trust, a partner of any partnership, or an administrative official of any business entity, and from receiving compensation for services with respect thereto, or participating in profits derived from the investments of any such corporation, trust, partnership or other business entity, or from investing in any investment medium for their own account, except as provided in Paragraph 3.5.

3.2.2. The General Partner, the Investment Manager and/or their respective Affiliate(s) may conduct business both related and unrelated to the business of the Partnership. Nothing contained in this Paragraph precludes the General Partner, the Investment Manager and/or their respective Affiliate(s) from commencing or continuing such activities or conducting any other business, including any other business

with respect to securities, and neither the Partnership nor any other Limited Partner shall have any rights in or to such other business or the income or distributions there from.

3.2.3. Without limiting the generality of the foregoing, the General Partner, the Investment Manager and/or their respective Affiliates (acting as a General Partner, Investment Manager, an investment adviser, manager, or otherwise) may: (i) act as an investment adviser or manager for others; (ii) manage funds or capital for others; (iii) have, make and maintain investments in its own name, or through other entities, including making and maintaining investments in the same securities held by the Partnership; and (iv) serve as consultant, partner or stockholder of one or more investment funds, partnerships, securities firms or advisory firms.

3.2.4. The General Partner and/or its Affiliate(s), in acting for the Partnership, are not obligated to effect securities transactions at the lowest obtainable commission rate and have full discretion to effect such transactions through any intermediary or intermediaries, or any other affiliate of the General Partner, any Limited Partner or any other client for whom the General Partner performs services (or any affiliate of the foregoing) or otherwise, as the General Partner shall select.

### 3.3. Powers of the General Partner.

3.3.1. In furtherance of Paragraph 3.1, the General Partner, the Investment Manager and/or their respective Affiliate(s) may engage and pay from funds of the Partnership such persons, firms or corporations as the General Partner and/or the Investment Manager in their respective judgments deem advisable for the conduct and operation of the business of the Partnership. Such persons or firms may be: (i) Limited Partners affiliated with, controlled by, or under common control with the General Partner or any Limited Partner or their respective directors, officers or employees; or (ii) persons or firms which may perform services for the General Partner, the Investment Manager, a Limited Partner or other persons or firms affiliated with, controlled by, or under common control with the General Partner, the Investment Manager or any Limited Partner or their respective directors, officers or employees.

3.3.2. The General Partner, the Investment Manager and/or their respective Affiliate(s), are also hereby authorized and empowered to take all actions necessary and proper in its discretion to carry out and implement any and all of the objectives and purposes of the Partnership, and may exercise all of the rights and powers of a General Partner and/or Investment Manager as provided in the Act, including but not limited to, the right to:

3.3.2.1. act as or retain any person or entity, including the General Partner, the Investment Manager and/or any respective Affiliate of the General Partner or the Investment Manager to: (i) supervise the investment of assets of the Partnership, whether or not registered; (ii) become registered, in the case of the Investment Manager, with the SEC or any state securities regulatory authority as an investment adviser; and (iii) enter into an agreement with such adviser providing for the payment of such fees and the reimbursement of such expenses as the General Partner or the Investment Manager shall deem reasonable and appropriate;

3.3.2.2. receive, buy, sell, sell short, exchange, trade and otherwise deal in and with securities and other property of the Partnership, including by utilizing leverage;

3.3.2.3. open, conduct and close accounts, including joint tenancy accounts with rights of survivorship, and margin and discretionary accounts, with brokers and to pay the customary fees and charges applicable to transactions in all such accounts;

3.3.2.4. engage and pay for research consultants and research services provided to the Partnership in amounts that may be in excess of what another consultant or service would charge, if the General Partner or the Investment Manager determines in good faith that the cost is reasonable in relation to the value of the services or information provided to the Partnership;

3.3.2.5. engage personnel and do such other acts and incur such other expenses on behalf of the Partnership, including, without limitation, telephone, travel and travel-related research expenses, as may be necessary or advisable in connection with the conduct of Partnership affairs;

3.3.2.6. engage independent attorneys, accountants and such other persons as the General Partner may deem necessary or advisable and to commence or defend any litigation involving the Partnership, the General Partner, Investment Manager in their respective capacities as the General Partner or the Investment Manager;

3.3.2.7. open, maintain and close bank accounts and draw checks and other orders for the payment of money;

3.3.2.8. pay a member of an exchange, broker, or dealer, including a broker-dealer affiliated with the General Partner, the Investment Manager and/or any of their respective Affiliates, an amount of commission for effecting a securities transaction equal to or in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, which payment may be for products or services other than execution, including, without limitation, using "soft" or commission dollars to generally pay for expenses of the Partnership in accordance with the research-related safe harbor within Section 28(e) of the 1934 Act;

3.3.2.9. pay a commission to a broker dealer, including a broker dealer affiliated with the General Partner, the Investment Manager and/or their respective Affiliates, for referring prospective investors to the Partnership;

3.3.2.10. enter into letter agreements or other similar agreements, including with certain Limited Partners who are the employees, members, officers, or Affiliates of the General Partner and/or the Investment Manager, and their respective family members, and for certain large or strategic investors, which may provide for additional and/or different rights (including, without limitation, with respect to withdrawal rights, minimum investment amounts and/or the terms of the Performance Allocation and Management Fees) than the rights of other Limited Partners ("Side Letters");

3.3.2.11. borrow money and make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness, all without limit as to amount, and secure the payment thereof by mortgage, pledge or assignment of or granting a security interest in all or any part of the securities and other property then owned or thereafter acquired by the Partnership and to prepay, refinance, increase, consolidate or extend any debt or obligation of the Partnership;

3.3.2.12. enter into, make and perform such contracts, agreements and other undertakings, and do such other acts, as the General Partner and/or the Investment Manager deems necessary or advisable or as may be incidental to or necessary for the conduct of the business of the Partnership, including without limitation, contracts, agreements, undertakings and transactions with any Limited Partner or with any other person, firm or corporation having any business, financial or other relationship with the General Partner, the Investment Manager or any other Limited Partner or Limited Partners; and

3.3.2.13. obtain and maintain such insurance in such amount or amounts as the General Partner deems necessary or appropriate in protecting the General Partner, the Investment Manager and/or their respective Affiliates against risks of personal liability to the General Partner, the Investment Manager, the Partnership or its Affiliates, the Limited Partners and the agents and employees of the Partnership and against any such other risk or risks as the General Partner or the Investment Manager may determine.

3.4. Reliance by Third Parties. Third parties dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner and/or the Investment Manager as herein set forth.

3.5. Partner's Transaction in Securities. Nothing in this Agreement is intended to prohibit the General Partner, the Investment Manager and/or their respective Affiliate(s), or any Limited Partner, from: (i) in the case of a Limited Partner, buying or selling securities for its own account, including securities of the same issues as those held by the Partnership; (ii) in the case of the General Partner, the Investment Manager and/or their respective Affiliates, buying or selling securities to other house accounts, managed accounts or accounts or clients for whom the General Partner, the Investment Manager and/or their respective Affiliate(s) render advice; but (iii) neither the General Partner nor the Investment Manager shall either buy securities from, or sell securities to, the Partnership (excluding securities which the Partnership receives from the General Partner or any Limited Partner as any initial or subsequent Capital Contribution), without otherwise receiving the written consent of a Majority in Interest of the Limited Partners.

3.6. Interested Limited Partner. The fact that the General Partner, the Investment Manager and/or their respective Affiliate(s), or one or more of the Limited Partners, is directly or indirectly interested in or connected with any company or persons with which or with whom the Partnership may have dealings including, but not limited to, the payment of brokerage commissions, research fees and other expenses, shall neither preclude such dealings nor make them void or avoidable, and neither the Partnership nor any of the Limited Partners have any rights in or to such dealings or any profits derived therefrom.

3.7. Registration of Securities. Stocks, bonds, securities and other property owned by the Partnership shall be registered in the Partnership name or in a "street name." Any corporation or transfer agent called upon to transfer any stocks, bonds or securities to or from the name of the Partnership is entitled to rely on instructions or assignments signed by the General Partner or the Investment Manager without inquiry as to the authority of the person signing such instructions or assignments or as to the validity of any transfer, the corporation or transfer agent being entitled to assume that: (i) the Partnership is still in existence; and (ii) this Agreement is in full force and effect and has not been amended unless the corporation or transfer agent has received written notice to the contrary.

3.8. Determination by the General Partner of the Investment Manager of Matters not Provided for in this Agreement. The General Partner or the Investment Manager, as the case may be, shall have the sole and absolute discretion to resolve any issues arising with respect to the Partnership or this Partnership Agreement that are not specifically and expressly provided for in this Partnership Agreement.

## ARTICLE 4.

### CAPITAL ACCOUNTS

#### 4.1. Contributions.

4.1.1. Initial Capital Contributions. Each Limited Partner shall assign or convey by way of a contribution to the Partnership an initial capital contribution ("Initial Capital Contribution"), which shall



not be less than Five Hundred Thousand Dollars (\$500,000), subject to the General Partner's discretion to make exceptions. Subsequent Capital Contributions shall not be less than One Hundred Thousand Dollars (\$100,000), subject to the General Partner's discretion to make exceptions. The Initial (or lesser initial) Capital Contribution, together with all subsequent Capital Contributions shall be referred to collectively as Capital Contributions. A capital account ("Capital Account") shall be established for each Limited Partner upon receiving such Limited Partner's Initial Capital Contribution. All Capital Contributions shall be available to the General Partner and/or the Investment Manager to carry out the objectives and purposes of the Partnership. The General Partner may, in its discretion, permit the Initial Capital Contribution to be made in securities.

4.2. Opening Capital Accounts. An opening capital account (the "Opening Capital Account") shall be established for each Partner (whether General or Limited) on the books of the Partnership, as of the first day of each Fiscal Period, and in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv).

4.2.1. For the Fiscal Period during which such Partner was admitted, its Opening Capital Account shall be the amount of its Initial (or lesser initial) Capital Contribution.

4.2.2. For each subsequent Fiscal Period, the Opening Capital Account shall be the amount equal to the Closing Capital Account of such Partner for the immediately preceding Fiscal Period plus any additional Capital Contributions made by such Partner and accepted by the General Partner.

4.3. Partnership Percentages. At the beginning of each Fiscal Period, the partnership percentage (the "Partnership Percentage") for each Partner (whether Limited or General) for such Fiscal Period shall be determined by dividing the amount of each Partner's Opening Capital Account by the sum of the Opening Capital Accounts for all Limited Partners. The sum of such Partnership Percentages shall equal one hundred percent (100%).

4.4. Closing Capital Account. The Closing Capital Account of each Partner shall be calculated as of the last day of each Fiscal Period or on an Interim Date:

4.4.1. by crediting or debiting, as the case may be, to the Capital Account in accordance with the respective Partnership Percentages, the difference between: (i) the total capital of all the Partners in such accounts at the beginning of such Fiscal Period and (ii) the total capital of all the Partners in such accounts as of the last day of such Fiscal Period, then

4.4.2. if applicable, making any Performance Allocation described in Paragraph 4.6; and

4.4.3. deducting any withdrawals made by such Partner.

4.5. Maximum Capital Account.

4.5.1. The Partnership shall keep records establishing a maximum capital account (the "Maximum Capital Account") for each Limited Partner.

4.5.2. Such Maximum Capital Account shall initially be equal to the value of a Limited Partner's original Opening Capital Account.

4.5.3. Any adjustments to the Maximum Capital Account shall be made at the end of each Fiscal Period, upon a Limited Partner's complete withdrawal or, in the General Partner's discretion, upon a partial withdrawal. In any such case, a comparison shall be made between: (a) the Maximum Capital

Account for each Limited Partner, which shall be the Opening Capital Account at the beginning of a fiscal quarter, or the date of the Initial Capital Contribution; (b) the sum of the Opening Capital Accounts, or the date of the initial Capital Contribution, if later; (c) adjusted for contributions, withdrawals and the sum of the allocations made pursuant to Paragraph 4.4.1 (the "Adjusted Opening Capital Account").

4.5.3.1. If the value of such Adjusted Opening Capital Account is less than the total Maximum Capital Account, there shall be no adjustment to the Maximum Capital Account.

4.5.3.2. If the value of the Adjusted Opening Capital Account is greater than the total Maximum Capital Account, the Maximum Capital Account shall be increased by such difference.

4.5.4. Notwithstanding anything to the contrary in this Agreement, the Maximum Capital Account of each Limited Partner shall always reflect adjustments for: (i) withdrawals; (ii) additional contributions by such Limited Partner; and (iii) the Performance Allocation. An additional adjustment will be made to a Limited Partner's Maximum Capital Account if, at the time of a partial withdrawal, the Limited Partner's Maximum Capital Account is greater than the value of the Opening Capital Account, in order to effectuate a proportionate reduction in the benefit of any losses which occurred in any preceding year.

#### 4.6. General Partner's Performance Allocation.

4.6.1. To the extent that: (i) at the end of a Calendar Quarter; (ii) upon a Limited Partner's complete withdrawal; or (iii) in the General Partner's discretion, upon a partial withdrawal, a Limited Partner's Maximum Capital Account reflects increases due to the performance of the Partnership, as determined in accordance with Paragraph 4.4, a Performance Allocation will be allocated to the General Partner's Capital Account. The Performance Allocation will be an amount equal to twenty percent (20%) of the increase in a Limited Partner's Maximum Capital Account.

4.6.2. Pursuant to Sub-Clause 3.3.2.10, the General Partner reserves the right, in its sole discretion, to set a different Performance Allocation than proscribed herein in connection with a Limited Partnership Interest acquired by the General Partner, the Investment Manager, and their respective Affiliates, family members, and for certain large or strategic investors, investors pursuant to a Side Letter.

4.7. Interim Dates, Contributions and Admissions. The General Partner may, in its sole discretion, allow Limited Partners to make Capital Contributions and admit new Limited Partners to the Partnership on the first day of each calendar month or on such other dates as the General Partner may determine in its sole discretion (each an "Interim Date").

4.8. Valuation of Partnership Assets. The assets of the Partnership will be valued by the Investment Manager, under the supervision of the General Partner, in accordance with the following policies and principles:

4.8.1. Securities listed on a national securities exchange or national market will be valued at their last sale price on its principal exchange or market on the date of determination, or if no sales occurred on such day, at the mean between the "bid" and "asked" prices on such day.

4.8.2. Securities which are not listed or quoted on any securities exchange or national market but for which an active trading market exists, then the Investment Manager will assign a fair value to the security based upon (a) sales of the security which occurred within the previous 5 trading days as reported through FINRA's Trade Reporting and Compliance Engine (TRACE) or similar system; (b) recent "bids" and "offers" for the security using market data sources deemed appropriate by the General Partner

including, but not limited to, quotes from dealers; (c) the most recent official price quoted by a clearing house, financial institution or ECN; (d) reviewing recent sales, "bids" and "offers" of similar securities of the same issuer, including similar new issue securities, whether recently issued or pending issuance; (e) reviewing recent sales, bids and offers of similar securities of similar issuers, including similar new issue securities whether recently issued or pending issuance; and (f) such other factors as the Investment Manager may deem relevant and appropriate under the circumstances. For purposes of this Agreement, an "active trading market" will be deemed to be one for which prices are available for that security or substantially similar securities of the same issuer on NASDAQ, a national securities exchange, TRACE or similar system, or if not available from any of the above, from one or more dealers or ECNs in the pink or yellow sheets or over the counter market on a reasonably consistent basis.

4.8.3. Securities without an active trading market, will be assigned fair value by the General Partner based upon: (a) a comparison with market value for securities of the same or similar issuer using the methodology described in 4.8.2 above; (b) investment risk and/or potential; (c) opinions of qualified investment bankers; (d) marketability (if any); and/or (e) such other factors as the Investment Manager, in consultation with the General Partner, deems appropriate.

4.8.4. Notwithstanding the forgoing, any security which is held in a joint account with a Participant who is deceased and for which the Partnership expects to redeem the security with the issuer, shall be valued at the higher of its market value, as determined above, or the redemption price that is expected to be received, in good faith, upon exercise of the survivor's option feature.

4.8.5. For securities whose settlement terms provide for the payment or receipt of accrued interest, the valuation as determined above will include accrued interest to the valuation date.

4.8.6. The Investment Manager's good faith determination, in consultation with the General Partner, made in accordance with the terms of this Agreement, at to the value of a security made in accordance with the terms of this Agreement, will be final and binding upon the Limited Partners and their representatives.

4.8.7. The Net Asset Value shall be computed in accordance with GAAP, except with respect to organizational expenses.

4.8.8. For financial statement purposes, the General Partner is permitted to make certain adjustments to the foregoing in order to comply with current or future provisions of GAAP.

#### 4.9. Allocation for Tax and Related Purposes.

4.9.1. Ordinary Deductions and Ordinary Income. For Federal income tax purposes, all items of deduction other than realized capital losses, and all items of income other than realized capital gains, shall be allocated, as nearly as is practicable, among the Limited Partners in such manner as to reflect equitably amounts debited or credited to each Limited Partner's Capital Account for the applicable Fiscal Year.

4.9.2. Capital Gains and Losses. For Federal income tax purposes, each category of capital gains and losses realized by the Partnership shall be allocated, as nearly as is practicable, among the Limited Partners, in such manner as to reflect equitably amounts credited or debited to each Limited Partner's Capital Account for the current and prior fiscal years.

4.9.3. Allocation of Capital Gain (Loss) to Withdrawing Limited Partners. Notwithstanding Sub-Paragraph 4.9.2. above, in the event a Limited Partner withdraws all of its Capital Account, the General

Partner may, in its sole discretion, make an allocation of the Partnership income, gain, loss or deduction for Federal income tax purposes to a withdrawing Limited Partner so as to cause the Limited Partner's Capital Account to equal as nearly as possible its adjusted tax basis in its Limited Partnership Interest in the Partnership. However, there can be no assurance that, if the General Partner makes such a special allocation, the Internal Revenue Service will accept such allocation.

4.9.4. Compliance with Section 704. All allocations under this Paragraph shall be made pursuant to the principles of Section 704 of the Internal Revenue Code of 1986, as amended (the "Code"), and in conformity with Regulations thereunder, including without limitation Treasury Regulations 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(4)(i) promulgated thereunder, or the successor provisions to such Section and Regulations.

4.9.5. Qualified Income Offset. Notwithstanding anything to the contrary in this Agreement, there shall be allocated to the Limited Partners such gains or income as necessary to satisfy the "qualified income offset" requirements of Treasury Regulations 1.704-1(b)(2)(ii)(d).

4.9.6. Withholding Taxes. Any taxes, fees or other charges that the Partnership is required to withhold from any Limited Partner's Capital Account pursuant to any applicable law shall be so withheld and paid to the appropriate governmental authority. Any such amount shall be deducted from the Capital Account of the Limited Partner as of the last day of the Fiscal Period when such amount is required to be so withheld.

4.9.7. Tax Matters Partner. The Managing Member of the General Partner shall be the Tax Matters Partner of the Partnership pursuant to the requirements of the Code, and may make such tax elections as the General Partner determines, in its sole discretion, is in the best interest of the Partnership.

4.10. New Issues Account. In the event the Partnership invests in New Issues, as defined below, and there are General or Limited Partners (both referred to herein as "Partners" for purposes of this Paragraph 4.10) who are not permitted to participate in such New Issues, the following provisions shall apply:

4.10.1. The new issues account ("New Issues Account") shall apply to any Partnership investment in New Issues.

4.10.2. Any such investment made in a particular Fiscal Period shall be made in the New Issues Account.

4.10.3. Only those Partners who do not fall within the proscription of the aforementioned Conduct Rules (the "Unrestricted Partners") shall have any beneficial interest in the New Issues Account. However, if the beneficial interests of those Partners defined under the Rule as restricted (for purposes herein defined as "Restricted Partners") do not exceed ten percent (10%) of the Partnership capital in the Fiscal Period in which the New Issues income arises, the Restricted Partners may also share in the New Issues allocation, in proportion to all respective Capital Accounts. Additionally, if the Restricted Partners own in excess of ten percent (10%) of the beneficial interests during that Fiscal Period, then the Restricted Partners will be allocated ten percent (10%) of the beneficial interest in the New Issues Account and the Unrestricted Partners shall be allocated ninety percent (90%) of the beneficial interest in the New Issues Account (the "Unrestricted Partners" together with the "Restricted Partners" that are allocated ten percent (10%) of the beneficial interest in the New Issues Account, shall collectively be referred to as "Participating Partners").

4.10.4. The funds required to make a particular New Issues investment shall be transferred to the New Issues Account from the capital account of the Partnership, then: (i) the New Issues shall be

purchased and held in the New Issues Account; (ii) if such securities are sold from the New Issues Account, the proceeds of the sale shall be transferred from the New Issues Account to the capital of the Partnership; and (iii) at any time, in the General Partner's discretion, the New Issues may be transferred from the New Issues Account to any other Partnership account at the fair market value at the time of the transfer. The difference between the original purchase price and the value at the time of the transfer shall be allocated to Participating Partners in accordance with Paragraph 4.10.3 above.

As of the last day of each Fiscal Period in which a particular investment or investments are held in the New Issues Account: (i) interest may be debited from the Capital Accounts of the Participating Partners in accordance with their beneficial interest in the New Issues Account at the then applicable broker's call rate, payable to the Partnership's principal broker on funds from the regular account that have been held in or made available to the New Issues Account; and such interest may be credited to the Capital Accounts of all the Partners in the proportions that each Partner's Capital Account as of the beginning of such Fiscal Period bore to the sum of the Capital Accounts of all Partners as of the beginning of such Fiscal Period; and any increases or decreases during such Fiscal Period with respect to the New Issues Account may be allocated to the Capital Accounts of the Participating Partners in accordance with their beneficial interests in the New Issues Account during such Fiscal Period.

4.11. New Issues Account: Investment Banking Services. In the event that the Partnership investment in New Issues and there are General or Limited Partners who are "Restricted Executives" (defined below), FINRA Rule 5131 specifically prohibits the allocation of New Issues to any New Issues Account in which an executive officer or director of a public company or a non-public company that satisfies certain income and equity thresholds (a "covered non-public company") and together with public companies, a "Company"), or a person materially supported by such executive officer or director (each such executive officer, director or person, a "Restricted Executive"), has a beneficial interest, as follows:

4.11.1. If the Company is currently an investment banking services client of such FINRA member or if such FINRA member has received compensation from the Company for investment banking services in the last twelve (12) months;

4.11.2. If the person responsible for making the allocation knows, or has reason to know, that such FINRA member intends to provide, or expects to be retained to by the Company for, investment banking services within the next three (3) months; or

4.11.3. On the express or implied condition that a Restricted Executive, on behalf of the Company, will retain such FINRA member for the performance of future investment banking services.

4.11.4. Excluded from the scope of this prohibition shall be allocations of New Issues to a New Issues Account in which the collective beneficial interests of Restrictive Executives of a particular Company does not exceed twenty-five percent (25%).

4.11.5 - For purposes of this Paragraph, the following definitions shall apply:

4.11.5.1. "Investment banking services" include, without limitation: acting as an underwriter, participating in a selling group in an offering for an issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger, acquisition or other corporate reorganization; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs) or similar investments or otherwise acting in furtherance of a private offering of the issuer; or serving as placement agent for the issuer.

4.11.5.2. "Covered non - public company" shall mean a company which has (i) income of at least \$1 million in the last Fiscal Year or in two of the last three Fiscal Years and shareholders equity of at least \$15 million; (ii) shareholders equity of at least \$30 million and a two-year operating history; or (iii) total assets and total revenue of at least \$75 million in the latest Fiscal Year or in two of the last three Fiscal Years.

4.11.5.3. "Materially supported by such executive officer or director" shall mean directly or indirectly receiving more than twenty – five percent (25%) of a person's income in the prior calendar year from such executive officer or director. Persons living in the same household are deemed to be materially supporting each other.

4.12. Allocation of Prior Fiscal Year or Fiscal Period Items. Anything herein to the contrary notwithstanding, any items of income, gain, loss or deduction for a current Fiscal Year, or fiscal period therein, attributable to any Partnership matter or transaction incurred during a prior Fiscal Year, or fiscal period therein, that exceeds the greater of: (i) two hundred thousand dollars (\$200,000); or (ii) two percent (2%) of the Capital Accounts of all Limited Partners as of the beginning of the current Fiscal Year, or fiscal period therein, shall be allocated among the Limited Partners (including all persons who have ceased to be Limited Partners) in proportion to their Capital Accounts, as of the beginning of such prior Fiscal Year, or fiscal period therein.

## ARTICLE 5.

### TRANSFER OF PARTNERSHIP INTERESTS

5.1. Assignment of Interest by Limited Partner. Each Limited Partner and any assignee expressly agree that it:

5.1.1. is purchasing a Limited Partnership Interest in the Partnership for investment and not with a view to the assignment, transfer or disposition of such Limited Partnership Interest; and

5.1.2. will not assign, transfer or otherwise dispose of, by gift or otherwise, any of such Limited Partnership Interest or any part or all of its right, title and interest in the capital or assets of the Partnership without giving prior written notice to the General Partner that the proposed assignment, transfer or disposition is exempt from registration under the 1933 Act, and such notice shall be subject to approval of counsel to the Partnership and require the prior written consent of the General Partner.

5.1.2.1. If an assignment, transfer or disposition occurs by reason of the death of a Limited Partner or assignee, or by operation of law, such written notice may be given by the duly authorized representative of the Limited Partner or assignee and shall be supported by such proof of legal authority and valid assignment as may reasonably be requested by the General Partner.

5.1.2.2. No consent of the General Partner is required in the case of assignments, transfers or dispositions resulting from death or by operation of law. Any substituted Limited Partner, however, whether or not consent shall be required, shall agree in writing to be bound by the terms and conditions of this Agreement.

5.1.3. The written notice required by this Paragraph shall: (i) specify the name and address of the assignee and the proposed date of assignment; (ii) include a statement by the assignee that it agrees to give the aforementioned written notice to the General Partner upon any subsequent assignment; (iii) contain an agreement to make no such assignment without the consent of the General Partner and to

become a substitute Limited Partner upon such consent by the General Partner; (iv) include such other information and be accompanied by such additional documentation as the General Partner may reasonably request; (v) be signed by the assignor and the assignee; and (vi) shall not contain any terms inconsistent with this Agreement. The General Partner may, in its sole discretion, waive receipt of the aforementioned written notice or waive any defect therein.

5.1.4. No assignee, except with the consent of the General Partner (which consent may be withheld in its sole and absolute discretion), may acquire any rights against the Partnership. A substitute Limited Partner shall have all rights and powers and shall be subject to all the restrictions and liabilities of its predecessor. Each Limited Partner agrees that, with the consent of the General Partner, any assignee may become a substitute Limited Partner without the further act or consent of any Limited Partner. Furthermore, the General Partner may at any time compel any or all assignees to become substitute Limited Partners.

## ARTICLE 6.

### WITHDRAWAL OF PARTNERS

#### 6.1. Withdrawal in General Including Withdrawal of Capital.

6.1.1. Withdrawal of a Limited Partner includes cessation of status as a Limited Partner as a result of: (i) death; (ii) voluntary withdrawal of a Limited Partner's entire Capital Account; (iii) required withdrawal; (iv) bankruptcy; (v) insolvency; (vi) dissolution; (vii) adjudication of incompetency; or (viii) any other reason except termination of the Partnership.

6.1.2. The right to withdraw capital is contingent upon, and subject to: (i) the Partnership having assets sufficient to discharge its liabilities on the designated withdrawal date; (ii) the timely receipt by the General Partner of a request for withdrawal of capital; (iii) the creation of reasonable reserves in order to fund any future management fees; and the General Partner having established reasonable reserves for estimated expenses and other contingencies, establishment of which shall be in its sole discretion; and (iv) such other restrictions as are set forth in the Limited Partnership Agreement.

#### 6.2. Withdrawal of a General Partner/Investment Manager.

6.2.1. General Partner/Investment Manager. The General Partner or the Investment Manager shall have the right, by written notice to the Limited Partners but without any action by the Limited Partners, to substitute for itself a new general partner or investment manager if such new general partner or investment manager is affiliated with, controls, is controlled by or is under common control with the General Partner or the Investment Manager. Also, in the case of the Investment Manager, it may be necessary for substituted investment manager, if any, to be registered with the SEC or a state regulatory body as an investment adviser. Otherwise, if no substitution is to occur, the General Partner or the Investment Manager will:

6.2.1.1. deliver written notice to the Limited Partners setting forth the intention of the General Partner or the Investment Manager to withdraw at least sixty (60) days prior to the date of withdrawal ("Effective Withdrawal Date");

6.2.1.2. pay any extraordinary legal or accounting expenses incurred by the Partnership as a result of said withdrawal;

6.2.1.3. accept the distribution of ninety-five percent (95%) of its allocable share of monies available within ten (10) business days thereafter and the balance within ten (10) business days of receipt by the Partnership of its annual audited statements; and

6.2.1.4. accept distributions in cash, in securities, in cash or partly in securities and partly in cash, in the sole determination of either the General Partner or the Investment Manager, as appropriate.

6.2.2. Election of Successor General Partner/Investment Manager. Upon receipt of notice in accordance with Clause 6.2.1.1, the Limited Partners shall have the right to elect a successor General Partner or Investment Manager (subject in the case of the Investment Manager to any registration referred to in Paragraph 6.2.1 above) and to continue the business of the Partnership in such reconstituted form as is necessary. Each Limited Partner and the successor General Partner and Investment Manager hereby agree to such continuation and reconstitution.

6.2.2.1. The Limited Partners' right of election pursuant to this Sub-Paragraph 6.2.2 shall, unless extended by a Majority in Interest of Limited Partnership Interests, be exercised by service of a notice in writing of such election to the withdrawing General Partner or the Investment Manager at the office of the Partnership within sixty (60) days of its receipt of the either the General Partner's or the Investment Manager's notice of intention to withdraw.

6.2.2.2. Such election shall be effective on the date thirty (30) days following the service of notice of election, and a successor General Partner and/or Investment Manager must be elected by a Majority in Interests in the Opening Capital Accounts of all Limited Partners in the Fiscal Period in which the election is held.

6.2.2.3. Immediately upon the election of a successor General Partner and/or Investment Manager, the successor(s) shall prepare, execute, and file for recording a new Certificate of Limited Partnership that designates a new name for the Partnership and shall take or cause to be taken all steps required by the Act and otherwise in accordance with all applicable laws. The withdrawal of the General Partner and/or the Investment Manager shall not be effective until the successor General Partner takes all steps necessary to be substituted as a general partner under the Act. In the case of the Investment Manager, if it is contemplated that a registration is secured as an investment adviser with the SEC or a state regulatory body, which in all events shall have been done by the "Effective Withdrawal Date" set forth in Clause 6.2.1.1. However, in the case of the Investment Manager, the "Effective Withdrawal Date" may depend upon whether an investment adviser registration has been applied for, and received the appropriate regulatory organization.

6.2.2.4. If the Limited Partners exercise the right of election pursuant to this Sub-Paragraph 6.2.2, the business of the Partnership will continue, subject to and upon the same terms and conditions as are set forth in this Agreement, in a reconstituted form as a successor limited partnership and shall be assigned to and assumed by the successor limited partnership. The parties agree that the name "EDEN ARC CAPITAL PARTNERS, LP" is proprietary to the General Partner and that, upon the withdrawal of the General Partner, any successor limited partnership shall not use "EDEN ARC" or derivative thereof as the name of any entity, including the successor limited partnership, which name shall, for consideration of one dollar (\$1), be assigned and transferred to the General Partner and/or its Affiliate(s).

6.2.3. Designated Liquidator.

6.2.3.1. If the Limited Partners do not exercise the right of election pursuant to Sub-Paragraph 6.2.2, then one or more persons ("Designated Liquidator(s)") designated in writing by the



General Partner (which designation may include successor designations and provide the manner and the matters with respect to which such Designated Liquidator(s) shall act) from time to time shall act on behalf of the Partnership, to terminate the Partnership and liquidate its assets. If the last remaining member of the General Partner or the Investment Manager becomes "Disabled," for more than forty-five (45) consecutive days, the Designated Liquidator(s) may thereafter act on behalf of the Partnership to perform the functions of the General Partner during the period of disability. However, if the disability continues for one hundred eighty (180) consecutive days, the Designated Liquidator(s) shall terminate the Partnership and liquidate its assets unless, prior to the expiration of such one hundred eighty (180) day period, a Majority in Interest of the Limited Partners have selected and approved in writing a General Partner who agrees to continue the Partnership. Notice of the selection of (and each change in) the Designated Liquidator(s) shall be delivered promptly to the Limited Partners. In the event of the failure of the General Partner to select one or more Designated Liquidator(s), or if the sole (or sole remaining) Designated Liquidator should become Disabled, die, or be declared bankrupt, or give notice to the Partnership of its unwillingness to act as provided herein, then (unless a successor Designated Liquidator has been designated), the Limited Partners may, by vote of a Majority in Interest of the Limited Partners, select one or more persons to perform the functions of the General Partner for the purpose of terminating the Partnership. Each Designated Liquidator, and each person selected by the Limited Partners pursuant to the preceding sentence, shall be excluded from liability and indemnified by the Partnership in accordance with Paragraph 12.2 hereof to the same extent as, and as if it were, the General Partner of the Partnership.

6.2.3.2. For purposes of this Sub-Paragraph 6.2.3, the last remaining member of the General Partner or the Investment Manager is "Disabled" if, because of physical or mental disease, illness, injury or otherwise, such member is rendered unable to perform its duties as, or on behalf of, the General Partner or the Investment Manager, under this Agreement.

6.2.4. Liability of Withdrawing General Partner or Investment Manager. Notwithstanding the withdrawal of a General Partner or the Investment Manager, and in addition to any other obligation contained herein, such General Partner or Investment Manager remains liable for payment of all debts, obligations, liabilities and commitments of the Partnership incurred while it was the General Partner or the Investment Manager to the extent the Partnership does not have funds available for such payment and to the extent the General Partner or the Investment Manager would otherwise have been liable.

6.2.5. Withdrawal of the General Partner. If the General Partner and the Investment Manager withdraw and the Limited Partners do not elect a successor General Partner to continue in business, a Majority in Interest of the Limited Partners shall elect one or more persons to wind up the affairs of the Partnership and discharge the functions of the General Partner and the Investment Manager under Paragraph 7.2.

6.2.6. Interim Capital Withdrawal by a General Partner or Investment Manager. On an Interim Date, or at such other dates as the General Partner may determine, the General Partner, the Investment Manager and/or their respective Affiliate(s) are entitled to partially withdraw their Capital Account. Notwithstanding the foregoing:

6.2.6.1. Distribution of at least ninety-five percent (95%) of the amount withdrawn will be made on, or within ten (10) business days of, such Interim Date or such other dates as the General Partner may determine, and the balance within ten (10) business days of receipt by the Partnership of its annual audited statements. However, if the amount withdrawn is less than ninety five percent (95%) of the General Partner or the Investment Manager's Capital Account, the requested amount may be distributed in its entirety within ten (10) business days of the applicable withdrawal date.

6.2.6.2. The General Partner and the Investment Manager may, in their sole respective determinations, receive distributions in securities, in cash or partly in securities and partly in cash.

6.3. Redemption by a Limited Partner. After the Initial Capital Contribution and with respect to any subsequent Capital Contributions, Limited Partners shall be subject to a twelve (12) month lock-up period (the "Lock-Up Period"). A Limited Partner may elect to redeem its Capital Account or any portion thereof by providing written notice at the end of a Calendar Quarter ("Redemption Request"). During the Lock-Up Period, such Redemption Request shall be subject to the following fee ("Redemption Fee") as a percentage of the withdrawn amount: (i) a Redemption Fee equal to five (5%) of the amount withdrawn if the Redemption Request is provided in the first three (3) months following the Capital Contribution; ; (ii) a Redemption Fee equal to four percent (4%) of the amount withdrawn if the Redemption Request is provided more than three (3) months but less than six (6) months following the Capital Contribution; (iii) a Redemption Fee equal to three percent (3%) of the amount withdrawn if the Redemption Request is provided more than six (6) months but less than nine (9) months following the Capital Contribution; and iv) a Redemption Fee equal to two percent (2%) of the amount withdrawn if the Redemption Request is provided more than nine (9) months but less than one (1) year following the Capital Contribution. Redemption Requests made on or after the Lock-Up Period shall not incur any Redemption Fee.

All Redemption Fees set forth above shall be paid to the Partnership. For the avoidance of doubt, The Lock-up and above Redemption Fee payments shall apply to both the Initial Capital Contribution and any subsequent Capital Contribution.

6.3.1. Redemption requests must be made in minimum amounts of fifty thousand dollars (\$50,000) and in multiples of ten thousand dollars (\$10,000).

6.3.2. Upon a Redemption Request from a Limited Partner, The General Partner will distribute ninety-five percent (95%) of the amount redeemed pursuant to Paragraph 6.3, no later than ten business days after the end of the first calendar quarter following the Redemption Request date (the month end preceding such distribution being the "Redemption Valuation Date") and the balance within thirty (30) business days of receipt by the Partnership of its next succeeding annual audited statements for that Fiscal Year. Anything to the contrary notwithstanding, the General Partner shall have the discretion to finally determine the timing of the distribution and the Redemption Valuation Date.

6.3.3. The General Partner may, in its sole determination, pay redemptions under this Paragraph 6.3 in securities, in cash or partly in securities and partly in cash.

6.3.4. Any legal, accounting or administrative expenses incurred by the Partnership as a result of a withdrawal may, in the General Partner's sole discretion, be charged to the Capital Account of such withdrawing Limited Partner.

6.3.5. Gating Provision. The General Partner may in its sole discretion elect to limit the amount redeemed by a Limited Partner with respect to any Quarter End (the "Gating Provision") to an amount equal to twenty-five percent (25%) of that Limited Partner's Capital Account balance (such balance being the "Starting Balance"). So long as the Gating Provision remains in effect, additional redemptions by the redeeming Limited Partner may be limited to twenty five percent of the Starting Balance per calendar quarter until the Redemption Request has been satisfied in full. Once the General Partner invokes the Gating Provision, it shall remain in effect for all subsequent Redemption Requests from any Limited Partners until such time as all outstanding Redemption Requests have been satisfied in full.

6.3.6. Pursuant to Sub-Clause 3.3.2.10, the General Partner reserves the right, in its sole discretion to make certain differing redemption arrangements pursuant to a Side Letter.

6.4. Required Withdrawal of a Limited Partner.

6.4.1. The General Partner may, at any time and in its sole discretion, deliver five (5) days prior notice to a Limited Partner requiring that such Limited Partner withdraw from the Partnership as of the end of such Calendar Quarter or end of the Fiscal Year. If, however, the General Partner, in its sole discretion, believes that the continued participation of any Limited Partner might cause the Partnership to violate any law, such Limited Partner may be required to withdraw immediately. Upon the date in said notice, the Limited Partner shall be deemed to have resigned from the Partnership without any further action on the part of said Limited Partner, and the provisions of Paragraphs 4.4 through 4.6 shall apply. Such withdrawal shall not be cause for dissolution of the Partnership.

6.4.2. The General Partner will distribute ninety-five percent (95%) of the amount withdrawn under Sub-Paragraph 6.4.1 within ten business days of the end of the first calendar quarter following the Redemption Request date and the balance within thirty (30) business days of receipt by the Partnership of its annual audited statements for that Fiscal Year.

6.4.3. In the event of a Limited Partner receiving such a withdrawal notice, the interest of such Limited Partner shall continue to be at the risk of the Partnership's business until the withdrawal date in such notice, but shall not be included in calculating the interest of the Limited Partners required taking any action under any provision of this Agreement.

6.4.4. There shall be no withdrawal charge and any additional legal, accounting or administrative expenses incurred by the Partnership as a result of such required withdrawal shall be borne by the General Partner.

## ARTICLE 7.

### TERM AND DISSOLUTION OF THE PARTNERSHIP

7.1. Term. The Term of the Partnership shall commence on the day on which the Certificate of Limited Partnership is filed in the office of the Secretary of State of the State of Delaware and shall end upon the first to occur of the following:

7.1.1. January 2060;

7.1.2. Insolvency, bankruptcy, or dissolution of the General Partner;

7.1.3. Death(s) or disability of all of the principal(s) of the General Partner;

7.1.4. Upon the withdrawal of the General Partner, if the Limited Partners do not exercise their right to elect a successor General Partner under Sub-Paragraph 6.2.2;

7.1.5. A determination by the General Partner that the Partnership should dissolve; or

7.1.6. Subject to the terms of this Agreement, any other event causing the dissolution of the Partnership under the laws of the State of Delaware. Upon the dissolution of the Partnership, no further business shall be done in the Partnership's name except the completion of any transactions and the taking

of such action as shall be necessary for the winding up of the affairs of the Partnership and the distribution of its assets.

## 7.2. Dissolution.

7.2.1. Upon termination of the Partnership, dissolution, payment of creditors and distribution of the Partnership's assets shall be effected in accordance with the Act. The General Partner and each Limited Partner (and any assignee to which the General Partner has consented) shall share in the remaining assets of the Partnership pro rata in accordance with the positive Capital Account balances of each Limited Partner (whether Limited or General) to the total of all Partners' Capital Accounts.

7.2.2. For this purpose, any Performance Allocation in accordance with Paragraph 4.6 shall be made to the Capital Account of the General Partner. All Limited Partners may participate, on dissolution, in the Partnership assets that they were entitled to participate in during the operation of the Partnership.

7.2.3. Any distribution under this Paragraph 7.2 shall be preceded by an audited report as of the date of dissolution, comparable to the Annual Report required by Paragraph 8.2.

7.2.4. Notwithstanding anything to the contrary in this Agreement, if upon "liquidation of the General Partner's interest in the Partnership," as defined in Clause 7.2.4.1 herein, the General Partner has a deficit in its Capital Account, then prior to the termination of the Partnership but not later than the date described in Treasury Regulation Section 1.704-1(b)(2)(ii)(b)(2), the General Partner (but not the Limited Partners) shall be required to contribute to the Partnership an amount equal to the deficit balance, if any, of its Capital Account.

7.2.4.1. For purposes of Sub-Paragraph 7.2.4, a "Liquidation of the General Partner's interest in the Partnership" occurs upon the earlier of: (i) the date the Partnership dissolves; or (ii) the date the General Partner's entire interest in the Partnership terminates, by means of a distribution, or series of distributions, to the General Partner by the Partnership.

7.2.5. Termination of the Partnership shall be deemed the end of a Fiscal Period for purposes of calculating Closing Capital Accounts under Paragraph 4.4.

## ARTICLE 8.

### REPORTS TO LIMITED PARTNERS

8.1. Books of Account. Proper books of account of the Partnership shall be kept in accordance with GAAP, by or under the supervision of the General Partner at the principal place of business of the Partnership or such other place as the General Partner may designate, and shall be open to inspection, no more frequently than once per year, by any Limited Partner or its representative at any reasonable time during regular business hours upon no less than sixty (60) days prior written notice. Such inspection, however, shall be limited to information reasonably related to such Limited Partner's interest in the Partnership. The accounts of the Partnership shall be audited by the Partnership's accountant in accordance with Paragraph 8.2.

## 8.2. Annual Reports.

8.2.1. The General Partner shall, within one hundred and twenty (120) days of the expiration of each Fiscal Year, have prepared and mailed to each Limited Partner, financial statements audited by the

Accountant and prepared in accordance with GAAP and any other information necessary to enable a Limited Partner to prepare its individual income tax returns.

8.3. Interim Reports. The General Partner shall use its best efforts to also prepare and deliver to each Limited Partner, a quarterly unaudited report on each Limited Partner's Capital Account and on the overall performance of the Partnership, together with any other information the General Partner deems pertinent.

## ARTICLE 9.

### ORGANIZATIONAL AND PARTNERSHIP EXPENSES AND MANAGEMENT FEE

9.1. Organization Expenses. The Partnership will pay directly, or reimburse the General Partner or its designee for advancing, the legal, accounting and other expenses of the organization of the Partnership.

9.1.1. The Partnership has reimbursed the General Partner (or its designee) for advancing the legal, accounting and other expenses of the organization of the Partnership. Such advance is being treated as a contribution to the Partnership by the General Partner and is concomitantly credited to the General Partner's Capital Account. Over a sixty (60) month period [unless otherwise accelerated by the General Partner], the General Partner shall cause the Limited Partners to make, on a pro rata basis based on the relative values of the Limited Partners' respective Capital Accounts, a special allocation of income, which allocation shall be prior to any other allocations of income, to the General Partner. On a monthly basis, this special allocation shall be one-sixth (1/60th) of the amount of the organization expenses. Such treatment may result in a qualification to the independent auditor's report relating to the Partnership's audited financials.

9.2. Management Fees and Partnership Expenses. The General Partner or its designee will provide, or incur on behalf of the Partnership, office space, utilities and general office expenses.

9.2.1. Each Limited Partner shall pay a fee to the Investment Manager on the first day of each Calendar Quarter, in advance (the "Management Fee"), to be debited from the Capital Account of such Limited Partner, in an amount equal to 0.50% per Calendar Quarter, or 2% on an annualized basis, of the Capital Account of each Limited Partner as of such date.

9.2.1.1. The Capital Account of a Limited Partner who makes a Capital Contribution or a withdrawal from their Capital Account on a date other than the first day of each Calendar Quarter will be charged a prorated Management Fee as of the date of such contribution.

9.2.1.2. Pursuant to Sub-Clause 3.3.2.10., the General Partner reserves the right, in its sole discretion, to set a different Management Fee than proscribed herein in connection with a Limited Partnership Interest acquired by certain Limited Partners who are the employees, members, officers, or Affiliates of the General Partner and/or the Investment Manager, and their respective family members, and for certain large or strategic investors.

9.2.2. The Partnership will pay, in addition to the Management Fee, all expenses associated with the Partnership's operations ("Reimbursable Expenses"), including, without limitation: (i) expenses related to the evaluation, acquisition or disposition of investments; (ii) Partnership expenses such as brokerage commissions, custody charges, trustee fees, financing costs and payments to Participants; (iii) research and investment management related services and equipment (including, without limitation, third party research services, telephone lines, telephone equipment, telephone service, news and quotation equipment, computer facilities, computer software and terminals, professional fees including on – going accounting and legal fees and expenses, overhead and publications); (iv) interest and commitment fees on

loans and debit balances; withholding and transfer taxes; governmental fees; marketing expenses, including travel and fees associated with research and professional conferences; and (v) such other necessary and appropriate costs and expenses necessary for the operation of the Partnership.

9.2.3. The General Partner may use "soft" or commission dollars to pay for expenses of the Partnership generally in accordance with the research-related safe harbor within Section 28(e) of the 1934 Act.

## ARTICLE 10.

### SPECIAL POWER OF ATTORNEY

10.1. Power of Attorney. Each Limited Partner, by its execution of this Agreement, does hereby irrevocably constitute and appoint the General Partner, with full power of substitution, as its true and lawful attorney-in-fact, in its name, place and stead, to execute, acknowledge, swear to (and deliver, as appropriate) on its behalf, and file and record in the appropriate public offices, and publish (as may in the reasonable judgment of the General Partner be required by law):

10.1.1. This Agreement, including any amendments thereto duly adopted as provided herein;

10.1.2. Certificates of limited partnership in various jurisdictions, and amendments thereto, concerning the Partnership;

10.1.3. All conveyances and other instruments that: (i) the General Partner deems appropriate to qualify or continue the Partnership in the State of Delaware and those jurisdictions in which the Partnership may conduct business; (ii) may be required to be filed by the Partnership or the Limited Partners under the laws of any jurisdiction; (iii) reflect the dissolution or termination of the Partnership; or (iv) may be required to reorganize or re-file the Partnership in a different jurisdiction, provided that such reorganization or re-filing does not result in a material change in the rights of the Limited Partners;

10.1.4. Filing of amended certificates or agreements of limited partnership or other instruments to reflect changes to such certificates, agreements and instruments;

10.1.5. Filing, prosecuting, defending, settling or compromising litigation, claims or arbitrations on behalf of the Partnership; and

10.1.6. Any election permitted to be made by the Partnership under any provision of the Code that the General Partner deems advisable, including, without limitation, an election (or, with the consent of the Commissioner of Internal Revenue, to revoke any election previously made) as follows: (i) under Section 754 of the Code to adjust the basis of the Partnership property under Sections 734 and 743 of the Code; and (ii) a Section 475 election to mark to market securities and/or commodities.

10.2. Irrevocability. The Power of Attorney granted herein shall be irrevocable, deemed to be a power coupled with an interest and shall survive and shall not be affected by the subsequent incapacity, disability or death of a Limited Partner. Each Limited Partner agrees to be bound by representations made to the General Partner and to any successor thereto, acting in good faith pursuant to such Power of Attorney. In addition to the Power of Attorney granted hereby, each Limited Partner agrees, upon the request of the General Partner, to execute one or more "Special Powers of Attorney" to the foregoing effect, in form and substance satisfactory to the General Partner, on documents separate from this Agreement. In the event of

any conflict between such Special Power of Attorney and the Power of Attorney granted herein or between documents filed pursuant to such Special Power of Attorney and this Agreement, this Agreement or the Power of Attorney provided for herein, as the case may be, shall control.

## ARTICLE 11.

### WARRANTIES AND REPRESENTATIONS

11.1. Investment Purposes. Each Limited Partner who is an individual represents and warrants that: (i) he or she is at least twenty one (21) years of age; (ii) he or she has no present intention of selling or assigning its Limited Partnership Interest; (iii) he or she is acquiring such interest for investment purposes only and not with a view to the resale or redistribution thereof; and (iv) agrees that he or she may not transfer the same without obtaining: (a) registration under or exemption from the requirements of the 1933 Act; (b) approval from counsel to the Partnership; and (c) the written consent of the General Partner, which the General Partner shall be under no obligation to provide.

11.2. Exemption Acknowledgment. Each Limited Partner acknowledges that: (i) this transaction is not being registered under the 1933 Act; (ii) the Limited Partnership Interests are offered pursuant to the exemption from the registration requirements contained in Sections 3(b) and 4(2) of the 1933 Act; and (iii) he, she or it has sufficient knowledge and experience in business matters so that he, she or it is capable of evaluating the merits and risks of his, her or its investment therein. Each Limited Partner further acknowledges that: (a) he, she or it has been given access to all material information concerning the business of the Partnership, and that such information was adequate for the purpose of forming an independent judgment pertaining to his, her or its investment; and (b) he, she or it has been given opportunities to ask questions and receive answers from the General Partner concerning this investment.

## ARTICLE 12.

### LIABILITY AND INDEMNITY

12.1. Limited Partner's Liability. Each Limited Partner, including any former Limited Partner, shall bear, and be responsible for, its proportionate share of the expenses, obligations and liabilities paid or incurred by the Partnership attributable to each fiscal year or lesser period in which it is a Limited Partner and nothing in this Agreement nor any action taken hereunder including the withdrawal of a Limited Partner shall affect in any way the right of the Partnership to claim contributions in regard to liabilities or to the return of that part of a withdrawn Limited Partner's Capital Contribution necessary to discharge applicable liabilities to the creditors of the Partnership.

12.1.1. Notwithstanding Paragraph 12.1, no Limited Partner shall be liable for Partnership obligations in any amount in excess of its Capital Contribution by it plus its share of undistributed increased capital and/or assets, including its obligation, as required by law, under certain circumstances to return to the Partnership distributions and contributions.

12.1.2. Each Limited Partner hereby agrees with the General Partner that, upon written demand therefore by the General Partner, such Limited Partner will promptly return to the Partnership, as and to the extent required by law, all amounts for which such Limited Partner may be liable to the Partnership or its creditors under the Act or this Agreement. In the event the Partnership is made a party to any claim, dispute or litigation or otherwise incurs any loss or expense, including reasonable attorneys' fees, as a result of or in connection with any Limited Partner's (or Limited Partner's assignee's) obligations

or liabilities unrelated to the Partnership business, such Limited Partner (or assigns cumulatively) shall indemnify and reimburse the Partnership for all loss and expense incurred, including attorneys' fees.

**12.2. Standard of Liability and Indemnification for General Partner and the Investment Manager.**

12.2.1. Neither the General Partner, the Investment Manager nor any of their respective Affiliate(s) (collectively, "Indemnified Persons") will be liable to the Partnership or any Limited Partner for: (i) mistakes of judgments or for any act taken, or omission suffered, by it or by him or her, or for any "losses," as hereinafter defined, arising out of or relating to any mistakes, action or inaction, except to the extent of the willful misconduct or gross negligence of such Indemnified Person as determined by a final judgment (after all appeals and the expiration of time to appeal) of a court of competent jurisdiction; or (ii) the willful misconduct or gross negligence of any officer, director, employee, representative, consultant, independent contractor, broker or agent of the Partnership or of any Indemnified Person provided that such officer, director, employee, representative, consultant, independent contractor, broker or agent (including any who may be a Limited Partner), was selected, engaged or retained in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Partnership. Each Indemnified Person will be entitled to rely in good faith on the advice of counsel, accountants or other such independent persons experienced in the matter at issue and (subject to the immediately preceding sentence) any act or omission of any Indemnified Person in reasonable reliance on such advice will in no event subject any Indemnified Person to any liability to the Partnership or to any Limited Partner.

12.2.2. The Partnership will, out of Partnership assets, including, without limitation, any insurance proceeds, to the fullest extent permitted by applicable laws, indemnify and hold harmless each Indemnified Person from and against any and all claims, damages, losses, penalties, expenses, judgments or liabilities of any nature whatsoever, including but not limited to legal fees, expenses and costs associated with investigating or preparing the defense of any proceeding or investigation, giving testimony or furnishing documents in response to a subpoena (collectively, the "Losses"), as incurred to which any such Indemnified Person may become subject in connection with, or arising out of or related to this Agreement or to the operation and affairs of the Partnership, provided, however, that the foregoing indemnification will not apply to any Losses that are determined by final judgment (after all appeals and the expiration of time to appeal) of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Person.

12.2.3. The Partnership will not incur the cost of that portion of any insurance, other than public liability insurance, insuring any party against any liability the indemnification of which is herein prohibited.

**ARTICLE 13.**

**MISCELLANEOUS**

13.1. Amendment of the Partnership Agreement. This Agreement may be modified or amended by the General Partner pursuant to its Power of Attorney in any manner which does not adversely affect the rights of the Limited Partners, including reflecting changes validly made in the membership of the Partnership and the Capital Contributions of the Limited Partners.

13.1.1. This Agreement may also be modified or amended at any time in writing, signed by the General Partner and by Partners who hold a Majority in Interest of the capital then in the Opening Capital Accounts of all Partners relating to the applicable Fiscal Period, provided however, that without the specific consent of each Partner thereto, no such modification or amendment shall reduce the Capital



Account of any Partner or its rights of contribution or withdrawal with respect thereto or amend this Paragraph.

13.2. Partnership Name.

13.2.1. In the event of the continuation of the Partnership, after the withdrawal of the General Partner, any rights by the continuing Partnership to the Partnership name shall be subject to Paragraph 6.2. At no time during the existence of the Partnership, as between the Limited Partners or for the purpose of determining the Capital Account of any Limited Partner, shall any value be placed upon the Partnership name, the right to its use or to any goodwill attached thereto.

13.2.2. In the event of a termination of the Partnership, the Partnership shall, prior to termination, assign and transfer, for consideration of one dollar (\$1), the entire right, title and interest to the firm name, and the goodwill attached thereto, to the General Partner and/or its Affiliate(s).

13.3. Notices. Each notice relating to this Agreement shall be in writing and delivered in person or by certified or registered mail.

13.3.1. All notices to the Partnership shall be sent to:

EDEN ARC CAPITAL PARTNERS, LP  
One Penn Plaza, 36<sup>th</sup> Floor  
New York, N.Y. 10019a  
Tel: (212) - 786 - 7414a  
Fax: (646) - 349 - 5964a

13.3.2. All notices and reports shall be addressed to each Limited Partner as set forth in the Partnership records. Any Limited Partner may designate a new address by notice to that effect given to the Partnership. The General Partner may designate a new address by giving notice to each Limited Partner. Unless otherwise specifically provided in this Agreement, a notice shall be deemed to have been given to a Limited Partner when mailed by certified or registered mail, or when delivered in person.

13.4. Interim Limited Partner. Notwithstanding anything to the contrary above, the General Partner shall, for the sole and exclusive purpose of organizing the Partnership, have the authority to admit an Interim Limited Partner who may immediately withdraw upon the admission of the next Limited Partner and who shall have no further rights or obligations under this Agreement.

13.5. General.

13.5.1. This Agreement, (i) shall be binding on the executor(s), administrator(s), custodian(s), heir(s) and legal survivor(s) of the Limited Partners; and (ii) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written; provided, however, that each separate counterpart shall have been executed by the General Partner and that several counterparts, in the aggregate, shall have been signed by all of the Limited Partners.

13.5.2. The parties each represent, warrant and agree that they have the right to enter into this Agreement, to perform the obligations hereunder, and that the consent of no other party is required.

13.5.3. The parties hereto shall execute any and all further documents or amendments which either party hereto may deem necessary and proper to carry out the purposes of this Agreement.

13.5.4. The computer software, trade secrets, know-how, trading techniques, inventions, trademarks, trade names, and other intellectual property utilized by the Partnership and any of its Affiliates shall not be or become the property of the Partnership, and no Limited Partner shall have any right or interest therein, but instead shall remain the property of the General Partner.

13.5.5. None of the provisions of this Agreement shall be for the benefit of, or enforceable by, any creditor of a Partner or of the Partnership. No creditor who makes a loan to the Partnership may have or acquire as a result of making the loan any direct or indirect interest in the profits, capital, or property of the Partnership (other than as a result of being a secured creditor).

13.5.6. The Partnership shall not be required to furnish copies of the Certificate of Limited Partnership or any Certificates of Amendment thereto, including, without limitation, any such document executed pursuant to the Power of Attorney under Section 10, to any Limited Partner unless the Partnership shall receive a request therefore.

13.5.7. Except for any subscription agreement which may be executed by a Limited Partner in connection with an investment in the Partnership, this Agreement contains the full and complete understanding among the parties hereto, supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and cannot be modified except by a written instrument signed by each party hereto.

13.5.8. Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the State of Delaware and, without limitation thereof, that the Act as now adopted or as may hereafter be amended shall govern the Partnership aspects of the Agreement. Each of the Partners consents to the jurisdiction and venue of the Federal and State Courts of the State of New York in connection with any claim or controversy arising out of or relating to this Agreement, on the condition that, with respect to any federal litigation, the amount in controversy exceeds the statutory requirement in force as of the date of this Agreement.

13.5.9. Each Limited Partner agrees that it, and anyone having knowledge through it, shall not make independent use of or knowingly disclose to any other person any aspect of the General Partner's investment discipline, except that a Limited Partner may communicate such information in confidence to its personal attorneys, accountants and tax advisers.

13.5.10. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular forms of nouns, pronouns or verbs shall include the plural and vice versa.

13.5.11. All headings and captions contained in this Agreement are inserted for convenience only and shall not be deemed a part of this Agreement.

13.5.12. If any provision of this Agreement or the application thereof should be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or the application of any other provision of this Agreement.

IN WITNESS WHEREOF, the undersigned has hereto set its hand and seal as of the date first above written:

**EDEN ARC CAPITAL PARTNERS, LP**

By: EDEN ARC CAPITAL ADVISORS, LLC

By: \_\_\_\_\_  
Donald F. ("Jay") Lathen, Managing Member

# **EXHIBIT 4**

## Agreement Regarding Recovery of Fees and Expenses under EAJA

Whereas, the parties hereto have previously entered into an Amended Limited Partnership Agreement ("LPA") dated April 13, 2016;

Whereas the LPA provides under Section 12.2.2 for the Partnership to indemnify the General Partner, Investment Manager and other Indemnified Persons from and against any and all claims, damages, losses, penalties, expenses, judgements or liabilities of any nature whatsoever, including but not limited to legal fees, losses, expenses and costs associated with investigating or preparing the defense of any proceeding or investigation;


Whereas the Partnership has paid all legal fees and expenses in connection with the SEC's investigation of, and administrative proceeding (the "SEC Matter") against, the Investment Manager, General Partner and Donald F. (Jay) Lathen, Jr.;


Whereas the Investment Manager and General Partner have decided to bring a counterclaim ("EAJA Claim") against the SEC under the Equal Access to Justice Act ("EAJA") in order to recoup certain legal fees and other costs that the Partnership expended pursuant to Section 12.2.2 of the LPA in connection with the SEC Matter;


Whereas the parties interpret the language of Section 12.2.2 as meaning the Partnership shall be entitled to recoup any costs expended on the SEC Matter through a counter-claim recovery related to same;

Now therefore, the Parties agree that any and all recoveries that the General Partner, the Investment Manager and/or Donald F. Lathen, Jr. may receive from a court of competent jurisdiction in connection with an EAJA Claim, shall be immediately paid to the Partnership.

On this date, December 2, 2017, the undersigned parties do so agree.

  
\_\_\_\_\_  
Managing Member  
Eden Arc Capital Advisors, LLC ("General Partner")

  
\_\_\_\_\_  
Managing Member  
Eden Arc Capital Management, LLC ("Investment Manager")

  
\_\_\_\_\_  
Managing Member of the General Partner  
Eden Arc Capital Partners, LP ("Partership")

  
\_\_\_\_\_  
Donald F. Lathen, Jr.