MTP ENERGY OPPORTUNITIES FUND II LLC

LIMITED LIABILITY COMPANY AGREEMENT

Dated as of May 8, 2015

THE MEMBERSHIP INTERESTS ("INTERESTS") IN MTP ENERGY OPPORTUNITIES LLC ISSUED PURSUANT TO THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. INTERESTS MAY NOT BE TRANSFERRED WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. IT IS NOT ANTICIPATED THAT INTERESTS WILL BE REGISTERED UNDER THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS. IN ADDITION, TRANSFERS OF INTERESTS ARE SUBJECT TO THE RESTRICTIONS SET FORTH IN ARTICLE X HEREOF.

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LIMITED LIABILITY COMPANY AGREEMENT

of

MTP ENERGY OPPORTUNITIES FUND II LLC

This LIMITED LIABILITY COMPANY AGREEMENT OF MTP ENERGY OPPORTUNITIES FUND II LLC (the "Agreement") dated as of May 8, 2015, is entered into by and among MTP Energy Management LLC, a Delaware limited liability company ("MTP Energy Management"), Magnetar Financial LLC, a Delaware limited liability company ("Magnetar Financial"), the Special Member (as defined below), and all the parties who become Members in accordance with this Agreement. Definitions of certain terms used in this Agreement are contained in Article I.

WHEREAS, the Company was formed on February 19, 2015 (the "Formation Date") under the Act pursuant to a certificate of formation filed with the Secretary of State of the State of Delaware (as amended, the "Certificate"), with the Managing Member and Magnetar Financial as the sole Members; and

WHEREAS, the parties hereto desire to enter into this Agreement and to set forth the terms on which the Company shall be governed, effective as of the Formation Date.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 *Defined Terms*. Capitalized terms used in this Agreement have the following meanings:

"Act" means the Delaware Limited Liability Company Act, 6 Del. C §§ 18-101 et seq., as amended from time to time, and any successor thereto.

"Adjusted Capital Account" means the Capital Account maintained for each Member, (a) increased by any amounts that such Member is obligated to restore (or is treated as obligated to restore under Treasury Regulation Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5)) to the Company, and (b) decreased by any amounts described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) with respect to such Member.

"Administrator" means Citco Fund Services (Cayman Islands) Limited, or such other person as designated by the Managing Member from time to time.

"Advisers Act" means the Investment Advisers Act of 1940, as amended.

"Affiliate" means, with respect to any person, a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person.

"Book Value" means, with respect to any property of the Company, such property's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value of any property contributed by a Member to the Company shall be the Fair Market Value of such property as of the date of such contribution;

(b) The Book Values of all properties shall be adjusted to equal their respective Fair Market Values in connection with (i) the acquisition of an interest (or additional interest) in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution to the Company, (ii) the distribution by the Company to a Member of more than a de minimis amount of property as consideration for an interest in the Company, (iii) the grant of an interest in the Company (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Company, (iv) the liquidation of the Company within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g)(1) (other than pursuant to Code Section 708(b)(1)(B)), or (v) any other event to the extent determined by the Managing Member to be permitted and necessary to properly reflect Book Values in accordance with the standards set forth in Treasury Regulation Section 1.704-1(b)(2)(iv)(q); *provided*, *however*, that adjustments pursuant to clauses (i), (ii), and (iii) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company.

(c) The Book Value of any property distributed to a Member shall be the Fair Market Value of such property as of the date of such distribution;

(d) The Book Values of all properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such properties pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and clause (f) of the definition of Profits and Losses or Section 8.2(h); *provided*, *however*, that the Book Values of properties shall not be adjusted pursuant to this clause (d) to the extent the Managing Member reasonably determines that an adjustment pursuant to clause (b) hereof is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (d); and

(e) If the Book Value of property has been determined or adjusted pursuant to clauses (b) or (d) hereof, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such property for purposes of computing Profits and Losses and other items allocated pursuant to Sections 8.1 and 8.2.

"Capital Call Line of Credit" means a line of credit by and between the Lender as the lender and the Company as the borrower, as may be entered into in the discretion of the Managing Member.

"Capital Commitment" means, with respect to any Member, the dollar amount specified as such Member's capital commitment in connection with such Member's admission to the Company as set forth in such Member's subscription agreement pursuant to which such person agrees to be bound by the terms of this Agreement, and which may be adjusted from time to time in accordance with the provisions of this Agreement.

"Capital Contribution" means, with respect to each Member as of any applicable time of determination, the amount of cash theretofore contributed or deemed to be contributed by such Member to the capital of the Company from time to time pursuant to Article VI. The amount of a Member's Capital Contributions shall be reduced by any amounts received as refunds from Subsequent Closing Payments pursuant to Section 3.2(c) or as a return of any unexpended Call Amounts pursuant to Section 6.3(d). Funds paid by Member as Interest Payments pursuant to Section 3.2(d) shall not be treated as Capital Contributions.

"Cause" means [redacted].

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means MTP Energy Opportunities Fund II LLC.

"Depreciation" means, for each Fiscal Period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to property for such Fiscal Period, except that (i) with respect to any property the Book Value of which differs from its adjusted tax basis for federal income tax purposes and which difference is being eliminated by use of the remedial allocation method pursuant to Treasury Regulation Section 1.704-3(d), Depreciation for such Fiscal Period shall be the amount of Book Value recovered for such Fiscal Period under the rules prescribed by Treasury Regulation Section 1.704-3(d)(2), and (ii) with respect to any other property the Book Value of which differs from its adjusted tax basis at the beginning of such Fiscal Period, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation,

amortization or other cost recovery deduction for such Fiscal Period bears to such beginning adjusted tax basis; *provided*, *however*, that if the adjusted tax basis of any property at the beginning of such Fiscal Period is zero, Depreciation with respect to such property shall be determined with reference to such beginning value using any reasonable method selected by the Managing Member.

"Economic Risk of Loss" has the meaning ascribed to the corresponding term in Treasury Regulation Section 1.752-2(a).

"ERISA" means Employee Retirement Income Security Act of 1974, as amended.

"Fair Market Value" means with respect to all assets, other than cash, the value determined in good faith by the Managing Member in accordance with the Company's valuation policy.

"Final Closing Date" means the first day of the month immediately following the date that is six months after the Initial Closing Date, unless the Managing Member designates an earlier date.

"Finally Adjudicated" means a final, non-appealable judgment (including the expiration of time to appeal or a determination not to appeal) by a court of competent jurisdiction or binding arbitrator, or the voluntary admission by a person, including a plea of *nolo contendere*.

"Fiscal Period" means any period (i) commencing on the date hereof or the day following the end of a prior Fiscal Period and (ii) ending on the last day of each Fiscal Year, the day preceding any day in which an adjustment to the Book Value of the Company's properties pursuant to clause (b) of the definition of Book Value occurs, or any other date determined by the Managing Member.

"Fiscal Year" means the fiscal year of the Company, which shall end on December 31 of each calendar year unless, for United States federal income tax purposes, another fiscal year is required. The Company shall have the same fiscal year for United States federal income tax purposes and for accounting purposes.

"GAAP" means United States generally accepted accounting principles.

"Group Business" means, (i) with respect to any Portfolio Manager, the business of the Managing Member, the Company and the energy-related business of Magnetar Financial and (ii) with respect to any Principal, the business of Magnetar Financial.

"Interest" means the membership interest of a Member in the Company.

"Investment Period" means the period beginning on the Initial Closing Date and ending on the date that is 36 months after the Final Closing Date, as adjusted pursuant to Section 2.12.

"Key Person Event" means an event where any [redacted]

"Lender" means such financial institution as the Managing Member may select from time to time.

"Liquidating Share" means, with respect to any retiring, deceased, bankrupt, legally incapacitated or disabled Member, the Fair Market Value of the Interest of such Member on the date in question (after giving effect to the payment of any accrued Management Fee pursuant to Section 5.3 and any Carried Interest payable to the Special Member pursuant to the distribution provisions of Section 7.1(b)).

"Litigation Event" means [redacted]

"Magnetar Capital" means Magnetar Capital LLC, a Delaware limited liability company.

"Managing Member" means MTP Energy Management, or any person acting as managing member of the Company in accordance with this Agreement.

"Member Nonrecourse Debt" has the meaning assigned to the term "Partner Nonrecourse Debt" in Treasury Regulation Section 1.704-2(b)(4).

"Member Nonrecourse Debt Minimum Gain" has the meaning assigned to the term "Partner Nonrecourse Debt Minimum Gain" in Treasury Regulation Section 1.704-2(i)(2).

"Member Nonrecourse Deduction" has the meaning assigned to the term "Partner Nonrecourse Deduction" in Treasury Regulation Section 1.704-2(i)(1).

"Members" means any person admitted as a "Member" to the Company in accordance with Articles III or X (including, for the avoidance of doubt, the Managing Member).

"Memorandum" means the Company's Confidential Private Placement Memorandum dated April 2015.

"Minimum Gain" has the meaning assigned to that term in Treasury Regulation Section 1.704-2(d).

"MLP" means a master limited partnership.

"MTP Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with MTP Energy Management, Magnetar Financial or Magnetar Capital.

"MTP Funds" means [redacted]

"Natural Resource Industry" means business and activities involving the development of energy infrastructure and the acquisition, exploration, production, mining, processing, fractionating, refining, transportation, trans-loading, storage, servicing, or marketing of natural

resources, including, but not limited to, crude oil, refined products, petrochemicals, natural gas, natural gas liquids, coal, metals, and renewable energy sources.

"Natural Resource Company" means companies that derive at least 50% of their revenue from the Natural Resource Industry, including (i) publicly-traded corporations, (ii) publicly-traded partnerships, MLPs or limited liability companies, (iii) private partnerships, limited liability companies and corporations and (iv) royalty trusts.

"Negotiated Investments" means negotiated investments as determined by the Managing Member, which may include equity, preferred equity, rights, or other equity securities, debt and convertible debt, mineral interests, and derivatives of such instruments and special purpose vehicles or other collective investment vehicles formed for the purpose of facilitating indirect investments in such instruments.

"Nonrecourse Deduction" has the meaning assigned to that term in Treasury Regulation Section 1.704-2(b).

"Periodic Proceeds" means proceeds received by the Company from dividends, interest or other earnings.

"Platform Interest" means, with respect to any person, a fraction (expressed as a percentage), (a) the numerator of which is the balance in such person's Capital Account (in the case of a Member) or capital account in or net asset value of any shares issued by a Parallel Fund (in the case of a limited partner, shareholder or member of any Parallel Fund) at the beginning of such Fiscal Period and (b) the denominator of which is the aggregate balance in the Capital Accounts of all Members and the capital accounts in or net asset value of any shares issued by a Parallel Fund of all of the limited partners, shareholders or members in any Parallel Fund at the beginning of such Fiscal Period. The aggregate Platform Interests, after the adjustments provided for in Section 13.7(b) and the analogous provisions in each Parallel Fund's operating agreement, shall at all times be equal to 100%.

"Platform Majority" means the persons holding a majority of the Platform Interests.

"Platform Supermajority" means the persons holding at least 66⅔% of the Platform Interests.

"Portfolio Managers" means [redacted]

"Principals" means [redacted].

"Profits" or "Losses" means, for each Fiscal Period, an amount equal to the Company's taxable income or loss for such Fiscal Period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;

(c) in the event the Book Value of any asset is adjusted pursuant to clause (b) or clause (c) of the definition of Book Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall, except to the extent allocated pursuant to Section 8.2, be taken into account for purposes of computing Profits or Losses;

(d) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(e) in lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation;

(f) to the extent an adjustment to the adjusted tax basis of any asset pursuant to Code Section 734(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Account balances as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or an item of loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) any items that are allocated pursuant to Section 8.2 shall not be taken into account in computing Profits and Losses.

"Protected Person" means [redacted]

"Sale Proceeds" means with respect to the sale, refinancing or disposition of any investment, the excess of the net proceeds received by the Company (other than for the avoidance

of doubt, Capital Contributions to the Company) in connection with such sale, refinancing or disposition over any reserve, as determined by the Managing Member, for anticipated expenses and contingent liabilities of the Company in connection with such sale, refinancing or disposition.

"Seed Capital" means [redacted].

"Special Member" means [redacted].

"Special Member Interest" means the special member interest in the Company held by the Special Member, in respect of which the Special Member is entitled to be allocated the Carried Interest.

"Sub-Administrator" means Citco Fund Services (USA), Inc., or such other person as designated by the Managing Member from time to time.

"Successor Fund" means [redacted].

"Treasury Regulations" means the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code.

"Unfunded Commitment" means, with respect to any Member, as of any date, the excess, if any, of (i) the amount of such Member's Capital Commitment, over (ii) such Member's aggregate Capital Contributions previously made; *provided*, *however*, that during the Investment Period, a Member's Unfunded Commitment shall be increased by all amounts to be added back to such Member's Unfunded Commitment pursuant to this Agreement.

"Unrelated Voting Interests" means all Voting Interests other than those held by (i) the Managing Member, (ii) its Affiliates and (iii) employees, members, partners, directors, officers or shareholders of the Managing Member, and family of such persons.

Section 1.2 *Cross-References*. Each of the following terms shall have the meaning specified in the Section of this Agreement set forth opposite such term:

Term	Section
Ancillary Fees	5.4
Advisory Committee	4.7
Agreement	Preamble
Associated Management Company	13.11(b)
Business Combination	13.8
Call Amounts	6.3(a)
Call Notice	6.3(a)
Capital Accounts	6.1
Carried Interest	7.1
Certificate	Recitals
Clawback Amount	7.2
Company Expenses	5.1
Continuation Plan	2.12(b)
Covered Persons	4.5

Term	Section
Deemed Tax Rate	7.1(d)
Default	6.5
Defaulting Member	6.5
Excused Member	6.4(a)
Formation Date	Recitals
Fund I	2.3
Funding Date	6.3(a)
Governing Documents	13.8
Initial Closing Date	3.1
Interest Payment	3.2(d)
Investment Committee	4.3
Investment Period Event	2.12(a)
Liquidator	11.1
Magnetar Financial	Preamble
Management Fee	5.3(a)

Term	Section
Managing Member Party	4.4(a)
Managing Member Transfer	10.1(f)
MTP Energy Management	Preamble
Non-Defaulting Member	6.5(b)
Open Call Amount	6.5(a)
Organizational Expenses	5.2
Parallel Fund	4.8
Plan	12.1
Plan Assets Entity	12.2
Plan Fiduciary	12.1
Preferred Return	7.1
Subsequent Closing Date	3.2(a)
Subsequent Closing Members	3.2(a)
Subsequent Closing Payment	3.2(c)
Tax Distribution	7.1(d)

Term	Section
Tax Items	8.7
Tax Matters Member	14.4(a)
Transfer	10.1(a)
Transfer Agreement	10.1(a)
Transfer Date	10.1(d)
Transferee	10.1(a)
Transferor	10.1(a)
Voting Interests	13.7
Withholding Advances	8.5(b)

Section 1.3 *Interpretation*. The section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof. Whenever the context permits, the use of a particular gender shall include the masculine, feminine and neuter genders, and any reference to the singular or the plural shall be interchangeable with the other. The use of the word "including" herein shall not be considered to limit the provision which it modifies but instead shall mean "including, without limitation." Unless otherwise expressly set forth therein, any provision hereof that allows for an election, action, authorization, approval, designation, consent, opinion or determination of the Managing Member shall provide for such election, action, consent, opinion or determination to be made at, and in accordance with, the Managing Member's sole discretion. For the purpose of the definitions of Platform Interest and Unrelated Voting Interests, "family" includes a person's spouse, parents, parents-in-law, children, siblings and grandchildren, and any trust or estate all of the beneficiaries of which consist of such person or such person's spouse, parents, parents-in-law, children, siblings or grandchildren.

ARTICLE II

GENERAL PROVISIONS

Section 2.1 *Formation*. The existence of the Company commenced upon the filing of the Certificate with the Secretary of State of the State of Delaware in accordance with the provisions of the Act.

Section 2.2 *Company Name*. The name of the Company is MTP Energy Opportunities Fund II LLC. The Managing Member shall manage and conduct the business and affairs of the Company under that name or, to the extent permitted by applicable law, under such other name or names as the Managing Member may determine from time to time.

Section 2.3 *Purpose*. The purpose of the Company is to achieve attractive risk-adjusted returns through investing in a combination of Negotiated Investments (expected to be 10 to 12 in number, subject to adjustment at the determination of the Managing Member) generally alongside the MTP Funds in the Natural Resource Industry. [redacted] The Managing Member does not anticipate that the Company will engage in hedging at the portfolio level, but nonetheless, the Company may hedge certain more generalized risks, such as commodity price, market and interest rate risks, through the use of derivative instruments or otherwise and make other investments in assets or property recommended by the Managing Member consistent with the Company's purpose. In connection with such hedging activity, the Company may hold both long and short positions in a broad range of securities, derivatives and other assets. Other than as specified in Section 5.5, the Company is not expected to utilize leverage, but may do so as determined by the Managing Member. The Company may engage in such other activities as the Managing Member deems necessary, advisable, convenient or incidental to carry out the Company's objectives and purposes; [redacted].

Section 2.4 *Powers of the Company*. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary, appropriate, advisable or convenient to the conduct, promotion or attainment of any business, purpose or activity of the Company.

Section 2.5 *Registered Office and Agent for Service of Process*. The registered office of the Company shall be at 1209 Orange Street, Wilmington, Delaware 19801. The Managing Member may designate another registered office (which may but need not be a place of business of the Company) from time to time in accordance with the provisions of the Act. The registered agent for service of process shall be The Corporation Trust Company. The Managing Member may designate another registered agent from time to time in accordance with the provisions of the Act.

Section 2.6 *Place of Business*. The principal place of business of the Company shall be at 1603 Orrington Avenue, 13th Floor, Evanston, Illinois 60201. The Managing Member may determine another principal place of business from time to time.

Section 2.7 *Fiscal Year and Fiscal Periods*. The fiscal year of the Company shall be the Fiscal Year, subject to change by the Managing Member from time to time.

Section 2.8 *Liability of the Members*. The Members shall not be liable for any liabilities, or for the payment of any debts and obligations, of the Company.

Section 2.9 *Members Not Agents*. Nothing contained herein shall be construed to constitute any Member (other than the Managing Member as set forth in Section 13.2) as the agent of the Company or any other Member.

Section 2.10 *No Participation in Management*. No Member (other than the Managing Member) shall, in its capacity as such, take part in the management or conduct of the business or affairs of the Company, transact any business in the name of the Company or otherwise for or on behalf of the Company, or have the right, power or authority to sign documents for or otherwise bind the Company or to incur any indebtedness or expenditures on behalf of the Company.

Section 2.11 *Notices to Members Upon Certain Events*. The Managing Member shall promptly notify the Members of any Investment Period Event, Key Person Event or Litigation Event or in the event the Managing Member designates another registered office or agent pursuant to Section 2.5 or determines another principal place of business of the Company pursuant to Section 2.6.

Section 2.12 *Termination of the Investment Period*.

(a) Upon occurrence of an Investment Period Event during the Investment Period, Members owning a [redacted] Voting Interests shall be permitted to terminate the Investment Period upon 15 days written notice to the Managing Member. An "Investment Period Event" means [redacted].

(b) Upon occurrence of a Key Person Event during the Investment Period, the Investment Period shall automatically be suspended. If (x) the Managing Member delivers to the Members within 90 days of the date of the Key Person Event a written plan (a "Continuation Plan") for replacement of the persons who have ceased to be actively involved in the Group Business and

continuation of the business of the Company, and (y) Members owning a majority of the Unrelated Voting Interests approve such Continuation Plan in writing within [redacted] of the date such Continuation Plan is delivered, then the Investment Period shall be reinstated and continued in accordance with Section 2.12(f). In the event the Managing Member does not deliver a Continuation Plan within the period specified in the foregoing sentence or the Members [redacted] do not approve such Continuation Plan within the period specified in the foregoing sentence, the Investment Period shall automatically terminate, but may, within [redacted] following the date the Investment Period was terminated, be reinstated and continued with the approval of Members [redacted].

(c) Upon occurrence of a Litigation Event during the Investment Period, Members [redacted] may suspend the Investment Period upon [redacted] written notice to the Managing Member. In the event that the Litigation Event is Finally Adjudicated, (i) if the Company, the Managing Members or the Principals, as the case may be, prevail, the Investment Period shall be automatically reinstated and continued in accordance with Section 2.12(f) and (ii) if the Company, the Managing Members or the Principals, as the case may be, do not prevail, Members [redacted] may terminate the Investment Period upon [redacted] written notice to the Managing Member.

(d) At any time after the Final Closing Date, Members [redacted] may terminate the Investment Period upon provision of written notice to the Managing Member.

(e) If the Investment Period is terminated pursuant to this Section 2.12, the Managing Member may not make any additional investments (except for hedging purposes or to make investments which the Company was already contractually committed to make). Thereafter, the Company's investments will be liquidated in an orderly manner, which will likely include allowing positions to run off in accordance with their agreed termination or maturity dates without selling them into the marketplace, but may include earlier sales of certain investments, as determined by the Managing Member. In the event of the foregoing, the Special Member shall be entitled to receive its Carried Interest per the distribution provisions of Section 7.1(b).

(f) In the event that the Investment Period is suspended and subsequently reinstated pursuant to this Section 2.12, the Investment Period shall be automatically extended by the length of time of any such suspension.

Section 2.13 *Status and Duration of the Company*. The Company shall be a separate legal entity whose existence commenced upon the filing of the Certificate and whose term shall continue until the date that is 24 months from the end of the Investment Period, unless extended for up to two additional one-year periods after such date, the first at the discretion of the Managing Member and the second upon the affirmative consent of a majority of the Voting Interests. The Company shall be dissolved and wound up in accordance with the provisions of Article XI.

Section 2.14 *Minimum Capital Commitment of Managing Member*. On the Initial Closing Date, the Managing Member shall contribute to the Company [redacted], and the Managing Member may not make any withdrawal of capital (except for withdrawals related to tax

distributions) to the extent such withdrawal would reduce its Capital Account balance below [redacted] prior to the final distribution of Company assets to Members.

Section 2.15 *Maximum Capital Commitments*. The sum of the aggregate Capital Commitments of the Members to the Company and those of the shareholders of the Parallel Fund shall not exceed [redacted].

ARTICLE III

ADMISSIONS

Section 3.1 *Admission of Members*. On such date as determined by the Managing Member (the "Initial Closing Date"), each person that has (i) executed a copy of this Agreement, a supplement hereto or a subscription agreement pursuant to which such person agrees to be bound by the terms of this Agreement as a "Member" and which sets forth each Member's Capital Commitment, (ii) contributed to the Company, as its initial Capital Contribution to the Company, an amount equal to the sum of that portion of its Capital Commitment as the Managing Member shall have determined to be such Member's share of the investments contemplated in the relevant Call Notice, and (iii) been accepted by the Managing Member as a "Member," shall be deemed to be admitted as a Member of the Company. At the Initial Closing Date, upon the admission of the Members admitted thereon, Magnetar Financial shall automatically withdraw from, and shall have no further right or interest in, the Company. The Special Member shall not be required to submit a subscription agreement and is hereby admitted to the Company on the date hereof with the rights set forth herein. Except as the context otherwise requires, the term "Member" includes the Special Member.

Section 3.2 *Admission of New Members*.

(a) The Company may admit additional Members (collectively, "Subsequent Closing Members") as of the first day of any calendar month following the Initial Closing Date or such other times as the Managing Member may determine in its sole discretion (each, a "Subsequent Closing Date"). The final Subsequent Closing Date shall be the first day of the month immediately following the date that is six months after the date of the Initial Closing Date. In connection with the admission of a Subsequent Closing Member to the Company, such Subsequent Closing Member shall, in advance of such admission and as a condition thereto, (i) execute a copy of this Agreement, a supplement hereto or a subscription agreement pursuant to which it agrees to be bound by the terms of this Agreement as a "Member" and which sets forth each Subsequent Closing Member's Capital Commitment, (ii) contribute to the Company as its initial Capital Contribution an amount equal to (x) such Member's Subsequent Closing Payment (as defined below), plus (y) such Member's Interest Payment (as defined below).

(b) If, at the time of any Subsequent Closing Date, the Company has made one or more investments and if, in the opinion of the Managing Member, there has been a significant change or event relating to any investment that would justify a change in its value since the date such investment was made, or there has been a disposition of any investment, the Managing Member may exclude the Subsequent Closing Members from participation in such investment, with the

same effect as if Subsequent Closing Members had been excluded therefrom pursuant to Section 6.4.

(c) "Subsequent Closing Payment" means, with respect to any Subsequent Closing Member:

(i) In the event of a Subsequent Closing Date after the Company has made one or more investments, if the Managing Member has not excluded such Subsequent Closing Member from any investments, an amount equal to (x) the aggregate amount of Capital Contributions to the Company that would have previously been required of such Subsequent Closing Member had it become a Member as of the Initial Closing Date (unless in the opinion of the Managing Member there has been a significant change or event relating to any such investment that would justify a change in its value since the date such investment was made, in which case such required Capital Contributions shall be appropriately adjusted to reflect such value) minus (y) its proportionate share of Company distributions that it would have received had it become a Member as of the Initial Closing Date; or

(ii) In the event of a Subsequent Closing Date prior to the Company having made any investments or in which the Managing Member has excluded such Subsequent Closing Member from all prior investments, an amount equal to the sum of that portion of its Capital Commitment as the Managing Member shall have determined to be such Subsequent Closing Member's share of the Organizational Expenses and Company Expenses (each determined in proportion to the Capital Commitments of all Members required to pay such amounts, but subject to an offset against the Management Fee as provided in Section 5.3).

(d) "Interest Payment" means, with respect to any Subsequent Closing Member, interest on such Member's Subsequent Closing Payment calculated at a rate per annum of [redacted] computed from the date such Subsequent Closing Payment would have been made if such Subsequent Closing Member had become a Member as of the Initial Closing Date through such Subsequent Closing Date.

(e) In the event of a Subsequent Closing Date after the Company has made one or more investments in which the Managing Member has excluded the Subsequent Closing Members from some, but not all, prior investments, the Subsequent Closing Payment required pursuant to this Section 3.2 shall be appropriately adjusted.

(f) Capital Contributions made in respect of the Interest Payment shall not constitute a Capital Contribution to the Company (and, consequently, shall not reduce such Member's Unfunded Commitment) or increase such Member's Capital Account. The Company shall apply amounts contributed by each Subsequent Closing Member as Subsequent Closing Payments in a manner so that each Member (including, for this purpose, each Subsequent Closing Member) is, to the extent possible, in the same position in relation to the Company and the investments in which each such Member is participating as each such Member would have been had the Subsequent Closing Members participating in such investment been Members in respect of their Capital Commitments as of the Initial Closing Date. The Company shall apply Interest Payments in the

same manner as the particular Subsequent Closing Payments to which they relate are applied according to the immediately preceding sentence. Interest Payments shall be treated solely for purposes of this Agreement (including the tax treatment of such Interest Payments) as though paid directly to the recipient by the payor. The Unfunded Commitment of each previously-admitted Member shall be increased by the portion of any Subsequent Closing Payment refunded to it, excluding the Interest Payment. In the event any Member receives a distribution from the Company as a result of any such Subsequent Closing Payment to the Company, any pending or anticipated Call Amount with respect to such Member shall be netted so as to only require a single cash payment. This "netting" will be for administrative convenience only and each of the distributions related to the Subsequent Closing Payment and any subsequent payments of the Call Amount by the Members shall be subject to all provisions hereof, other than a requirement of two cash payments. The Managing Member shall make all determinations under this Section 3.2 and make such other adjustments required under this Agreement by reason of the operation of this Section 3.2 in such reasonable manner as the Managing Member deems equitable to all Members and the Company.

Section 3.3 *Admission of Additional Managing Members*. The Managing Member may admit one or more additional Managing Members to the Company as set forth in this Section 3.3. The Managing Member may not effect such admission without (i) providing notice to the Members, at least 30 days prior to the consummation of such admission, setting forth all material facts relating to such admission, and (ii) obtaining the consent of Members [redacted] to such admission prior to the consummation thereof. Notwithstanding the foregoing, if (x) the Managing Member is not registered nor required to be registered as an investment adviser under the Advisers Act, or such admission would not constitute an "assignment" of this Agreement by the Managing Member within the meaning of Section 202(a)(1) of the Advisers Act and (y) the newly-admitted Managing Member is an MTP Affiliate, the Managing Member may effect such admission without obtaining the consent of the Members, but shall give notification of such admission to the Members within a reasonable time after such admission. The admission of an MTP Affiliate as an additional Managing Member may not change the economic rights or obligations of any Member hereunder, or otherwise materially adversely affect any Member. [redacted]

Section 3.4 *Admission of Affiliated Alternate Managing Member*. The Managing Member may admit an alternate managing member to the Company without the consent of the Members if such alternate manager is an MTP Affiliate and controlled by or under common control with the Managing Member. The Managing Member shall give notification of such admission to the Members promptly after such admission.

ARTICLE IV

MANAGEMENT OF THE COMPANY; POWERS OF THE MANAGING MEMBER; LIABILITY; INDEMNIFICATION

Section 4.1 *Management of the Company*. The Company shall be managed by the Managing Member, which shall conduct the Company's business, serve as the investment advisor

of the Company and have the sole discretion of making investments on behalf of the Company and of exercising the powers set forth in Section 4.2, subject to Section 4.3. The Managing Member shall be considered a "manager" of the Company within the meaning of the Act.

Section 4.2 *Powers of the Managing Member*.

(a) Subject to the provisions of this Agreement and the requirements of applicable law, the Managing Member, on behalf of and in the name of the Company or through its employees and agents, shall possess and may exercise full, complete and exclusive right, power and authority to manage and conduct the business and affairs of the Company, including (i) all investment and investment management decisions to be undertaken on behalf of the Company and (ii) managing and administering the affairs of the Company, and shall have the power and authority to perform all acts and enter into and perform all contracts and other undertakings which the Managing Member considers necessary or desirable to carry out its duties hereunder and to achieve the purposes of the Company.

(b) Without limiting the generality of the foregoing, but subject in each case to the provisions of this Agreement and the requirements of applicable law, the Managing Member shall possess and may exercise the right, power and authority to:

(i) take such action for and on behalf of the Company and in the name of the Company as the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to effect the continuation of the Company and to carry on the businesses, purposes and activities for which the Company was formed, including investing (for the avoidance of doubt, whether buying, selling or holding) in (A) equity, preferred equity, rights, or other equity securities, debt and convertible debt, mineral interests, and derivatives of Natural Resource Companies, (B) consistent with the purpose of the Company, securities of U.S. and non-U.S. issuers that are holding companies or similar investment vehicles that indirectly own, hold or control securities of Natural Resource Companies, (C) cash or other money market instruments, (D) to the extent that the Company holds cash in excess of margin and collateral requirements, U.S. government issued securities, securities that are guaranteed by the US government, bank deposits, money market funds or similar short-term investments, (E) commodity and financial futures, forward contracts, repurchase and reverse repurchase agreements, swaps, caps and floors, commercial paper, other securities and derivatives, rights or options (purchased or written), (F) other investments, assets or property selected by the Managing Member, including special purpose and alternative investment vehicles and (G) mineral interests;

(ii) execute, swear to, acknowledge, deliver, publish, and file and record in the appropriate public offices: (A) all certificates, agreements, instruments and other documents (including this Agreement and the Certificate and all amendments or restatements thereof) that the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to effect such formation and to carry on such businesses, purposes and activities (including such certificates, agreements, instruments or other documents, and such amendments thereto, as the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to comply with the requirements for the operation of the Company as a limited liability company

under the Act and the qualification of the Company to do business in any jurisdiction in which the Company owns property or conducts business); (B) all certificates, agreements, instruments or other documents that the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to reflect any amendment of this Agreement or the Certificate effected in accordance with the provisions hereof; (C) all conveyances and other certificates, agreements, instruments and other documents that the Managing Member shall reasonably determine to be necessary, appropriate, advisable or convenient to reflect the dissolution and winding up of the Company pursuant to the provisions of this Agreement and the Act, including a certificate of cancellation of the Certificate; and (D) all certificates, agreements, instruments and other documents relating to the admission, withdrawal, removal or substitution of any Member pursuant to the provisions of this Agreement or the Capital Contribution by any Member;

(iii) cause the Company to enter into agreements with (A) legal counsel, accountants, auditors, appraisers, investment bankers and other consultants and service providers selected by the Managing Member, including, subject to Section 4.9, Affiliates such as Magnetar Capital (which will provide administrative and other services to the Managing Member and the Company), (B) one or more persons to serve as investment manager for or investment adviser to the Company on a discretionary or non-discretionary basis, (C) prime, clearing, executing and other brokers, and (D) counterparties in respect of financial transactions, in each case on such terms and subject to such conditions as the Managing Member may determine (it being understood and agreed that nothing herein shall require the Managing Member to employ or continue to employ the services of any person, or be construed to limit in any way the rights, powers and authority of the Managing Member hereunder);

(iv) cause the Company to borrow monies from time to time (and to pledge, mortgage, hypothecate or encumber its assets, and issue notes or other evidences of indebtedness, in connection therewith), on such terms and subject to such conditions as the Managing Member may determine;

(v) cause the Company to engage in any transaction that is subject to the provisions of Section 206(3) of the Advisers Act; *provided*, *however*, that the Managing Member may not cause the Company to engage in any such transaction without obtaining the consent of the Members holding a majority of the Unrelated Voting Interests prior to the completion thereof;

(vi) act, in respect of any of its rights, powers, authority, duties, responsibilities or obligations hereunder, directly or by or through any duly authorized officer, employee or agent of the Managing Member or the Company or any duly appointed attorney-in-fact of either (it being understood and agreed that each such officer, employee, agent or attorney-in-fact shall, to the extent provided by the Managing Member, possess full and complete right, power and authority to do and perform each and every act which is permitted or required to be performed by a Managing Member hereunder on behalf of the Managing Member, without thereby causing such Managing Member to cease to be a Managing Member of the Company); and

(vii) act for the Company in all other matters.

(c) To the extent the duties, responsibilities or obligations of the Managing Member require expenditures of funds to be paid to third parties, the Managing Member shall not have any duty, responsibility, liability or obligation hereunder except to the extent that funds of the Company are reasonably available to it for the performance of such duties, responsibilities or obligations, and nothing herein contained shall be deemed to require the Managing Member, in its capacity as such, to expend its individual funds for payment to third parties or to undertake any specific liability or litigation on behalf of the Company.

(d) Except as set forth in Section 7.2, the Managing Member shall not have any personal liability for the repayment to any Member of any Capital Contribution by such Member.

Section 4.3 *Investment Committee*. The Managing Member shall establish an investment committee (the "Investment Committee"). The initial members of the Investment Committee shall be [redacted]. The Managing Member shall appoint and remove all members of the Investment Committee, or increase or decrease the size of the Investment Committee. The Investment Committee shall review and approve each investment made by the Company, and each investment or disposition made by the Company shall require the approval of at least one member of the Investment Committee. The functions of the Investment Committee shall not diminish the duties or obligations of the Managing Member hereunder.

Section 4.4 *Activities of the Managing Member and Affiliates; Interested Members*.

(a) Subject to Section 2.12(b) and the definition of Key Person Event, nothing herein shall require the Managing Member, any MTP Affiliate, or any of their respective members, officers, employees, principals and agents or any member of the Investment Committee (a "Managing Member Party") to devote its full time or any material portion of its time to the Company, and nothing contained herein shall preclude any Managing Member Party from acting either individually or as a member, partner, shareholder, director, trustee, officer, official, employee or agent of any entity, in connection with any type of enterprise (whether for or not for profit), regardless of whether (i) such enterprise is in competition with the Company or (ii) the Company or any Managing Member Party has dealings with or invests in such enterprise if in connection with any such activity allocations of investment opportunities satisfying the Company's investment objective are allocated between the Company and accounts owned, sponsored, or advised by a Managing Member Party in compliance with the written investment allocation policies previously provided to the Members. No Member shall, by reason of any provision of this Agreement or the Managing Member's carrying out the businesses, purposes and activities of the Company, be entitled to any interest, economic or otherwise, in any such enterprise. For purposes of clarity and without limiting the foregoing, a Managing Member Party may conduct any other business, including any business within the securities industry, whether or not such business is in competition with the Company. Without limiting the generality of the foregoing, a Managing Member Party may act as general partner, investment adviser, or investment manager for others, may manage funds, separate accounts or capital for others, may have, make and maintain investments in its own name or through other entities and may serve as an officer, director, consultant, partner or stockholder of one or more investment funds, partnerships, securities firms or advisory firms. For the avoidance of doubt, nothing herein alters

any obligations, duties, rights or agreements that any Managing Member Party may have to the Managing Member itself.

(b) The Managing Member Parties invest directly in various securities and derivatives for client accounts as well as their own accounts. The Managing Member Parties, in trading on behalf of client accounts or their own accounts, may make use of information obtained by the Managing Member Parties in the course of managing the Company. The Managing Member Parties have no obligation to the Company for any profits earned from their use of such information nor to compensate the Company in any respect for their receipt of such information.

(c) Without limiting the generality of Section 4.4(a), the Managing Member Parties may make use of the investments of the Company or other vehicles in which the Company directly or indirectly invests to generate the provision of goods or services for, or payments to or for the account or benefit of, any one or more of the Managing Member or the Managing Member Parties; *provided*, *however*, none of the Company or the Managing Member Parties will receive or utilize soft dollar benefits with respect to the Company outside the "safe harbor" afforded by Section 28(e) of the U.S. Securities and Exchange Act of 1934, as amended.

(d) The foregoing activities, as well as any other activities described in the Memorandum provided to a person prior to the time such person is admitted to the Company as a Member, are explicitly acknowledged and consented to by each person as a necessary condition to such person's admission to the Company as a Member.

Section 4.5 *Limitation of Liability; Indemnification*.

(a) The Managing Member, any other Managing Member Party and any person acting on behalf of the Company pursuant to this Agreement (collectively, the "Covered Persons") shall not be liable for any [redacted]

(b) Upon the request of the Managing Member to the fullest extent legally permissible under and by virtue of the laws of the State of Delaware, as amended from time to time, the Company shall indemnify, defend and hold harmless each Covered Person from and against any and all losses, costs, damages, obligations, liabilities or expenses (including judgments, fines,

amounts paid or to be paid in settlement and reasonable attorneys' fees and expenses) incurred or suffered either by the Company or by such Covered Person (or by any other Covered Person) in connection with, relating to, arising out of or otherwise resulting from (i) the good faith performance by such Covered Person of his, her or its responsibilities to the Company or the Managing Member, *provided*, *however*, that the Company shall not indemnify a Covered Person for losses resulting from such Covered Person's gross negligence, material breach of this Agreement, breach of fiduciary duty, willful misconduct or knowing violation of applicable laws; (ii) the performance or omission to perform by such Covered Person of any act which such Covered Person reasonably believed to be consistent with the advice of attorneys, accountants or other professional advisors to the Company, the Managing Member or such Covered Person with respect to matters relating to the Company; or (iii) the conduct of any person reasonably selected and monitored by the Covered Person with reasonable care. For the avoidance of doubt, the Company's indemnity obligation extends to expenses incurred in defending a threatened or pending civil, administrative or criminal action, suit or proceeding or investigation against any Covered Person. In the event this indemnification obligation shall be deemed to be unenforceable, whether in whole or in part, such unenforceable portion shall be stricken or modified so as to give effect to this paragraph to the fullest extent permitted by law. The foregoing agreement of indemnity shall be in addition to, and shall in no respect limit or restrict, any other remedies which may be available to a Covered Person. The indemnification provided in this Section 4.5(b) shall in no event cause any Member to incur any liability beyond the limited liability provided in Section 2.8. The Company may not make any indemnification payment or advance under this Section 4.5(b) pursuant to any settlement agreement unless the Managing Member has first determined that the Covered Person would be eligible for indemnification under the provisions of this Agreement. [redacted]

(c) The Company shall promptly advance to each Covered Person (and in any event promptly reimburse each such Covered Person for) reasonable legal or other expenses (as incurred) of each Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding (in each case whether or not such Covered Person is a party) relating to any liabilities for which the Covered Person may, in the good faith judgment of the Managing Member, be indemnified pursuant to this Section 4.5; [redacted]

(d) The termination of any demand, claim, lawsuit, action or proceeding by settlement shall not, in itself, create a presumption that the conduct in question was not undertaken in good faith and in a manner reasonably believed to be in, or not opposed to, the best interests of the Company.

(e) Notwithstanding the foregoing, no exculpation or indemnification of a Managing Member Party shall be permitted hereunder to the extent such exculpation or indemnification would be inconsistent with the requirements of the federal securities laws or any other applicable law.

(f) In no case shall the Company be liable under this Section 4.5 or any indemnity agreement with respect to any claim made against a Managing Member Party unless the Company shall be notified in writing by the Managing Member of the nature of the claim within a reasonable time after the assertion thereof, *provided*, *however*, that (i) failure to so notify the Company shall not relieve the Company from any liability which it may have otherwise than on account of this Section 4.5 or any indemnity agreement; and (ii) where a delay in notifying the Company does not materially adversely affect the Company's position with respect to its providing the indemnity requested, it shall do so as if the request had been timely provided. The Company shall be entitled to participate at its own expense in the defense of any claim that has not been tendered to the Company or, if such defense has been tendered to the Company by the Managing Member within a reasonable time after delivery of such notice of a claim or potential claim as aforesaid, the Company shall assume the defense of any suit so brought, which defense shall be conducted by counsel chosen by it and satisfactory to the Covered Person, defendant or defendants therein. In the event that the Company assumes the defense of any such claim or suit and retains such counsel as aforesaid, the parties that are named as defendant or defendants in the suit shall bear the fees and expenses of any additional counsel thereafter retained by them. Notwithstanding the foregoing, if, in any such claim or suit, a Covered Person reasonably determines its interests are or may be adverse, in whole or in part, to the Company's interests or that there may be legal defenses available to such Covered Person which are different from, in addition to or inconsistent with the defenses available to the Company, such Covered Person may retain its own counsel in connection with such claim or suit and will be entitled to indemnification by the Company as otherwise set forth above.

(g) Notwithstanding anything in this Agreement to the contrary, no Managing Member Party shall be entitled to any indemnification for any threatened or pending civil, administrative or criminal action, suit or proceeding or investigation between or among Managing Member Parties and not involving any third parties. For the avoidance of doubt, a third-party claim against a Managing Member Party that would otherwise be indemnifiable on a stand-alone basis shall be eligible for indemnification even if, in the same matter, there is an internecine dispute.

Section 4.6 [redacted] *Managing Member*.

(a) The Managing Member shall promptly notify the Members of any event constituting Cause. [redacted]

[redacted]

(c) [redacted]

[redacted]

[redacted]In the event there is more than one Managing Member prior to an event constituting Cause, the provisions of this Section 4.6 shall apply to such Managing Members collectively, [redacted]

[redacted]

Section 4.7 *Advisory Committee*.

(a) On or prior to the Final Closing Date, the Managing Member shall establish a single Advisory Committee of the Company and the Parallel Funds (the "Advisory Committee") consisting of three or five members as the Managing Member deems appropriate. The members of the Advisory Committee shall be representatives of the Members and the shareholders, limited partners and members of the Parallel Funds as selected by the Managing Member in its sole discretion; *provided*, *however*, that no member of the Advisory Committee shall be an Affiliate of the Managing Member; and *provided*, *further*, that the Managing Member shall have the right to designate an observer to attend any meeting of, and receive any communications by, the Advisory

Committee. No member of the Advisory Committee shall receive any compensation from the Company (other than [redacted] reimbursement for reasonable out-of-pocket expenses) in connection with his or her position on the Advisory Committee.

(b) The function of the Advisory Committee shall be to provide the Managing Member with non-binding advice on matters concerning the Company and the Parallel Funds, other business issues and industry trends. The Advisory Committee shall inform the Managing Member of the advice or recommendations of the Advisory Committee members with respect to items presented to the Advisory Committee by the Managing Member. However, the Advisory Committee will not have any investment discretion, which shall remain with the Investment Committee, upon recommendation of the Managing Member. The Managing Member shall consider the advice and recommendations expressed by the Advisory Committee; *provided*, *however*, that the Managing Member shall have no obligation to act in accordance with any advice or recommendations provided by the Advisory Committee. The Managing Member shall disclose to the Advisory Committee: (i) [redacted]

[redacted]

(d) The Advisory Committee shall meet at such times as requested by the Managing Member or two (2) members of the Advisory Committee, at a time and place designated upon reasonable prior notice to the members of the Advisory Committee and the Managing Member. The quorum for a meeting of the Advisory Committee shall be a majority of its members entitled to vote. All actions taken by the Advisory Committee shall be by a vote of a majority of the members entitled to vote present at the meeting thereof. Meetings of the Advisory Committee may be held in person, by telephone or other electronic device by means of which all participants in the meeting can hear each other. Whenever the Advisory Committee is requested or required to review a matter, the Advisory Committee shall use commercially reasonable efforts to meet and make its final determination as to such matters within 15 days after the date of receipt from the Managing Member of notice of the proposed transaction and information describing the material terms of such transaction. The notice shall call a meeting of the Advisory Committee before the end of the 15-day period for purposes of making the determination.

(e) No member of the Advisory Committee will incur any liability in respect of any loss arising out of any advice or recommendation given by the committee, unless such loss arises by reason of bad faith or breach of Section 13.11(a). Members of the Advisory Committee will be indemnified out of the assets of the Company and the Parallel Funds pro rata against any actions, costs, claims, damages, expense or demands incurred by them in connection with the exercise or performance of their role, other than any such actions, claims, costs, damages, expenses or demands incurred by reason of bad faith or breach of Section 13.11(a). The Company and the Parallel Funds may reimburse any member of, or observer to, the Advisory Committee, whether or not affiliated with the Managing Member or an Investor, for his or her reasonable out-of-pocket

expenses, incurred in connection with his or her services rendered on behalf of the Company and the Parallel Funds.

Section 4.8 *Successor Funds and Parallel Funds*. Except with respect to investments permitted to be made through special purpose or alternative investment vehicles by Section 4.2(b)(i), and investments by one or more parallel entities formed by the Managing Member that have the same investment strategy and duration as the Company that are expected to be established to accommodate tax, regulatory or other legal concerns of investors (each, a "Parallel Fund"), none of the Managing Member and its Affiliates shall, following the Initial Closing Date, except with the consent of a majority of the Unrelated Voting Interest, draw capital from any Successor Fund, in either case, until the earliest of [redacted] For purposes of clarity, nothing in this Section 4.8 shall restrict any other private investment funds managed by the Managing Member or its Affiliates from implementing the same, similar or related investment strategies as one of multiple investment strategies on behalf of such other private investment fund.

[redacted]

ARTICLE V

INVESTMENT AND OPERATING EXPENSES OF THE COMPANY; ORGANIZATIONAL EXPENSES; MANAGEMENT FEE

Section 5.1 *Investment and Operating Expenses of the Company*. The Managing Member shall pay, without reimbursement by the Company, all of its ordinary administrative and overhead expenses, including all costs and expenses on account of rent, supplies, postage and delivery, equipment, furniture, salaries, wages, bonuses and other employee benefits. The Managing Member is authorized to incur and pay in the name and on behalf of the Company all expenses of the Company that it deems necessary or desirable (collectively, "Company Expenses"), including: (i) the Management Fee; (ii) direct legal, accounting, valuation, tax and audit expenses, regulatory and compliance expenses (including, but not limited to, the costs and expenses incurred in connection with complying with Securities and Exchange Commission and U.S. Commodity Futures Trading Commission reporting obligations); consulting fees and expenses; fees and expenses related to making and structuring investments; fees and expenses of the Administrator or of any additional or successor administrator; fees and expenses of any independent valuation agent; [redacted] annually in the aggregate of compensation for

members of the Investment Committee; brokerage commissions and other transaction charges; interest; fees and expenses incurred in the borrowing and lending of securities; costs of acquiring and maintaining financing for the portfolio; custodial fees and expenses; costs of insurance [redacted] premiums for any directors' and officers' errors and omissions coverage purchased by the Managing Member or any of its Affiliates that would offset some portion of the Company's indemnity obligations); research and due diligence expenses of the Managing Member and its Affiliates, including travel and third-party research or analyses (*e.g.* retaining third-party engineering firms and analyses) related to proposed or existing investments, including costs related to transactions that are not consummated and follow-up on past transactions; governmental, registration and license fees (including those payable to regulatory as well as self-regulatory organizations); costs and expenses related to the offer and sale of the Interests; taxes and other governmental charges; expenses incurred as a result of the Company's indemnity obligations; expenses incurred in connection with any threatened, pending or anticipated litigation, inquiry, examination or proceeding (*e.g.*, expenses incurred in connection with responding to any subpoena or regulatory information request of any kind); expenses and fees incurred in connection with any actual or proposed investment (*e.g.*, fees and expenses related to making and structuring investments) or other participation in, or any holding or disposition of any interest in, another investment entity, business entity or organization; the Company's *pro rata* share of investment, administrative and operational expenses of any trading Affiliate or special purpose vehicle that the Company co-invests in; fees and expenses of external legal counsel (on either a fixed or contingency basis) incurred in connection with analyzing and consummating investments, reviewing transaction documents (including financing arrangements) and extraordinary matters; and all other expenses and liabilities incurred in connection with or arising out of the Company's business, including extraordinary or non-recurring charges. The research and due diligence expenses of the Managing Member and its Affiliates to be paid by the Company to third parties includes an amount payable to a certain non-discretionary registered investment adviser with whom the Managing Member has a long-standing relationship. Any payments to such non-discretionary investment adviser will be subject to a cap for the Company, the MTP Funds and the Parallel Funds in the aggregate of [redacted] and the Company's *pro rata* portion of such expense will be treated as a Company Expense; *provided*, *however*, that for the avoidance of doubt, [redacted] is not a general cap on the Company's due diligence or consulting expenses, only a description of one specific expense item. Investment, administrative and operating expenses that are incurred by the Managing Member or any of its Affiliates for multiple investment vehicles advised by the Managing Member or its Affiliates shall be generally allocated *pro rata* based on the respective participation in the relevant investment but may be allocated non-*pro rata* as deemed fair and equitable by the Managing Member.

Section 5.2 *Organizational Expenses*. The Company shall pay or reimburse to the Managing Member or any Affiliate of, or designee of, the Managing Member (including Magnetar Capital) the organizational expenses of the Company (including expenses of the initial offer and sale of Interests, the "Organizational Expenses"), as incurred or undertaken on the Company's behalf by the Managing Member.

Section 5.3 *Management Fee*.

(a) Subject to Section 5.3(b), the Company shall pay the Managing Member a monthly management fee (the "Management Fee") calculated at the rate of 0.125% (*i.e.* 1.5% per annum)

of the aggregate Capital Contributions to the Company made by the Members prior to such calculation with respect to investments that have not been disposed of, net of formal write-downs or write-offs from those investments (including a portion of the Capital Contributions made to fund such Member's share of Company Expenses and Organizational Expenses, as determined by the Managing Member on the basis of the ratio of such Member's Capital Contribution with respect to such investment to such Member's Capital Contribution with respect to all investments by the Company). The Management Fee shall initially be payable on the Initial Closing Date for the remainder of the current month and the subsequent month, and thereafter on the first business day of each month until (subject to Section 4.6(b)) the dissolution of the Company. For the avoidance of doubt, the Special Member shall not be subject to a Management Fee.

(b) The Managing Member, in its sole discretion, may waive or modify the Management Fee for certain Members. No waiver or modification of the Management Fee for any Member shall entitle any other Member to any such waiver of modification nor shall any such waiver or modification increase the amount of the Management Fee payable by any other Member. The Managing Member may disclose relevant portions of the Memorandum or of this Agreement to third parties who require further information regarding the Management Fee for purposes of due diligence prior to providing credit, goods or services to the Managing Member or its Affiliates (including Magnetar Capital).

Section 5.4 *Fee Offset*. Director's fees, break-up fees, monitoring fees, transaction fees, consulting fees, commitment fees and other similar fees, if any, earned by the Managing Member or its officers, employees, partners, members or affiliates for services rendered by such persons to the Company, the Parallel Fund or any entity in which they invest ("Ancillary Fees") shall be paid (net of any applicable taxes) directly to the Company based upon the Company's pro rata participation in such activity. Any such Ancillary Fees shall be used first to offset any Organizational Expenses not reimbursed by the Company (subject to Sections 5.1 and 5.2), and any balance shall be retained by the Company and be apportioned among the Members in proportion to their Capital Commitments. For the avoidance of doubt, the Management Fee, the Carried Interest, and any reimbursement of expenses of the Managing Member or the officers, employees, partners, members or affiliates thereof shall not be considered Ancillary Fees.

Section 5.5 *Capital Call Line of Credit.*

(a) The Company is authorized to enter into the Capital Call Line of Credit, which may be secured by (i) a pledge to the Lender by the Company of all or a portion of the aggregate Unfunded Commitments of any or all Members, (ii) a pledge by the Managing Member of the rights of the Managing Member contained herein, including the right to deliver Call Notices, to receive payment of Capital Contributions and apply the same to obligations under the Capital Call Line of Credit, to exercise all rights of the Managing Member with respect to Unfunded Commitments, and to enforce all remedies against Members that fail to fund their respective Unfunded Commitments pursuant to Call Notices and in accordance with the terms of this Agreement, and (iii) a collateral account. The Company may participate in, guarantee, and borrow funds under the Capital Call Line of Credit together with the Parallel Fund on any basis that the Managing Member determines is fair and reasonable to the Company.

(b) Each Member understands, acknowledges and agrees, in connection with the Capital Call Line of Credit and for the benefit of the Lender thereunder, (i) that, to the extent not publicly available, the Managing Member may from time to time request the delivery within 90 days after the end of that Member's fiscal year, a copy of the Member's annual report, if available, or that Member's balance sheet as of the end of that fiscal year and the related statements of operations for that fiscal year prepared or reviewed by independent public accountants in connection with that Member's annual reporting requirements, (ii) that the Managing Member may from time to time request a certificate confirming (x) the remaining amount of that Member's Unfunded Commitment and (y) that the Member has not and will not mortgage, pledge, collaterally assign, encumber or otherwise grant a security interest in its Interest in the Company, (iii) that the Member's obligation to fund its Unfunded Commitment is without defense, counterclaim or offset of any kind, (iv) that any claims that a Member may have against the Company shall be subordinate to all payments due to the Lender under the Capital Call Line of Credit, (v) to make such other representations and deliver such documents as the Managing Member and the Lender may reasonably request, including an acknowledgement agreement incorporating the affirmations along with other standard provisions that the Lender may require, and (vi) that, in connection with the extension of credit under the Capital Call Line of Credit, the Lender may rely on the agreement and acknowledgements of the Members with respect to the provisions of this Section 5.5. Each Member agrees to comply with those requests.

(c) Each Member understands, acknowledges and agrees that, to the extent agreed by the Managing Member with the Lender, the Lender shall be a third-party beneficiary of this Section 5.5.

ARTICLE VI

CAPITAL ACCOUNTS; CAPITAL CONTRIBUTIONS; COMMITMENTS; DEFAULT

Section 6.1 *Capital Accounts*. The Company shall maintain a separate capital account (each a "Capital Account") for each Member on the books of the Company in accordance with the following provisions:

(a) Each Member's Capital Account shall be increased by the amount of: (A) money contributed by such Member to the Company; (B) the initial Book Value of any property contributed by such Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to Code Section 752); and (C) Profits and other items of income or gain allocated to such Member pursuant to Section 8.1 and Section 8.2

(b) Each Member's Capital Account shall be decreased by the amount of: (A) money distributed to such Member by the Company (B) the Book Value of any property distributed to such Member by the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to Code Section 752); and (C) any Losses or other items of loss or deduction allocated to such Member pursuant to Sections 8.1 and 8.2.

(c) The manner in which Capital Accounts are to be maintained pursuant to this Section 6.1 is intended to comply with the requirements of Code Section 704(b) and the Treasury

Regulations promulgated thereunder. If, in the opinion of the Company's legal counsel, the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this Section 6.1 should be modified in order to comply with Code Section 704(b) and the Treasury Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this Section 6.1, the method in which Capital Accounts are maintained shall be so modified; *provided*, *however*, that any change in the manner of maintaining Capital Accounts shall not alter the economic agreement and relative economic benefits between or among the Members.

Section 6.2 *Succession to Capital Accounts*. If any person becomes a Member in accordance with the provisions of Section 10.1, such Member shall succeed to the Capital Account of the transferor Member to the extent such Capital Account relates to the transferred Interest (or portion thereof) in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv).

Section 6.3 *Drawdowns*.

(a) Each Member's Unfunded Commitment shall be paid to the Company to fund investments, Company Expenses and Organizational Expenses from time to time as calls are made by the Managing Member upon the Members, in such amounts (the "Call Amounts") and on such dates (the "Funding Dates") as shall be specified by the Managing Member upon 10 days' notice (the "Call Notice") by the Managing Member, which notice shall be delivered pursuant to Section 13.12.

(b) Notwithstanding the foregoing, after the end of the Investment Period (and during any suspension thereof), no Call Amount shall be required to be paid except: (i) to pay Organizational Expenses, Company Expenses (including Management Fees) and indemnification and other obligations due under Sections 4.5, 6.1(c) and 8.5(d) and (ii) to fund investments as to which the Company has entered into a definitive agreement, letter of intent, memorandum of understanding or similar document as of the end of the Investment Period.

(c) With respect to Call Amounts payable in connection with investments, Organizational Expenses and Company Expenses, each Member shall be required to contribute to the aggregate Call Amount in proportion to its Unfunded Commitment (determined by taking into account the Unfunded Commitments of all Members); *provided*, *however*, that each Member's Call Amount with respect Management Fees shall be adjusted to reflect the calculation in Section 5.3.

(d) The Managing Member shall return any unexpended Call Amounts within 90 days of the Funding Date together with any interest earned thereon to the Members funding such amounts. Upon the return of such Call Amounts, the Members' Capital Accounts shall thereupon be reduced (and, consequently, their Unfunded Commitments increased) correspondingly.

Section 6.4 *Excuse and Exclusion Procedures*.

(a) Any Member may be excused from participation in any investment (such Member, with respect to such investment, an "Excused Member") if, not later than 5 business days (or such later time as the Managing Member shall determine) after the date of delivery of a Call Notice for an investment (or a proposed investment), the Managing Member shall have received from such Member a written opinion (in form and substance satisfactory to the Managing Member) of

counsel (reasonably satisfactory to the Managing Member) to the effect that participation in such investment by such Member could reasonably be expected to result in a violation of any law or regulation applicable to such Member. Any Call Amount as to which a Member is excused or excluded shall not reduce such Member's Capital Commitment or otherwise affect such Member's obligation to make future Capital Contributions. No Excused Member shall be deemed a Defaulting Member for purposes of this Agreement, and an Excused Member shall not be liable to any Member, the Company or any other person solely for the failure to fund a Call Amount with respect to an investment for which it is excused or excluded in accordance with the provisions of this Section 6.4.

(b) If any Member is excused or excluded from making a contribution of all or a portion of any Call Amount pursuant to this Section 6.4 and the Managing Member elects to make an investment without such Member, the Managing Member may (i) increase the Call Amounts with respect to such investment from the other Members (but not in excess of any such Member's Unfunded Commitment) proportionately based on such Members' Unfunded Commitment to the extent necessary to fund the amount that is excused or excluded (and in connection therewith give notice to such other Members of such increase), or (ii) offer such other Members the opportunity to co-invest in their individual capacities, *pro rata* in accordance with the Capital Commitments of Members choosing to participate (or in such other proportion as the Managing Member reasonably determines), an aggregate amount equal to the amount that is excused or excluded, on terms to be determined by the Managing Member.

Section 6.5 *Capital Call Defaults*.

(a) Each Member agrees that payment of its obligations under this Agreement when due is of the essence, that any Default by any Member would cause injury to the other Members, and that the amount of damages resulting from such Default would be extremely difficult to calculate. If a Member shall fail for any reason to contribute all or a portion of its share of any Call Amount on or before the Funding Date therefor and shall not within 5 business days following the receipt of notice of such failure have cured such failure (such failure being referred to herein as a "Default," such Member being referred to herein as a "Defaulting Member," and the unpaid portion of such Defaulting Member's share of any Call Amount, the "Open Call Amount"), (a) such Defaulting Member shall remain liable in respect of its obligation to fund its Call Amount, (b) whenever the vote, consent or decision of a Member is required or permitted pursuant to this Agreement, the Defaulting Member shall not be entitled to participate in such vote or consent, or to make such decision, and such vote, consent or decision shall be tabulated or made as if such Defaulting Member were not a Member, and (c) the Managing Member shall take any one or more of the following remedial actions (to the extent not mutually exclusive) (*provided*, *however*, that the Managing Member may extend the time of payment or agree to waive or permit the cure of any Default by a Defaulting Member, subject to such terms as the Managing Member may determine):

(i) immediately reduce the Defaulting Member's Capital Account and rights to receive distributions from the Company by 50% of the amount thereof, which reduction shall be allocated among the Non-Defaulting Members pro rata in accordance with their Capital Accounts;

(ii) cause such Defaulting Member to forego any future distributions after the Default from investments made prior to such Default, and such distributions shall be distributed *pro rata* to the Non-Defaulting Members participating in such investments; or

(iii) pursue any other remedies, at law or in equity, that it deems advisable.

(b) In addition to the foregoing remedies, the Managing Member may issue a Call Notice requiring each Member who is not a Defaulting Member with respect to any Call Amount (a "Non-Defaulting Member") to contribute its *pro rata* portion (determined in accordance with the aggregate Non-Defaulting Members' Unfunded Commitments) of the Open Call Amount up to the amount of such Non-Defaulting Member's Unfunded Commitment.

(c) Notwithstanding any other provision of this Agreement, each Defaulting Member shall pay on demand all reasonable losses, costs and expenses incurred by or on behalf of the Company (including legal fees and expenses as incurred), if any, in connection with the enforcement of this Agreement against such Defaulting Member sustained as a result of a Default by such Defaulting Member; it being understood that no such payment shall reduce such Defaulting Member's Unfunded Commitment (or increase such Member's Capital Contributions) and any such payment shall be payable (A) without regard to such Member's Unfunded Commitment, and (B) notwithstanding the termination of the Investment Period. In addition, a Defaulting Member shall remain liable for its *pro rata* share of the Management Fees.

(d) No right, power or remedy conferred upon the Managing Member in this Section 6.5 shall be exclusive, and each such right, power or remedy shall be cumulative and in addition to every other right, power or remedy whether conferred in this Section 6.5 or now or hereafter available at law or in equity or by statute or otherwise. No course of dealing between the Managing Member and any Member and no delay in exercising any right, power or remedy conferred in this Section 6.5 or now or hereafter existing at law or in equity or by statute or otherwise shall operate as a waiver or otherwise prejudice any such right, power or remedy.

ARTICLE VII

DISTRIBUTIONS

Section 7.1 *Timing and Priority of Distributions*.

(a) During the Investment Period, the Company may, at the determination of the Managing Member, reinvest Sale Proceeds received with respect to any investment up to the amount originally invested therein. During the Investment Period, the Company shall distribute Sale Proceeds not reinvested or reserved for reinvestment and Periodic Proceeds on a quarterly basis or on such more frequent dates as determined by the Managing Member. After the Investment Period, the Company shall distribute Sale Proceeds promptly after receipt thereof and Periodic Proceeds on a quarterly basis. The Company may, at the determination of the Managing Member, maintain reserves out of any Sale Proceeds and Periodic Proceeds payable to the Members for payment of each Member's pro rata portion of expenses and liabilities of the Company, including the Management Fee (if any) but excluding expenses and liabilities taken into account in the determination of any Sale Proceeds, which reserves shall be treated as Capital

Contributions otherwise due from such Member and reduce such Member's Unfunded Commitment in accordance with this Agreement.

(b) Unless otherwise set forth herein and subject to Section 7.1(f), the Company shall apportion (x) Sale Proceeds and Periodic Proceeds to each Member that participated in the investment generating such Sale Proceeds or Periodic Proceeds, in proportion to such Member's Capital Contribution with respect to such investment (including a portion of the Capital Contributions made to fund such Member's share of Company Expenses (other than, solely for purposes of calculating this *pro ration*, any Management Fees) and Organizational Expenses, as determined by the Managing Member on the basis of the ratio of such Member's Capital Contribution with respect to such investment to such Member's Capital Contribution with respect to all investments), and (y) other proceeds not directly attributable to a particular investment, to each Member in proportion to such Member's aggregated funded Capital Commitments. The amount so apportioned to each Member shall be distributed to such Member and the Special Member as follows:

(i) *Return of Capital*: First, to such Member, until such Member has received pursuant to this clause (i) an amount equal to its aggregate Capital Contributions;

(ii) *6% Preferred Return*: Second, to such Member, until such Member has received distributions in excess of distributions made pursuant to clause (i) above equal to a preferred rate of return of 6% per annum, compounded annually and pro rated for partial periods, on the amount outstanding from time to time that equals the excess, if any, of such Member's aggregate Capital Contributions over aggregate distributions to such Member pursuant to clause (i) above; *provided*, *however*, that the Managing Member, in its sole discretion may agree with any Member to modify such preferred rate of return for such Member;

(iii) *Special Member Catch-Up*: Third, (x) if such Member's Capital Commitment is less than $100 million, to the Special Member, until the cumulative distributions to the Special Member pursuant to this clause (iii) equal 20% of the sum of the distributions made to such Member pursuant to clause (ii) and to the Special Member pursuant to this clause (iii) and (y) if such Member's Capital Commitment is equal to or exceeding $100 million, until the cumulative distributions to the Special Member pursuant to this clause (iii) equal 17.5% of the sum of the distributions made to such Member pursuant to clause (ii) and to the Special Member pursuant to this clause (iii); and

(iv) *80/20 Split*: Fourth, (x) if such Member's Capital Commitment is less than $100 million, 80% to such Member and 20% to the Special Member and (y) if such Member's Capital Commitment is equal to or exceeding $100 million, 82.5% to such Member and 17.5% to the Special Member.

"Preferred Return" means any amount distributable pursuant to Section 7.1(b)(ii). The amounts distributed to the Special Member as described in Sections 7.1(b)(iii) and 7.1(b)(iv) (the "Carried Interest") are distributed to the Special Member as holder of the Special Member Interest.

For the avoidance of doubt, the distribution amounts described in clause (iii) above are intended to provide a "catch up" to the Special Member such that it receives a Carried Interest of 20% associated with Capital Commitments less than $100 million and 17.5% associated with Capital Commitments of $100 million or more, *provided* that distributions exceed the Preferred Return.

(c) Any distributions relating to the partial disposition of portfolio investments shall also be subject to the formula set forth in Section 7.1(b); *provided*, *however*, that the Preferred Return and the Carried Interest shall be based on the amount invested in, and the cumulative distributions being made with respect to, the disposed portion of such investment.

(d) Notwithstanding the distribution provisions of Section 7.1(b), if, with respect to any Fiscal Year (A) the product of (x) the taxable net income allocated to the Special Member pursuant to this Agreement for such Fiscal Year in respect of the Carried Interest, and (y) the highest combined Federal and state income tax rate applicable to a resident of the State of Illinois (the "Deemed Tax Rate") for such Fiscal Year exceeds (B) the aggregate amount of distributions made or to be made with respect to the Carried Interest to the Special Member during such Fiscal Year, the Managing Member may elect for the Company to make a distribution ("Tax Distribution") to the Special Member in an amount up to such excess. The Company may pay Tax Distributions to the Special Member on a quarterly basis corresponding to the due dates for U.S. federal estimated income tax payments. The Managing Member may make reasonable estimates of taxable income of the Company for the Fiscal Year and any other reasonable assumptions for purposes of calculating and making any Tax Distribution. All Tax Distributions made to the Special Member shall be repaid to the Company by reducing the amount of the next succeeding distribution or distributions (in each case, that is not a Tax Distribution) that would otherwise have been made to the Special Member with respect to the Carried Interest. To the extent that an amount otherwise distributable to the Special Member is so reduced, the amount of the reduction shall be treated for all purposes hereof as if such amount had actually been distributed to the Special Member pursuant to clauses (iii) and (iv) of Section 7.1(b). The Tax Distribution shall be (x) computed separately with respect to each Member based upon the allocations of Profits, Losses, and other items of income, gain, loss, deduction and credit allocated to the Special Member in respect of such Member and (y) deducted from amounts otherwise distributable to such Member, if any, and the repayment thereof by the Special Member pursuant to the preceding provisions of this Section 7.1(d) shall be made by reducing distributions to the Special Member with respect to the Carried Interest otherwise payable to the Special Member with respect to such Member. To the extent the taxation of distributions of the Carried Interest is adversely affected by any change in law, as determined by the Managing Member, in its sole discretion, the Managing Member may in good faith unilaterally amend the distribution and allocation provisions of this Agreement or other provisions of this Agreement, so long as such amendment does not adversely affect the interest of any Member.

(e) Distributions prior to the termination of the Company shall be made in cash. Upon termination of the Company, distributions may also be made in the form of securities or other assets of the Company for which the Managing Member may seek a valuation from an appropriate independent expert.

(f) During the Investment Period, Sale Proceeds received in respect of any investment up to the amount originally invested therein may, at the determination of the Managing Member, be reinvested or, if distributed, be added back to the Unfunded Commitments, and drawn down again in accordance with Section 6.3.

Section 7.2 *Clawback*. Upon dissolution of the Company and within 60 days following the distribution of all of the amounts to be distributed to the Members under Section 12.2, the Special Member shall return to the Company, with respect to each Member, distributions previously received by the Special Member in an amount equal to such Member's Clawback Amount, which amount shall be distributed to such Member. The "Clawback Amount" means, with respect to each Member, the amount necessary to cause (i) the Carried Interest distributions made in respect of such Member not to exceed (ii) the Carried Interest distributions that would have been made in respect of such Member had all distributions made in accordance with Section 7.1(b) in respect of such Member been made on a combined basis on liquidation of the Fund (except that the Preferred Return shall be computed based on actual Capital Contributions and distributions received by such Member). The Clawback Amount for any Member shall in no event exceed the aggregate Carried Interest received by the Special Member less the taxes, calculated at the Deemed Tax Rate, assumed paid by the Special Member (or its direct or indirect owners) on any income or gain allocated to the Special Member with respect to the Carried Interest in respect of such Member taking into consideration the character of the income, gain and deductibility of any prior losses or taxes and shall be increased by any tax benefits thereon actually realized through the period in which such Clawback Amount is paid.

ARTICLE VIII

ALLOCATION OF INCOME, GAIN, LOSS AND DEDUCTIONS

Section 8.1 *Allocations of Profits and Losses*. After giving effect to the allocations set forth in Section 8.2, and subject to Section 11.2(a), Profits and Losses (and to the extent determined by the Managing Member to be necessary and appropriate to achieve the resulting Capital Account balances described below, any allocable items of gross income, gain, loss and expense includable in the computation of Profits and Losses) for each Fiscal Period shall be allocated among the Members during such Fiscal Period, in such a manner as shall cause the Capital Accounts of the Members (as adjusted to reflect all allocations pursuant to Section 8.2 and all distributions through the end of such Fiscal Period) to equal, as nearly as possible, (a) the amount such Members would receive if all assets of the Company on hand at the end of such Fiscal Period were sold for cash equal to their Book Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited in the case of non-recourse liabilities to the Book Value of the property securing such liabilities), and all remaining or resulting cash were distributed to the Members under Section 7.1 of this Agreement minus (b) such Member's share of Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets.

Section 8.2 *Special Allocations*. Notwithstanding the provisions of Section 8.1, the following special allocations shall be made for each Fiscal Period:

(a) *Nonrecourse Deductions*. Nonrecourse Deductions for any Fiscal Period shall be allocated to the Members in proportion to their relative Capital Commitments.

(b) *Member Nonrecourse Deductions*. Member Nonrecourse Deductions for any Fiscal Period shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss. This Section 8.2(b) is intended to comply with the provisions of Treasury Regulation Section 1.704-2(i) and shall be interpreted consistently therewith.

(c) *Minimum Gain Chargeback*. Notwithstanding any other provision of Section 8.1 or this Section 8.2, if there is a net decrease in Minimum Gain during any Fiscal Period, each Member shall be allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), (g)(2) and (j)(2)(i). For purposes of this Section 8.2(c), each Member's Capital Account shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to Section 8.1 or this Section 8.2 with respect to such Fiscal Period. This Section 8.2(c) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(d) *Member Nonrecourse Debt Minimum Gain Chargeback*. Notwithstanding the other provisions of Section 8.1 or this Section 8.2 (other than Section 8.2(c)), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Period, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Fiscal Period shall be allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(i)(4) and (j)(2)(ii). For purposes of this Section 8.2(d), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income and gain required hereunder shall be effected, prior to the application of any other allocations pursuant to Section 8.1 or this Section 8.2, other than Section 8.2(c), with respect to such Fiscal Period. This Section 8.2(d) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(e) *Stop Loss Provision*. Notwithstanding the other provisions of Section 8.1 or this Section 8.2 (other than Sections 8.2(a) and 8.2(b)), no Losses for a Fiscal Period shall be allocated to any Member to the extent that such allocation would cause such Member to have a deficit balance in its Adjusted Capital Account at the end of such Fiscal Period. Such Losses shall instead be allocated entirely to Members with positive Adjusted Capital Account balances in the ratio of such positive balances until no Member has a positive Adjusted Capital Account balance.

(f) *Qualified Income Offset*. Notwithstanding any provision hereof to the contrary (other than Sections 8.2(c), 8.2(d), and 10.1(e)), a Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(*d*)(4), (5) or (6) shall be allocated items of income and gain (consisting of a pro rata portion of each item of income, including gross income, and gain for the Fiscal Period) in an amount and manner sufficient to eliminate any deficit balance in such Member's Adjusted Capital Account as quickly as possible; *provided*, *however*, that an allocation pursuant to this Section 8.2(f) shall be made only if and to the extent that such Member would have deficit Adjusted Capital Account balance after all other allocations provided for in Sections 8.1 and 8.2 have been tentatively made as if this Section 8.2(f) were not in this Agreement. This Section 8.2(f) is intended to constitute a qualified income offset under Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(g) *Elimination of Adjusted Capital Account Deficit*. In the event that any Member has a deficit balance in its Adjusted Capital Account at the end of any Fiscal Period, such Member shall be allocated items of Company gross income and gain in the amount of such deficit as quickly as possible; *provided*, *however*, that an allocation pursuant to this Section 8.2(g) shall be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided for in Sections 8.1 and 8.2 (other than Section 8.2(f)) have been tentatively made as if Section 8.2(f) and this Section 8.2(g) were not in this Agreement.

(h) *Certain Adjustments Under Section 734(b) or 743(b)*. To the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulation Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to any Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be allocated to the Members in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(2) if such Section applies, or to the Member to whom such distribution was made if Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(4) applies.

(i) *Management Fees*. Deductions of the Company related to Management Fees shall be allocated to the Members for each Fiscal Period in proportion to their respective shares thereof as determined pursuant to Section 5.3.

(j) *Organizational Expenses*. Deductions or losses of the Company related to Organizational Expenses shall be allocated to the Members to the maximum extent permitted under Code Section 706(d) and the Treasury Regulations based on the Capital Commitments of the Members.

Section 8.3 *Tax Allocations*.

(a) All items of income, gain, loss, deduction and credit for federal income tax purposes shall be allocated in the same manner as the corresponding item is allocated pursuant to Sections 8.1 or 8.2 of this Agreement, except as otherwise provided in this Section 8.3.

(b) Any (i) recapture of depreciation or any other item of deduction shall be allocated, in accordance with Treasury Regulations Sections 1.1245-1(e) and 1.1254-5, to the Members who received the benefit of such deductions (taking into account the effect of remedial allocations), and (ii) recapture of grants and credits shall be allocated to the Members in accordance with applicable law.

(c) Tax credits of the Company shall be allocated among the Members as provided in Treasury Regulation Sections 1.704-1(b)(4)(ii) and 1.704-1(b)(4)(viii).

Section 8.4 *Other Allocation Rules*.

(a) If a Transfer occurs at any time other than the end of a Fiscal Year, the various items of Company income, gain, deduction, loss, credit and allowance as computed for United States federal income tax purposes shall be allocated between the Transferor and the Transferee in a manner determined by the Managing Member in accordance with Code Section 706 and the Regulations promulgated thereunder, and the Transferor and transferee agree to reimburse the Company for any incidental accounting fees and other expenses incurred by the Company in making such allocation.

(b) The Members' proportionate shares of the "excess nonrecourse liabilities" of the Company, within the meaning of Treasury Regulation Section 1.752-3(a)(3), shall be allocated to the Members in proportion to their relative Capital Commitments.

Section 8.5 *Tax Withholding; Withholding Advances*.

(a) *Tax Withholding*.

(i) If requested by the Managing Member, each Member shall, if able to do so, deliver to the Managing Member: (A) an affidavit in form satisfactory to the Managing Member that the applicable Member (or its partners, as the case may be) is not subject to withholding under the provisions of any federal, state, local, foreign or other law; (B) any certificate that the Managing Member may reasonably request with respect to any such laws; or (C) any other form or instrument reasonably requested by the Managing Member relating to any Member's status under such law. If a Member fails or is unable to deliver to the Managing Member an affidavit described in subclause (A) of this clause (i), the Managing Member may withhold amounts from such Member in accordance with Section 8.5(b). Each Member shall reasonably cooperate with the Managing Member in connection with any tax audit of the Company or any existing or former investment.

(ii) After receipt of a written request of any Member, the Managing Member shall provide such information to such Member and take such other action as may be reasonably necessary to assist such Member in making any necessary filings, applications or elections to obtain any available exemption from, or any available refund of, any withholding imposed by any foreign or United States taxing authority with respect to amounts distributable or items of income allocable to such Member hereunder to the extent not adverse to the Company or any Member. In addition, the Managing Member shall, at the request of any Member, make or cause to be made (or cause the Company to make) any such filings, applications or elections; *provided*, *however*, that any such requesting

Member shall cooperate with the Managing Member or the Company, as the case may be, with respect to any such filing, application or election to the extent reasonably determined by the Managing Member and that any filing fees, taxes or other out-of-pocket expenses reasonably incurred and related thereto shall be paid and borne by such requesting Member or, if there is more than one requesting Member, by such requesting Members pro rata based on their Capital Commitment.

(b) *Withholding Advances — General*. To the extent the Company is required by law to withhold or to make tax payments on behalf of or with respect to any Member (*e.g.*, backup withholding) ("Withholding Advances"), the Managing Member may withhold such amounts and make such tax payments as so required.

(c) *Repayment of Withholding Advances and Other Tax Withholdings*. All Withholding Advances made on behalf of a Member, (plus interest thereon at a rate equal to 8% per annum) and the portion of any tax that has been withheld from or in respect of a payment or distribution received by the Company that is determined by the Managing Member to be attributable to a Member shall (1) be paid on demand by such Member (it being understood that no such payment shall reduce such Member's Unfunded Commitment or increase such Member's Capital Contribution and any such payment shall be payable without regard to such Member's Unfunded Commitment and notwithstanding the termination of the Investment Period), or (2) with the consent of the Managing Member be repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member. Notwithstanding the foregoing, whenever repayment by a Member is made as described in clause (2), for all other purposes of this Agreement such Member shall be treated as having received all distributions (whether before or upon dissolution) unreduced by the amount of such repayment. To the extent Withholding Advances on behalf of or with respect to a Member are less than the amounts that would be distributed to the Member pursuant to Section 7.1(b) if such Member withdrew from the Company at the time of withholding, such Withholding Advances may with the consent of the Managing Member be treated as current distributions to such Member or reduce subsequent distributions to such Member.

(d) *Withholding Advances — Reimbursement of Liabilities*. Each Member hereby agrees to indemnify, hold harmless and reimburse the Company and the Managing Member for any liability (other than any liability arising from gross negligence, material breach of this Agreement, breach of fiduciary duty, willful misconduct or knowing violation of applicable laws) with respect to Withholding Advances required or made on behalf of or with respect to such Member

Section 8.6 *Death, Bankruptcy or Legal Incapacity of a Member*. In the event of the death, bankruptcy or legal incapacity of a Member, the estate or legal representative of such Member shall succeed to the Member's right to share in net Profits or net Losses of the Company and to receive distributions from the Company. The estate or representative may, at the determination of the Managing Member, be paid as of the end of the fiscal year during which the Member died or became bankrupt or legally incapacitated, the Fair Market Value of such Member's Interest as of the end of such year in liquidation of the Member's Interest in the

Company. Alternatively, the Managing Member may admit the estate or representative to the Company as a Member. If a Member dies on a day other than the last day of a Fiscal Period, net Profits or net Losses for such Fiscal Period shall be allocated between the deceased Member and his estate for federal income tax purposes.

Section 8.7 *Consistent Tax Reporting*. Except as otherwise agreed to in writing by the Managing Member, for all tax purposes, the Members, including former Members, shall report any item of income, gain, credit, loss, expense or deduction, including each item required to be separately stated by Code Section 702(a) (collectively, "Tax Items"), including the character and timing of such Tax Items, in a manner consistent with the manner in which such Tax Items are reported by the Company on its tax returns and the Schedules K-1 (and any successor tax form) furnished by the Company to the Members.

ARTICLE IX

WITHDRAWALS FROM CAPITAL ACCOUNTS AND RETIREMENTS

Section 9.1 *No Withdrawal*. No Member may withdraw any amount from such Member's Capital Account prior to dissolution of the Company, except with the prior written consent of the Managing Member.

Section 9.2 *Mandatory Withdrawals*.

(a) The Managing Member may require any Member to withdraw all or any portion of its Interest at any time on not less than 10 days' notice (including the amount to be withdrawn and the basis on which such amount has been determined by the Managing Member), such withdrawal to be effective on the date specified in such notice. A Member who is required to withdraw all of its Interest pursuant to this Section 9.2 shall (i) be entitled to receive the value of its Liquidating Share and (ii) shall be deemed to have retired from the Company (and shall cease thereafter to be a Member as of the effective date of the complete withdrawal).

(b) Notwithstanding Section 9.2(a), the Managing Member may compulsorily withdraw a Member's Interest in the Company if the Member has provided the Managing Member with written advice of nationally recognized counsel reasonably acceptable to the Managing Member to the effect that the Member's continued ownership of an Interest in the Company would, in and of itself, result in a violation of law solely as a result of any change in applicable law, statute, regulation or administrative ruling or a formal written guidance adopted by an agency or rule-making body that has the force of law (and not a violation of a law, statute or regulatory or administrative ruling or a formal written guidance adopted by an agency or rule-making body that has the force of law as in effect on the date of such Investor's initial Capital Commitment to the Company), to the extent necessary to avoid such violation. Such withdrawal proceeds shall be equal to the Member's Liquidating Share and may be paid wholly or partly in cash or in kind in the Managing Member's sole discretion.

(c) In the event the Managing Member compulsorily withdraws a Member's Interest in the Company pursuant to Section 9.2(b), the Managing Member agrees to assist the Member in engaging a broker-dealer to sell the Member's Interest in the Company by considering and

suggesting investment bankers that the Managing Member believes would understand the Company's portfolio. The Managing Member shall cooperate with such broker-dealer to provide necessary transparency and other information reasonably requested by such broker-dealer, taking into account the Managing Member's fiduciary duties to the Company.

Section 9.3 *Payments in Cash or in Kind*. All payments to a Member by reason of such Member's partial or complete withdrawal from the Company shall be made in cash or, at the determination of the Managing Member, in securities (which may include short positions, as well as long positions) selected by the Managing Member or partly in cash and partly in securities (which may include short positions, as well as long positions) selected by the Managing Member. If the Managing Member determines to distribute securities in kind, such securities may be distributed directly to the withdrawing Member or alternatively, distributed into a liquidating trust or liquidating account and sold by the Company for the benefit of the withdrawing Member, in which case (i) payment to such Member of that portion of his withdrawal attributable to such securities shall be delayed until such time as such securities can be liquidated and (ii) the amount otherwise due such Member shall be increased or decreased to reflect the performance of such securities through the date on which the liquidation of such securities is affected.

ARTICLE X

TRANSFER OF INTERESTS

Section 10.1 *Transfers of Interests by Members*.

(a) Subject to the provisions of this Agreement generally (including Section 10.1(b)), Interests shall only be transferred, assigned or pledged, sold, exchanged, encumbered, hypothecated, mortgaged or disposed of, in whole or in part (each, a "Transfer") upon the execution and delivery of a transfer agreement (the "Transfer Agreement") by the transferor (the "Transferor") and transferee ("Transferee"), the execution and delivery of a subscription agreement by the Transferee, and the acceptance of such Transfer Agreement and subscription agreement (or this Agreement, as applicable) by the Managing Member; *provided*, *however*, that the Managing Member may waive any of the foregoing required documentation.

(b) Subject in the case of the Managing Member to Section 10.1(f), an Interest or any beneficial interest therein may not be Transferred except with the written consent thereto of the Managing Member (not be unreasonably withheld); *provided*, *however*, in the event that the Transferee and Transferor are Affiliates and the Transferee meets the Company's eligibility requirements, the Managing Member shall not withhold its consent to the Transfer so long as such Transfer is in accordance with Section 10.1(a) and which would not cause any of the events in Section 10.1(c)(ii).

(c) Any attempted Transfer of an Interest:

(i) in violation of this Section 10.1; or

(ii) which would cause: (A) the Company to be treated as an association taxable as a corporation for income tax purposes; (B) the Company to be treated as a "publicly-traded partnership"; (C) the Company not to qualify for the exclusion from the definition

of "investment company" provided by Section 3(c)(7) of the Investment Company Act of 1940, as amended; (D) the Company not to qualify for the 4.13 exemption promulgated by the Commodity Futures Trading Commission; or (E) the assets of the Company to be treated for any purpose of the ERISA or Code Section 4975 as assets of any "employee benefit plan" as defined in and subject to ERISA or of any "plan" as defined in and subject to Code Section 4975 (or any corresponding provisions of succeeding law);

shall be null and void *ab initio* and of no legal force or effect whatsoever.

(d) Subject to Section 10.1(c) and following the satisfaction of the conditions set forth in Section 10.1(a), Transfers shall only be permitted at the end of each quarterly period ending March 31, June 30, September 30 or December 31, effective as of the first date of the subsequent quarterly period (a "Transfer Date"), *provided*, *however*, that the Managing Member may permit transfers on other dates if it determines that doing so would not have a material adverse effect on the other Members. Any distributions made before the Transfer Date shall be paid to the Transferor, and any distributions made on or after the Transfer Date shall be paid to the Transferee.

(e) Transferors and Transferees may, as determined by the Managing Member, be required to pay the expenses incurred in effecting their Transfers, but no Transfer shall be subject to any limitation imposed with respect to withdrawals pursuant to Article IX.

(f) *Limited Assignability of Managing Member Interest.* If at the time the Managing Member desires to consummate a merger, sale or transfer of its business, or pledge, hypothecation or transfer of all or substantially all of its rights and obligations under this Agreement (each, a "Managing Member Transfer"), the Managing Member is not registered nor required to be registered as an investment adviser under the Advisers Act, or such Managing Member Transfer would not constitute an "assignment" of this Agreement by the Managing Member within the meaning of Section 202(a)(1) of the Advisers Act, the Managing Member may consummate the Managing Member Transfer with (i) any person with the same beneficial owners as the Managing Member (not including any person who acquires his, her or its interest to facilitate a Managing Member Transfer) without the consent of the Members or (ii) any other entity upon the consent of the Members [redacted]; *provided*, *however*, that in either case such entity expressly assumes all obligations of the Managing Member under this Agreement and is entitled to act in the capacity of the Managing Member for the benefit of the Company and has received all necessary regulatory approvals in that regard. If at the time the Managing Member desires to effect a Managing Member Transfer, the Managing Member is registered or required to be registered as an investment adviser under the Advisers Act and such Managing Member Transfer would constitute an "assignment" of this Agreement by the Managing Member within the meaning of Section 202(a)(1) of the Advisers Act, the Managing Member may not consummate such Managing Member Transfer without (A) providing notice to the Members, at least [redacted] prior to the consummation of such Managing Member Transfer, and (B) obtaining the consent of Members [redacted] to such Managing Member Transfer prior to the consummation thereof.

Section 10.2 *Rights and Obligations of Transferees*.

(a) With respect to any Transfer of part or all of any Interest permitted pursuant to Section 10.1, as of the Transfer Date all of the rights possessed by the Transferor with respect to the transferred Interest (or part thereof) shall vest in the Transferee, and all of the obligations of the Transferor with respect to the transferred Interest (or part thereof) shall be assumed by the Transferee and such Transferee shall be admitted to the Company as a Member.

(b) On and after the Transfer Date for any Interest (or part thereof), the Transferor shall no longer have any obligation with respect to the transferred Interest (or part thereof).

Section 10.3 *Terms of and Conditions to Transfer*. With respect to any Transfer of part or all of any Interest permitted pursuant to Section 10.1, the proposed transferee shall have executed a subscription agreement or such other agreement or instruments as the Managing Member may reasonably deem necessary or appropriate to admit such transferee as a Member and to evidence such Member's agreement to be bound by and to comply with the terms and provisions hereof.

ARTICLE XI

DISSOLUTION OF THE COMPANY

Section 11.1 *Dissolution of the Company*. The Company shall dissolve and the Managing Member shall wind up the Company's affairs upon the earlier of (a) the expiration of its term in accordance with Section 2.13, (b) such earlier date as determined by the Managing Member and (c) subject to Sections 2.14 and 4.6, upon a withdrawal of a Managing Member unless there is a remaining Managing Member who agrees to continue the business of the Company [redacted]. Upon the dissolution of the Company, the affairs of the Company shall be promptly wound up as provided in Section 11.2 hereof by the Managing Member, or if the Managing Member is unavailable, by the person previously designated by the Managing Member, or if the Managing Member has made no such designation, the person selected by Members [redacted] Voting Interests (in each case, the "Liquidator"). Such person shall take all steps necessary or appropriate to wind up the affairs of the Company as promptly as practicable. Neither the admission of Members nor the retirement, bankruptcy, death, dissolution, or insanity of any Member shall dissolve the Company.

Section 11.2 *Procedure on Winding Up*.

(a) Upon the dissolution of the Company, a full account of the assets and liabilities of the Company shall be taken and the assets of the Company shall be liquidated to the extent determined by the Liquidator, which may be an Affiliate of the Managing Member, and, as promptly as practicable, the cash proceeds thereof shall be applied in the following order of priority:

(i) to the payment of all debts, taxes, obligations and liabilities of the Company (including amounts owed to Members who are creditors), including the expenses of liquidation; and

(ii) to the Members in accordance with Section 7.1.

If the foregoing distributions to the Members do not equal the Members' respective positive Capital Account balances as determined after giving effect to all adjustments attributable to allocations of Profits and Losses (or any items thereof) during the Fiscal Period in which such distribution is made and all adjustments attributable to contributions and distributions of money and property effected prior to such distribution, then the allocations of Profits and Losses (or any items thereof) provided for in this Agreement shall be adjusted, including by the filing of amended tax returns to the extent necessary and permissible, to the least extent necessary to produce a Capital Account balance for each Member which corresponds to the amount of the distribution to such Member.

(b) In the winding up of the Company, the Managing Member (or the Liquidator) may establish reserves for contingent liabilities of the Company in an amount (including estimated expenses, if any, in connection therewith) determined by the Managing Member (or the Liquidator) and, upon the satisfaction of such contingent liabilities, the amounts, if any, remaining in such reserves shall be distributed to the Members in accordance with Section 7.1.

(c) Distributions to a Member pursuant to subparagraph (a)(ii) may be made over time as proceeds are received by the Company and shall be made in cash or, in the discretion of the Managing Member (or the Liquidator), in securities (which may include short positions, as well as long positions) selected by the Managing Member (or the Liquidator), or partly in cash and partly in securities (which may include short positions, as well as long positions) selected by the Managing Member (or the Liquidator).

(d) Upon the winding up of the Company, the name of the Company and its goodwill shall not be appraised, sold or otherwise liquidated but shall remain the exclusive property of the Managing Member.

ARTICLE XII

BENEFIT PLAN INVESTORS

Section 12.1 *Investment in Accordance with Law*. Each Member that is, or is investing assets on behalf of, an "employee benefit plan," as defined in, and subject to the fiduciary responsibility provisions of, ERISA, or a "plan," as defined in and subject to Code Section 4975 (each such employee benefit plan and plan, a "Plan"), and each fiduciary thereof who has caused the Plan to become a Member (a "Plan Fiduciary"), represents and warrants that (a) the Plan Fiduciary has considered an investment in the Company for such Plan in light of the risks relating thereto; (b) the Plan Fiduciary has determined that, in view of such considerations, the investment in the Company for such Plan is consistent with the Plan Fiduciary's responsibilities under ERISA; (c) the investment in the Company by the Plan does not violate and is not otherwise inconsistent with the terms of any legal document constituting the Plan or any trust agreement thereunder; (d) the Plan's investment in the Company has been duly authorized and approved by all necessary parties; (e) none of the Managing Member, the Administrator, the Sub-Administrator, the independent valuation agent, if any, Magnetar Capital, any placement agent, any of their respective Affiliates or any of their respective agents or employees: (i) has investment discretion with respect

to the investment of assets of the Plan used to purchase Interests; (ii) has authority or responsibility to or regularly gives investment advice with respect to the assets of the Plan used to purchase Interests for a fee and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to the Plan and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to the Plan; and (f) the Plan Fiduciary (i) is authorized to make, and is responsible for, the decision for the Plan to invest in the Company, including the determination that such investment is consistent with the requirement imposed by Section 404 of ERISA that Plan investments be diversified so as to minimize the risks of large losses; (ii) is independent of the Managing Member, the Administrator, the Sub-Administrator, the independent valuation agent, if any, Magnetar Capital, each placement agent and each of their respective Affiliates, and (iii) is qualified to make such investment decision.

Section 12.2 *Disclosures and Restrictions Regarding Benefit Plan Investors*. Each Member that is a "benefit plan investor" (defined as any Plan and any entity ("Plan Assets Entity") deemed for any purpose of ERISA or Code Section 4975 to hold assets of any Plan) represents that the individual signing any subscription agreement in connection herewith has disclosed such Member's status as a benefit plan investor by checking the appropriate box in the subscription agreement. Each Member that is not a "benefit plan investor" represents and agrees that if at a later date such Member becomes a benefit plan investor, such Member shall immediately notify the Managing Member of such change of status. In addition, each Plan Assets Entity agrees to promptly provide information to the Managing Member, upon the Managing Member's reasonable request, regarding the percentage of the Plan Assets Entity's equity interests held by benefit plan investors. Notwithstanding anything herein to the contrary, the Managing Member, on behalf of the Company, may take any and all action including refusing to admit persons as Members or refusing to accept additional Capital Contributions, and requiring the withdrawal of the Interests of any Member in accordance with Section 9.2 hereof, as may be necessary or desirable to assure that at all times less than 25% of the total value of each "class of equity interests in the Company" as determined pursuant to United States Department of Labor Regulation Section 2510.3-101 and Section 3(42) of ERISA, is held by benefit plan investors (not including the investments of the Managing Member, any member of the Investment Committee, any person who provides investment advice for a fee (direct or indirect) with respect to the Company and individuals and entities (other than benefit plan investors) that are "affiliates," as such term is defined in the applicable regulation promulgated under ERISA, of any such person) or to otherwise prevent the Company from holding "plan assets" under Section 3(42) of ERISA.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 13.1 *Legal Effect; Governing Law*. This Agreement shall be binding on the executors, administrators, estates, heirs, legal survivors, successors and permitted assigns of the Company, and shall be governed by and construed in accordance with the laws of the State of Delaware. The rights and liabilities of the Members shall be as provided in the Act, except as herein otherwise expressly provided. Each party expressly submits and consents to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan with respect to any action, suit or proceeding arising out of or relating to this Agreement.

Section 13.2 *Designation of Attorney*. Each of the undersigned for himself hereby irrevocably constitutes and appoints the Managing Member as his true and lawful attorney-in-fact in his name, place and stead, to make, execute, sign and file:

(a) the Certificate and any amendment thereto or termination thereof which is or may be required by the laws of the State of Delaware;

(b) any certificate required by reason of the dissolution of the Company; and

(c) any application, certificate, report or similar instrument or document required to be submitted by or on behalf of the Company to any governmental or administrative agency or body, to any securities exchange, board of trade, clearing corporation or association or to any self-regulatory organization or trade association.

Said attorney-in-fact is not by this Section 13.2 granted any authority on behalf of the undersigned to amend this Agreement (*provided*, *however*, that this sentence shall not be construed as limiting the Managing Member's ability to amend this Agreement pursuant to Section 13.9).

Section 13.3 *Maintaining Books of Account*. Proper and complete books of account shall be kept at all times and shall be open to inspection by any Member or his accredited representative at reasonable times during office hours, *provided*, *however*, that the Members understand and agree that the Managing Member shall have the right to keep confidential from the Members, for such period of time as the Managing Member deems reasonable, any information which the Managing Member reasonably believes to be in the nature of trade secrets or other information the disclosure of which the Managing Member in good faith believes is not in the best interests of the Company or could damage the Company or its business or which the Company is required by law or by agreement with a third party to keep confidential.

Section 13.4 *Audit and Retention of Books*. The books of account and records of the Company shall be audited as of the end of each fiscal year by independent certified public accountants designated from time to time by the Managing Member. The Company shall retain all books and records relating to the Company and Members' interests in the Company required under the Advisers Act and the regulations of the Securities and Exchange Commission promulgated thereunder for the periods required therein.

Section 13.5 *Reports to Members*. The Company shall use reasonable best efforts to cause to be prepared and mailed to each of the Members (a) unaudited reports of the performance of the Company promptly after the end of each fiscal quarter and (b) audited financial statements of the Company within 120 days after the end of each fiscal year, which shall be accompanied by an opinion from the Company's independent certified public accountants as soon as practicable following completion of the Company's annual audit (using GAAP as a guideline). If the Company is unable to deliver such audited financial statements within such 120-day period, it shall provide each Member with estimated financial results for such fiscal year as soon as practicable. The Managing Member shall notify the Members of any change (w) to the Company's independent certified public accountant, (x) to the Administrator or Sub-Administrator, (y) to the Company's name, or (z) to the Company's fiscal year.

Section 13.6 *Limited Access to Investor Information*. To the greatest extent possible under the Act, the Company shall restrict the rights as provided in the Act of a Member to obtain information with respect to other Members of the Company. For the avoidance of doubt, this restriction provides that any Member may not request or receive a current list of the name and last known business, residence or mailing address of each other Member.

Section 13.7 *Voting Interests of the Members*.

(a) Subject to Sections 13.7(b) and 13.7(c), with respect to any Member for any Fiscal Period, the "Voting Interest" shall be a fraction (expressed as a percentage), the numerator of which is the balance in such Member's Capital Account at the beginning of such Fiscal Period and the denominator of which is the aggregate balance in the Capital Accounts of all Members at the beginning of such Fiscal Period. The aggregate Voting Interests, after the adjustments provided for in Section 13.7(b), shall at all times be equal to 100%.

(b) In the event that a Member indicates in such Member's subscription agreement entered into in connection herewith that holding a Voting Interest, or a Voting Interest in excess of a certain percentage of the aggregate Voting Interests, could reasonably be expected to cause such Member to violate any law, rule or regulations promulgated by any governmental or public authority or any regulatory or self-regulatory organization and applicable to such Member, the Managing Member by accepting such subscription agreement shall agree to such Member's waiving, in whole or in part, what would otherwise have been such Member's Voting Interest. The Voting Interest so waived shall thereupon be deemed to be held by the other Members *pro rata* in accordance with their respective Voting Interests (after giving effect to all other limitations imposed on the Voting Interests of such Members).

(c) The Interest of any Defaulting Member shall be excluded from the definition of "Voting Interests" and from any voting matter, such that the Defaulting Member's Interest will not be considered in either the numerator or the denominator in determining the Voting Interest.

(d) Notwithstanding anything to the contrary herein, the voting rights of Members shall be aggregated with those of the limited partners, shareholders or members in any Parallel Fund for purposes of calculating the Platform Majority and Platform Supermajority.

Section 13.8 *Merger*. Upon the consent of the Managing Member and the consent of Members [redacted] of the Voting Interests, the Company may merge, consolidate, sell, transfer or otherwise dispose of all or substantially all of its assets to, convert or otherwise combine with or into any entity (a "Business Combination"). The Managing Member shall have the power and authority, on behalf of the Members, to determine: (i) the terms and conditions upon which such merger, consolidation, sale, transfer or other distribution, conversion or combination will occur; and (ii) the terms and provisions of the organizational or governing documents or agreements of the entity surviving, resulting from or acquiring assets in any such Business Combination ("Governing Documents") and each Member hereby expressly agrees to be bound by any such Governing Documents, *provided*, *however*, that the Managing Member may not agree to a term or condition that, had such term or condition been proposed as an amendment to this Agreement, would have required the consent of any Member pursuant to Section 13.9 without first obtaining the consent of such Member. The provisions of Section 13.9 shall apply in

connection with the consent to any Business Combination. No Member shall be entitled to any appraisal, dissenters' or similar rights in connection with any Business Combination.

Section 13.9 *Amendment of this Agreement*. This Agreement may be amended by the Managing Member without seeking or obtaining the consent of the Members (other than the Managing Member): (a) in any manner that does not materially adversely affect any Member; (b) to effect any changes required by applicable laws or regulations or take such actions as may be necessary or appropriate to avoid the assets of the Company being treated for any purpose of ERISA or Code Section 4975 as assets of any "employee benefit plan" as defined in and subject to the fiduciary responsibility provisions of ERISA or of any plan, as defined in and subject to Code Section 4975 (or any corresponding provisions of succeeding law) or to avoid the Company's engaging in a prohibited transaction as defined in Section 406 of ERISA or Code Section 4975(c); or (c) to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision contained herein; *provided*, *however*, that any amendment to or waiver of any provision of this Agreement that would increase the Capital Commitment, otherwise increase the monetary liabilities or obligations of any Member shall require the written consent of such Member; *provided*, *further*, that any amendment that would extend the Investment Period shall require the consent of a majority of the Unrelated Voting Interests. Except as otherwise set forth herein, this Agreement may also be amended by action taken by both the Managing Member and the Members [redacted] Voting Interests owned by the Members at the time of the amendment, *provided*, *however*, that such amendment does not discriminate among the Members. Any amendment approved pursuant to this Section 13.9 shall be valid upon receipt of the requisite consent and shall not require the execution of any agreement, instrument or document by any Member. The Managing Member shall circulate to all Members any amendment of this Agreement promptly after it has become effective.

Section 13.10 *Consents*. The Managing Member may from time to time determine to submit to the Company, for its approval, various actions (including proposed amendments to this Agreement), regardless of whether approval is required pursuant to the provisions of this Agreement. Any such action shall be deemed to be approved by the Company if: (a) no later than 30 days prior to the proposed effectiveness of such action, the Managing Member gives notification to the Members describing such action in reasonable detail and (b) prior to the effectiveness of such action, Members holding a majority of the Voting Interests, determined as of the beginning of the Fiscal Period in which such notification is given to the Members, approve such action (it being understood and agreed that (i) a Member who is not a Managing Member Party shall be deemed to approve such an action if such Member either (A) affirmatively approves such action prior to the effectiveness thereof or (B) fails to give notification to the Company of its objection to such action prior to the effectiveness thereof; and (ii) a Member who withdraws or is required to withdraw all of such Member's Interests pursuant to the provisions of this Agreement prior to the effectiveness of such an action shall thereupon automatically cease to have any right to approve or withhold its approval of such action and shall not be considered a Member for purposes of determining whether Members holding a majority of the Voting Interests have approved such action, notwithstanding that such Member may have objected to such action).

Section 13.11 *Confidentiality; Non-Solicitation*.

(a) Each Member covenants and agrees that such Member shall maintain as confidential all information concerning any Managing Member Party or any account for which the Managing Member or any Affiliate serves as Managing Member, manager or portfolio manager received from any source, including information received from a Managing Member Party as part of a Member's investment or due diligence process, whether received prior to or after becoming a Member. No Member shall disclose such information to any person, except for information that is otherwise publicly available or required to be disclosed by law, *provided* that a Member may share such information with members of such Member's immediate family, as well as investment advisers, accountants and attorneys, *provided*, *however*, that such other persons undertake (i) to hold such information confidential to the same extent set forth herein and (ii) not to use any such information in any manner which could reasonably be expected to be adverse to the best interests of the Company or the Managing Member. For the avoidance of doubt, no Member may provide information concerning the Company to any third party, knowing that such third party may use such information in any form of printed, electronic or "on-line" publication, newsletter or circular, whether publicly or privately distributed.

(b) Each Member covenants and agrees that until the twelfth (12^{th}) calendar month-end after such Member Transfers such Member's entire Interest or otherwise withdraws or is removed as a Member, (i) such Member shall not, directly or indirectly, without the prior written consent of the Managing Member, knowingly contact any Protected Person except with regard to such Member's current or prospective investment in the Company or another investment for which the Managing Member acts as investment manager or Managing Member, nor shall such Member, directly or indirectly, solicit for employment or hire any such Protected Person, *provided*, *however*, that an investment in a private investment fund or other investment vehicle (other than an investment constituting Seed Capital) for which an entity employing a Protected Person acts as investment manager or advisor, shall not, in and of itself, be deemed to be a prohibited "knowing contact" (either direct or indirect) of a Protected Person; and (ii) if such Member (including such Member's Affiliates and related parties), directly or indirectly, acts as an investment manager or advisor or provides or will provide Seed Capital to support, sponsor or promote the activities of an investment manager or advisor (an "Associated Management Company") (as distinguished from making a purely passive investment with such an investment manager or advisor), such Member shall not permit (or allow the Associated Management Company to permit) a Protected Person to provide portfolio-related, investment management-related or trading-related services (other than on behalf of the Managing Member or its Affiliates) for the benefit of such Associated Management Company or private investment funds managed or sponsored by such Associated Management Company. For the avoidance of doubt, no Member shall, during the period set forth above, solicit or encourage any Protected Person to seek employment or business opportunities elsewhere than with the Managing Member or its Affiliates or not to devote (in the case of a Protected Person that is a then-current officer or employee of the Managing Member or any Affiliate) such person's full and undivided business time to such person's activities as an officer or employee of the Managing Member or any Affiliate.

(c) The provisions of this Section 13.11 may be waived, in part or in whole, in writing by the Managing Member.

(d) Each Member agrees that the Company and the Managing Member would be subject to potentially irreparable injury as a result of any breach by such Member of the covenants and agreements set forth in this Section 13.11, and that monetary damages would not be sufficient to compensate or make whole either the Company or the Managing Member for any such breach. Accordingly, each Member agrees that the Company and the Managing Member, separately or together, shall be entitled to equitable and injunctive relief, on an emergency, temporary, preliminary or permanent basis, to prevent any such breach or the continuation thereof, without first being required to post any bond or show actual damages.

Section 13.12 *Notices*. All notices provided for under this Agreement shall be in writing and shall be deemed to have been duly given as indicated if sent to the Member's address as set forth in the schedule in the files of the Company as of the date of such notice:

(a) If delivered in person or by courier, on the date it is delivered;

(b) If sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted;

(c) If sent by first-class mail, 2 days after the date of postmark; and

(d) If sent by facsimile, on generation of confirmation.

Notice by any Member to the Company shall be deemed effective upon receipt by the Company.

A Member may change his address for purposes of this Agreement upon 5 days prior written notice to the Managing Member.

Section 13.13 *Binding Effect of this Agreement*. This Agreement, including Section 13.2 hereof, shall be binding on the successors, permitted assigns and the legal representatives of each of the Members.

Section 13.14 *Counterparts*. This Agreement may be executed by executing a subscription agreement or similar instrument with the same effect as if the parties executing the subscription agreement or similar instrument had all executed one counterpart of this Agreement, *provided*, *however*, that this Agreement may also be executed in more than one counterpart with the same effect as if the Members executing the several counterparts had all executed one document.

Section 13.15 *Entire Agreement*. This Agreement, together with the agreements referenced in Article III and Section 13.14, constitutes the entire agreement of the parties hereto relating to the Company and supersedes all prior negotiations, correspondence or agreements, written or oral, among the parties hereto with respect to the matters herein, including the First A&R Agreement. The parties hereto acknowledge and agree that the Company or the Managing Member, without the approval of or further disclosure to any other Member, may enter into side letters or similar written agreements with Members that (i) have the effect of establishing rights under or altering or supplementing the terms of this Agreement and (ii) shall govern with respect to such Member notwithstanding any other provision of this Agreement.

ARTICLE XIV

TAX RETURNS

Section 14.1 *Tax Returns*. The Company shall prepare and timely file all U.S. federal, state and local and foreign tax returns required to be filed by the Company. Any income tax return of the Company shall be prepared by an independent public accounting firm selected by the Managing Member. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver to each Member as soon as applicable after the end of each calendar year and no later than [redacted] of the subsequent year estimates for each Member's Schedule K-1, and no later than [redacted] of the subsequent year each Member's final Schedule K-1 together with such additional information as may be required by the Members (or their owners) in order to file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its tax returns.

Section 14.2 *Tax Partnership*. It is the intention of the Members that the Company be classified as a partnership for U.S. federal income tax purposes. Unless otherwise approved by the Managing Member, neither the Company nor any Member shall make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law or to be classified as other than a partnership pursuant to Treasury Regulation Section 301.7701-3.

Section 14.3 *Tax Elections*. The Company shall make the following elections on the appropriate forms or tax returns:

(a) to adopt the calendar year as the Company's fiscal year, if permitted under the Code;

(b) to adopt the accrual method of accounting for U.S. federal income tax purposes;

(c) to elect to amortize the organizational expenses of the Company as permitted by Code Section 709(b); and

(d) any other election the Managing Member may deem appropriate and in the best interests of the Members.

Section 14.4 *Tax Matters Member*.

(a) The tax matters partner of the Company pursuant to Code Section 6231(a)(7) shall be a Member designated from time to time by the Managing Member subject to replacement by the Managing Member. (Any Member who is designated as the tax matters partner is referred to herein as the "Tax Matters Member"). The initial Tax Matters Member shall be the Managing Member and/or the Special Member. The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each other Member to become a notice partner within the meaning of Code Section 6231(a)(8). The Tax Matters Member shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the fifth (5th) day after becoming aware thereof and, within that

time, shall forward to each other Member copies of all significant written communications it may receive in that capacity.

(b) The Tax Matters Member shall take no action without the authorization of the Managing Member, other than such action as may be required by applicable law. Any reasonable, documented cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

(c) The Tax Matters Member shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the consent of the Managing Member. The Tax Matters Member shall not bind any Member to a settlement agreement without obtaining the consent of such Member. Any Member that enters into a settlement agreement with respect to any Company item (within the meaning of Code Section 6231(a)(3)) shall notify the other Members of such settlement agreement and its terms within 15 days from the date of the settlement.

(d) No Member shall file a request pursuant to Code Section 6227 for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If the Managing Member consents to the requested adjustment, the Tax Matters Member shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within 30 days from such notice, or within the period required to timely file the request for administrative adjustment, if shorter, any Member, including the Tax Matters Member, may file a request for administrative adjustment on its own behalf. Any Member intending to file a petition under Code Sections 6226 or 6228 or any other Code Section with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the case where the Tax Matters Member is the Member intending to file such petition on behalf of the Company, such notice shall be given within a reasonable period of time to allow the other Members to participate in the choosing of the forum in which such petition will be filed.

(e) If any Member intends to file a notice of inconsistent treatment under Code Section 6222(b), such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Member's intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

* * * * *

IN WITNESS WHEREOF, the undersigned has hereunto signed this Agreement on the date first set forth above.

Managing Member:

MTP Energy Management LLC

By: Magnetar Financial LLC, its managing member

By: _____
Name [redacted]
Title: Chief Legal Officer

Members:

All Members now and hereafter admitted as Members of the Company pursuant to a Power of Attorney now or hereafter executed in favor of and delivered to the Managing Member.

By: MTP Energy Management LLC, Attorney-in-Fact

By: Magnetar Financial LLC, its managing member

By: _____
Name: [redacted]
Title: Chief Legal Officer

Initial Member:

Magnetar Financial LLC

By: _____
Name: [redacted]
Title: Chief Legal Officer

Special Member:

Magnetar Financial LLC

By: _____
Name: [redacted]
Title: Chief Legal Officer