

satisfaction evidence of the prepayment in full of the fees of each such agent. Service of process, writ, judgment, or other notice of legal process upon said agent shall be deemed and held in every respect to be effective personal service upon the applicable Interested Party. The Fund shall cause each such appointment (or that of a successor satisfactory to OPIC) to be maintained continuously in effect at all times while any of the Interested Parties is obligated under this Agreement or any other Financing Document. Nothing herein shall affect OPIC's right to serve process in any other manner permitted by any Applicable Law.

#### **Section 8.04. Judgment Currency.**

This is an international loan transaction in which the specification of Dollars is of the essence, and such currency shall be the currency of account in all events. The payment obligations of the Fund hereunder or under the Notes or any other Financing Document shall not be discharged by payment in another currency, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on prompt conversion to Dollars in the United States of America under normal banking procedures does not yield the amount of Dollars then due. In the event that any payment by the Fund, whether pursuant to a judgment or otherwise, upon conversion and transfer, does not result in the full payment of such amount of Dollars at the place such amount is due, OPIC shall be entitled to demand immediate payment of, and shall have a separate cause of action against the Fund for, the additional amount necessary to yield the full amount of Dollars then due. In the event OPIC, upon the conversion of such judgment into Dollars, shall receive, as a result of currency exchange rate fluctuations, an amount greater than that to which it was entitled, the Fund shall be entitled to immediate reimbursement of the excess amount.

#### **Section 8.05. Subordination.**

(a) The Subordinated Obligations are and shall be subordinate and junior in right of payment to the prior indefeasible payment in full in Dollars of the Senior Obligations.

(b) Unless and until the Senior Obligations shall have been indefeasibly paid in full in Dollars, no Subordinated Creditor shall ask, demand, sue for, accept, take, or receive from or on account of the Fund, and the Fund shall not make, give, or permit, directly or indirectly, in cash or other property, or by set-off, redemption, purchase, or in any other manner, any payment or prepayment of, or collateral security for, all or any of the Subordinated Obligations; provided, however, that a Subordinated Creditor may receive and retain, and the Fund directly or indirectly may make, payments of Subordinated Obligations to the extent permitted under Sections 7.04(b) and 7.06(b), in each case only to the extent no Default or Event of Default exists at the time of payment and giving effect to such Subordinated Obligation.

(c) In the event of any Insolvency Proceeding with respect to the Fund:

(i) all of the Senior Obligations shall first be indefeasibly paid in full to OPIC before any payment may be made on account of any Subordinated Obligation, whether in cash, securities or other property;

(ii) any payment or distribution of assets of the Fund (whether in cash, securities or other property, including any such payment or distribution arising out of the exercise by such Person of a right of set off or counterclaim and any such payment or distribution received by reason of any other Indebtedness of the Fund) to which a Subordinated Creditor would be entitled except for the provisions of this Section 8.05 shall be paid by the Person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee, other trustee or

agent or other Person, to the extent permitted under Applicable Law, to OPIC to the extent necessary to make indefeasible payment in full of the Senior Obligations remaining unpaid; and

(iii) in the event that notwithstanding the foregoing provisions of this Section 8.05, any payment or distribution described in Section 8.05(c)(ii) shall be received by a Subordinated Creditor (including by reason of the subordination of any other obligations to the Subordinated Obligations) before all Senior Obligations are indefeasibly paid in full, such payment or distribution shall be received and held in trust by such Subordinated Creditor for the benefit of OPIC and shall immediately be paid over by such Subordinated Creditor to OPIC in the form received for application to the payment of unpaid Senior Obligations.

***"Insolvency Proceedings"*** means any proceeding commenced by or against or affecting any Person in any way whatsoever under any provision of the United States Bankruptcy Code or any other Applicable Law relating to bankruptcy or insolvency, any assignment for the benefit of creditors, any formal or informal moratorium, composition, extension generally with creditors, or any proceeding seeking receivership, bankruptcy, insolvency, reorganization, winding up, rehabilitation, dissolution, liquidation, or other similar arrangement or proceeding affecting any Person or any or all of its revenues or properties.

***"Senior Obligations"*** means all obligations of the Fund owing to OPIC or any other Indemnified Person, now or hereafter existing, under any Note or under any other Financing Document, including those provisions therein that operate to indemnify and hold harmless any Indemnified Person from and against any loss, claim, damage, liability, penalty or other expense, whether for principal, interest, fees, premium, expenses, or otherwise.

***"Subordinated Creditors"*** means, collectively, the Equity Vehicle, General Partner, Latin Power GP, the Parallel Equity Vehicles, the Investment Manager, the Sponsors, and any of their Affiliates; and ***"Subordinated Creditor"*** means any of the Subordinated Creditors.

***"Subordinated Obligations"*** means all obligations of the Fund owing to any Subordinated Creditor, now or hereafter existing, whether arising by operation of law, under the Fund Documents or under any other agreement between or among any or all of the Subordinated Creditors and the Fund, including those provisions therein, or arising by operation of law, that operate to indemnify and hold harmless any Subordinated Creditor for any loss, claim, damage, liability, penalty or other expense, whether for principal, interest, premiums, fees, expenses or otherwise.

## **ARTICLE IX MISCELLANEOUS**

### **Section 9.01. Notices.**

Each notice, demand, report, or other communication relating to this Agreement shall be in writing, shall be hand-delivered or sent by air courier or facsimile transmission (with a copy by first class mail to follow, receipt of which copy shall not be required to effect notice), and shall, except as expressly provided in this Agreement, be deemed duly given on the earlier of when received by the addressee or (a) if hand-delivered, one (1) Business Day after delivery, (b) in respect of delivery by air courier, (i) if for inland delivery, two (2) Business Days after being deposited with a nationally recognized courier, and (ii) if for overseas delivery, four (4) Business Days after being deposited with an internationally recognized courier, and (c) if sent by facsimile transmission, one (1) Business Day after being sent (with confirmation), in each case to the following addresses, or to such other address or number as each party shall have last specified by notice to the other parties:

To the Fund:  
c/o Conduit Capital Partners, LLC  
488 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022  
United States of America

Attn: (b) (6)  
(Facsimile: (b) (6))

To OPIC:  
Overseas Private Investment Corporation  
1100 New York Avenue, N.W.  
Washington, D.C. 20527  
United States of America

Attn: Vice President for the Investment Funds Department  
with copies to Chief Financial Officer  
(Facsimile: (b) (2))

To the General Partner:  
c/o Conduit Capital Partners, LLC  
488 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022  
United States of America

Attn: (b) (6)  
(Facsimile: (b) (6))

To the Investment Manager:

Conduit Capital Partners, LLC  
488 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10022  
United States of America

Attn: (b) (6)  
(Facsimile: (b) (6))

Any party may, by written notice to the others, change the address to which such communications should be sent to it. Copies of notices sent to the Fund shall be sent to:

Proskauer Rose LLP  
One International Place  
Boston, MA 02110-2660  
United States of America

Attn: Arnold May, Esq.  
(Facsimile: 1-617-526-9899)

#### **Section 9.02. English Language.**

All documents to be furnished and communications to be given or made under this Agreement or any other Financing Document to which any of the Financing Parties is a party shall be in the English language or, if in another language, shall be accompanied by a translation into English certified by an Authorized Officer of the General Partner as complete and accurate, which English translation shall be the governing version between the Financing Parties and OPIC, and on which OPIC may rely.

#### **Section 9.03. Governing Law.**

THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, UNITED STATES OF AMERICA.

#### **Section 9.04. Succession.**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that none of the Financing Parties shall, without OPIC's consent, assign or delegate all or any part of its respective interests or obligations herein or hereunder. In the event any of the Financing Parties should enter into any agreement purporting to effect any such assignment or delegation, such agreement shall be null and void *ab initio*.

#### **Section 9.05. Survival of Agreements.**

Each agreement, representation, warranty and covenant contained or referred to in this Agreement shall survive any investigation at any time made by OPIC and, except as otherwise expressly provided in this Agreement, shall survive indefeasible payment in full of all amounts payable in respect of the OPIC Loan.

#### **Section 9.06. Integration; Amendments.**

This Agreement and the other Financing Documents embody the entire understanding of the parties hereto, and supersede all prior negotiations, understandings and agreements among them with respect to the subject matter hereof and thereof. The provisions of this Agreement may be waived, modified, supplemented or amended only by an instrument signed by an Authorized Officer of each party hereto; provided, however, that any provision hereof that is solely for OPIC's benefit may be waived by an instrument signed by an Authorized Officer of OPIC. In the event of any conflict or inconsistency between any provision of this Agreement and any provision of any of the Fund Documents, this Agreement shall be controlling.

#### **Section 9.07. Severability.**

If any provision of this Agreement or any other Financing Document is prohibited or held to be invalid, illegal or unenforceable in any jurisdiction, the parties hereto agree, to the fullest extent permitted by law, that (a) the validity, legality and enforceability of the other provisions of such document in such jurisdiction shall not be affected or impaired thereby and (b) any such prohibition, invalidity, illegality or unenforceability shall not render any such provision prohibited, invalid, illegal, or unenforceable in any other jurisdiction.

## **Section 9.08. No Waiver; Exculpation.**

### **(a) No Implied Waivers.**

No failure or delay by OPIC in exercising any right, power or remedy, and no course of dealing between OPIC and any of the Financing Parties shall operate as a waiver thereof or otherwise impair any of its rights, powers or remedies. No single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof or the exercise of any other legal right. No waiver of any such right, power or remedy shall be effective unless given in writing and then only to the extent expressly set forth in such writing.

### **(b) Separate Waivers.**

Unless otherwise notified to the relevant Financing Party by OPIC and without prejudice to the generality of subsection (a) above, the right of OPIC to require compliance with any condition under this Agreement or any other Financing Document which may be waived by OPIC in respect of any Disbursement is expressly preserved for the purpose of any subsequent Disbursement.

### **(c) Waiver of Conditions to Disbursement.**

The acceptance of the benefits of each Disbursement shall constitute a representation and warranty to OPIC by the Fund and all other Financing Parties that all conditions specified in Articles IV and V have been satisfied as of that time.

### **(d) Cumulative Rights.**

The rights, powers and remedies provided for herein or in any other Financing Document are cumulative and are not exclusive of any other rights, powers or remedies provided by law or equity. The assertion or employment of any right, power or remedy hereunder, or otherwise, shall not prevent the concurrent or successive assertion of any other appropriate right, power or remedy.

### **(e) Exculpation.**

Except with respect to conduct that, in respect of an Indemnified Person, is finally determined by a court or arbitral tribunal of competent jurisdiction to be (i) gross negligence or willful misconduct, or (ii) breach of an express covenant binding OPIC pursuant to this Agreement, neither OPIC, nor any of its directors, officers, employees agent or other personal service contractors shall be liable to any Interested Party or to any Limited Partner or any Person claiming through any of the foregoing for any loss, claim, damage, liability, cost or expense arising out of or incurred in connection with any act or omission performed or omitted by him, her or it, as the case may be, including the exercise of or failure to exercise any remedy available to it hereunder or under any other Financing Document upon the occurrence of an Event of Default or breach hereunder or thereunder including foreclosure on any or all Liens created pursuant to the Security Documents, removal or replacement of the General Partner or the Investment Manager, or requiring the General Partner to take any action contemplated by the Financing Documents, including to liquidate the investments of the Fund in order to satisfy any amounts owing hereunder, or with respect to any claim of assumption of control. Neither OPIC, nor any of its directors, officers, agents, employees nor personal service contractors shall have any duties, including fiduciary duties, to any Interested Party or any Limited Partner, or any Person claiming through any of the foregoing. The exculpation provided above is in addition to the protections afforded to any Indemnified Person by Applicable Law, including the Federal Tort Claims Act, and nothing provided herein, including the limitations provided above, shall be deemed as a limitation on any such protections.

**(f) Charter Documents.**

The parties to this Agreement acknowledge that the Charter Documents of the Interested Parties may contain provisions that authorize one or more Interested Parties to take actions that would be in violation of this Agreement, and the fact that OPIC may have accepted any such Charter Documents for purposes of Section 4.01(a) or Section 4.02(b) or otherwise shall not be understood to constitute a waiver of any applicable provision of this Agreement or any other Financing Document.

**Section 9.09. Cooperation.**

Each party hereto shall take all actions within its power, and execute such documents, as may be appropriate or desirable to give full effect to the rights and obligations hereunder of the parties hereto.

**Section 9.10. Waiver of Jury Trial.**

EACH OF THE FINANCING PARTIES AND OPIC HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM ESTABLISHED BY THIS AGREEMENT, ANY OTHER FINANCING DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT ENTERED INTO IN CONNECTION WITH THIS AGREEMENT, ANY OTHER FINANCING DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**Section 9.11. Additional Waivers.**

**(a) Waiver of Litigation Payments.**

In the event that any Action is initiated by or on behalf of OPIC against any one or more of the Interested Parties or any other party to any Financing Document, each of the Financing Parties, to the fullest extent permissible under all Applicable Laws, irrevocably waives for itself, and shall cause the other Interested Parties to irrevocably waive, its right to, and agrees not to, and to cause the other Interested Parties not to, request, plead, or claim that OPIC or its successors, transfers, and assigns (any such Person, an "**OPIC Plaintiff**") post, pay, or offer, any *cautio judicatum solvi* bond, litigation bond, or any other bond, fee, payment, or security measure provided for by any provision of law applicable to such Action (any such bond, fee, payment, or measure, a "**Litigation Payment**"), and, to the fullest extent permissible under all Applicable Law, each of the Financing Parties further waives for itself, and shall cause the other Interested Parties to waive, any right that any of them may now or hereafter have to object to an OPIC Plaintiff's claim that such OPIC Plaintiff should be exempt or immune from posting, paying, making or offering any such Litigation Payment.

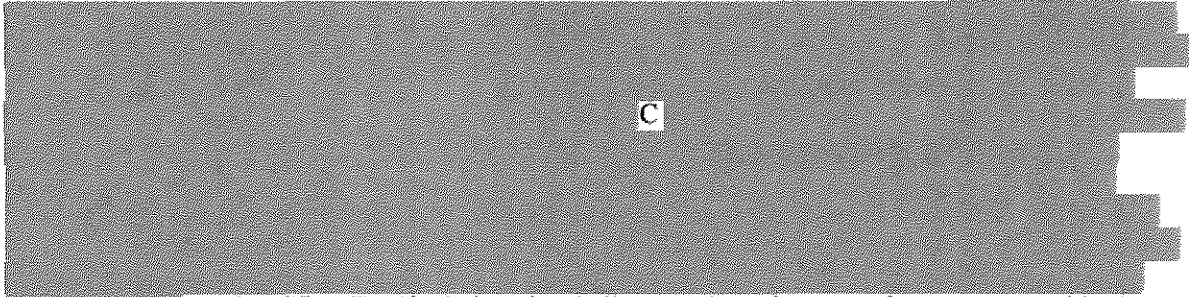
**(b) Waiver of Immunity.**

Each of the Financing Parties hereby agrees that, to the extent that it, or any of its properties, assets, revenues and rights to receive income has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, to enforce or collect upon the Agreement, the Notes, or any other Financing Document, including 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, it expressly and irrevocably waives any such immunity and agrees not to assert any such right or claim in any such proceeding. Further, each of the Financing Parties hereby acknowledges and agrees that it is

subject to commercial law, and that this Agreement and each other Financing Document and the transactions contemplated hereby and thereby constitute commercial activities of the Interested Parties.

**Section 9.12. Indemnity.**

(a) The Fund shall, at all times, indemnify and hold harmless (collectively, the "**Indemnity**") OPIC and each of OPIC's directors, officers, employees, agents, personal service contractors, counsel and advisors (each of OPIC and such Persons, an "**Indemnified Person**"), in connection <sup>(b) (4)</sup>



(each, a "**Loss**"). The Indemnity shall not apply to the extent that a court or arbitral tribunal with competent jurisdiction over the subject matter of the Loss, and over OPIC and each other Indemnified Person who has a Loss in connection therewith and at which OPIC and such other Indemnified Person had an adequate opportunity to defend its interests, determines that such Loss resulted from the gross negligence or willful misconduct of the Indemnified Person, which determination results in a final, non-appealable judgment or decision of a court or arbitral tribunal of competent jurisdiction, or that such Loss resulted from claims against an Indemnified Person that are determined adverse to such Indemnified Person in a final, non-appealable judgment or decision of a court or arbitral tribunal of competent jurisdiction. The Indemnity in this Section 9.12(a) and in Section 9.12(b): (a) shall survive the expiration or other termination of the OPIC Commitment, the disbursement of the OPIC Commitment and repayment of the OPIC Loan, and the provision of any subsequent or additional indemnity by any Person unless explicitly terminated by OPIC in writing and (b) is independent of and in addition to any other agreement of any Interested Party to pay any amount to OPIC and any exclusion of an obligation to pay any amount under this Section 9.12 shall not affect the requirement to pay such amount under any other Section hereof or under any other agreement. The Financing Parties each agree not to assert, and to cause the other Interested Parties not to assert, on any theory of liability, any claim against any Indemnified Person for special, indirect, consequential or punitive damages arising out of or otherwise relating to the OPIC Commitment Letter, the Financing Documents or to any of the transactions contemplated therein or the actual or proposed use of the OPIC Loan, and no Indemnified Person shall be liable for any indirect or consequential damages in connection with its activities related to the OPIC Loan.

(b) Each of the Financing Parties is jointly and severally obligated to indemnify and hold harmless each Indemnified Person in connection with any Losses to which such Indemnified Person may become subject arising from claims relating to gross negligence, willful misconduct or fraud of any of the Interested Parties or Affiliates thereof.

(c) Nothing herein does, or should be construed to, vest the right or power to control the defense of any Indemnified Person in any other Person, including in any Interested Party. Any such defense shall be controlled by the Indemnified Person and shall be through counsel acceptable to the Indemnified Person in such Indemnified Person's sole discretion. The Indemnified Person shall use reasonable efforts to inform and consult with the party or parties indemnifying such Indemnified Person.

**Section 9.13. Counterparts.**

This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original and all of which together shall constitute one and the same instrument.

**Section 9.14. Publicity.**

No Financing Party shall make or issue, or cause or Permit any Interested Party or other Person to be made or issued, any oral, written, electronic or other announcement, press release or statement concerning this Agreement, any Financing Document or the transaction contemplated hereby for dissemination to the public without the consent of OPIC.

**Section 9.15. Confidentiality.**

OPIC and the Financing Parties each acknowledge that OPIC is subject to Applicable Law, including the Trade Secrets Act (c.645, 62 Stat. 791, 18 U.S.C. 1905 (1948)) and the Freedom of Information Act (Pub. L. No. 89-487, 80 Stat. 250, 5 U.S.C. 552 (1966)), regarding the disclosure of information to third parties.

**Section 9.16. Relationship of OPIC to Fund.**

The relationship between the Fund and OPIC shall be solely that of debtor and creditor. Nothing contained in any of the Financing Documents shall be deemed or construed to create a partnership, tenancy in common, joint tenancy, joint venture, or co-ownership by or between OPIC and any of the Fund and/or Interested Parties.

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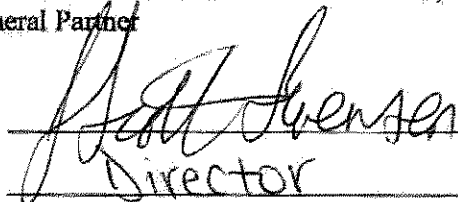
IN WITNESS WHEREOF, each of the parties hereto has caused this Finance Agreement to be executed and delivered on its behalf by its Authorized Officer as of the date first above written.

**LATIN POWER III INVESTMENTS, L.P.,**  
Fund

By: **LATIN POWER III INVESTMENTS GP, LIMITED**  
its General Partner

By:

Its:

  
Director

**LATIN POWER III INVESTMENTS GP, LIMITED,**  
as General Partner

By:

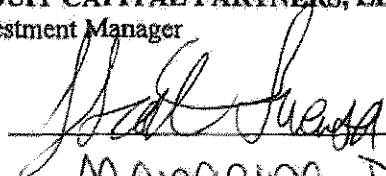
Its:

  
Director

AMENDED AND RESTATED FINANCE AGREEMENT

CONDUIT CAPITAL PARTNERS, LLC,  
as Investment Manager

By:



Its:

Managing Partner

AMENDED AND RESTATED FINANCE AGREEMENT

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

By: \_\_\_\_\_

Its: Director, Investment Funds Department

## TABLE OF CONTENTS

|   | <u>Page</u> |
|---|-------------|
| <b>RECITALS</b> .....   | 1           |
| <b>ARTICLE I DEFINITIONS</b> .....  | 2           |
| Section 1.01. Definitions.....  | 2           |
| Section 1.02. Interpretation.....   | 22          |
| <b>ARTICLE II AMOUNT AND TERMS OF FINANCING</b> .....   | 23          |
| Section 2.01. OPIC Commitment; Disbursements; Notes.....  | 23          |
| Section 2.02. Interest.....   | 25          |
| Section 2.03. Accrual of Certain Payments.....  | 26          |
| Section 2.04. [RESERVED].....   | 26          |
| Section 2.05. Repayment of the OPIC Loan.....   | 26          |
| Section 2.06. Prepayment.....   | 26          |
| Section 2.07. Facility Fee.....   | 27          |
| Section 2.08. Taxes.....  | 27          |
| Section 2.09. Use of Proceeds; Permitted Portfolio Securities.....  | 27          |
| Section 2.10. Miscellaneous.....  | 29          |
| <b>ARTICLE III REPRESENTATIONS AND WARRANTIES</b> .....   | 30          |
| Section 3.01. Existence and Power.....  | 30          |
| Section 3.02. Authority.....  | 33          |
| Section 3.03. Financial Condition.....  | 34          |
| Section 3.04. Status; Ownership.....  | 34          |
| Section 3.05. Obligations.....  | 36          |
| Section 3.06. Taxes and Reports.....  | 37          |
| Section 3.07. Defaults; Agreements; Letter of Credit; Revolving Loan and Letter<br>of Credit Agreement; Fees..... | 37          |
| Section 3.08. Litigation.....   | 38          |
| Section 3.09. Compliance with Law.....  | 39          |
| Section 3.10. Disclosure.....   | 39          |
| Section 3.11. Offering.....   | 40          |
| Section 3.12. Investment Company Act; Other Regulation.....   | 40          |
| Section 3.13. Margin Stock.....   | 40          |
| Section 3.14. Portfolio Investments.....  | 40          |
| Section 3.15. Title; Insurance.....   | 41          |
| Section 3.16. Transactions with Interested Parties.....   | 42          |
| Section 3.17. No Immunity.....  | 42          |
| Section 3.18. Insolvency.....   | 42          |
| Section 3.19. Limited Partners.....   | 43          |
| <b>ARTICLE IV CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT</b> .....  | 43          |
| Section 4.01. Closing Certificate.....  | 43          |
| Section 4.02. Financing Documents.....  | 44          |
| Section 4.03. Appointment of Agent.....   | 45          |
| Section 4.04. [RESERVED].....   | 46          |

|   |  |           |
|---|--|-----------|
| Section 4.05.   | Appointment of Accountants.....                                      | 46        |
| Section 4.06.   | Legal Opinions.....  | 46        |
| Section 4.07.   | Minimum Initial Closing.....   | 46        |
| Section 4.08.   | Initial Budget.....  | 46        |
| Section 4.09.   | Ownership of Partner Interests.....                                  | 46        |
| Section 4.10.   | OPIC Account.....  | 46        |
| <b>ARTICLE V CONDITIONS PRECEDENT TO EACH DISBURSEMENT.....</b> |  | <b>47</b> |
| Section 5.01.   | Representations and Defaults; Performance.....                       | 47        |
| Section 5.02.   | Material Adverse Effect.....   | 48        |
| Section 5.03.   | Certification.....   | 48        |
| Section 5.04.   | Financial Information.....   | 48        |
| Section 5.05.   | Payment or Reimbursement of Expenses.....                            | 48        |
| Section 5.06.   | OPIC Consent Notice.....   | 48        |
| Section 5.07.   | Fund Equity Contributions.....                                       | 48        |
| Section 5.08.   | Legal Opinions.....  | 49        |
| Section 5.09.   | Disbursement Documents.....  | 49        |
| Section 5.10.   | Notes; Other Documents.....  | 49        |
| Section 5.11.   | OPIC Funding Documents.....  | 49        |
| Section 5.12.   | Notice of Default and Other Matters.....                             | 49        |
| Section 5.13.   | OPIC Account.....  | 49        |
| Section 5.14.   | Perfection of Security Interests.....                                | 49        |
| <b>ARTICLE VI AFFIRMATIVE COVENANTS.....</b>                    |  | <b>49</b> |
| Section 6.01.   | Fundraising; Operations; Key Persons.....                            | 50        |
| Section 6.02.   | Fund Investments.....  | 50        |
| Section 6.03.   | Maintenance of Rights; Compliance with Laws; Authorizations.....     | 51        |
| Section 6.04.   | Maintenance of Insurance.....  | 52        |
| Section 6.05.   | Accounting and Financial Management.....                             | 52        |
| Section 6.06.   | Management of Fund Cash Flow.....                                    | 53        |
| Section 6.07.   | Financial Statements and Other Information.....                      | 53        |
| Section 6.08.   | Access to Records; Ownership of Records.....                         | 55        |
| Section 6.09.   | Advisory Board and Committees.....                                   | 55        |
| Section 6.10.   | Key Persons.....   | 57        |
| Section 6.11.   | Notice of Default and Other Matters.....                             | 58        |
| Section 6.12.   | Compliance Monitoring; Annex A Requirements.....                     | 59        |
| Section 6.13.   | OPIC Challenge Right.....  | 59        |
| Section 6.14.   | Security Documents; Letter of Credit.....                            | 60        |
| Section 6.15.   | Further Assurances.....  | 60        |
| Section 6.16.   | Termination of the Fund.....   | 61        |
| <b>ARTICLE VII NEGATIVE COVENANTS.....</b>                      |  | <b>61</b> |
| Section 7.01.   | Liens.....   | 61        |
| Section 7.02.   | Indebtedness.....  | 62        |
| Section 7.03.   | No Alteration of Agreements.....                                     | 63        |
| Section 7.04.   | Distributions of Fund Cash Flow.....                                 | 63        |
| Section 7.05.   | Tax Distributions.....   | 67        |
| Section 7.06.   | Conduct of Business with Affiliates; Exclusivity; Co-Investment..... | 69        |

|                     |   |           |
|---------------------|---|-----------|
| Section 7.07.       | Ordinary Conduct of Business.....   | 71        |
| Section 7.08.       | Proscribed Assets.....  | 72        |
| Section 7.09.       | Certain Restrictions on Investments in Portfolio Companies.....                         | 72        |
| Section 7.10.       | Subsidiaries.....   | 73        |
| Section 7.11.       | Portfolio Concentration.....  | 73        |
| Section 7.12.       | Transfer Restrictions on Limited Partner Interests.....                                 | 74        |
| Section 7.13.       | Investment Manager, General Partner Removal, Replacement,<br>Transfer Restrictions..... | 75        |
| Section 7.14.       | Reinvestment; Permitted Follow-On Investments.....                                      | 76        |
| Section 7.15.       | Investment Company.....   | 76        |
| Section 7.16.       | Employees and Employee Plans.....   | 76        |
| Section 7.17.       | Books and Records.....  | 76        |
| Section 7.18.       | Management Fees.....  | 76        |
| Section 7.19.       | Margin Stock.....   | 77        |
| Section 7.20.       | Operating Expenses; Organizational Expenses.....  | 77        |
| Section 7.21.       | No Termination.....   | 78        |
| Section 7.22.       | Subadvisor Prohibition.....   | 79        |
| Section 7.23.       | Indemnification Issues.....   | 79        |
| Section 7.24.       | LTV Covenant.....   | 79        |
| <b>ARTICLE VIII</b> | <b>DEFAULTS AND REMEDIES.....</b>   | <b>80</b> |
| Section 8.01.       | Events of Default.....  | 80        |
| Section 8.02.       | Remedies Upon Event of Default.....   | 82        |
| Section 8.03.       | Consent to Suit; Exclusive Forum for OPIC Claims.....                                   | 85        |
| Section 8.04.       | Judgment Currency.....  | 86        |
| Section 8.05.       | Subordination.....  | 86        |
| <b>ARTICLE IX</b>   | <b>MISCELLANEOUS.....</b>   | <b>87</b> |
| Section 9.01.       | Notices.....  | 87        |
| Section 9.02.       | English Language.....   | 89        |
| Section 9.03.       | Governing Law.....  | 89        |
| Section 9.04.       | Succession.....   | 89        |
| Section 9.05.       | Survival of Agreements.....   | 89        |
| Section 9.06.       | Integration; Amendments.....  | 89        |
| Section 9.07.       | Severability.....   | 89        |
| Section 9.08.       | No Waiver; Exculpation.....   | 90        |
| Section 9.09.       | Cooperation.....  | 91        |
| Section 9.10.       | Waiver of Jury Trial.....   | 91        |
| Section 9.11.       | Additional Waivers.....   | 91        |
| Section 9.12.       | Indemnity.....  | 92        |
| Section 9.13.       | Counterparts.....   | 93        |
| Section 9.14.       | Publicity.....  | 93        |
| Section 9.15.       | Confidentiality.....  | 93        |
| Section 9.16.       | Relationship of OPIC to Fund.....   | 93        |

## ANNEXES

|              |   |
|--------------|---|
| Annex A      | Certain OPIC Policy Requirements            |
| Schedule A.1 | Illustrative List of Category A Investments |
| Schedule A.2 | Prohibited Activities                       |

## SCHEDULES

|                       |  |
|-----------------------|--|
| Schedule 1.01(a)      | Eligible Countries That Are "Anchor Countries"   |
| Schedule 1.01(b)      | Other Eligible Countries   |
| Schedule 3.02         | Authorizations   |
| Schedule 3.04(c)      | Parent Portfolio Companies   |
| Schedule 3.04(d)      | Owners of the General Partner, the Carry Partnership, Latin Power GP and the Ultimate            |
| Schedule 3.04(e)      | Owners of Investment Manager   |
| Schedule 3.04(f)(i)   | Ownership of the General Partner, the Feeder Limited Partner and the (b) (4) Vehicle in the Fund |
| Schedule 3.04(f)(ii)  | Partners of the Equity Vehicle   |
| Schedule 3.04(f)(iii) | Partners of the (b) (4) Vehicle  |
| Schedule 3.04(f)(iv)  | Partners of the (b) (4) Vehicle  |
| Schedule 3.04(f)(v)   | Ownership of the Equity Vehicle and (b) (4) Vehicle in the Feeder Limited Partner                |
| Schedule 3.05         | Actions Necessary to Perfect Liens   |
| Schedule 3.08         | Litigation   |
| Schedule 3.10(a)      | Disclosure   |
| Schedule 3.14(b)(i)   | Portfolio Companies  |
| Schedule 7.06(c)      | Exclusivity; Competing Funds   |
| Schedule 8.02(c)(iii) | Names and Addresses of Limited Partners  |

## EXHIBITS

|           |   |
|-----------|---|
| EXHIBIT A | Form of Disbursement Request              |
| EXHIBIT B | Investment Committee Guidelines           |
| EXHIBIT C | OPIC Valuation Principles                 |
| EXHIBIT D | Form of Portfolio Acquisition Certificate |
| EXHIBIT E | Form of Authorized Officer Certificate    |
| EXHIBIT F | Form of Closing Certificate               |

**ANNEXES**



## ANNEX A

### Certain OPIC Policy Requirements

#### (1) Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings:

- (a) **“Category A Investment”** means an investment in a company the existing or contemplated operations of which are likely to have significant adverse impact on the environment (taking into account, among other factors, the sensitivity of the impacted ecosystem) or human health and safety, including without limitation the types of operations listed on Schedule A.1.
- (b) **“Category B Investment”** means an investment, other than a Category A Investment, in a company the existing or contemplated operations of which are likely to have an adverse impact on the environment (taking into account, among other factors, the sensitivity of the impacted ecosystem) or human health and safety.
- (c) **“Consent Application”** means the form titled “OPIC 168A and 168B: Expedited Screening Questionnaire (ESQ) – Downstream Investments,” which is available on the OPIC website ([www.opic.gov](http://www.opic.gov)) under the Investment Funds Forms link.
- (d) **“Consent Notice”** means a written notice of OPIC’s determination that an investment proposed to be made (directly or indirectly) by the Fund into a Portfolio Company, based on the information provided to OPIC, complies with the OPIC Requirements.
- (e) **“Environmental Requirements”** means (a) all environmental standards and policies promulgated by the World Bank or OPIC relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, or (vi) any other environmental, health or safety matters, (b) all Applicable Laws of any relevant jurisdiction regarding environmental, health and safety matters, and (c) with respect to any Portfolio Securities and the related Portfolio Company and its Portfolio Company Subsidiaries, such additional requirements, if any, as may be set forth in any applicable Consent Notice.
- (f) **“OPIC Policy Covenants”** shall have the meaning ascribed to that term in paragraph 4 of this Annex A.
- (g) **“OPIC Requirements”** means, in respect of a proposed investment to be made (directly or indirectly) by the Fund into a Portfolio Company, and thereafter in respect of any investment made in a Portfolio Company, (i) the prohibition on Prohibited Activities; (ii) all applicable statutory requirements, resolutions of OPIC’s Board of Directors, and OPIC management policies relating to Restricted Investments, in each case in effect as of OPIC’s review of the Consent Application submitted with respect to such investment; and (iii) the Worker

Rights Requirements.

- (h) **"Prohibited Activity"** means any of the activities listed on Schedule A.2.
- (i) **"Prohibited Investment"** means an investment in a company the existing or contemplated operations of which are likely to involve any Prohibited Activity.
- (j) **"Remediation Plan"** means a detailed plan adopted by a Portfolio Company or Portfolio Company Subsidiary, in cooperation with the Fund, for remediation of such violations of Environmental Requirements by a Portfolio Company or Portfolio Company Subsidiary as are identified by OPIC in a Consent Notice.
- (k) **"Restricted Investment"** means an investment that OPIC has reasonably determined is: (i) a Category A Investment; (ii) a Category B Investment; or (iii) a Sensitive Sector Investment.
- (l) **"Sensitive Sector Investment"** means an investment in a company the existing or contemplated operations of which are likely to result in the displacement of U.S. production or services in the United States, the host country, or third country markets.
- (m) **"Worker Rights Requirements"** means, in respect of a Person, the following covenants:
  - (1) such Person shall not take any action to prevent its employees or the employees of any Affiliate from, or penalize them for, lawfully exercising their right of association or their right to organize and bargain collectively, or otherwise to interfere with, coerce or penalize such employees on the basis of trade union activities or membership, or use forced labor;
  - (2) such Person shall observe applicable laws relating to a minimum age for employment of children and acceptable conditions of work with respect to minimum wages, hours of work and occupational health and safety; and
  - (3) such Person shall observe any worker rights covenants set forth in a Consent Notice that are by their terms applicable to such Person, which covenants shall be derived from the conventions of the International Labor Organization and relate to any of the following subjects: right of association, right to organize and collective bargaining, prohibition on forced labor and child labor, and acceptable conditions with respect to hours, wages and occupational health and safety; provided however, that in the event that applicable law imposes a requirement on such Person that is more protective of worker rights than the covenant set forth in a Consent Notice, such Person shall observe applicable law.

(2) Certain Covenants Relating to Fund Investments in Portfolio Companies.

- (a) The Fund shall not make (directly or indirectly) any investment (including any Follow-On Investment) in any Portfolio Company unless and until OPIC has delivered to the Fund a Consent Notice. In connection with the issuance of a Consent Notice, OPIC's review of a proposed investment shall not encompass the investment merits of the proposed investment, and will be limited to determining the compliance of the proposed investment with the OPIC Requirements.
- (b) The Fund shall not make (directly or indirectly): (i) any Prohibited Investment; or (ii) any Restricted Investment except in compliance with the terms of the Consent Notice, if any, delivered by OPIC in respect of such investment.
- (c) OPIC's issuance of a Consent Notice with respect to a proposed investment that is a Restricted Investment may be conditioned on such undertakings of the Fund, the Investment Manager and/or the Portfolio Company as OPIC reasonably determines are necessary to ensure such investment complies with the OPIC Requirements.
- (d) OPIC will endeavor to conduct its review of each proposed investment, notify the Fund of the results thereof and, where OPIC determines that such proposed investment can be made in compliance with the OPIC Requirements (subject to specified conditions, if applicable), issue a Consent Notice, promptly following receipt of a completed Consent Application with respect to such proposed investment; provided, however, that no assurance can be given that OPIC will complete its review, or issue any Consent Notice, within the time frame of the investment opportunity.
- (e) To facilitate OPIC's review of a proposed investment, the Fund and the Investment Manager shall provide OPIC such information as OPIC may reasonably request about such proposed investment, including without limitation in respect of the operations of the Portfolio Company and its Portfolio Company Subsidiaries, the structure and terms of the proposed investment, and the proposed use of proceeds of the investment.
- (f) The Fund shall not (directly or indirectly) invest in any Portfolio Company if the proceeds of the investment are to be further invested by the Portfolio Company in other entities, unless the Consent Notice contemplates and approves such proposed further investment pursuant to the terms hereof.

(3) Certain Environmental Covenants.

- (a) Category A Investments. With respect to each proposed investment determined by OPIC to be a Category A Investment, the Fund shall, prior to issuance of any Consent Notice: (i) deliver to OPIC a full environmental impact assessment (or for existing facilities, an initial environmental audit) acceptable to OPIC; (ii) cause the proposed Portfolio Company to publish and solicit comments within the host country on such environmental report, for a period of not less than sixty (60) days; and (iii) provide OPIC copies of, and a written response to, any public comments received on such environmental report.

- (b) Environmental Management System. Upon the Initial Closing Date, the Investment Manager shall maintain at all times an environmental management system, which shall consist of policies, procedures and resources adequate to implement the OPIC Requirements with respect to the environment and human health and safety and which shall include the requirement to employ or retain an Environmental Coordinator on the terms set forth in this paragraph. No later than March 1, 2010, the Investment Manager shall name a senior officer of the Investment Manager or retain a third-party environmental consultant who, in either case, will be a qualified environmental expert with overall responsibility for environmental matters among his or her other duties ("Environmental Coordinator"). Prior to submitting a Disbursement Request for the first Disbursement under the Finance Agreement, the Investment Manager shall provide to OPIC a fully executed copy of an agreement employing or retaining an Environmental Coordinator whose qualifications and job description or scope of work shall be acceptable to OPIC and who shall commence performing duties under the said contract no later than the date of the first Disbursement. If the Fund invests (directly or indirectly) or contemplates investing (x) in two (2) or more Category A Investments, or (y) more than thirty percent (30%) of its Available Capital in Category A Investments, the Environmental Coordinator shall supervise, and provide technical assistance to the Investment Manager in, the implementation of the OPIC Requirements with respect to the environment, health and safety and shall be available and capable of providing OPIC complete information on the Fund's Category A Investments.
- (c) Environmental Remediation. If in any applicable Consent Notice OPIC requires the preparation of a Remediation Plan, then the Fund shall (unless the Fund elects not to make the proposed investment): (i) as soon as possible from the date of such notice, enter into a binding agreement with the applicable Portfolio Company or Portfolio Company Subsidiary, as the case may be, providing for the adoption and implementation of a Remediation Plan; (ii) promptly submit to OPIC for its review a draft Remediation Plan, and cooperate with OPIC to make such modifications to such plan as OPIC shall require; and (iii) use all reasonable efforts, including the enforcement of related rights under the agreement described in clause (i) hereof, to cause the Portfolio Company or Portfolio Company Subsidiary, as the case may be, to adopt and implement as promptly as possible the Remediation Plan in the form as approved by OPIC.

(4) Certain Compliance and Monitoring Covenants:

- (a) Each of the Fund, the Investment Manager, and the General Partner shall:
- (i) comply with the Corrupt Practices Laws and Anti-Money Laundering Laws and ensure that none of its directors, officers 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);
  - (ii) refrain from engaging in any Prohibited Activity;

- (iii) comply with each of the conditions set forth in each Consent Notice that is, by its terms, applicable to it;
  - (iv) comply with each of the Environmental Requirements; and
  - (v) comply with each of the Worker Rights Requirements (the requirements of clauses (i), (ii), (iii), (iv) and (v) of this paragraph 4(a), collectively, the "OPIC Policy Covenants").
- (b) In respect of each Portfolio Company in which the Fund (directly or indirectly) invests, each of the Fund, the General Partner and the Investment Manager shall:
  - (i) cause the Portfolio Company, if the Fund controls such Portfolio Company; or
  - (ii) in all other cases, use all reasonable efforts to cause such Portfolio Company, to comply with each of the OPIC Policy Covenants.
- (c) Each of the Fund, the General Partner and the Investment Manager will cooperate with OPIC to monitor each Portfolio Company's on-going compliance with the OPIC Policy Covenants, and use all reasonable efforts to obtain (and shall promptly deliver to OPIC) such additional information as OPIC may from time to time request respecting compliance or non-compliance by each Portfolio Company and its Portfolio Company Subsidiaries with the OPIC Policy Covenants and all Applicable Laws. Without limitation of the foregoing, each of the Fund, the General Partner and the Investment Manager shall use all reasonable efforts to ensure that the Fund and OPIC have the rights, upon reasonable notice, to: (i) visit and inspect each Portfolio Company, (ii) access each Portfolio Company's books and records, and (iii) meet with each Portfolio Company's management, in order to assess compliance with the OPIC Policy Covenants, confirm the accuracy of the information submitted to OPIC in any Self Monitoring Questionnaire, and confirm the appropriate valuation of the Fund's investment in such Portfolio Company. The Fund will provide an annual environmental report to OPIC concerning each Category A Investment, and each other investment by the Fund if required by OPIC. The first such report for each project will be delivered to OPIC no later than 12 months from the date of investment by the Fund in such project, and each subsequent annual report will be delivered to OPIC no later than 12 months after the immediately preceding report.
- (d) Each of the Fund, the General Partner and the Investment Manager agrees to: (i) immediately upon receiving notice thereof, provide OPIC written notice describing any material non-compliance by it or any Portfolio Company with any of the OPIC Policy Covenants; and (ii) without limiting OPIC's rights under Section 8.02, use all reasonable efforts to divest the Fund of its interests (direct and indirect) in a Portfolio Company, as soon as it is feasible to do so on a commercially reasonable basis (or earlier, if specified in the Consent Notice in respect of an investment), if OPIC reasonably determines that (A) such Portfolio Company is in material non-compliance with any of the Annex A Requirements or the terms of any Remediation Plan or Consent Notice related to the Fund's investment in such Portfolio Company and such non-compliance is not cured to OPIC's reasonable satisfaction within sixty (60) days of the Fund's receipt of notice from OPIC requesting cure, or (B) information delivered to OPIC in connection with the relevant Consent Application contains a material

misstatement of fact or fails to state a material fact or any fact necessary to make such information not materially misleading, with respect to the proposed investment as actually implemented (regardless of whether any such statement in fact was correct or such Consent Application complete at the time given).

Illustrative List of Category A Investments

- (1) Large-scale industrial plants
- (2) Industrial estates
- (3) Crude oil refineries
- (4) Large thermal power projects (200 megawatts or more)
- (5) Major installations for initial smelting of cast iron and steel and production of non-ferrous metals
- (6) Chemicals
  - (a) manufacture and transportation of pesticides
  - (b) manufacture and transportation of hazardous or toxic chemicals or other materials
- (7) All projects which pose potential serious occupational or health risks
- (8) Transportation infrastructure
  - (a) roadways
  - (b) railroads
  - (c) airports (runway length of 2,100 meters or more)
  - (d) large port and harbor developments
  - (e) inland waterways and ports that permit passage of vessels of over 1,350 tons
- (9) Major oil and gas developments
- (10) Oil and gas pipelines
- (11) Disposal of toxic or dangerous wastes
  - (a) incineration
  - (b) chemical treatment
- (12) Landfill
- (13) Construction or significant expansion of dams and reservoirs not otherwise prohibited
- (14) Pulp and paper manufacturing
- (15) Mining
- (16) Offshore hydrocarbon production
- (17) Major storage of petroleum, petrochemical and chemical products
- (18) Forestry/large scale logging
- (19) Large scale wastewater treatment
- (20) Domestic solid waste processing facilities
- (21) Large-scale tourism development
- (22) Large-scale power transmission
- (23) Large-scale reclamation
- (24) Large-scale agriculture involving the intensification or development of previously undisturbed land
- (25) All projects with potentially major impacts on people or serious socioeconomic concerns
- (26) Projects, not categorically prohibited, but located in or sufficiently near sensitive locations of national or regional importance to have material environmental impacts on:
  - (a) wetlands
  - (b) areas of archeological significance
  - (c) areas prone to erosion and/or desertification

- (d) temperate/boreal forests
- (e) coral reefs
- (f) mangrove swamps
- (g) nationally-designated seashore areas
- (h) managed resource protected areas, protected landscape/seascape (IUCN categories V and VI) as defined by IUCN's Guidelines for Protected Area Management Categories; additionally, these projects must meet IUCN's management objectives and follow the spirit of IUCN definitions.



Prohibited Activities

Projects that involve conversion or degradation of Critical Forest Areas or related Critical Natural Habitats. "**Critical Natural Habitats**" means (1) existing internationally recognized protected areas, areas initially recognized as protected by traditional local communities (e.g., sacred groves), and sites that maintain conditions vital to the viability of protected areas (as determined by the environmental assessment procedure); and (2) sites identified on supplementary lists by authoritative sources identified by OPIC (such sites may include areas recognized by traditional local communities (e.g., sacred groves), areas with known high suitability for biodiversity conservation and sites that are critical for vulnerable, migratory or endangered species; listings are based on systematic evaluations of such factors as species richness, the degree of endemism, rarity, and vulnerability of component species, representativeness and the integrity of ecosystem processes). "**Critical Forest Areas**" means a type of natural forest that qualifies as Critical Natural Habitat.

1. Projects involving the construction of large dams that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) displace large numbers of inhabitants (5,000 persons or more) or (F) impact local inhabitants' ability to earn a livelihood.
2. Projects involving the commercial manufacturing of ozone-depleting substances (ODS) or the production or use of persistent organic pollutants (POPS) that are banned or scheduled to be phased out of production and use by international agreement during the life of the project. A list of these substances and chemicals can be obtained from OPIC on request. The ODS list is defined by the Montreal Protocol as amended and US implementing regulations. The POPs prohibition refers to twelve products whose ban and phase out are provided for under the Rotterdam Convention of 2004. OPIC's prohibition is consistent with the position of the U.S. government in these negotiations with respect to the various categories of POPs, which include pesticides, industrial chemicals and unintentional by-products.
3. Projects that require resettlement of 5,000 or more persons.
4. Projects in or impacting natural World Heritage Sites (areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).
5. Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.
6. Extraction or infrastructure projects in or impacting: protected area Categories I, II, III, and IV (Strict Nature Reserve/Wilderness Areas and National Parks; Natural Monuments and Habitat/ Species Management Areas), as defined by the International Union for the Conservation of Nature. Projects in IUCN Categories V (Protected Landscape/Seascape) and VI (Managed Resource Protected Area) must be consistent with IUCN management objectives.

Areas protected by the Ramsar Convention are considered within the appropriate IUCN Category to which they are assigned.

7. Creation of export processing zones.
8. The relocation of commercial operations performed in the United States to locations outside the United States.
9. Military production or sales.
10. Unless waived by OPIC in writing, and subject to any conditions to such waiver, pharmaceuticals and medical equipment not approved for use in the United States.
11. Tobacco.
12. Alcoholic beverages other than beer or wine, or any alcoholic beverages if contrary to local religious or cultural norms.
13. Gambling.
14. Media communications of an adult or overtly political nature (i.e. propaganda).
15. Companies in which host governments have majority ownership or effective management control (except for investments in privatizing companies made in accordance with the Finance Agreement).
16. Companies found by a court or administrative body of competent jurisdiction to be engaging in unlawful monopolistic practices.
17. Companies whose operations are subject to host country performance requirements.
18. Companies, the investment into which would provide significant, direct support to the government of a country that engages in a consistent pattern of gross violations of internationally recognized human rights, such determination to be made solely by the U.S. Department of State in connection with OPIC's review of a proposed investment.



## **SCHEDULES**

**Schedule 1.01(a)**

**Eligible Countries That Are "Anchor Countries"**

Chile  
Mexico  
Peru

**Schedule 1.01(b)**

**Other Eligible Countries**

Anguilla  
Antigua & Barbuda  
Argentina  
Aruba  
Bahamas  
Barbados  
Belize  
Bolivia  
Brazil  
Chile  
Colombia  
Costa Rica  
Dominica  
Dominican Republic  
Ecuador  
El Salvador  
French Guiana  
Grenada  
Guatemala  
Guyana  
Haiti  
Honduras  
Jamaica  
Mexico  
Netherlands Antilles  
Nicaragua  
Panama  
Paraguay  
Peru  
St. Kitts & Nevis  
St. Lucia  
St. Vincent & the Grenadines  
Suriname  
Trinidad & Tobago  
Turks & Caicos  
Uruguay

## **Schedule 3.02**

### **Authorizations**

Certain of the Financing Parties may be required to take such actions as are set forth in Schedule 3.05 hereto. The Financing Parties may also be required to obtain corporate and other approvals from their partners, members, officers and/or directors, all of which such Authorizations will have been obtained prior to the applicable Financing Parties' entering into the applicable Financing Documents.

**Schedule 3.04(c)**

**Parent Portfolio Companies**

None.

**Schedule 3.04(d)**

**Owners of the General Partner, the Carry Partnership, Latin Power GP and the Ultimate GP**

| <u>Entity</u>                                    | <u>Record and Beneficial Owners</u> | <u>Percentage Ownership Interests*</u> |
|--|-------------------------------------|--|
| Latin Power III Investments GP, Limited (Cayman) | (b) (4)                             | (b) (4)                                |
| Conduit Carry Partnership III, L.P.              | (b) (4)                             |  |
| Latin Power GP Limited                           | (b) (4)                             | (b) (4)                                |
| Latin Power III, LLC                             | (b) (4), (b) (6)                    | (b) (4)                                |

\* Based on subscriptions to applicable entities. Percentages are rounded to the nearest one-hundredth of a percent.



Schedule 3.04(e)

Owners of Investment Manager

| <u>Record and Beneficial Owners</u>      | <u>Percentage Ownership Interests</u> |
|--|---------------------------------------|
| (b) (4)<br>(u) (b)<br>(b) (4)<br>(u) (b) | (b) (4)                               |

Schedule 3.04(f)(i)

**Ownership of the General Partner, the Feeder Limited Partner and the FMO Vehicle in the Fund**

| <u>Entity</u>                           | <u>Percentage Ownership*</u> |
|---|------------------------------|
| Latin Power III Investments GP, Limited | (b) (4)                      |
| Latin Power III Feeder, Limited         | (b) (4)                      |
| Latin Power III Parallel, L.P.          | (b) (4)                      |

\* Based on subscriptions to the Fund. Percentages are rounded to the nearest one-hundredth of a percent.

Schedule 3.04(f)(ii)

**Partners of the Equity Vehicle**

| <u>Partners</u>   | <u>Ownership of<br/>Equity Vehicle*</u> | <u>Ownership of<br/>Aggregate<br/>Equity of Equity<br/>Vehicle and<br/>Parallel Equity<br/>Vehicles*</u> |
|---|---|--|
| General Partner<br>Latin Power GP Limited<br>Limited Partners<br>(b)(4), (b)(6) | 1.45%                                   | 1.38%  |
| <div></div>   |   |  |

|  |            |  |  |  |
|--|------------|--|--|--|
|  | b(4), b(6) |  |  |  |
|--|------------|--|--|--|

\* Note the percentage interest of the General Partner only reflects the interest corresponding to its ownership in the Equity Vehicle; the General Partner holds additional interests in each of the (b) (4) Vehicle and the (b) (4) Vehicle. Percentages are rounded to the nearest one-hundredth of a percent.

\*\* Investors in the Tax-exempt Feeder and their indirect ownership percentage in the Equity Vehicle are as follows:

1. (b) (4)
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

IN WITNESS WHEREOF, the undersigned, [name of Authorized Officer], has executed this Certificate in his capacity as an Authorized Officer of the Fund, this [ ] day of [ ],<sup>6</sup>

\_\_\_\_\_  
Name:

Title:

\_\_\_\_\_  
<sup>6</sup> Date the Disbursement Date of the Subject Disbursement.

19. [Amendment[s] to Finance Agreement]. Attached hereto as Exhibit F [is an][are] amended and restated [copy of Schedule \_\_, which is true, complete and correct in all respects, together with OPIC's written acceptance of such amended and restated Schedule \_\_, all in accordance with Section 5.01(a) of the Finance Agreement.]

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**Schedule 3.04(f)(iii)**

**Partners of the (b) (4) Vehicle**

| <u>Partner</u>                     | Ownership of the<br>(b) (4) Vehicle* | Ownership of<br>Aggregate Equity of<br>Equity Vehicle and<br>Parallel Equity<br>Vehicles* |
|------------------------------------|--------------------------------------|---|
| <b>General Partner</b><br>(b) (4)  | (b) (4)                              | (b) (4)   |
| <b>Limited Partners</b><br>(b) (4) |                                      |   |

\* Note the percentage interest of the General Partner only reflects the interest corresponding to its ownership in the (b) (4) Vehicle; the General Partner holds additional interests in each of the Equity Vehicle and the (b) (4) Vehicle. Percentages are rounded to the nearest one-hundredth of a percent.

**Schedule 3.04(f)(iv)**

**Partners of the FMO Vehicle**

| Partner   | Ownership of the<br>(b) (4) Vehicle* | Ownership of<br>Aggregate Equity<br>of Equity Vehicle<br>and Parallel Equity<br>Vehicles* |
|---|--------------------------------------|---|
| General Partner<br>(b) (4)<br>Limited Partners<br>(b) (4) | (b) (4)<br>(b) (4)                   | (b) (4)<br>(b) (4)  |

- \* Note the percentage interest of the General Partner only reflects the interest corresponding to its ownership in the FMO Vehicle; the General Partner holds additional interests in each of the Equity Vehicle and the DEG Vehicle. Percentages are rounded to the nearest one-hundredth of a percent.



Schedule 3.04(f)(v)

**Ownership of the Equity Vehicle and (b) (4) Vehicle in the Feeder Limited Partner**

| <u>Entity</u>                         | <u>Percentage Ownership*</u> |
|---------------------------------------|------------------------------|
| Latin Power III, L.P.                 | (b) (4)                      |
| Latin Power III Second Parallel, L.P. | (b) (4) %                    |

\* Based on subscriptions to the Feeder Limited Partnership. Percentages are rounded to the nearest one-hundredth of a percent.