

### **Section 3.09. Compliance with Law.**

#### **(a) Generally.**

Each Interested Party (other than a Sponsor) is conducting its business in compliance with (i) its Charter Documents and (ii) all Applicable Laws (including of each country in which it is doing business). Each Sponsor is conducting his funds management business in compliance with all Applicable Laws (including of each country in which he is doing business). Each Interested Party has duly obtained all of its respective Authorizations required to be in effect, and each such Authorization is in full force and effect, is not subject to appeal and is held in the name of such Interested Party. The Financing Parties have no reason to believe that any Authorization that is not yet required to have been obtained by any Interested Party, but that will be required in the future, will not be granted in due course before the time when needed.

#### **(b) Corrupt Practices Laws; Anti-Money Laundering Laws.**

Without limiting the effect of Section 3.09(a), each Interested Party and its respective Affiliates and each of their respective officers, directors, employees, and agents, has complied with all applicable Corrupt Practices Laws in obtaining any Authorizations, rights, or privileges in respect of the Fund, the Equity Vehicle and each Parallel Equity Vehicle and is otherwise conducting the Fund and such Interested Party's business in compliance with applicable Corrupt Practices Laws and Anti-Money Laundering Laws. To the best knowledge of the Financing Parties and their respective Affiliates, after due inquiry (the assessment of ownership of a widely-held pension plan or public company being deemed to have occurred if the General Partner and Latin Power GP have verified that no Blocked Person controls or owns 5% or more of such entity), each Portfolio Company and Portfolio Company Subsidiary is conducting its business in compliance with all applicable Corrupt Practices Laws and Anti-Money Laundering Laws and none of the directors, officers or 5% or more record or beneficial owners of any Portfolio Company or any Portfolio Company Subsidiary is a Person included in the OFAC List. Each Interested Party and its respective Affiliates has management and accounting practices and controls adequate to ensure compliance with applicable Corrupt Practices Laws and Anti-Money Laundering Laws. An Authorized Officer of each Interested Party has read and understood the Anti-Corruption Handbook, and the Anti-Corruption Handbook has been distributed to all Project Parties.

### **Section 3.10. Disclosure.**

(a) Except as set forth in Schedule 3.10(a), all documents, reports, financial statements, exhibits, schedules and other factual information pertaining to the Fund or the other Interested Parties (including this Agreement, the Private Placement Memorandum (as of the date thereof and as of any date thereafter when and if delivered thereafter (i) to OPIC or (ii) to any Person for the purpose of selling Partner Interests), the other Financing Documents, any Consent Application, any Portfolio Acquisition Certificate and any other information submitted to OPIC pursuant to Section 6.12(a) that have been furnished to OPIC are, and all other factual information hereafter furnished will be, true, complete and correct in all material respects and do not, and will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein, not misleading. There is no fact known to, or which by the exercise of due diligence could be known to, any Interested Party, and that has not been disclosed to OPIC, the existence of which any Financing Party expects, or which could reasonably be expected, to have a Material Adverse Effect. Except as set forth on Schedule 3.10 (a), no condition has arisen or event occurred since the date of the Private Placement Memorandum that has had or could reasonably be expected to have a Material Adverse Effect.

(b) OPIC has received a true, complete and correct copy of each of the Fund Documents in effect or required to be in effect as of the date this representation is made or deemed made (including all exhibits, schedules, side letters and disclosure letters referred to therein or delivered pursuant thereto, if any).

### **Section 3.11. Offering.**

None of the Interested Parties, nor anyone acting on behalf of any such Person, has taken or will take any action that would subject the transactions contemplated hereby or the offering or sale of the Notes, the Partner Interests, any other direct or indirect interest in the Fund or other similar securities to the registration requirements of the Securities Act of 1933, as amended. The Interested Parties have taken or will take or cause to be taken all actions necessary to cause the offering and sale of the Notes, the Partner Interests, and any such other direct or indirect interest or similar securities to be in compliance at all times with all Applicable Laws.

### **Section 3.12. Investment Company Act; Other Regulation.**

No Interested Party is (a) required to register as an "investment company" under the Investment Company Act of 1940, as amended, or (b) subject to any Applicable Law (other than bankruptcy and insolvency laws) that limits its ability to incur Indebtedness or which otherwise renders all or any portion of the obligations of the Interested Parties under the Notes and/or any other Financing Document unenforceable.

### **Section 3.13. Margin Stock.**

No Interested Party is engaged principally, or as one of its important activities, in the business of extending credit to any Person for the purpose of such Person purchasing or carrying Margin Stock; provided, however, that the Fund may make loans, in accordance with the terms of this Agreement, to Parent Portfolio Companies to invest in equity and quasi-equity securities of Portfolio Companies.

### **Section 3.14. Portfolio Investments.**

#### **(a) Authority.**

With respect to each applicable Financing Party and Parent Portfolio Company, each purchase of Portfolio Securities and the execution, delivery, and performance by each Financing Party of all agreements, contracts and instruments entered into in connection therewith (i) have been (or, as of the date of purchase and/or execution and delivery, will have been) duly authorized by all necessary corporate, company or partnership action; (ii) will not violate any provision of the Charter Documents of such Person, or any Applicable Law; and (iii) will not breach, cause a default or result in the creation or imposition of any Lien on any of its properties, revenues or assets under, any agreement, contract, instrument or other requirement by which such Person or any of its properties, revenues or assets may be bound or affected, except as expressly permitted or required by the Financing Documents. No clearances, waivers, acquiescence, consents or appeals of any Person are or will be required in connection with any such purchase or such execution, delivery and performance.

#### **(b) Portfolio Companies.**

(i) Each Portfolio Company in which the Fund has an ownership interest, and the nature and extent of the respective ownership interest of the Fund in each such Portfolio Company, is set forth on Schedule 3.14(b)(i).

(ii) In connection with each acquisition of Portfolio Securities, the Fund has delivered to OPIC a true, correct and complete Portfolio Acquisition Certificate with respect to such acquisition, and all such Portfolio Securities are owned beneficially and of record by the Fund or the Parent Portfolio Company indicated on the applicable Portfolio Acquisition Certificate.

(iii) There are no voting agreements, proxies, or similar restrictions on voting agreed to by any Financing Party or any Parent Portfolio Company with respect to any Portfolio Securities, except as are described in the applicable Portfolio Acquisition Certificate.

(iv) No change in ownership or control of any Financing Party or Parent Portfolio Company will adversely affect any contractual right of any Financing Party or Parent Portfolio Company with respect to any Portfolio Security, including such Person's rights to appoint members of the board of directors or similar bodies of the applicable Portfolio Company, conversion rights, anti-dilution rights, registration rights, and tag along rights and, except as disclosed in the applicable Portfolio Acquisition Certificate, all such rights are transferable to a subsequent owner of such Portfolio Securities.

**(c) Annex A Compliance.**

(i) Each acquisition of Portfolio Securities by the Fund (including each acquisition of Securities by a Parent Portfolio Company and each acquisition of Portfolio Securities funded entirely with Fund Equity Contributions) has been effected in compliance with the Annex A Requirements and all other applicable provisions of this Agreement.

(ii) To the best knowledge of the Financing Parties, after due inquiry, (A) each Portfolio Company has been duly and properly formed in accordance with all Applicable Laws and has the requisite power to own and operate its properties and assets and to carry on its business as now conducted, or as now contemplated to be conducted, (B) no additional filing, registration, recording, or amendment to, or in respect of, the Charter Documents of any Portfolio Company is required under any Applicable Law in connection with its formation and continued valid existence and (C) each Portfolio Company and its Portfolio Company Subsidiaries are in compliance with the Annex A Requirements and all other Applicable Laws.

(iii) With respect to any Portfolio Security acquired or to be acquired, the Fund has used all reasonable efforts to obtain relevant information respecting compliance by the related Portfolio Company and its Portfolio Company Subsidiaries with the Annex A Requirements, and has delivered all such information to OPIC.

**Section 3.15. Title; Insurance.**

**(a) Title.**

Each of the Financing Parties owns and has good, legal and beneficial title to its property, assets and revenues, free and clear of all Liens other than as permitted in Section 7.01 and other than obligations under the Partnership Agreement (in respect of the Fund). Each of the General Partner, the Feeder Limited Partner and the (b) (4) Vehicle owns and has good, legal and beneficial title to the Capital Stock of the Fund described in Section 3.04(f)(i), free and clear of all Liens other than Liens created by the Security Documents.

**(b) Insurance.**

Each of the Financing Parties has obtained such insurance policies as are required to be maintained by them under Section 6.04, and such policies are in full force and effect without default.

**Section 3.16. Transactions with Interested Parties.**

Except as set forth in Schedule 3.16, permitted in Section 7.06, Section 7.10 or specifically contemplated by any Financing Document, no Interested Party is a party to any contract, agreement, instrument, understanding or arrangement with, or any other commitment to, whether or not in the ordinary course of business, any other Interested Party, Affiliate thereof, Portfolio Company or Portfolio Company Affiliate provided that the foregoing limitation shall not apply to any Limited Partner of any of the Equity Vehicle or either Parallel Equity Vehicle (or any Affiliate of such Limited Partner) which is a Financial Institution and provides commercial or investment banking services to any such Person on an arm's length basis; provided, however, the foregoing shall not prohibit (i) transactions between the Sponsors which are unrelated to any Interested Person (other than a Sponsor) and unrelated to the transactions contemplated by any Financing Document, or (ii) the making of loans to or from the Investment Manager by an Interested Party.

**Section 3.17. No Immunity.**

The Interested Parties are not permitted, in any jurisdiction in which judicial, administrative or arbitral proceedings may at any time be commenced with respect to this Agreement, the Notes or any of the other Financing Documents, to claim (for itself or its properties, assets, revenues or rights to receive income) immunity from suit, from the jurisdiction of any court, from attachment prior to judgment, or from attachment in aid of execution of a judgment on any grounds, including grounds of sovereignty. The Interested Parties are subject to commercial law, and this Agreement and each other Financing Document and the transactions contemplated hereby and thereby constitute commercial activities of the Interested Parties.

**Section 3.18. Insolvency.**

Each of the Interested Parties (other than any Sponsor) (a) is capable of paying its debts as they fall due and is not unable and has not admitted its inability to pay its debts as they fall due, (b) is not bankrupt or insolvent (as determined in accordance with Applicable Law) and (c) has taken no action, and no such action has been taken by a third party, for its winding up, dissolution or liquidation or similar executory or judicial proceeding or for the appointment of a liquidator, custodian, receiver, trustee, administrator or other similar officer for any such Person or any or all of its property, assets or revenues. Notwithstanding the foregoing, an Interested Party shall not be deemed to be insolvent (i) solely because unpaid fees and expenses incurred in accordance with the Financing Documents and customary business practices are greater than current assets, (ii) if such Interested Party is a partnership, notwithstanding such Interested Party's current liabilities exceed such Interested Party's current assets, (x) there shall remain as unpaid subscription amounts for such Interested Party an amount greater than such excess, (y) the general partner of such Interested Party shall have issued a capital call to the limited partners of such Interested Party in such amount and as of such time as may be necessary to pay all current liabilities when due and (z) there shall be no default in respect of such capital call by any such limited partner such that all current liabilities cannot be paid when due, or (iii) if such Interested Party is a corporation or limited liability company, notwithstanding such Interested Party's current liabilities exceed such Interested Party's current assets, (x) there shall remain as unpaid subscription amounts for such Interested Party an amount greater than such excess, (y) the authorized officer of such Interested Party shall have issued a capital call to the shareholders or members of such Interested Party in such amount and as of such time as may be necessary

to pay all current liabilities when due and (z) there shall be no default in respect of such capital call by any such shareholder or member such that all current liabilities cannot be paid when due.

### **Section 3.19. Limited Partners.**

(a) To the best knowledge of the Financing Parties and Latin Power GP after due inquiry, each Limited Partner was an Accredited Investor at the time of its admission as a Limited Partner.

(b) The General Partner and Latin Power GP have verified that no Limited Partner is, or is beneficially owned by, a Blocked Person (the assessment of ownership of a widely-held pension plan or public company being deemed to have occurred if the General Partner and Latin Power GP have verified that no Blocked Person controls or owns 5% or more of such entity) and have complied, in respect of each Limited Partner (and each owner of any interest in the Tax-exempt Feeder), with all applicable requirements of the Anti-Money Laundering Laws.

(c) The Private Placement Memorandum was delivered to the Limited Partners no later than June 2006, and to OPIC in January 2007. To the best knowledge of the Financing Parties and Latin Power GP after due inquiry, no Limited Partner has any claims against OPIC or any Interested Party arising out of or relating to the Private Placement Memorandum.

## **ARTICLE IV CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT**

Unless OPIC otherwise agrees in advance, OPIC's obligation to make the first Disbursement is subject to the prior or contemporaneous fulfillment, to OPIC's satisfaction, of the following conditions precedent and to their continued fulfillment on the date of the first Disbursement.

### **Section 4.01. Closing Certificate.**

OPIC shall have received a certificate executed by an Authorized Officer of the General Partner and an Authorized Officer of Latin Power GP, dated the first Disbursement Date, substantially in the form of Exhibit E:

(a) attaching an original or a copy of each of the Charter Documents of each of the Interested Parties (other than the Sponsors), each as amended to date, certifying that each of the attached copies is true, complete and correct and in full force and effect in accordance with its terms without default as of the first Disbursement Date, together with evidence satisfactory to OPIC that such documents have been approved, filed and recorded in accordance with all Applicable Laws by the competent and appropriate Governmental Authorities;

(b) attaching an original or a copy of (i) in respect of the Equity Vehicle, the Feeder Limited Partner and each Parallel Equity Vehicle, requisite approval pursuant to the Charter Documents of each such entity and (ii) the resolution of the general partner or board of directors (or the equivalent governing body) of each of the Fund, Latin Power GP, the General Partner and the Investment Manager, and of all documents evidencing any other necessary action of such Person, in each case in form and substance satisfactory to OPIC, authorizing each to execute, deliver and perform this Agreement and each of the other Financing Documents to which it is or will be a party and to engage in the transactions contemplated hereby and by any other Financing Document, and certifying that each of the attached copies is true, complete and correct and in full force and effect without default and has not been modified as of the first Disbursement Date;

(c) certifying, as to each Interested Party, the names, titles and specimen signatures and initials of the persons who are authorized to execute and deliver on behalf of such party this Agreement (for each Financing Party only), the Notes (for the Fund only) and any of the other Financing Documents to which it is party, and all other notices, certificates or instruments contemplated hereunder or under any other Financing Document;

(d) certifying that it has complied, in respect of each Limited Partner, with all applicable requirements of the Anti-Money Laundering Laws; and

(e) certifying that the Fund has obtained a D-U-N-S number issued by Dun & Bradstreet, Inc. and advising OPIC as to such number.



#### **Section 4.02. Financing Documents.**

OPIC shall have received the following documents, each of which shall be in full force and effect in accordance with its terms without default:

(a) originals, duly executed and delivered by each party thereto, of each of the following agreements and documents (together with any Notes issued subsequent to the first Disbursement, the "**Loan Documents**");

- (i) this Agreement; and
- (ii) the Notes to be issued in connection with the first Disbursement;

(b) copies of the following agreements (including all amendments thereof made after the date hereof), each of which shall be amended as necessary to accommodate the OPIC financing and otherwise be satisfactory to OPIC in form and substance, shall have been duly executed and delivered by the parties thereto, and shall have been certified by an Authorized Officer of the General Partner as being true, correct and complete and in full force and effect in accordance with its terms without default (together with the Charter Documents required under Section 4.01(a), and any Investment Management Agreements or agreements relating to Subadvisors, entered into subsequent to the first Disbursement, the "**Fund Documents**");

- (i) the Partnership Agreement;
- (ii) the Feeder Limited Partner Operating Document, the Equity Vehicle Partnership Agreement, the  Vehicle Partnership Agreement and the  Vehicle Partnership Agreement;
- (iii) the General Partner Operating Document, Latin Power GP Operating Document and the Carry Partnership Agreement;
- (iv) the Investment Manager Operating Agreement;
- (v) each agreement, understanding or arrangement governing the allocation or distribution of the Carried Interest, or otherwise relating to the compensation of the General Partner, Latin Power GP, the Ultimate GP, the Carry Partnership, or Investment Manager for activities relating to the Fund, and any side letters or other agreements between or among any of the Limited Partners, the Equity Vehicle, any Parallel Equity Vehicle, the General Partner, Latin

Power GP, the Ultimate GP, the Feeder Limited Partner, the Carry Partnership, the Tax-exempt Feeder, the owners of interests in the Tax-exempt Feeder and the Fund;

(vi) the Private Placement Memorandum;

(vii) the Management Agreement;

(viii) the Letter of Credit;

(ix) the Revolving Loan and Letter of Credit Agreement; and

(x) all other contracts to provide services to any Financing Party or pursuant to which any such party has an obligation (other than the Loan Documents) the total commitment (whether contingent or otherwise) of which exceeds a value of (b) (4) Dollars (\$ (b) (4) );

(c) originals of the following agreements, each of which shall be in form and substance satisfactory to OPIC in its sole discretion and shall have been duly executed and delivered by the parties thereto:

(i) the Vehicle Sideletter;

(ii) the Latin Power GP Sideletter; and

(iii) each of the Security Documents, each of which shall have been duly filed and registered or recorded in every jurisdiction in which such filing and registration or recording is necessary or advisable to make valid, effective and perfected the Liens and other rights of OPIC purported to be granted thereunder and the first priority Liens intended to be created thereby;

(d) originals of each OPIC Funding Document, each of which shall have been duly executed and delivered by the parties thereto; and

(e) (i) for each Interested Party which is an exempted limited partnership under the laws of the Cayman Islands, copies of such Person's Register of Partnership Interests and Register of Mortgages of Limited Partnership Interests; and

(ii) for each Interested Party which is a limited company under the laws of the Cayman Islands, copies of such Person's Register of Member and Register of Mortgages and Charges.

#### **Section 4.03. Appointment of Agent.**

OPIC shall have received evidence that the agents for service of process referred to in Section 8.03(c) have been duly and irrevocably appointed, and hold such appointment without reservation until at least six (6) months after the Scheduled Maturity Date, together with evidence of the prepayment in full of the fees of such agents.

**Section 4.04. [RESERVED]**

**Section 4.05. Appointment of Accountants.**

OPIC shall have received evidence that the Accountants have been duly appointed and instructed in accordance with Section 6.05, and have accepted and hold such appointment without reservation.

**Section 4.06. Legal Opinions.**

OPIC shall have received such written opinions of legal counsel to the Interested Parties and such other Persons as OPIC may reasonably request, dated as of the first Disbursement Date, in form and substance satisfactory to OPIC, including opinions respecting (a) the offering of interests in the Fund, the Equity Vehicle and each Parallel Equity Vehicle under Applicable Law (e.g. the Securities Act of 1933, but excluding (i) state securities laws, and (ii) the offering of interests in the Equity Vehicle in (b) (4) in an amount of (b) (4) 0), (b) the applicability of the Investment Company Act of 1940, and/or equivalent laws of other jurisdictions (excluding state securities laws) to each of the Interested Parties, (c) the valid existence, power and authority of each of the Interested Parties (other than those Interested Parties who are individuals) and (d) the legality, validity and enforceability of the Financing Documents. OPIC shall have received a letter or letters from counsel to the Interested Parties attaching copies of, and authorizing OPIC to rely on, each legal opinion delivered to the General Partner or the Limited Partners on or prior to the date of the first Disbursement; provided that, as an alternative to any such reliance letter, any such opinion may by its terms authorize reliance by OPIC on the opinions expressed therein.

**Section 4.07. Minimum Initial Closing.**

OPIC shall have received evidence satisfactory to it that: (a) the Fund has accepted the Fund Equity Commitments from the Feeder Limited Partner and (b) (4) Vehicle providing for not less than (b) (4) (b) (4) Dollars (\$ (b) (4) 0) (\$ (b) (4) from the Feeder Limited Partner and \$ (b) (4) 6 from the (b) (4) Vehicle); (b) the Feeder Limited Partner has executed a subscription agreement with the Equity Vehicle for investment of (b) (4); (c) the Feeder Limited Partner has executed a subscription agreement with the (b) (4) Vehicle for investment of \$ (b) (4); and (d) each of the General Partner and Investment Manager, as of the first Disbursement Date, is an Eligible Investor.

**Section 4.08. Initial Budget.**

The Annual Budget of the Fund shall have been delivered, and shall be in form and substance satisfactory, to OPIC.

**Section 4.09. Ownership of Partner Interests.**

(a) The identities of each of the Limited Partners, and of all record and beneficial owners of all right, title and interest in and to each such Person, shall be satisfactory to OPIC.

(b) OPIC shall have received evidence satisfactory to it that a majority-in-interest of the Limited Partner Interests are owned by Persons who are Independent Limited Partners.

**Section 4.10. OPIC Account.**

The Fund shall have opened the OPIC Account with (b) (4) pursuant to the Collateral Account Control and Security Agreement.



## **ARTICLE V**

### **CONDITIONS PRECEDENT TO EACH DISBURSEMENT**

Unless OPIC otherwise agrees in advance, OPIC's obligation to make each Disbursement, including the first Disbursement, is subject to the prior or contemporaneous fulfillment, to OPIC's satisfaction, of the following conditions precedent and to their continued fulfillment on the date of any such Disbursement.

#### **Section 5.01. Representations and Defaults; Performance.**

##### **(a) Representations and Defaults.**

The representations and warranties set forth in Article III and in all of the other Financing Documents shall be true, complete and correct in all respects on the date of such Disbursement as if made on and as of such date (after giving effect to the Disbursement and the purchase of any Portfolio Securities to be purchased with the proceeds of such Disbursement) except where such representations and warranties are made expressly as of a specified date; provided, however, that any Schedule hereof shall be deemed to be amended or revised for the purpose of satisfying this condition precedent to the extent a related amended or revised Schedule, certified by an Authorized Officer of the Fund to be true, complete and correct in all respects, has been delivered to, and accepted by, OPIC on or before the date of such Disbursement and in form and substance satisfactory to OPIC. On the date of such Disbursement (i) no Default or Event of Default shall have occurred and be continuing, and (ii) no default shall have occurred and be continuing under any other Financing Document.

##### **(b) Performance; Portfolio Acquisition Certificates.**

Each of the Interested Parties shall have performed each of its respective obligations theretofore to be performed under this Agreement and the other Financing Documents to which it is a party. Without limiting the foregoing, (i) OPIC shall have received within the time periods specified in the Financing Documents, all documents and agreements (each of which shall be duly executed and delivered, true, complete, and correct, and in full force and effect without default) required to be delivered after the consummation of any prior Disbursement, including any Portfolio Acquisition Certificates; and (ii) the Interested Parties shall have completed all actions that in the opinion of OPIC in its sole discretion are necessary or advisable (x) to secure the payment of all amounts due or to become due hereunder or under the Notes with valid and enforceable perfected first priority Liens on the assets described in the Security Documents to the extent possible under Applicable Law and (y) to ensure that OPIC may draw upon and be paid under the Letter of Credit in accordance with its terms during any LC Requirement Period subject to the limitations set forth in Section 8.02(a)(viii).

##### **(c) Letter of Credit.**

During any LC Requirement Period, the Letter of Credit shall be in full force and effect, enforceable in accordance with its terms, and no Person (including the Letter of Credit Bank) shall have contested the validity or enforceability of the Letter of Credit.

##### **(d) Revolving Loan and Letter of Credit Agreement.**

During any LC Requirement Period, no Person shall have contested the validity or enforceability of the Revolving Loan and Letter of Credit Agreement and there shall be no dispute between the Equity Vehicle and the Letter of Credit Bank relating to the Revolving Loan and Letter of Credit Agreement.

#### **Section 5.02. Material Adverse Effect.**

No condition or circumstance shall exist, including as the result of a change in Applicable Law, that in OPIC's judgment could have a Material Adverse Effect.

#### **Section 5.03. Certification.**

The Fund shall have delivered to OPIC a certificate of an Authorized Officer, dated the date of such Disbursement (each a "*Closing Certificate*"), substantially in the form of Exhibit F.

#### **Section 5.04. Financial Information.**

Not less than ten (10) Business Days prior to the Disbursement Date, OPIC shall have received all Financial Statements, reports, and other information that the Financing Parties, pursuant to Section 6.07, are required to furnish to OPIC on or before such Disbursement Date.

#### **Section 5.05. Payment or Reimbursement of Expenses.**

All fees, reimbursements and other amounts that are then due and owing to OPIC hereunder or under any Financing Document, shall have been paid, including the Fixed OPIC Payments, Taxes payable pursuant to Section 2.08, amounts described in Section 2.10(a) and the costs of registration and recordation of any Financing Document.

#### **Section 5.06. OPIC Consent Notice.**

(a) With respect to each Portfolio Security acquired by the Fund prior to the proposed Disbursement Date (including In-kind Contributions and investments made entirely with Fund Equity Contributions), OPIC shall have provided the Fund with a Consent Notice pursuant to Section 2.09(c), which Consent Notice shall be effective in accordance with its terms.

(b) With respect to any Portfolio Securities proposed to be acquired with the proceeds of the proposed Disbursement (whether on or after the proposed Disbursement Date), OPIC shall have provided the Fund with its Consent Notice pursuant to Section 2.09(c) (subject to the proviso set forth therein), which Consent Notice shall be effective in accordance with its terms, and the information set forth in the Consent Application on which such Consent Notice was based shall be complete and continue to be true and accurate, and such Consent Application shall not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not materially misleading, as of the relevant Disbursement Date.

#### **Section 5.07. Fund Equity Contributions.**

The Feeder Limited Partner, the (b)(4) Vehicle and the General Partner shall have made Fund Equity Contributions in immediately available funds in accordance with the terms of the Partnership Agreement and in an aggregate amount sufficient to ensure that, after giving effect to the Disbursement on such date, the aggregate principal amount of all Disbursements outstanding shall not exceed the sum of (i) the amount (if any) by which aggregate Fund Equity Contributions received by the Fund as of the applicable Disbursement Date exceeds Equity Repayments and (ii) the product of two and the LC Balance as of such date, and OPIC shall have received satisfactory evidence thereof (which at OPIC's discretion may be oral confirmation from an officer of the financial institution that has received such contributions, followed by a signed confirmation from such institution within one (1) Business Day).

**Section 5.08. Legal Opinions.**

OPIC shall have received such written opinions of legal counsel to the Interested Parties and such other Persons as OPIC may reasonably request, dated as of the Disbursement Date, in form and substance satisfactory to OPIC.

**Section 5.09. Disbursement Documents.**

OPIC shall have received a Disbursement Request in accordance with Section 2.01(c), together with all other documents or instruments required in connection therewith.

**Section 5.10. Notes; Other Documents.**

OPIC shall have received (a) fully executed originals of the Notes to be issued in connection with such Disbursement, and (b) such other certificates, opinions, agreements, documents, instruments and evidence, each satisfactory to OPIC in form and substance, as it may reasonably request.

**Section 5.11. OPIC Funding Documents.**

Suitable arrangements shall have been made and paid for by the Fund for funding the Disbursement through the sale of OPIC-guaranteed certificates of participation relating to the Note(s) to be issued in connection with the proposed Disbursement to Eligible Investors, and all such arrangements and all agreements, documents and instruments required in connection with such arrangements (collectively, the "*OPIC Funding Documents*"), shall be satisfactory in form and substance to OPIC. All conditions precedent to the obligations of any party to the OPIC Funding Documents shall have been satisfied, and the Fund shall have performed all of its obligations to be performed under such OPIC Funding Documents on or prior to the date of the Disbursement.

**Section 5.12. Notice of Default and Other Matters.**

The Fund shall have complied with Section 6.11 and, to the extent any notification is delivered to OPIC in accordance therewith, OPIC shall have determined that no Material Adverse Effect exists.

**Section 5.13. OPIC Account.**

The OPIC Account shall be open and in existence pursuant to the terms of the Collateral Account Control and Security Agreement.

**Section 5.14. Perfection of Security Interests.**

Each Security Document shall be in full force and effect and enforceable in accordance with its terms without default, and shall grant OPIC valid, effective and perfected Liens in the collateral intended to be covered thereby.

**ARTICLE VI  
AFFIRMATIVE COVENANTS**

At all times during the Availability Period, and thereafter until (i) the Fixed Obligations have been indefeasibly paid in full, or (ii) in the case of the covenants and agreements set forth in Sections 6.01(b), 6.05, 6.06, 6.07, 6.08, 6.09, 6.11, and 6.12, all of the Obligations have been indefeasibly paid in full, each of the Financing Parties shall comply with each of the covenants and agreements in this Article

VI, and shall cause each Interested Party, Parent Portfolio Company and Portfolio Company to comply with each of the covenants and agreements in this Article VI applicable to such Interested Party, Parent Portfolio Company or Portfolio Company.

**Section 6.01. Fundraising; Operations; Key Persons.**

**(a) Fundraising.**

(i) The Equity Vehicle Commitment of Latin Power GP shall equal not less than 2% of the aggregate amount of Equity Vehicle Commitments. The Equity Vehicle Commitment of Latin Power GP may be made in part through waivers of fees to be paid to the Investment Manager by the Equity Vehicle and the Parallel Equity Vehicles.

(ii) No subscriptions for Partner Interests shall be accepted by the Fund, the Equity Vehicle or any Parallel Equity Vehicle, no new equity investment shall be accepted by the Feeder Limited Partner, and no Partners shall be admitted by any of the Fund, the Equity Vehicle, the (b) (4) Vehicle or the (b) (4) Vehicle except in connection with Transfers in accordance with this Agreement, after the date hereof.

(iii) A majority-in-interest of the Limited Partner Interests shall at all times be owned by Persons who are Independent Limited Partners.

(iv) The General Partner and the Investment Manager shall at all times be majority beneficially owned by Eligible Investors.

(v) The Fund will not accept capital commitments from any Person other than the General Partner, the Feeder Limited Partner and the (b) (4) Vehicle.

**(b) Operations.**

Except as otherwise expressly provided herein:

(i) the SPV GP shall at all times be the general partner of the Fund and control all of the significant operations of the Fund;

(ii) Latin Power GP shall at all times be the general partner of the Equity Vehicle and the Parallel Equity Vehicles and control all of the significant operations of the Equity Vehicle and the Parallel Equity Vehicles; and

(iii) the Investment Manager shall at all times provide investment advisory services to the Fund, the Equity Vehicle and the Parallel Equity Vehicles.

**Section 6.02. Fund Investments.**

(a) During the Availability Period, the General Partner and Investment Manager shall cause the Equity Vehicle and each Parallel Equity Vehicle to use commercially reasonable efforts to make and hold through the Fund all investments (other than (b) (4), (b) (4) and the (b) (4)) that the Investment Manager, after consultation with OPIC, reasonably determines meets the terms of this Agreement, including the Annex A Requirements, and the Investment Guidelines. The Equity Vehicle and each Parallel Equity Vehicle shall offer to the Fund, via a Consent Application to

OPIC no later than the date of this Agreement, all investments made prior to the date of this Agreement which meet the terms hereof in accordance with clause (b) below. For the avoidance of doubt, the undertaking of the General Partner and the Investment Manager pursuant to this Section 6.02 shall be deemed satisfied with respect to any investment (and such investment therefore shall not be required to be offered to the Fund) if the Available Fund Equity Contributions and Available OPIC Commitment Amount as of such time are insufficient for the Fund to make such investment and (y) investments contributed to the Fund pursuant to this Section 6.02 shall not constitute In-Kind Contributions.

(b) If an investment which meets the terms hereof cannot be made by the Fund, such investment may be made by the Equity Vehicle and/or the Parallel Equity Vehicles, provided that the Equity Vehicle and/or the Parallel Equity Vehicles shall, no later than sixty (60) days after it has made such investment, offer such investment, via a Consent Application, on the same terms and conditions as the Equity Vehicle and/or the Parallel Equity Vehicles made such investment. Upon receiving a Consent Notice from OPIC, the Fund shall have a period of one hundred and eighty (180) days to accept such offer. The General Partner shall notify OPIC in writing of any such investment made by the Equity Vehicle and/or the Parallel Equity Vehicles, the date such investment is offered to the Fund and the date the Fund's option to acquire such investment expires. Such notice from the General Partner shall be sent to OPIC within five (5) Business Days of the Equity Vehicle and/or the Parallel Equity Vehicles making such investment.

(c) For purposes of this Section 6.02, with respect to any investment by the Equity Vehicle and the Parallel Equity Vehicles in a Development Project, the date on which the investment is treated as having been made shall be the earlier of the date on which Construction of such Development Project begins and the date on which such Development Project has received third party financing in any form (including but not limited to equity or debt financing or third party guarantees of any liability of such project).

(d) In connection with any contribution pursuant to this Section 6.02 of an investment, each of the Feeder Limited Partner and the ~~(b)(4)~~ Vehicle shall be treated as having made a Fund Equity Contribution equal to (x) for an investment that is a Development Project, (i) if, after the date on which the Equity Vehicles and the Parallel Equity Vehicles acquired such investment and prior to the date on which such investment is contributed to the Fund, there has been a third party transaction involving the sale or issuance of at least 1% of the equity interests in such investment, the fair market value of the investment so contributed (determined by reference to such third party transaction) and (ii) otherwise, the Cost of such investment, and (y) for all other investments, the Cost of such investment, in each case at the time of the Consent Application in respect of such investment.

### **Section 6.03. Maintenance of Rights; Compliance with Laws; Authorizations.**

(a) Each Interested Party shall (i) whenever in its power to do so, acquire, maintain, exercise and renew all rights, contracts, powers, privileges, leases, and franchises necessary for the conduct of its business and the performance of its obligations hereunder and under the other Financing Documents; (ii) conduct its business in compliance with all Applicable Laws and (iii) use all powers available to it to ensure directly or indirectly that each other Interested Party fulfills its obligations under this Section 6.03(a).

(b) Each Interested Party (other than any Sponsor) shall (i) maintain its existence, and (ii) duly pay before they become overdue or any Lien is imposed all Taxes, assessments and other charges levied or imposed in any jurisdiction upon its property, assets, revenues or business, except amounts which, after giving effect to reserves therefore, could not directly or indirectly cause a Material Adverse Effect.

(c) The Interested Parties shall obtain, and shall at all times maintain in full force and effect without default, all Authorizations.

(d) The Fund shall apply for an undertaking from the Cayman Islands that no tax will be levied by the Cayman Islands upon the assets of Fund during the term of the Fund.

(e) Each Interested Party shall comply with the Corrupt Practices Laws and Anti-Money Laundering Laws, and ensure that none of its directors, officers, or record or beneficial owners, is a Person included in the OFAC List (the assessment of ownership of a widely-held pension plan or public company being deemed to have occurred if the General Partner and Latin Power GP have verified that no Blocked Person controls or owns 5% or more of such entity).

#### **Section 6.04. Maintenance of Insurance.**

From and after the date of the first Disbursement, each of the Financing Parties shall maintain in effect with financially sound and reputable insurers such public liability and other insurance on its property, assets, and business in such amounts and against such risks as is consistent and in accordance with sound commercial and industry practice for activities similar to those contemplated for such Person in the Fund Documents.

#### **Section 6.05. Accounting and Financial Management.**

##### **(a) General Duties.**

Each Financing Party shall (i) maintain adequate management information and cost control systems and (ii) maintain a system of cash management, accounting, and financial reporting consistent with its operations and similar systems customarily maintained by others similarly situated. Without limiting the foregoing, each Financing Party shall maintain systems described in Section 6.05(a)(i) and Section 6.05(a)(ii), and related management and accounting policies, in a manner adequate to ensure compliance with applicable Corrupt Practices Laws and Anti-Money Laundering Laws.

##### **(b) Accountants.**

The Fund shall, (i) engage the Accountants, (ii) notify OPIC of any proposed change in such Accountants and the reason therefor and shall not effect such change without the Advisory Board's and OPIC's consent, and (iii) instruct such Accountants to communicate directly with OPIC regarding the Fund's accounts and operations and permit OPIC to review their work papers and other documentation relating thereto. The accountants for the General Partner and the Investment Manager shall at all times be acceptable to OPIC, and the General Partner and the Investment Manager will instruct its accountants to communicate directly with OPIC regarding the Fund's accounts and operations and permit OPIC to review their work papers and other documentation relating thereto. OPIC agrees that (b) (4) and (b) (4) is an acceptable accountant to the Investment Manager and the General Partner.

##### **(c) Certain Certifications.**

The General Partner shall certify (and upon OPIC's request, provide to OPIC evidence) that (i) the General Partner has complied, in respect of each Limited Partner proposed to be admitted to the Equity Vehicle and each Parallel Equity Vehicle from and after the date of the first Disbursement, with the Anti-Money Laundering Laws and (ii) no such Limited Partner nor any of its record or beneficial owners is a Person included in the OFAC List (the assessment of ownership of a widely-held pension plan

or public company being deemed to have occurred if the General Partner and Latin Power GP have verified that no Blocked Person controls or owns 5% or more of such entity).

#### **Section 6.06. Management of Fund Cash Flow.**

(a) The Fund may apply Fund Cash Flow to establish and maintain reserves in accordance with Section 7.04(b)(i)(A) and Section 6.06(b); provided, however, that without the consent of OPIC, no reserves may be established or supplemented during the continuance of any Event of Default.

(b) Pending expenditure in accordance with the terms of the Financing Documents, all Fund Cash Flow (including any amounts held in reserve) shall be deposited in the OPIC Account and invested in Interim Securities, which Interim Securities and OPIC Account shall be subject to the Collateral Account Control and Security Agreement. So long as no Event of Default shall have occurred and be continuing, cash may be freely transferred from the OPIC Account to the Operating Account, provided that no more than \$614 shall be held in such Operating Account at any time.

#### **Section 6.07. Financial Statements and Other Information.**

The Financing Parties shall furnish, or cause to be furnished, to OPIC:

(a) within sixty (60) days after the end of each fiscal quarter of each Fiscal Year:

(i) a copy of the Fund's unaudited consolidated and consolidating Financial Statements, including cash flows and changes in partners' capital accounts, certified by an Authorized Officer of the General Partner as being complete and correct and that such Financial Statements fairly present the financial condition and results of operations of the Fund in accordance with U.S. GAAP consistently applied (except for the lack of notes and subject to normal year-end adjustments), together with such Authorized Officer's certificate that his or her review has not disclosed the existence of a Default or an Event of Default, or, if any such event or condition then exists, specifying the nature and period of existence thereof and what action Fund has taken or proposes to take with respect thereto;

(ii) an investment activity report, in a format acceptable to OPIC, indicating Fund investments made and liquidated, specifying for each such investment, the relevant industry and country and, as appropriate, amount of new investment or return on liquidated investment, and a narrative description of other material events affecting the Fund or any of its investments during such fiscal quarter; and

(iii) a report in a form satisfactory to OPIC that sets forth, in each case as of the last day of such fiscal quarter, (A) the Asset Value of each asset owned by the Fund, (B) a narrative description of the factors considered in determining each such Asset Value (including with respect to the effects of any exchange rate fluctuations), and (C) the Net Asset Value of the Fund (such report, an "*OPIC Valuation Report*"), certified by an Authorized Officer of the General Partner as being true, complete and correct.

(b) within ninety (90) days after the end of each fiscal quarter of each Fiscal Year:

(i) a copy of each Portfolio Company's unaudited consolidated and consolidating Financial Statements, prepared in accordance with any of U.S. GAAP, IFRS, or Local GAAP, and translated into Dollars; and

(ii) a narrative summary for each Portfolio Company comparing its actual and budgeted performance for such period (including with respect to key non-financial assumptions underlying projections);

(c) within one hundred twenty (120) days after the end of each Fiscal Year:

(i) a copy of the Fund's audited (in accordance with U.S. GAAP) consolidated and consolidating annual Financial Statements, together with a certificate of the Accountants describing the scope of their examination (which shall include a review of the following sections of this Agreement:

Sections 2.02, 2.03, 2.08, 2.09, 3.03, 3.06, 3.18, 6.05, 6.06, 6.07, 6.11, 6.13, 7.01, 7.02, 7.04, 7.05, 7.06(e), 7.20, and 8.01, and each definition appearing in such sections);

(ii) [Reserved];

(iii) a copy of each Portfolio Company's audited (in accordance with any of U.S. GAAP, IFRS, or Local GAAP; provided however, that if prepared in Local GAAP, such Financial Statements shall be accompanied by a narrative statement indicating the key differences, if any, between Local GAAP and U.S. GAAP or IFRS) consolidated and consolidating annual Financial Statements, translated into Dollars, together with a certificate of the Portfolio Company's accountants describing the scope of their examination;

(iv) an investment monitoring report for each Portfolio Company, comparing its actual and projected performance during such Fiscal Year (including with respect to key non-financial assumptions underlying performance projections), and an annual three-year forecast for such Portfolio Company;

(d) within sixty (60) days after the end of each Fiscal Year:

(i) a Self Monitoring Questionnaire for each Portfolio Company; and

(ii) a report certified by an Authorized Officer of the General Partner setting forth in reasonable detail all transactions with an aggregate price or value equal to or greater than (b) (4) Dollars (b) (4) between any Interested Party, any Portfolio Company or any Portfolio Company Affiliate, on the one hand, and any other Interested Party or Affiliate thereof, on the other hand;

(e) within thirty (30) days of its preparation by the General Partner, any Annual Budget of the Fund for any Fiscal Year;

(f) in connection with each new Portfolio Company investment made by the Fund, a copy of the Investment Committee materials on such investment and a publicly releasable description of the Portfolio Company;

(g) as soon as practicable but in no event later than ten (10) days after the delivery thereof to the Partners, members of the Advisory Board, or members of any other committee of the Fund, copies of all materials, reports (including any report providing valuations of the Fund's assets) or documents submitted to the Partners, the Advisory Board, or such other committee relating to the Fund;



(h) as soon as practicable but in no event later than ten (10) days after the Fund's receipt thereof, all other annual or interim audit reports, all management letters, and such other information and data with respect to the Fund's operations that could have a material impact on the value of the Fund that are submitted to the Fund by the Accountants; and

(i) as soon as practicable but in no event later than five (5) days after the Fund's receipt of OPIC's request therefor, any information and documents reasonably requested by OPIC from time to time including (i) pursuant to Section 6.08, (ii) to monitor the compliance of the Interested Parties and the Portfolio Companies with the Annex A Requirements, (iii) relating to a valuation or an OPIC Valuation Report on any Portfolio Company, and (iv) updated descriptions of Portfolio Companies that may be disclosed to the public by OPIC.

For purposes of the foregoing reporting requirements, compliance with applicable accounting principles shall be determined without regard to any requirement for an opinion to be rendered by an independent third party on the fair market value of the Fund's assets except as set forth in this Agreement (including the OPIC Valuation Principles), provided all financial reports are in accordance with GAAP as specified above.

All reporting data will be provided to OPIC both in hard copy and a computer format that allows efficient interface with OPIC's management information system via "comma separated value" or other agreed format. All documents or reports furnished to OPIC will be in the English language or, if in another language, will be accompanied by a certified translation into English, which translation will be the governing version.

#### **Section 6.08. Access to Records; Ownership of Records.**

(a) Each Interested Party shall, at OPIC's request, give, or cause to be given, to any representatives of OPIC, access (i) during normal business hours and after reasonable notice to, and permit them to examine, copy and make extracts from, any and all records and documents in the possession or subject to the control of such Interested Party relating to the operations and financial affairs of any Interested Party, any Portfolio Company or any Portfolio Company Affiliate, and to inspect any of the facilities of any Interested Party (other than a Sponsor) that relate to the Interested Parties, any Portfolio Company or any Portfolio Company Affiliate, and (ii) to each such Person's personnel, accountants, including the Accountants in the case of the Fund, and attorneys.

(b) The Financing Parties agree that (i) all of the rights, title and interest in and to all accounts, books, records, databases, software and computers maintained in connection with the Fund and its operation shall be the property of the Fund or Conduit Capital and not any of the other Interested Parties, and each of the Financing Parties (other than the Fund and Conduit Capital) hereby waives for all time any claim to ownership or use of any such accounts, books, records, databases, software and computers, except as a non-exclusive licensee of the Fund; and (ii) all of the rights, title and interests of the Fund or Conduit Capital referenced above shall be pledged to OPIC pursuant to the Security Documents.

#### **Section 6.09. Advisory Board and Committees.**

##### **(a) Advisory Board.**

(i) The Financing Parties shall take all action necessary to ensure that at all times:

(A) the Advisory Board shall consist of not fewer than five (5) representatives of the Independent Limited Partners, each of which representatives shall

be independent of and not Affiliated with any of the Interested Parties other than the Fund, the Equity Vehicle and the Parallel Equity Vehicles;

(B) OPIC shall have the right to have one designee attend each meeting of the Advisory Board as a permanent, non-voting, member;

(C) all decisions of the Advisory Board are taken by the affirmative vote of not less than a majority of the voting members entitled to vote thereon; and

(D) the Advisory Board shall: (1) review, assess, and approve or disapprove any potential conflicts of interest involving any of the Interested Parties, Affiliates thereof, or any Portfolio Company in accordance with Section 7.06 (without the participation or vote thereon of any party interested in such matter); (2) have the rights to require the General Partner to change the Accountants to a different firm acceptable to OPIC and the Advisory Board, to receive a presentation of the Fund's audited Financial Statements annually from the Accountants, and to meet and confer from time to time with the Accountants in respect to the Fund's Financial Statements; (3) review the General Partner's valuations of the Fund's assets, and assess the compliance of such valuations with the valuation guidelines of the Fund; and (4) vote on and, if appropriate, approve, such other matters as are provided in this Agreement or the Partnership Agreement.

(ii) Any change to the provisions of the Partnership Agreement governing the membership, operation or duties of the Advisory Board shall be subject to OPIC's prior approval.

**(b) Meetings of the Advisory Board.**

(i) The Advisory Board shall meet as necessary (but not less frequently than once in each calendar year) to fulfill its responsibilities in a timely manner.

(ii) OPIC shall have the right to cause the General Partner (A) to call meetings of the Advisory Board from time to time, (B) to place matters on the agenda for any meeting of the Advisory Board and (C) to conduct a recorded vote on any matter considered by the Advisory Board.

(iii) The General Partner shall ensure that notice of meetings of the Advisory Board, and agendas and materials relevant to agenda matters, are delivered in a timely manner to each member of the Advisory Board, and to OPIC, so as to facilitate meaningful discussion of such agenda matters.

**(c) Investment Committee; Meetings.**

(i) The General Partner shall form and maintain an Investment Committee to consider making any acquisition or disposition of any Portfolio Security which shall be comprised of each of the Key Persons and such other persons as the Key Persons may designate with OPIC's consent, which shall have the power and authority necessary to approve or reject investments and divestments by the Fund.

(ii) The Investment Manager shall ensure that notice of meetings of the Investment Committee, and agendas and materials relevant to agenda matters, are delivered in a timely manner to each member of the Investment Committee so as to facilitate meaningful discussion of such agenda matters.

(iii) Copies of all materials delivered to the Investment Committee shall be delivered to OPIC not later than five (5) days after any formal decision is taken thereon by the Investment Committee with respect to the proposals made therein.

**(d) Meetings of the Partners.**

(i) OPIC shall have the right, in its discretion, to cause the General Partner to call meetings of the Partners of the Fund, to attend all or any such meetings as a non-voting observer, to receive notice thereof and agendas and materials relevant to agenda matters concurrently with distribution to the Partners, to add items to the agenda for any such meeting, and to cause the General Partner to conduct a recorded vote on any matter considered at any such meeting.

(ii) The General Partner shall ensure that notice of meetings of the Partners of the Fund, and agendas and materials relevant to agenda matters, are delivered in a timely manner to each Partner of the Fund and to OPIC, so as to facilitate meaningful discussion of such agenda matters.

(iii) OPIC shall have the right, in its discretion, to cause Latin Power GP to call meetings of the Partners of the Equity Vehicle and the Parallel Equity Vehicles, to attend all or any such meetings as a non-voting observer, to receive notice thereof and agendas and materials relevant to agenda matters concurrently with distribution to the Partners, to add items to the agenda for any such meeting, and to cause Latin Power GP to conduct a recorded vote on any matter considered at any such meeting.

(iv) Latin Power GP shall ensure that notice of meetings of the Partners of the Equity Vehicle and the Parallel Equity Vehicles, and agendas and materials relevant to agenda matters, are delivered in a timely manner to each Partner of the Equity Vehicle and the Parallel Equity Vehicles and to OPIC, so as to facilitate meaningful discussion of such agenda matters.

(v) OPIC shall have the right to communicate with Latin Power GP, the Tax-exempt Feeder, the Equity Vehicle, the (b) (4) Vehicle, the (b) (4) Vehicle, the Feeder Limited Partner, any Partner of the Equity Vehicle and the Parallel Equity Vehicles and any holder of any interest in the Tax-exempt Feeder (and any of their authorized representatives), whether or not at a formal meeting of the Advisory Board or the Partners.

(vi) Latin Power GP shall provide to OPIC, upon OPIC's request but in any event within one hundred twenty (120) days after the end of each Fiscal Year, a list of the names, addresses, telephone numbers and e-mail addresses of each Partner of the Equity Vehicle and the Parallel Equity Vehicles as provided to Latin Power GP by such Partners.

**Section 6.10. Key Persons.**

(a) (b) (4)



(b) (b) (4)



(b) (4)

(c) (b) (4)

#### **Section 6.11. Notice of Default and Other Matters.**

The Financing Parties shall immediately notify OPIC of:

- (a) the occurrence of each Default or Event of Default;
- (b) any actual or threatened Action against, or any actual or threatened governmental investigation of or involving, any Interested Party, as to which any Interested Party or any of its Affiliates has knowledge which could reasonably be expected to result in damages in excess of \$(b) (4);
- (c) any claim made to a Financing Party or any of its respective Affiliates for payment under an indemnity provision;
- (d) the actual termination, or the giving by any party of notice of termination, of the services of any Investment Manager under any Investment Management Agreement;
- (e) any material non-compliance (of which any Financing Party or Affiliate thereof has knowledge) by an Interested Party, Portfolio Company or Portfolio Company Subsidiary of the Annex A Requirements;
- (f) any substantial dispute between or among (i) any of the Interested Parties (other than a dispute between the Sponsors and unrelated to any other Interested Party) or (ii) any of the Interested Parties and any Governmental Authority (other than a dispute between any Sponsor and a Governmental Authority and unrelated to any other Interested Party);
- (g) any actual or proposed rescission, discharge or other termination, amendment, or waiver under any Financing Document;
- (h) any material or extraordinary notice or correspondence received by any of the Interested Parties relating to an Authorization;
- (i) any notice or correspondence received by any of the Interested Parties relating to the imposition of a Lien (other than a Lien permitted by Section 7.01(a) or (b)) on any assets owned by any of the Interested Parties;

(j) any proposed change in the nature or scope of business of any Financing Party (other than any Sponsor);

(k) any defaults (without regard to any grace period or cure) (i) in an aggregate amount of (b) (4) Dollars (US \$(b) (4)) or for a period of (b) (4) (b) days or longer, by any Partner or Partners under its subscription agreement or under the Equity Vehicle Partnership Agreement, the (b) (4) Vehicle Partnership Agreement or the (b) (4) Vehicle Partnership Agreement; (ii) by the Equity Vehicle or the (b) (4) Vehicle under the Feeder Limited Partner Operating Document; (iii) by the Feeder Limited Partner, the (b) (4) Vehicle or the General Partner under the Partnership Agreement or (iv) any breach or default by the Equity Vehicle in respect of the provisions required by Section 7.06(c) of this Agreement;

(l) the occurrence or failure to occur of any other condition or event (including any action or inaction by a Governmental Authority) that any Interested Party or Affiliate thereof expects, or which could reasonably be expected, to have a Material Adverse Effect;

(m) any Change of Control Event;

(n) any substantial dispute between the Equity Vehicle and the Letter of Credit Bank concerning the Letter of Credit or the Revolving Loan and Letter of Credit Agreement;

(o) any default (without regard to any grace period or cure) under the Revolving Loan and Letter of Credit Agreement; and

(p) any contest, claim or allegation by any party that the Letter of Credit has expired or otherwise ceases to be in full force and effect (other than in accordance with its terms), or is unenforceable or invalid in any respect, or any proceeding threatened or commenced by any party seeking to establish the unenforceability or invalidity of the Letter of Credit.

#### **Section 6.12. Compliance Monitoring; Annex A Requirements.**

(a) Submission of Information.

Within twenty (20) days following consummation of each acquisition of Portfolio Securities by the Fund (including Portfolio Securities acquired entirely with Fund Equity Contributions), the Fund shall deliver to OPIC (i) a Portfolio Acquisition Certificate with respect to such Portfolio Securities and (ii) updates to Schedule 3.04(c) and Schedule 3.14(b)(i) as necessary to accurately describe all Portfolio Securities acquired (directly or indirectly) by the Fund.

(b) Compliance with Annex A Requirements.

Each of the Financing Parties and Portfolio Companies shall comply with each of the Annex A Requirements applicable to it.

#### **Section 6.13. OPIC Challenge Right.**

(a) OPIC shall have the right, at any time and from time to time (subject to Section 6.13(c)) until the Fixed Obligations are indefeasibly paid in full, and the Financing Parties shall take all action necessary to ensure that OPIC shall have and maintain the right, to:

(i) challenge (whether or not the Advisory Board has reviewed and approved the valuations of the Fund's assets or any other calculation) (A) any determination of the Asset Value

of a Fund asset or the Net Asset Value of the Fund (B) any calculation of the Bright Line Test (including any calculation of the Outstanding OPIC Debt), and (C) any calculation of amounts required to be applied pursuant to any of clauses (D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i); and

(ii) in the event of any such challenge, cause the Fund, at the Fund's expense, to appoint jointly with OPIC, within fifteen (15) days of receipt of notice from OPIC, an independent appraiser, which shall be either (A) an independent public accounting firm of national standing in the United States selected by OPIC, or (B) any other qualified independent appraiser selected by OPIC and reasonably acceptable to the General Partner, to review the challenged determination, valuation or calculation, and render its own determination, valuation or calculation, in accordance with the OPIC Valuation Principles and any other relevant provisions of the Financing Documents (an "*Independent Appraisal*"). The Financing Parties shall use all reasonable efforts to ensure that the independent appraiser is able to render its Independent Appraisal within ninety (90) days of its appointment, including by promptly providing OPIC and the independent appraiser with (1) any information that may be requested by OPIC or the independent appraiser in connection therewith and (2) using all reasonable efforts to ensure that OPIC and the independent appraiser have, upon reasonable notice, the right to (x) access to the books and records of any Portfolio Company, (y) visit and inspect each Portfolio Company and (z) meet with the management of any Portfolio Company. OPIC shall have the right to meet and confer with such independent appraiser, or any auditor of the Fund, for any purpose.

(b) For all purposes of the Financing Documents relating to OPIC, this Agreement and the transactions contemplated hereby, Independent Appraisals shall be binding on the Interested Parties and OPIC.

(c) Provided no Event of Default has occurred, OPIC shall exercise its rights under Section 6.13(a) no more than once each fiscal quarter.

#### **Section 6.14. Security Documents; Letter of Credit.**

(a) Until all of the Fixed Obligations have been indefeasibly paid in full, the Interested Parties, at their expense, shall take all actions necessary or advisable, as determined by OPIC, to maintain each Security Document in full force and effect and enforceable in accordance with its terms without default, each of which Security Document shall grant OPIC valid, effective and perfected Liens in the collateral intended to be covered thereby.

(b) During the LC Requirement Period, the Interested Parties, at the Fund's expense, shall take all actions necessary or advisable, as determined by OPIC, to maintain the Letter of Credit in full force and effect and enforceable in accordance with its terms without default.

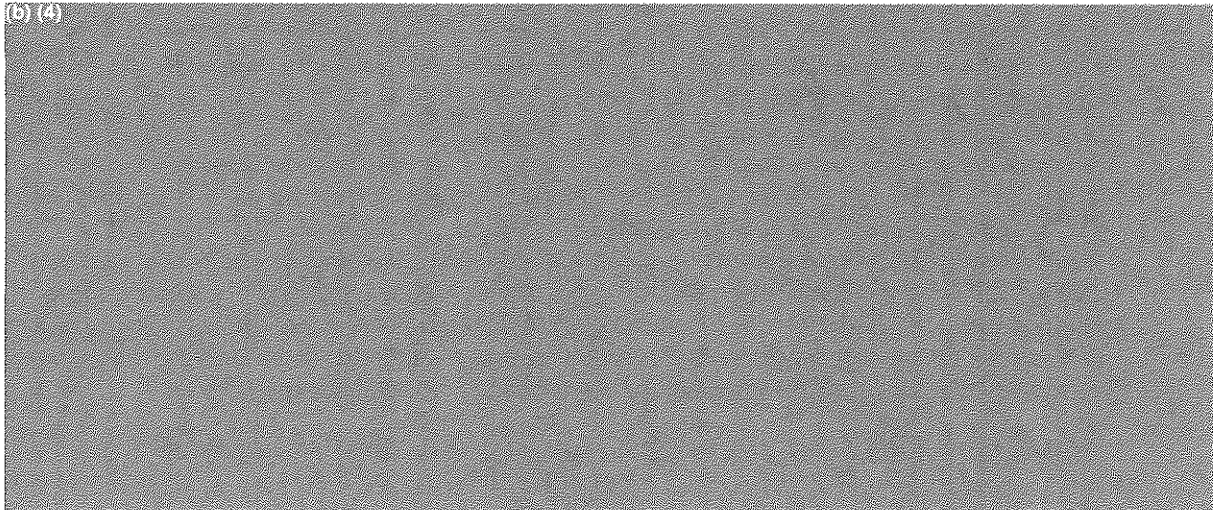
#### **Section 6.15. Further Assurances.**

(a) Each Interested Party, in each case for itself, shall: (a) take all such further action required or reasonably requested by OPIC to ensure that each of the Financing Documents to which it is a party is in proper legal form under Applicable Laws of the jurisdiction selected as the governing law jurisdiction in each such Financing Document for the enforcement thereof in such jurisdictions, to effect the purposes of the Financing Documents, and to otherwise protect the interests of OPIC in the Financing Documents; and (b) perform all of its obligations under, and conduct its operations and business in compliance with, the terms of each Financing Document to which it is a party.

(b) Each Financing Party shall cause the Equity Vehicle and Latin Power GP to (at their expense or the expense of the Fund) take all such further action required or reasonably requested by OPIC to ensure that the Letter of Credit (if issued, acknowledged by OPIC and not terminated in accordance with its terms) is in proper legal form under the law of New York for the enforcement thereof in such jurisdiction, to effect the purpose of the Letter of Credit, and to otherwise protect the interests of OPIC in the Letter of Credit.

**Section 6.16. Termination of the Fund.**

(b) (4)



**ARTICLE VII  
NEGATIVE COVENANTS**

At all times during the Availability Period, and thereafter until (i) the Fixed Obligations have been indefeasibly paid in full, or (ii) in the case of the covenants and agreements set forth in Sections 7.03, 7.04, 7.06, 7.07 (other than Section 7.07(e)), 7.08, 7.12, 7.13, 7.17, 7.18, 7.20 and 7.21, all Obligations have been indefeasibly paid in full, each of the Financing Parties shall comply with each of the covenants and agreements in this Article VII, and shall cause each Interested Party, Parent Portfolio Company and Portfolio Company to comply with each of the covenants and agreements in this Article VII applicable to such Interested Party, Parent Portfolio Company or Portfolio Company.

**Section 7.01. Liens.**

No Financing Party shall create, assume or otherwise permit to exist any Lien on any assets of any Financing Party, whether now owned or hereafter acquired, except for:

(a) (i) Liens created under the Security Documents; and (ii) subject to Section 8.05, other Liens created pursuant to any of the Financing Documents;

(b) Liens for Taxes or other statutory Liens securing obligations incurred in the ordinary course of business (i) not yet due or (ii) that are diligently being contested or litigated in good faith in appropriate proceedings, and in each case for which adequate reserves have been established in accordance with U.S. GAAP;

(c) Liens on the assets of any Portfolio Company that is not a Parent Portfolio Company securing Indebtedness permitted by Section 7.02(f);



(d) Liens on the assets of the Investment Manager securing Indebtedness permitted by Section 7.02(b)(ii);

(e) other Liens approved by OPIC; or

(f) Liens on the equity of any Portfolio Company securing Indebtedness of such Portfolio Company as permitted under Section 7.02 (f), and/or securing Indebtedness of a Parent Portfolio Company as permitted under Section 7.02(h)

**Section 7.02. Indebtedness.**

No Financing Party shall, and no Financing Party shall cause or permit any Portfolio Company or Parent Portfolio Company to, incur, assume, guaranty, create, permit, suffer to exist or otherwise become or remain liable for any Indebtedness except:

(a) the Notes and other payment obligations hereunder or under the other Financing Documents;

(b) (b) (4)



(c) Indebtedness consisting of a commitment or agreement by the Fund after the effectiveness of an applicable Consent Notice to purchase Portfolio Securities;

(d) Indebtedness arising from a customary seller's indemnity given in connection with the sale of Portfolio Securities;

(e) Indebtedness of a Portfolio Company to the Fund, a Parent Portfolio Company to the Fund, a Parent Portfolio Company to a Portfolio Company or a Portfolio Company to a Parent Portfolio Company;

(f) Indebtedness of any Portfolio Company that is not a Parent Portfolio Company incurred on an arms' length basis with a Person which is not an Affiliate (other than Indebtedness described in clauses (h) or (i) of the definition of "Indebtedness", or any Impairing Indebtedness of such Portfolio Company);

(g) (b) (4)



(h) Indebtedness of any Parent Portfolio Company incurred on an arms' length basis with a Person which is not an Affiliate (other than Indebtedness described in clauses (h) or (i) of the definition of "Indebtedness", or any Impairing Indebtedness of such Parent Portfolio Company);



### **Section 7.03. No Alteration of Agreements.**

Without the prior approval of OPIC, no Interested Party shall terminate, amend, or otherwise modify, or grant any waiver of, or delegate, transfer or assign any of its respective rights, duties or obligations under, any provision of any Fund Document to which it is a party; provided, however, that the Equity Vehicle Partnership Agreement, the (b) (4) Vehicle Partnership Agreement and the (b) (4) Vehicle Partnership Agreement may be amended in accordance with their terms. During any LC Requirement Period, Latin Power GP shall cause the Equity Vehicle to provide OPIC with (i) a true and correct copy of the Revolving Loan and Letter of Credit Agreement, (ii) the Letter of Credit and (iii) notice of any amendment, modification, termination or waiver of the Revolving Loan and Letter of Credit Agreement within ten (10) Business Days of the execution thereof.

### **Section 7.04. Distributions of Fund Cash Flow.**

#### **(a) Prohibited Distributions.**

Except for distributions permitted under Section 7.04(b) (and Section 7.04(d), in respect of in-kind distributions), the Fund shall not declare or make any distributions, including in-kind distributions, to any Partner or purchase, acquire, redeem or retire, directly or indirectly, any Partner Interest, until all amounts due or to become due hereunder, under the Notes and under any other Financing Document have been indefeasibly paid in full.

#### **(b) Permitted Distributions.**

(i) The Fund shall not distribute nor apply any of its Fund Cash Flow except in the following manner, and then only so long as no Event of Default has occurred and is continuing:

(A) *first*, to pay Operating Expenses then due and owing, and thereafter to pay ratably the Fixed OPIC Payments and any other fees, expenses and indemnity amounts then due and owing to OPIC under any Financing Document and the Management Fees then due and owing, and thereafter, to pay Organizational Expenses then due and owing; and thereafter, subject to Section 6.06, to fund, maintain or restore reasonable reserves for recurring and non-recurring Operating Expenses and for reserves for future investments in Permitted Portfolio Securities, Management Fees, Fixed OPIC Payments any other obligations, in each case as reasonably determined by the General Partner; and thereafter,

(B) *second*, at the discretion of the General Partner and subject to the terms hereof (including the Annex A Requirements), to invest in Permitted Portfolio Securities; provided, however, that after the Investment Period, such investments shall be limited to Permitted Follow-On Investments; and thereafter,

(C) *third*, at the discretion of the General Partner and provided no Event of Default would exist after giving effect to the Tax Distribution, to make permitted Tax Distributions as set forth in Section 7.05; and thereafter,

(D) *fourth*, to pay OPIC, to be applied to the Outstanding OPIC Debt in accordance with the OPIC Funding Documents, an amount equal to the sum of:

(1) an amount (the "*Maintenance Portion*") equal to:

$(\text{OOD} - \text{LC Balance}) - ((\text{NAV} - \text{CAD})^{(b)(4)})$

provided however, that if such amount is less than zero, no amount shall be payable to OPIC in respect of the Maintenance Portion, and provided further, that (for the avoidance of doubt) the amount of the Cash Available for Distribution and the amount of the Outstanding OPIC Debt used in the calculation of the Maintenance Portion as of any date shall, in each case, be reduced by the amount of any Fund Cash Flow that is paid to OPIC pursuant to Section 7.04(b)(i)(A) on such date,

*plus*

- (2) any redemption premium payable pursuant to the OPIC Funding Documents in respect of prepayment of the Outstanding OPIC Debt; and thereafter,

(E) *fifth*, if as of the time of a distribution any amounts are to be distributed in accordance with Clause (F) below as of such time, to pay OPIC, to be applied to the Outstanding OPIC Debt in accordance with the OPIC Funding Documents, an amount equal to the sum of:

- (1) an amount (the "***Enhanced Maintenance Portion***") equal to:

$(\text{OOD} - \text{LC Balance}) - ((\text{NAV} - \text{CAD})^{(b)(4)})$

provided however, that if such amount is less than zero, no amount shall be payable to OPIC in respect of the Enhanced Maintenance Portion, and provided further, that (for the avoidance of doubt) the amount of the Cash Available for Distribution and the amount of the Outstanding OPIC Debt used in the calculation of the Enhanced Maintenance Portion as of any date shall, in each case, be reduced by the amount of any Fund Cash Flow that is paid to OPIC pursuant to Sections 7.04(b)(i)(A) and (D) on such date,

*plus*

- (2) any redemption premium payable pursuant to the OPIC Funding Documents in respect of prepayment of the Outstanding OPIC Debt; and thereafter,

(F) *sixth*, during the Investment Period, at the discretion of the General Partner, to make distributions of CAD to the Feeder Limited Partner and the <sup>(b)(4)</sup> Vehicle until an amount equal to the lesser of (x) the sum of (I) Fund Equity Contributions and (II) Profits (in an amount less than or equal to \$<sup>(b)(4)</sup>) and (y) <sup>(b)(4)</sup> <sup>(b)(4)</sup>, has been applied pursuant to this clause (F); and thereafter,

- (G) *seventh*, to pay OPIC:

(1) prior to the Trigger Date, an amount, to be applied to the Outstanding OPIC Debt in accordance with the OPIC Funding Documents, equal to the sum of:

(x) an amount (the "*Pro-Rata Portion*") equal to the lesser of:

(I) the Outstanding OPIC Debt, and

(II)  $CAD * OOD / (OOD + OE)$ , provided, however, that (for the avoidance of doubt) the amount of the Cash Available for Distribution and the amount of the Outstanding OPIC Debt used in the calculation of the Pro-Rata Portion as of any date shall, in each case, be reduced by the amount of any Fund Cash Flow that is paid to OPIC pursuant to Sections 7.04(b)(i)(A), (D) and (E) on such date,

*plus*

(y) any redemption premium payable pursuant to the OPIC Funding Documents in respect of prepayment of the Outstanding OPIC Debt;

(2) on or after the Trigger Date,

(x) an amount, to be applied to the Outstanding OPIC Debt in accordance with the OPIC Funding Documents, equal to the Outstanding OPIC Debt,

*plus*

(y) any redemption premium payable pursuant to the OPIC Funding Documents in respect of prepayment of the Outstanding OPIC Debt; and thereafter,

(H) *eighth*, provided that OPIC shall have received a Distribution Notice and Bringdown Certificate confirming that the requirements of Section 7.04(b)(i)(D), (E) and (G) are met, to make distributions to the Feeder Limited Partner, the <sup>(b) (4)</sup> Vehicle and the General Partner until an amount equal to the aggregate Fund Equity Contributions has been applied; and thereafter,

(I) *ninth*, provided that OPIC shall have received a Distribution Notice and Bringdown Certificate confirming that the requirements of Section 7.04(b)(i)(D), (E) and (G) are met,

(1) to pay OPIC, in an amount equal to the OPIC Percentage of the amount remaining after the distributions of Fund Cash Flow set forth in Section 7.04(b)(i)(A) through Section 7.04(b)(i)(H) has been distributed (the "*Deferred Interest*"), and thereafter,

(2) to make distributions to the Equity Vehicle, the Parallel Equity Vehicles and the General Partner, in an amount equal to (b) (4) less the OPIC Percentage of the amount remaining after the distributions of Fund Cash Flow set forth in Section 7.04(b)(i)(A) through Section 7.04(b)(i)(H) has been distributed.

(ii) Notwithstanding any other provision of this Agreement or any other Financing Document, if an Event of Default has occurred and is continuing, all Fund Cash Flow will be paid directly to OPIC and applied as OPIC, in its sole discretion, may determine until such time as all amounts payable in respect of the OPIC Loan are indefeasibly paid in full, or OPIC delivers to the Fund notice that it may resume application of Fund Cash Flow in accordance with Section 7.04(b)(i).

(c) Distribution Notices; Bringdown Certificates.

Until all amounts payable in respect of the OPIC Loan are indefeasibly paid in full, the Fund shall:

(i) at least ten (10) and not more than twenty (20) calendar days prior to the date of any proposed application of Fund Cash Flow pursuant to any of clauses (D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i), deliver to OPIC a notice of the proposed application (a "**Distribution Notice**"), which notice shall include:

(A) the most recent OPIC Valuation Report and Financial Statements of the Fund,

(B) a calculation of the Pro-Rata Portion, the Maintenance Portion and the Enhanced Maintenance Portion as of such proposed application date on the basis of such OPIC Valuation Report and Financial Statements and any changes to the Net Asset Value of the Fund and/or the Outstanding OPIC Debt that have occurred (or in respect of interest relating to the Outstanding OPIC Debt, will occur prior to such proposed application date) since the date of such OPIC Valuation Report and Financial Statements (which changes shall be separately identified in the notice), and

(C) a statement of the amounts to be applied pursuant to each such clause (D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i) in order to comply with the terms thereof, in each case certified by the General Partner as true, correct, and complete; and

(ii) on the date of application of Fund Cash Flow pursuant to any of clauses (D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i), deliver to OPIC a certificate of the General Partner (a "**Bringdown Certificate**") stating that, (A) to the best of its knowledge, no event has occurred since the date of the related Distribution Notice that would reasonably be expected to result in a material decline in the Net Asset Value of the Fund or increase in the Outstanding OPIC Debt from that reflected in the related Distribution Notice, and (B) the amounts paid on such date pursuant to each such clause (D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i) satisfy the requirements thereof.

(iii) If, in connection with any proposed application of Fund Cash Flow pursuant to any of clause (F), (H) or (I) of Section 7.04(b)(i), either (A) the General Partner fails to provide OPIC a Distribution Notice or a Bringdown Certificate, or (B) OPIC notifies such General Partner that it challenges the General Partner's statement that the requirements of any of clauses

(D), (E), (F), (G), (H) and/or (I) of Section 7.04(b)(i) are met, then the Fund Cash Flow proposed for application shall be held in reserve by the Fund until the Fund and OPIC otherwise agree in writing or an Independent Appraisal shall have been made (upon which such Fund Cash Flow will be applied as set forth therein).

**(d) In-Kind Distribution of Portfolio Securities.**

The Fund shall not make in-kind distributions to the Feeder Limited Partner, the (b) (4) Vehicle or the General Partner, except as follows:

(i) prior to the end of the term of the Fund, the Fund may make in-kind distributions of Portfolio Securities only upon indefeasible payment in full of all amounts payable in respect of the OPIC Loan; and

(ii) from and after the earlier of (A) indefeasible payment in full of all amounts payable in respect of the OPIC Loan, and (B) expiration of the term of the Fund, the Fund may make in-kind distributions of Portfolio Securities only with OPIC's prior consent (which shall not be unreasonably withheld or delayed) to the distribution value assigned to such securities; *provided, however*, that all amounts due to OPIC in connection with such in-kind distribution shall be paid concurrently to OPIC in cash.

**Section 7.05. Tax Distributions.**

**(a) No Tax Distributions in Excess of Tax Distribution Amount.**

(i) Subject to Section 7.04(b)(i), the Fund may, on or before April 15th of any Fiscal Year of the Fund during any period in which any amount due or to become due under the Notes remains to be paid, distribute a portion of Fund Cash Flow to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner in accordance with the Partnership Agreement; provided, however, that the amount of any such distribution shall not exceed the Tax Distribution Amount for the immediately preceding Fiscal Year (the "*Target Year*"); provided further, however, that the following conditions are met: (A) the Fund is not subject to U.S. federal income tax; (B) at least ten (10) days but not more than thirty (30) days prior to such distribution, the Fund delivers to OPIC a written statement signed by an Authorized Officer of the Administrator stating that the Fund has Net Long-Term Capital Gain and Net Ordinary Income for the Target Year, the amount thereof, and a computation thereof and of the Tax Distribution Amount for such Target Year; (C) the amount of such distribution shall not exceed the Tax Distribution Amount specified in the Administrator's written statement; (D) the amount of such distribution shall not exceed, when combined with the amount of all prior distributions to the Equity Vehicle, each Parallel Equity Vehicle and the General Partner in accordance with Sections 7.04(b)(i)(C), (F) and (H), the amount distributable to the Equity Vehicle, each Parallel Equity Vehicle and the General Partner as contemplated by Section 7.04(b)(i)(H); (E) no distribution of cash under this Section 7.05 shall be made with respect to income of a type subject to U.S. withholding tax to the extent that the U.S. tax liabilities on such income are satisfied by such U.S. withholding tax; provided that any U.S. tax withheld shall be deemed for all purposes of this Agreement (including Section 7.04(b)(i)(C) and Section 7.05(b)(ii)) to have been distributed as a Tax Distribution Amount pursuant to Section 7.04(b)(i)(C); (F) after giving effect thereto, the representations and warranties set forth in Article III shall be true, complete and correct on the date of such distribution, as if made on and as of such date, and on such date no Default or Event of Default shall have occurred and be continuing or would be caused by, or would exist after giving effect

to, the making of such distribution, and the Fund shall have delivered to OPIC a certificate of an Authorized Officer of the General Partner to such effect; and (G) such distribution shall be made solely from Fund Cash Flow, and in no event shall the Fund incur any Indebtedness or dispose of any Portfolio Securities for the purpose of making any such distribution.

(ii) Any amounts distributed to the Feeder Limited Partner, the (b) (4) Vehicle or the General Partner pursuant to Section 7.04(b)(i)(C) shall be deemed to be advances of amounts that become distributable to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner under Sections 7.04(b)(i)(F), (H) and (I) thereafter, and distributions made to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner (in order of occurrence) under such clauses shall take into account (without duplication) any such advance.

(iii) Within fifteen (15) calendar days prior to each due date for estimated taxes payable by an individual resident in the U.S. (the Fiscal Year to which such estimated taxes relate, the "**Estimated Tax Year**", the Partnership may make a distribution (an "**Estimated Tax Distribution**") to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner. The amount of such distribution, when added to prior Estimated Tax Distributions in respect of such Estimated Tax Year, shall not exceed the Tax Distribution Amount with respect to the period from January 1 of such Estimated Tax Year through the last day of the month immediately prior to the due date for the corresponding estimated taxes, determined as if such period were a separate tax year applying the same principles as those set forth in the other provisions of this Section 7.05. Prior to any such distribution, the Partnership shall provide OPIC written statements and certificates similar to the statements and certificates described in Section 7.05(a)(i)(B) and (F) and obtain OPIC's prior written consent for such distribution.

**(b) Calculation of Tax Distribution.**

(i) "**Tax Distribution Amount**" means, in respect of any Fiscal Year of the Fund, the sum of (w) the highest U.S. federal long-term capital gains tax rate applicable to individuals for such Fiscal Year multiplied by the Net Long-Term Capital Gain (as defined below) of the Fund for such Fiscal Year plus (x) the highest individual combined federal, state and local tax rates for individuals living in New York City multiplied by the Net Ordinary Income (as defined below) of the Fund for such Fiscal Year, reduced by the sum of (y) any foreign income, war profits and excess profits taxes that are eligible to be credited against U.S. federal taxable income for such Fiscal Year under Code section 901(b), with all such items calculated as if the Fund were an individual U.S. citizen and resident realizing no items of income, gain, loss, deduction or credit other than those attributable to Fund activities plus (z) the aggregate amount of distributions (other than Tax Distribution Amounts) made to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner in such Fiscal Year. Each of the Feeder Limited Partner's, the (b) (4) Vehicle's and the General Partner's proportionate share of the aggregate Tax Distribution Amount limitation for any Fiscal Year shall be calculated based on the relative amounts of Fund taxable income allocated to such Person pursuant to Article 8 of the Partnership Agreement for such Fiscal Year.

(ii) "**Net Long-Term Capital Gain**" of the Fund for any Fiscal Year means the lesser of (x) the Fund's net long-term capital gain for such Fiscal Year, calculated as if the Fund were an individual U.S. citizen or resident realizing no items of income, gain, loss, deduction or credit other than those attributable to Fund activities but reflecting the deductibility for U.S. federal income tax purposes of state and local taxes attributable to income from the Fund's activities or

(y) the cumulative amount of the Fund's net long-term capital gain for all Fiscal Years of the Fund calculated in the same manner as in clause (x) above.

(iii) "*Net Ordinary Income*" of the Fund for any Fiscal Year means the lesser of (x) the Fund's U.S. federal taxable income for such Fiscal Year other than long-term capital gains described in Section 7.05(b)(ii), calculated as if the Fund were an individual U.S. citizen or resident realizing no items of income, gain, loss, deduction or credit other than those attributable to Fund activities but reflecting (A) the deductibility for U.S. federal income tax purposes of state and local taxes attributable to income from the Fund's activities and (B) the non-deductibility of any amounts under Section 212 of the Internal Revenue Code or (y) the cumulative amount of the Fund's net taxable income for all Fiscal Years of the Fund calculated in the same manner as in clause (x) above.

**(c) Allocations.**

The Fund shall allocate all items of income, gain, loss, deduction and credit of the Fund for United States federal income tax purposes generally in a manner consistent with Section 7.04, Section 7.05, the Partnership Agreement, and Applicable Law. OPIC shall not, under any circumstances, be considered a partner or owner of the Fund for any purposes whatsoever, including United States federal income tax purposes.

**Section 7.06. Conduct of Business with Affiliates; Exclusivity; Co-Investment.**

**(a) Affiliate Transactions.**

(i) Except as set forth in this Agreement, without the prior written consent of the Advisory Board and in addition to the matters specified in the Partnership Agreement for which the approval of the Advisory Board is required, (A) the Fund shall not, directly or indirectly, acquire investments from, sell investments to or otherwise engage in any transaction (except as specifically contemplated hereby) with, any Person that is controlled by, or in which a material interest (including by way of a loan or otherwise) is held by, any of the other Interested Parties or Affiliates thereof or Limited Partners and (B) none of the Interested Parties or Affiliates thereof or Limited Partners shall provide services to, or enter into or engage in any transaction or other arrangement with, the Fund (except as specifically contemplated hereby) or a Portfolio Company (other than a transaction or other arrangement entered into by a Limited Partner or an Affiliate of a Limited Partner with a Portfolio Company which is not controlled by the Fund); provided however, in the case of any potential conflict of interest involving a Limited Partner, such Limited Partner's representative on the Advisory Board shall be excluded from the Advisory Board's vote on such matter.

(ii) All transactions that require Advisory Board approval pursuant to Section 7.06(a)(i) shall be entered into by the Fund or the Portfolio Company, as applicable, only in the ordinary course of business upon terms and conditions that are substantially similar to those that would be available on an arm's length basis with a third party other than an Interested Party or a Limited Partner.

(iii) The Fund shall not make any payments with respect to its indemnity obligations under the Partnership Agreement if a Default or Event of Default has occurred and is continuing or would occur as a result of such payment.

**(b) Affiliate Payments.**

Except as expressly provided in Schedule 7.06(b) (i) the Investment Management Agreements, the Partnership Agreement, the Equity Vehicle Partnership Agreement, the (b) (4) Vehicle Partnership Agreement, the (b) (4) Vehicle Partnership Agreement or the other Financing Documents (in each case as in effect on the date of the first Disbursement or thereafter amended with OPIC's consent), (ii) Section 6.01(a)(i), (iii) Section 7.04 or (iv) this Section 7.06, no Interested Party or Affiliate thereof shall pay, or incur or assume any obligation to pay (b) (4)

The foregoing notwithstanding, the Interested Parties and their respective Affiliates may engage in other transactions unrelated to such entities or the Financing Documents and the limitations set forth in this Section 7.06(b) shall not prohibit or regulate such unrelated transactions

**(c) Exclusivity.**

Without the prior approval of OPIC and the Advisory Board, none of the Interested Parties or Key Persons shall sponsor, manage or advise any investment fund or similar investment vehicle until (b) (4), except for the Equity Vehicle, the Parallel Equity Vehicles and the funds that are listed in Schedule 7.06(c). After (b) (4) and prior to the end of the Restricted Period, without the prior approval of OPIC and the Advisory Board, none of the Interested Parties or Key Persons shall sponsor, manage or advise any investment fund or similar investment vehicle with an investment strategy substantially similar to the Fund's investment strategy except for the Equity Vehicle, the Parallel Equity Vehicles and the funds that are listed in Schedule 7.06(c).

**(d) Co-Investment.**

(i) None of the other Interested Parties or Affiliates thereof shall make an investment in any Parent Portfolio Company or Portfolio Company in which the Fund has made an investment; provided, that the Equity Vehicle and any Parallel Equity Vehicle may invest in such a Parent Portfolio Company or Portfolio Company, on the same terms as the Fund, to the extent the Fund cannot make such investment consistent with this Agreement and its Investment Guidelines; provided, however, that a Controlled Affiliate of the Investment Manager may own a carried interest and a capital interest (not to exceed 2% of the aggregate capital interests thereof) in vehicles which (i) are owned by entities which are not Limited Partners, and (ii) co-invest with the Fund in Portfolio Companies on a case-by-case basis; provided, further, however, that the Equity Vehicle and any Parallel Equity Vehicle may invest in any Portfolio Company or Parent Portfolio Company after the Availability Period.

(ii) The Fund may co-invest in a Portfolio Company with Independent Limited Partners and third parties that are not Interested Parties or Affiliates thereof, on terms that are substantially similar to those applicable to the Fund's investment in such Portfolio Company. With respect to any such co-investments, the Financing Parties shall cause each co-investor to bear, together with the Fund, its pro rata share of all (b) (4) with respect to the applicable investment.

(iii) Except as contemplated in Sections 7.06(d)(i) and (ii), without the consent of the Advisory Board or as determined by the Investment Manager as prudent and desirable for the Fund and confirmed in a writing executed by the Investment Manager filed with the records of



the Fund, none of the Interested Parties shall offer or make available to any Person any opportunity for investment, in any entity that would be eligible for an investment by the Fund.

**(c) In-kind Contributions.**

(i) A portion of the Fund Equity Commitment of the Feeder Limited Partner and the (b) (4) Vehicle may be made through the contribution to the Fund of interests in Portfolio Companies ("*In-kind Contributions*"), and such contributions shall be treated as a Fund Equity Contribution in an amount of cash as set forth in Section 6.02(d)(y).

(ii) Any In-kind Contribution may be made at any time, as long as the Fund has provided a Consent Application in respect of such investment to OPIC on or prior to September 1, 2009.

**Section 7.07. Ordinary Conduct of Business.**

No Interested Party shall:

(a) engage in any business other than (i) in the case of the General Partner, acting as general partner of the Fund, (ii) in the case of the Investment Manager, acting as the primary investment adviser to the Fund, the Parallel Equity Vehicles, the Equity Vehicle and the funds listed in Schedule 7.06(c) and any other activity not prohibited by the Financing Documents; (iii) in the case of the Fund, issuing its Capital Stock to the Feeder Limited Partner, the (b) (4) Vehicle and the General Partner, issuing the Notes, and investing in Interim Securities and Permitted Portfolio Securities; (iv) in the case of the Equity Vehicle, investing in accordance with the Equity Vehicle Partnership Agreement, except as prohibited by this Agreement, (v) in the case of the (b) (4) Vehicle, investing in accordance with the (b) (4) Vehicle Partnership Agreement, except as prohibited by this Agreement, (vi) in the case of the (b) (4) Vehicle, investing in accordance with the (b) (4) Vehicle Partnership Agreement, except as prohibited by this Agreement, (vii) in the case of the Feeder Limited Partner, investing in accordance with the Feeder Limited Partner Operating Document, except as prohibited by this Agreement, (viii) in the case of Latin Power GP, acting as general partner of the Equity Vehicle and the Parallel Equity Vehicles, (ix) in the case of the Carry Partnership, owning Latin Power GP, (x) in the case of the Ultimate GP, controlling the Carry Partnership and (xi) in the case of each other Interested Party, activities not prohibited by the terms of any Financing Document (including this Agreement);

(b) materially change the nature of the Fund, the Equity Vehicle, the Feeder Limited Partner or any Parallel Equity Vehicle or the scope of their activities from those described in the Private Placement Memorandum (as in effect on the date of the first Disbursement or supplemented with OPIC's prior written consent which consent shall not be unreasonably withheld and delayed) or as contemplated in this Agreement;

(c) if an entity other than an individual, dissolve, liquidate or otherwise cease to exist or to do business, or merge or consolidate with or into any Person, and if a Sponsor, cease to do business;

(d) change its name, address (unless it is a Sponsor and provides written notice of its new address to OPIC within thirty (30) days) or take any other action that would render a representation or warranty untrue, or would result in a Default or Event of Default;

(e) enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the income or profits of the Fund are, or might be, shared with any Person other than as provided

herein (including, for the avoidance of doubt, the provisions of Schedules 6.02 and 7.06(d)(i)), in the Partnership Agreement, in the Carry Partnership Agreement, in the General Partner Operating Document, in the (b) (4) Operating Document, in the Ultimate GP Operating Document, in the Equity Vehicle Partnership Agreement, in the Feeder Limited Partner Operating Document, in the (b) (4) Vehicle Partnership Agreement and in the (b) (4) Partnership Agreement (in each case, as in effect on the date of the first Disbursement or amended with OPIC's prior written consent);

(f) in the case of each Interested Party and notwithstanding the provisions of Section 7.02(b)(ii), (i) make or permit to exist any loans or advances to or investments in any Person for such Person to engage in hostile tender offers, or provide acquisition financing for, or engage in, hostile tender offers, or (ii) engage in the business of extending credit to any Person for the purpose of purchasing or carrying Margin Stock; provided, however, the Fund may make loans in accordance with the terms of this Agreement to Parent Portfolio Companies to invest in equity and quasi-equity securities of Portfolio Companies;

(g) in the case of each Interested Party which is an entity other than an individual, authorize or issue any shares, partnership interests, equity Securities or other evidence of ownership or Securities convertible into or exchangeable for any of the foregoing other than those provided for in its Charter Documents (as in effect on the date of the first Disbursement or amended with OPIC's prior written consent); or

(h) enter into or consent to any agreement or any amendment to any agreement if any such agreement or amendment would have a Material Adverse Effect.

#### **Section 7.08. Proscribed Assets.**

The Fund shall not acquire any assets other than rights under the Financing Documents, Interim Securities, Permitted Portfolio Securities, and Involuntary Securities, provided, however, that promptly upon any Interested Party becoming aware that the Fund has acquired Involuntary Securities, the Fund shall give OPIC written notice thereof and shall deliver to OPIC all such information as would otherwise be required by Section 6.12 in connection with a proposed acquisition of Portfolio Securities. If OPIC shall thereafter notify the Fund that the acquisition of such Involuntary Securities is not consistent with the Annex A Requirements, the Interested Parties shall actively seek divestiture of and shall cause the Fund to divest such Involuntary Securities as soon as it is feasible to do so on commercially reasonable terms.

#### **Section 7.09. Certain Restrictions on Investments in Portfolio Companies.**

##### **(a) Secondary Shares.**

(b) (4)

##### **(b) Privatizations.**

(b) (4)

(b) (4)

**(c) Blind Pools.**

(b) (4)

**(d) Financial Institution Investments.**

(b) (4)

**Section 7.10. Subsidiaries.**

No Financing Party shall establish, create or acquire any Subsidiary or otherwise acquire, directly or indirectly, voting or actual control of any Person other than any Portfolio Company or Parent Portfolio Company or otherwise as specifically contemplated in this Agreement; provided, however, the Investment Manager may establish, create or acquire Subsidiaries, subject to the provisions of Section 7.22.

**Section 7.11. Portfolio Concentration.**

(a) Without the consent of the Advisory Board and OPIC, the aggregate purchase price paid or committed to be paid by the Fund for Portfolio Securities (including Follow-On Investments) (b) (4)

(b) The Fund shall only invest in a Portfolio Company if, at the time of the Fund's investment therein such Portfolio Company derives at least (b) (4) (b) (4) of its total revenues from operations in, or maintains at least (b) (4) (b) (4) of its assets in, (b) (4)

(c) As of the last day of the Investment Period, the Fund shall have invested no more than (b) (4)

(d) Notwithstanding the provisions of clause (b) above, the Fund shall not make an investment in a Portfolio Company if, after such investment, the assets and operations of all Portfolio Companies then held by the Fund would (b) (4)

(e) As of June 30, 2010, the Fund shall have invested at least (b) (4)

o.

(f) The revenue and asset percentage calculations in this Section 7.11 shall be made on a consolidated basis for each Portfolio Company and its Subsidiaries. For the avoidance of doubt, in connection with the Fund's ownership of an interest in a Parent Portfolio Company, such calculations shall be made based on the Fund's share of the Parent Portfolio Company's interest in each Portfolio Company and its Subsidiaries.

#### **Section 7.12. Transfer Restrictions on Limited Partner Interests.**

(a) Until all Obligations are indefeasibly paid in full, the Fund shall not admit any Person other than the Feeder Limited Partner and the (b) (4) Vehicle as a Partner, register or recognize any direct or indirect Transfer of its Capital Stock, or permit or recognize any direct or indirect Transfer of its Capital Stock except between the Feeder Limited Partner and the (b) (4) Vehicle, whether upon issuance to such Person of its Capital Stock or upon any proposed Transfer of its Capital Stock, without OPIC's prior written consent.

(b) Until all Obligations are indefeasibly paid in full, the Feeder Limited Partner shall not admit any Person as a shareholder, register or recognize any direct or indirect Transfer of its Capital Stock, or permit or recognize any direct or indirect Transfer of its Capital Stock, whether upon issuance to such Person of its Capital Stock or upon any proposed Transfer of its Capital Stock, without OPIC's prior written consent.

(c) Until all Obligations are indefeasibly paid in full, the Equity Vehicle and the Parallel Equity Vehicles shall not admit any Person as a Partner, register or recognize any direct or indirect Transfer of a Limited Partner Interest (including any Transfer of any interest in the Tax-exempt Feeder), or permit or recognize any direct or indirect Transfer of a Limited Partner Interest (including any Transfer of any interest in the Tax-exempt Feeder), whether upon issuance to such Person of a Limited Partner Interest or upon any proposed Transfer to such Person of such an Interest, unless:

- (i) such Person is an Accredited Investor;
- (ii) the General Partner has disclosed the identity of such Person and of its record and beneficial owners to OPIC;
- (iii) the General Partner has certified and provided to OPIC the evidence described in Section 6.05(c) in respect of such Person; and
- (iv) other than for a Pre-Approved LP Transfer, the General Partner has obtained OPIC's consent to such proposed admission and proposed Transfer, which consent OPIC shall not withhold unreasonably; provided, that the standard of reasonableness shall take into account any special considerations affecting decisions of OPIC in its capacity as a governmental entity or its responsibilities as such.

### **Section 7.13. Investment Manager, General Partner Removal, Replacement, Transfer Restrictions.**

(a) Until all Obligations are indefeasibly paid in full, without OPIC's prior consent, (i) the Fund shall not (and the Feeder Limited Partner and the (b) (4) Vehicle shall not), remove or permit the removal of the General Partner, with or without cause, (ii) the Fund shall not (and the Feeder Limited Partner and the (b) (4) Vehicle shall not) admit any Person (other than the SPV GP) as a General Partner, (iii) the Fund shall not (and the Feeder Limited Partner and the (b) (4) Vehicle shall not) register or permit any direct or indirect Transfer of the General Partner's ownership interest in the Fund, whether upon issuance to such Person of such ownership interest or upon any proposed Transfer to such Person of such ownership interest, (iv) the General Partner and Latin Power GP shall not register or permit any direct or indirect Transfer of Latin Power GP's ownership interest in the General Partner, whether upon issuance to such Person of such ownership interest or upon any proposed Transfer to such Person of such ownership interest, (v) the General Partner shall not terminate or permit the termination of any Investment Management Agreements, or otherwise remove or permit the removal of the Investment Manager, with or without cause, except pursuant to clause (vi) below or (vi) the General Partner shall not enter into new Investment Management Agreements or otherwise replace the Investment Manager except for the appointment of a Substitute Investment Manager.

(b) Notwithstanding Section 7.13(a)(i), in the event that Latin Power GP is removed as general partner of the Equity Vehicle or any Parallel Equity Vehicle, the General Partner, the (b) (4) Vehicle and the Feeder Limited Partner shall take all necessary action to remove the SPV GP as general partner of the Fund.

(c) Notwithstanding Section 7.13(a)(iv), in the event that the Investment Manager is terminated or otherwise removed as the primary investment adviser to the Equity Vehicle or any Parallel Equity Vehicle, it shall automatically be terminated or otherwise removed as the primary investment adviser to the Fund.

(d) Until all Obligations are indefeasibly paid in full, the General Partner and Latin Power GP shall not, without OPIC's prior consent, other than Pre-Approved Transfers (i) admit any Person as a member of the General Partner or Latin Power GP, whether upon issuance to such Person of any Capital Stock or upon any proposed Transfer to such Person of such an interest, or (ii) register or permit any direct or indirect Transfer of any Capital Stock in the General Partner or Latin Power GP. Notwithstanding the provisions of the preceding sentence, Latin Power GP shall not, without OPIC's prior consent, register or permit any direct or indirect Transfer of a membership interest in Latin Power GP if such Transfer would result in more than (b) (4) of the member interests in Latin Power GP being transferred as "Pre-Approved Transfers" in accordance with clause (c) of the definition thereof.

(e) Until all Obligations are indefeasibly paid in full, without OPIC's prior consent, (i) the General Partner shall not withdraw as, or otherwise cease to act in the capacity of, General Partner, and (ii) the Investment Manager shall not withdraw as, or otherwise cease to act in the capacity of, Investment Manager.

(f) The Investment Manager shall not (i) admit any Blocked Person as a member of the Investment Manager whether upon issuance to such Person of a member interest or upon any proposed Transfer to such Person of such an interest, or (ii) register or permit any direct or indirect Transfer of a member interest in the Investment Manager to any Blocked Person. Until all Obligations are indefeasibly paid in full, the Investment Manager shall not, without OPIC's prior consent, other than Pre-Approved IM Transfers (i) admit any Person as a member of the Investment Manager whether upon issuance to such Person of a member interest or upon any proposed Transfer to such Person of such an interest or (ii)

register or permit any direct or indirect Transfer of a member interest in the Investment Manager. Notwithstanding the provisions of the preceding sentence, the Investment Manager shall not, without OPIC's prior consent, register or permit any direct or indirect Transfer of a membership interest in the Investment Manager if such Transfer would result in (x) more than 99% of the membership interests in the Investment Manager being transferred as "Pre-Approved IM Transfers in accordance with clauses (c) and (d) of the definition thereof or (y) the Sponsors not controlling the Investment Manager.

#### **Section 7.14. Reinvestment; Permitted Follow-On Investments.**

(a) The Fund shall not apply any Fund Cash Flow, other than cash proceeds of the Fund Equity Contributions and the OPIC Loan, to acquire Portfolio Securities, and no Fund Cash Flow shall be applied to reinvestment in Portfolio Securities other than: (i) to the extent reinvestment is permitted in the Partnership Agreement; (ii) during the Investment Period only, and to the extent consistent with Section 7.04(b); and (iii) provided that on each date of any such reinvestment, the Net Asset Value of the Fund is greater than or equal to two (2) times the excess of (x) the Outstanding OPIC Debt less (y) the LC Balance.

(b) The Fund shall not purchase additional Portfolio Securities in existing Portfolio Companies ("Follow-On Investments") unless (i) OPIC has provided its consent to such Follow-On Investment in accordance with the Annex A Requirements; (ii) no default has occurred and is continuing with respect to any condition set forth in OPIC's Consent Notice to any prior investment in such Portfolio Company; and (iii) after the Investment Period, (A) the aggregate amount invested in all Follow-On Investments does not exceed (b) (4) percent (b) (4) of Available Capital, and (B) such Follow-On Investment is made prior to the expiration of the Availability Period ("Permitted Follow-On Investment").

#### **Section 7.15. Investment Company.**

None of the Interested Parties shall be required to register as an "investment company" under the Investment Company Act of 1940.

#### **Section 7.16. Employees and Employee Plans.**

No Financing Party shall without the consent of OPIC adopt, establish, maintain, sponsor, administer, contribute to, participate in, or incur any liability under or obligation to contribute to, any multi-employer or single-employer plan subject to the Employee Retirement Income Security Act of 1974, other than the 401(k) plan of the Investment Manager provided through (b) (4).

#### **Section 7.17. Books and Records.**

No Interested Party shall remove or allow the removal of, the books and records relating to the Fund or any Portfolio Company from the principal office or principal place of business of the Fund or the Investment Manager as disclosed under this Agreement or under any other Financing Document, and OPIC shall not cease to have access to such books and records as required under Section 6.08.

#### **Section 7.18. Management Fees.**

(a) From and after the date of this Agreement, the Fund shall pay a Management Fee to the Investment Manager as follows:

(i) commencing on the first Disbursement Date under this Agreement and continuing through the Investment Period, an annual Management Fee equal to (b) (4)



(b) (4) of Available Capital (calculated as of the date of payment of the Management Fee), payable semi-annually in advance;

(ii) for each of the (b) (4) following the Investment Period, an annual Management Fee equal to (b) (4) as determined by the General Partner, or an Independent Appraisal, in each case in accordance with (b) (4) set forth in the Partnership Agreement and (b) (4) (each such amount to be calculated as of the date of payment of the Management Fee), payable semi-annually in advance; and

(iii) thereafter, an annual Management Fee equal to (b) (4) as determined by the General Partner, or an Independent Appraisal, in each case in accordance with (b) (4) set forth in the Partnership Agreement and (b) (4) (each such amount to be calculated as of the date of payment of the Management Fee), payable semi-annually in advance.

(b) The Amended and Restated Investment Management Agreement between Conduit Capital and each of the Equity Vehicle and the Parallel Vehicles, dated August 22, 2005 and amended pursuant to the First Omnibus Amendment, and any other documentation pursuant to which any portion of the management fee payable by the Equity Vehicle or Parallel Equity Vehicle to the Investment Manager for the investment advisory services of Conduit Capital to such entities for any period of time shall provide that (b) (4) from the Fund as Management Fees for the corresponding period of time.

(c) All "Portfolio Company Remuneration" (as defined in the Amended and Restated Investment Management Agreement between Conduit Capital and the Equity Vehicle dated August 22, 2005) received by any Interested Party or Affiliate or employee thereof in respect of a Portfolio Company (collectively, "Related Compensation") shall be (b) (4) Related Compensation may be allocated among the Fund, the Equity Vehicle and the Parallel Equity Vehicles by the Investment Manager (b) (4) pursuant to the terms of the Investment Management Agreement.

#### **Section 7.19. Margin Stock.**

The Fund shall not issue any Note, and no Financing Party shall use the proceeds of a Note, for the purpose of purchasing or carrying any Margin Stock, or issue or use the proceeds of a Note in any other manner which violates or is inconsistent with the provisions of Regulation T, U or X of the Board of Governors of the U.S. Federal Reserve System or any equivalent Applicable Law.

#### **Section 7.20. Operating Expenses; Organizational Expenses.**

(a) The Fund shall not pay any expenses incurred in connection with its operations and business, other than (b) (4)

(b) (4)

(i) (b) (4)

(ii) (b) (4)

(iii) (b) (4)

(iv) (b) (4)

(v) (b) (4)

(vi) (b) (4)

(vii) (b) (4)

(viii) (b) (4)

(ix) (b) (4)

(x) (b) (4)

(b) Without limitation on the foregoing, the Fund shall not pay (b) (4) which shall be paid by any of the Investment Manager, the Equity Vehicle, the Parallel Equity Vehicles or any other third party, in each case, without reimbursement by the Fund.

**Section 7.21. No Termination.**

The Fund and the General Partner shall not elect or permit a termination of the Fund except (b) (4)



#### **Section 7.22. Subadvisor Prohibition.**

No Financing Party shall enter into any agreement with any Person, or otherwise engage any Person, to act as a Subadvisor unless the identity of such Person has been disclosed to OPIC and OPIC has provided its consent to such agreement or engagement, which consent may be conditioned upon such Subadvisor's agreement to certain terms hereof applicable to the Investment Manager.

#### **Section 7.23. Indemnification Issues.**

If any Action is pending by or before any court or other Governmental Authority or in any arbitral or other forum involving any dispute or controversy between OPIC and any Person, other than any Independent Limited Partner or any of its directors, officers, partners, employees or agents, entitled to indemnification by the Fund under the Partnership Agreement or Investment Management Agreements, none of the Interested Parties shall, acting in any capacity, cause or permit the Fund to indemnify, defend or hold harmless such Person for any cost or expense of any kind in connection with or in respect of such Action.

#### **Section 7.24. LTV Covenant.**

As of each Test Date which occurs after the date (the "**LTV Trigger Date**") which is the earlier to occur of (x) the termination of the Investment Period and (y) the date on which the OPIC Commitment is fully drawn,

(a) Aggregate Portfolio Company Debt as of such Test Date shall not exceed (b) (4) percent (b) (4) of the sum of:

- (i) Aggregate Portfolio Company Assets as of such Test Date, plus
- (ii) the value of all Interim Securities and cash in the OPIC Account over which OPIC has a valid and enforceable, first priority Lien, plus
- (iii) the Excess LC Balance as of such Test Date; and

(b) the Individual Portfolio Company Debt as of such Test Date of each Portfolio Company and Parent Portfolio Company shall not exceed (b) (4) percent (b) (4) of the Individual Portfolio Company Assets of such Portfolio Company or Parent Portfolio Company

(together, the "**LTV Covenant**"). The Fund shall promptly (and, in any event, within five (5) Business Days of such Test Date) notify OPIC of a breach of the LTV Covenant, and the Fund shall have sixty (60) calendar days from the applicable Test Date to cure the LTV Covenant breach by causing the LTV Covenants to be satisfied, and failure to cure such breach within such sixty (60) calendar days shall be deemed to be an Event of Default. The Fund shall promptly (and in any event, within five (5) Business Days) notify OPIC of (i) the date of the cure of such breach of the LTV Covenant and (ii) the transactions undertaken by the Fund to effect such cure. If, on any day within the sixty (60) calendar days following the date of such cure of such breach (whether or not a Test Date), the LTV Covenant is breached, it shall be an immediate Event of Default and the Fund shall not be permitted to cure such default.

**ARTICLE VIII  
DEFAULTS AND REMEDIES**

**Section 8.01. Events of Default.**

(a) The occurrence and continuation of any of the following events or circumstances shall constitute an *“Event of Default”* hereunder:

(i)

(b) (4)

(ii)

(b) (4)

(iii)

(b) (4)

S

(iv)

(b) (4)

(v)

(b) (4)

(vi)

(b) (4)

(vii)

(b) (4)

(viii) (b) (4)

[REDACTED]

(ix) (b) (4)

[REDACTED]

(x) (b) (4)

[REDACTED]

(xi) (b) (4)

[REDACTED]

(xii) (b) (4)

[REDACTED]

(xiii) (b) (4) [REDACTED]

(xiv) (b) (4) [REDACTED]

(xv) (b) (4) [REDACTED]

(xvi) (b) (4) [REDACTED]

(xvii) (b) (4) [REDACTED]

(xviii) (b) (4) [REDACTED]

(xix) (b) (4) [REDACTED]

**Section 8.02. Remedies Upon Event of Default.**

**(a) General Remedies.**

Except as otherwise provided in Section 8.02(b), (c) or (d), if any Event of Default has occurred and is continuing, OPIC may at any time do any one (1) or more of the following:

(i) (b) (4) [REDACTED]

(ii) (b) (4) [REDACTED]

(iii) (b) (4) [REDACTED]

(iv) (b) (4) [REDACTED]



(v) (b) (4)

[REDACTED]

(vi) (b) (4)

(b) (4)

(vii) (b) (4)

[REDACTED]

(viii) (b) (4)

[REDACTED]

(ix) (b) (4)

[REDACTED]

Without limitation of the foregoing, OPIC shall have the right to exercise the remedies specified in Section 4(d) of Annex A in the circumstances therein described.

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**(b) Termination of the OPIC Commitment and Acceleration of the OPIC Loan.**

(b) (4)

[REDACTED]

**(c) Suspension; Removal.**

Without limitation of OPIC's other remedies under this Section 8.02, or of any other removal, replacement, or suspension rights the Limited Partners may have pursuant to the Equity Vehicle Partnership Agreement, OPIC shall have the following rights:

(i)

(b) (4)

(ii)

(b) (4)

(iii)

(b) (4)

||

(iv)

(b) (4)

(v)

(b) (4)

(vi)

(b) (4)

(vii)

(b) (4)

||

(d) Liquidated Damages.

(b) (4)



**(e) Excess Amounts.**

Any amounts received by OPIC in excess of the amounts due to OPIC hereunder, under the Notes or any other Financing Document, shall be paid to the Fund for distribution, (i) prior to the payment of all Obligations indefeasibly and in full, according to Section 7.04(b) and the Partnership Agreement, and (ii) thereafter, according to the Partnership Agreement.

**Section 8.03. Consent to Suit; Exclusive Forum for OPIC Claims.**

**(a) Consent to Suit.**

Without prejudice to OPIC's right to bring suit in any appropriate domestic or foreign jurisdiction, any Action to enforce this Agreement, any Note, or any other Financing Document may be brought by OPIC in any state or federal court of competent jurisdiction in the District of Columbia or the State of New York, each of the United States of America, or in any other jurisdiction where the party against whom OPIC has brought suit, or any of its assets or property, may be found. Each of the Financing Parties hereby irrevocably waives any present or future defense or objection to any such venue (including *forum non conveniens*), and irrevocably and unconditionally consents and submits, for itself and in respect of any of its assets or property, to the non-exclusive jurisdiction of any such court. Each of the Financing Parties hereby irrevocably waives any present or future defense or objection based on or relating to the method, procedure or timelines of any service of process by OPIC against such Financing Party. Final judgment against any Financing Party in any Action arising out of or relating to this Agreement or the transactions contemplated thereby shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and obligation of such Person.

**(b) Exclusive Forum for Claims Against OPIC.**

Any Action by any Financing Party against OPIC (or the United States government) arising out of or relating to this Agreement or the transactions contemplated thereby shall be brought exclusively in a United States federal court of competent jurisdiction in the District of Columbia or the State of New York, each of the United States of America.

**(c) Service of Process.**

Prior to the first Disbursement Date, each of the Financing Parties shall, and shall cause each Interested Party to, irrevocably designate and appoint an agent satisfactory to OPIC for service of process in the District of Columbia as its authorized agent to receive, accept, and acknowledge on its behalf service of process in any action or proceeding in either such jurisdiction and shall provide to OPIC's