

**OFFERING MEMORANDUM**

December 2, 1996

**EXPONENTIAL RETURNS, L.P.**

Limited Partnership Interests

Minimum Initial Investment: \$100,000

Exponential Returns, L.P. (the "Partnership") is a limited partnership which seeks maximum capital appreciation from its investments consistent with reasonable risk. The Partnership will invest its assets primarily in a diversified portfolio of domestic common stocks and related put and call options. Current income is a secondary objective. The Partnership intends to use leverage as an investment technique. See "The Partnership -- Investment Objectives".

Following the first anniversary of an investment in the Partnership, a Limited Partner will be entitled to withdraw all or a portion of its investment quarterly, subject to certain limitations. See "Summary of the Partnership Agreement".

The General Partner of the Partnership is Exponential Returns Management, L.P., a Texas limited partnership, of which Exponential Management LLC, a Texas limited liability company, is the general partner. Conrad P. Seghers and James R. Dickey are the principals of Exponential Management LLC and they will implement the Partnership's investment strategy. The General Partner holds a 1% equity interest in the Partnership and, as needed, will make further cash investments in the Partnership in amounts sufficient to maintain such percentage interest (or such smaller percentage as may be permitted by applicable IRS regulations and rulings).

The principals of Exponential have invested an aggregate of \$100,000 in the Partnership through the General Partner and, individually, as Limited Partners, and intend to invest up to an additional \$150,000 during 1997. They have agreed that, at least until January 1, 1999, they will not reduce the amount of their investments and that they will reinvest in the Partnership all management fees received from the Partnership, after payment of related expenses and taxes.

Limited partnership interests ("Interests") are being offered solely to qualified investors. The minimum investment is \$100,000, although the General Partner may accept subscriptions for less. Interests will continue to be offered for an indefinite period, and additional limited partners may be admitted from time to time. There is no maximum dollar amount of Interests that the Partnership may sell. See "Terms of the Offering".

**THESE SECURITIES ARE SPECULATIVE AND INVOLVE SUBSTANTIAL RISK. SEE "THE PARTNERSHIP -- INVESTMENT OBJECTIVES" AND "RISK FACTORS".**

**THESE SECURITIES HAVE NOT BEEN REGISTERED WITH OR APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, THE ATTORNEY GENERAL OF THE STATE OF NEW YORK OR ANY OTHER STATE SECURITIES COMMISSION. NO SUCH COMMISSION HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS MEMORANDUM NOR IS IT INTENDED THAT ANY SUCH COMMISSION WILL DO SO. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**EXPONENTIAL RETURNS, L.P.**  
c/o Exponential Returns Management, L.P.  
6157 Crestmont Drive, Dallas, Texas 75214  
(214) 692-8385

Name of Offeree: \_\_\_\_\_

Copy No. \_\_\_\_\_

**The Partnership is not intended to be operated as a regulated investment company or to be subject to regulation under the Investment Company Act of 1940.**

Interests are offered subject to prior sale and to the Partnership's right to reject any subscription, in whole or in part, and to terminate or restrict the size of this Offering.

**THIS MEMORANDUM DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, INTERESTS IN ANY JURISDICTION IN WHICH SUCH AN OFFER OR SOLICITATION WOULD BE UNLAWFUL. THIS MEMORANDUM CONSTITUTES AN OFFER ONLY TO THE OFFEREE NAMED ON THE COVER PAGE.**

This confidential Memorandum has been prepared by the Partnership for presentation to qualified investors. Any reproduction or distribution of this Memorandum, in whole or in part, or the disclosure of its contents, is prohibited.

**The Interests have not been registered under the Securities Act of 1933 and will, therefore, be "restricted securities" for purposes of that Act. There is no public market for the Interests and it is not expected that any market will develop.**

Prospective investors should not construe the contents of this Memorandum as legal, tax or investment advice. Each prospective investor should consult its own counsel, accountants and business advisors as to the legal, tax and business implications of an investment in the Partnership.

**EXCEPT FOR THE OFFICERS OF EXPONENTIAL RETURNS MANAGEMENT LLC, NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS MEMORANDUM, AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE PARTNERSHIP OR ANY OTHER PERSON. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY DISTRIBUTION AND RESALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE PARTNERSHIP SINCE THE DATE HEREOF.**

Prior to the sale of an Interest to any prospective investor, the prospective investor and its representatives, if any, will have an opportunity to ask questions of, and receive answers from, officers of Exponential Returns Management LLC concerning any aspect of this Offering and to obtain from them any additional information necessary to verify the information set forth in this Memorandum to the extent that they possess such information or can acquire it without unreasonable effort or expense.

**THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE FLORIDA SECURITIES AND INVESTOR PROTECTION ACT.**

**EACH FLORIDA RESIDENT WHO SUBSCRIBES TO PURCHASE AN INTEREST HAS THE RIGHT TO WITHDRAW HIS SUBSCRIPTION AND TO RECEIVE A FULL REFUND OF ALL MONIES PAID WITHIN THREE BUSINESS DAYS AFTER THE EXECUTION OF THE SUBSCRIPTION AGREEMENT OR PAYMENT FOR THE INTEREST IS**

**MADE, WHICHEVER IS LATER. SUCH WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH THIS WITHDRAWAL, A SUBSCRIBER NEED ONLY SEND A LETTER OR TELEGRAM TO THE PARTNERSHIP INDICATING HIS INTENTION TO WITHDRAW. SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED THIRD BUSINESS DAY. A LETTER SHOULD BE MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE ITS RECEIPT AND TO EVIDENCE THE TIME OF MAILING.**

**THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE BANKING COMMISSIONER OF THE STATE OF CONNECTICUT NOR HAS THE COMMISSIONER PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**EACH PENNSYLVANIA RESIDENT WHO SUBSCRIBES TO PURCHASE AN INTEREST HAS THE RIGHT TO WITHDRAW HIS SUBSCRIPTION AND TO RECEIVE A FULL REFUND OF ALL MONIES PAID WITHIN TWO BUSINESS DAYS AFTER RECEIPT BY THE PARTNERSHIP OF HIS WRITTEN BINDING CONTRACT OF PURCHASE. SUCH WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH THIS WITHDRAWAL, A SUBSCRIBER NEED ONLY SEND A LETTER OR TELEGRAM TO THE PARTNERSHIP INDICATING HIS INTENTION TO WITHDRAW. SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED SECOND BUSINESS DAY. A LETTER SHOULD BE MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE ITS RECEIPT AND TO EVIDENCE THE TIME OF MAILING. SHOULD THE REQUEST BE MADE ORALLY, YOU SHOULD ASK FOR WRITTEN CONFIRMATION THAT IT HAS BEEN RECEIVED.**

**THE INTERESTS WILL BE SOLD IN RELIANCE ON PARAGRAPH (13) OF CODE SECTION 10-5-9 OF THE GEORGIA SECURITIES ACT OF 1973, AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN A TRANSACTION WHICH IS EXEMPT UNDER SUCH ACT OR PURSUANT TO AN EFFECTIVE REGISTRATION UNDER SUCH ACT.**

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**Exhibits**

- A Agreement of Limited Partnership
- B Subscription Agreement
- C Confidential Offeree Questionnaire

## **THE PARTNERSHIP**

### **General**

Exponential Returns, L.P. (the "Partnership") is a Texas limited partnership which seeks maximum capital appreciation from its investments consistent with reasonable risk. The Partnership will invest its assets in a diversified portfolio of domestic common stocks and covered and uncovered put and call options. The General Partner of the Partnership is Exponential Returns Management, L.P., a Texas limited partnership, of which Exponential Management LLC, a Texas limited liability company ("Exponential"), is the general partner. The General Partner will select and manage the Partnership's investments and will administer the business and affairs of the Partnership. Conrad P. Seghers and James R. Dickey are the principals of Exponential. They have developed and will implement the Partnership's investment strategy on behalf of the General Partner and Exponential. The Partnership will begin operations in January 1997 and expects to continue its business until December 31, 2006, at which time it will dissolve and liquidate, unless the General Partner and a majority in interest of the Limited Partners determines otherwise.

The principals of Exponential have invested an aggregate of \$100,000 in the Partnership through the General Partner and, individually, as Limited Partners, and intend to invest up to an additional \$150,000 during 1997. They have agreed that, at least until January 1, 1999, they will not reduce the amount of their investments and that they will reinvest in the Partnership all management fees received from the Partnership, after payment of related expenses and taxes. Thereafter, should they wish to reduce their investments in the Partnership by an aggregate of \$100,000 or more, they will not do so without providing the Limited Partners with at least six months' notice of such intention. See "Management".

The Partnership is offering limited partnership interests ("Interests") for sale solely to qualified investors. The minimum investment is \$100,000, although the General Partner may accept subscriptions for less. See "Terms of the Offering". Purchasers of Interests become limited partners of the Partnership. A copy of the Agreement of Limited Partnership of the Partnership (the "Partnership Agreement") is an exhibit to this Memorandum. The General Partner holds a 1% equity interest in the Partnership and, as needed, will make further cash investments in the Partnership in amounts sufficient to maintain at all times such percentage interest (or such smaller percentage as may be permitted by applicable IRS regulations and rulings).

### **Investments**

**General.** The principal objective of the Partnership is to realize substantial capital appreciation on its investments, both long term and short term. The Partnership will invest its assets primarily in a diversified portfolio of common stocks of domestic issuers, as well as covered and uncovered put and call options. To a lesser extent, the Partnership may also invest in preferred stocks and securities convertible or exercisable into common stock, including notes, debentures, preferred stock and warrants, in order to obtain current income or when, in the opinion of the General Partner, such securities may be purchased at favorable prices in relation to the underlying common stock. The Partnership will engage to a significant extent in the trading

of put and call options on stocks included in its portfolio, or which it has a right to acquire through conversion or exchange ("covered options"), as well as, to a lesser extent, other stocks not owned by the Partnership ("uncovered options").

To fulfill the Partnership's objectives, the General Partner will monitor a variety of economic, monetary and market data in order to identify and analyze broad economic, industry and market trends so that the Partnership's investment strategy is kept consistent with such trends. In broad terms, the General Partner will attempt to use this data so that the Partnership is fully invested during market growth cycles and sufficiently liquid during downtrends so as to be able to accumulate at favorable prices stocks with substantial price appreciation potential. In addition, the General Partner will occasionally attempt to effect strategic short sales with respect to industries that appear significantly over-valued.

As to the selection of individual stocks, the Partnership will concentrate on companies with small to medium market capitalizations ranging between \$300 million to \$1 billion, although investments may be made in smaller and larger companies. The Partnership will look for companies whose prospects for substantial price appreciation exceed their potential risk of loss in market value because they are undervalued in relation to their assets, earnings, earnings potential, industry position or break-up value. The securities of such companies may be undervalued due to adverse operating results, poor general economic or industry conditions, adverse publicity or simply because they are out of favor in the investment community.

In its assessment of the fundamental value of an undervalued company, the General Partner will attempt to identify the reasons for its undervaluation by the public and will analyze its current financial situation, its position within its industry, and the trends in such industry. The General Partner will consider such factors as the company's earnings potential, anticipated cash flow, asset value, leverage and the historical relationship between its market prices and its fundamental value. The General Partner also will attempt to evaluate the strength and experience of the company's management. In particular, the General Partner will seek to identify "special situation" factors which suggest that an improvement in the company's market price is likely, such as an increase in cash flow, the generation of excess cash to pay down debt, a turnaround in operations, the introduction of new products, the sale or termination of unprofitable operations, an acquisition or merger, a reorganization or emergence from bankruptcy proceedings, a change in management, an improvement in industry prospects or the cessation of non-recurring or short-term circumstances that depressed the market price of the company's securities.

The General Partner will also base its investment decisions in part on technical analysis of selected stocks. Technical analysis attempts to ascertain the relative market strengths of stocks, their price support and resistance levels, various moving averages and historical price activity.

The Partnership's investment approach will be flexible and the General Partner will not utilize a formula or percentage limitations in determining how the Partnership's assets are allocated among different types of investments.

### **Investment Policies**

**General.** Consistent with the general investment objectives discussed above, the General Partner has full discretion to carry out the investment program of the Partnership. After the Partnership commences operations, a quarterly schedule of the investments of the Partnership will be available on request and the Partnership will furnish quarterly financial statements to each Limited Partner.

The Partnership will invest primarily in companies whose securities are listed on a nationally recognized securities exchange or on the NASDAQ National Market System. In addition, the Partnership may also invest to a limited extent in unlisted securities, or in unregistered securities which are subject to resale restrictions, where the General Partner believes that the potential for growth is very substantial. The General Partner expects to limit the investment of Partnership assets in any one company to not more than 15% of the Partnership's total assets. The General Partner reserves the right, however, to exceed these guidelines from time to time, as it deems appropriate. Diversification of investments among different industries is not a primary goal of the Partnership.

**Foreign Securities.** In attempting to achieve its investment objectives, the Partnership may from time to time invest in foreign equities, although the General Partner does not expect this will occur frequently or in significant amounts. To the extent such investments are made, it is likely that the Partnership would invest indirectly in such securities by acquiring sponsored or unsponsored American Depositary Receipts, Global Depositary Receipts and other types of depositary receipts traded in United States or international securities markets. While investments in foreign securities may reduce overall risk by providing further diversification, such investments involve certain risks which would not necessarily be associated with investments in the securities of domestic issuers. These risks include those resulting from fluctuations in foreign currency exchange rates, the possible imposition of currency controls and repatriation restrictions, political and economic instability and adverse developments, including the implementation of confiscatory or other laws or regulations unfavorable to foreign investors in particular, a reduced level of availability of public information about foreign issuers and a lack of accounting, auditing and financial reporting standards or other regulatory requirements or practices comparable to those applicable to domestic issuers. In addition, given the lack of development of many foreign markets, some foreign securities may be less liquid or more volatile than domestic securities.

**Other Investment Strategies.** The Partnership may use certain investment strategies and techniques to hedge against market risks and to enhance its performance. These strategies and techniques will primarily include (i) purchasing and selling or writing put and call options on securities, (ii) purchasing securities on a when-issued or delayed delivery basis and (iii) selling securities on a "short-sale" basis.

**Options.** An options contract entitles the purchaser to purchase ("call") or sell ("put") a security at a particular price within a specific period of time. The Partnership will engage in the trading of covered and uncovered put and call options and will participate in the options markets both for speculative purposes and to hedge against adverse market fluctuations in its portfolio investments.

The Partnership may also attempt to take advantage of discrepancies in pricing among related issues by engaging in spread trading of put and call options on the same stock at various strike prices or months of expiration. The Partnership will attempt to purchase the undervalued side of the spread and to simultaneously sell short the overvalued side, with the goal of capturing the price discrepancy over time.

Participation in the options markets involves certain investment risks and transaction costs. The correlation between the option prices and the prices of the underlying securities may be imperfect and the market for any particular option may be illiquid at any particular time. Options transactions are normally highly leveraged and, accordingly, gains and losses are magnified. If the Partnership writes or sells an uncovered option, its losses, theoretically, could be unlimited. Accordingly, the Partnership will limit this kind of exposure by primarily selling covered options.

*When-Issued and Delayed Delivery Securities.* The Partnership may purchase securities on a when-issued or delayed delivery basis, for payment and delivery at a specified, later date. The security's price and yield are generally fixed on the date of the commitment to purchase. During the period between purchase and settlement, no interest will accrue to the Partnership. At the time of settlement, the market value of the security may be more or less than the purchase price and, accordingly, the Partnership may realize an immediate gain, but also bears the risk of having an unrealized loss at the time of delivery.

*Short-Selling.* Short selling involves the sale of a security which the Partnership does not own at a specific price in the expectation of covering the sale by purchasing the security in the open market at a later date at a price lower than the specified price. At the time a short sale is effected, the Partnership borrows the securities from a third party "lender" and delivers them to the buyer. At the same time, it incurs an obligation to replace the borrowed security at the market price prevailing at the time the Partnership purchases it for delivery to the lender. The market price at such time can be more or less than the price at which the Partnership sold the security to the buyer. Since short selling can result in profits during a period of declining stock prices, the Partnership can, to an extent, use short selling to hedge against market risks. However, the Partnership would incur losses to the extent that securities sold short increase in value.

The Partnership may also make short sales "against the box" where it would borrow securities identical to securities that it already owns.

Short-selling is a form of leverage. The profit realized by the Partnership on a short sale will be the difference between the price received on the sale and the cost of the securities purchased to cover the sale. If the securities sold short increase in value, the Partnership will incur a loss. Such losses can be, in theory, unlimited, while losses on cash purchases of securities are limited to the amount of cash invested. Short selling is also subject to certain restrictions imposed under the federal securities laws and the rules of the various national and regional securities exchanges. Further, it is likely that the lenders of the securities borrowed by the Partnership for short sales will require the Partnership to collateralize its obligation to replace the borrowed securities with deposits of cash or governmental obligations, thus increasing the costs of such transactions to the Partnership.



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Investors should be aware that, while these kinds of investments may generate higher returns than traditional investments, losses associated with them may be greater than losses from traditional investments. The use of such techniques is designed to decrease the usual market risks associated with traditional, underlying investments. To the extent, however, that the Partnership uses hedging techniques and the underlying investments increase in value, the Partnership's return on the underlying investments will not be as great as it would have been if the Partnership had not hedged its portfolio. If the General Partner were to apply a hedge at an inappropriate time or evaluate market conditions incorrectly, such strategies could lower the Partnership's return more than if they had not been used or even result in losses.

The Partnership will not engage in (i) purchasing or writing options on stock indices or purchasing or writing interest rate and stock index futures contracts and related options, (ii) interest rate hedging transactions, (iii) commodity or commodity futures transactions or (iv) derivatives trading.

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**Interim Investments.** The Partnership will, from time to time, invest its cash in short term money market instruments, such as high yield corporate debt instruments, short-term U.S. Treasury obligations, dollar-denominated treasury obligations of foreign governments, bank certificates of deposit and other notes and bonds having short maturities or call features that the General Partner believes will be exercised in the short term. Such investments will be made pending application of Partnership funds to its investment program or for temporary defensive purposes during any periods in which the General Partner believes that economic or market conditions are unfavorable or suitable equity securities are not available, or to provide short-term liquidity.

**Leverage.** Under the Partnership Agreement, the Partnership is authorized to borrow to finance its investments. The General Partner may cause the Partnership to leverage its investments in circumstances in which borrowing would enable the Partnership to obtain a greater return on its capital than would otherwise be possible. Any such transactions would be subject to applicable credit and margin regulations, so that the amount of the Partnership's margin debt could be as much as 50% of the value of the Partnership's invested assets. If gains realized on securities purchased with borrowed funds exceed the interest paid on the borrowing, the net asset value of the Partnership will rise more quickly than would otherwise be the case. On the other hand, if investment gains fail to cover interest costs, or if there are losses, the net asset value of the Partnership would decline faster than would otherwise be the case.

#### **Management**

**The General Partner.** Exponential Returns Management, L.P., as General Partner, and with the assistance of Exponential, will make all investment decisions and effect the purchase and disposition of securities on behalf of the Partnership. The General Partner will act with full discretion, but in accordance with the investment objectives and policies set forth in this

**Memorandum.** The General Partner is a Texas limited partnership organized in November 1996 to serve as a general partner of the Partnership. Exponential is a Texas limited liability company and serves as general partner of the General Partner.

**Conrad P. Seghers, M.B.A., Ph.D.** Dr. Seghers is Chief Executive Officer of Exponential. He has over ten years experience in investment and financial analysis, acquisition analysis, corporate development, marketing and investor relations.

Dr. Seghers is currently associated with Cornerstone Securities, focusing on biotechnology, health-care, information technology, telecommunications and other high-growth and emerging industries. He has been active in securities trading in the Nasdaq, American Stock Exchange, New York Stock Exchange, Chicago Board Options Exchange, Small Order Execution System, Selectnet, Instinet and Island markets since 1993.

Dr. Seghers is also involved in the acquisition of institutional, private and federal investment funding for small corporations and partnerships that retain him as a consultant and partner. He has worked for American Growth Capital Corporation since 1993, participating in road show presentations and financing negotiations with institutional and private investors. In addition, he is associated with American Growth Fund I, a venture capital partnership, performing company analysis and due diligence, which has offered him the opportunity for several seats on the boards of high-growth corporations.

Dr. Seghers worked at the University of Texas Southwestern Medical Center and the Howard Hughes Institute from 1986 to 1993, where he acquired expertise in the areas of health-care, biotechnology and emerging technologies while being active in mergers and acquisitions and management consulting for the health-care and pharmaceutical industries. He received B.S. and M.S. degrees from Texas A&M University, a Ph.D. from the University of Texas and an Executive M.B.A. degree from Baylor University.

**James R. Dickey.** Mr. Dickey is President of Exponential. He brings to the Partnership over eight years of experience in the design, implementation and sale of financial products. Since 1995, he has been Vice President of Product Development at Associates First Capital Corporation, the largest publicly-traded consumer finance company in the U.S. His responsibilities include new product design, implementation and marketing. He also manages product, consumer and competitor research. His most recent product development efforts have focused on annuities and other insurance-related investment vehicles.

From 1992 to 1995, Mr. Dickey was head of product development for Republic Financial Services, Inc., where his responsibilities included establishing marketing and pricing strategies. Prior to that, he was Assistant Product Manager with Great American Insurance, a subsidiary of American Financial Corporation, where his duties included product strategy and design and market and firm analysis. Each of his positions has included significant involvement in compliance and regulatory issues at both the state and federal level.

Mr. Dickey received his B.A. from Stanford University and M.B.A. from Baylor University.

The address of the General Partner is 6157 Crestmont Drive, Dallas, Texas 75214, and its telephone number is (214) 692-8385.

**Interest of the General Partner.** The General Partner holds a 1% equity interest in the Partnership and, as needed, will make further cash investments in the Partnership in amounts sufficient to maintain at all times such percentage interest of the total capital of the Partnership (or such smaller percentage as may be permitted by applicable regulations and rulings of the Internal Revenue Service). The General Partner will at all times be allocated, accordingly, at least 1% (or such smaller percentage) of the Partnership's income, gains, losses, credits and deductions.

The General Partner bears most of the expenses of operating the Partnership, including expenses for personnel and overhead. The Partnership bears any taxes or governmental charges assessed on the Partnership, brokerage and similar costs and fees, legal and accounting expenses associated with investment transactions, the costs of preparing the Partnership's tax returns and financial statements and reports, legal expenses incurred in connection with any litigation involving the Partnership and any judgments or amounts paid in settlement. The Limited Partners who are not affiliates of the General Partner will reimburse the General Partner for the legal, accounting and other expenses incurred in the organization of the Partnership and the sale of Interests, up to a maximum of \$25,000, at a rate of \$5,000 per year over the first five years of the Partnership.

**Management Fees.** For its services to the Partnership, the General Partner will be paid a quarterly management fee, in advance, equal to 0.25% (approximately 1% per annum) of the net assets of the Partnership. The management fee will be an expense of the Partnership chargeable to the capital accounts of the Limited Partners who are not affiliates of the General Partner.

**Allocation of Net Gain.** The General Partner will receive an allocation of a portion of the Partnership's net gain, if any, for a year that would otherwise be allocated to each Limited Partner (other than any who is an affiliate of the General Partner). Such an allocation will only be made for a particular year, however, if (i) the cumulative net gain allocated to a Limited Partner through the end of such year (after taking into account any such allocations to the General Partner for prior years) exceeds the highest amount of cumulative net gain allocated to such Limited Partner as of the end of any prior year (the "High Watermark") and (ii) the net gain allocable to such Limited Partner for such year represents a percentage return on such Limited Partner's capital contributions (as of the beginning of such year) of not less than the "Hurdle Rate" for such year. In such event, the General Partner will be allocated 20% of the net gain for such year otherwise allocable to such Limited Partner (exclusive of any portion of such net gain which must be counted towards cumulative net gain in order for it to exceed the High Watermark).

The Hurdle Rate for each year will be determined by the General Partner by averaging the "bond equivalent yields" on the one-year United States Treasury Bills auctioned immediately prior to the last business day of each calendar quarter during such year, as reported in *The Wall Street Journal* (under the "Ask Yld." column) on the last business day of each quarter. Accordingly, the General Partner will not receive a performance allocation unless the

Partnership's performance at least meets the minimum investment return set by the interest rate market.

Net gain is the amount by which all allocations to a Limited Partner of income and gain exceed all allocations to him of loss. The determination of the General Partner's allocation of net gain takes into account both realized capital gains and losses of, and the unrealized appreciation and depreciation in, the Partnership's investments, as well as dividends and other types of income and all related expenses. The Limited Partners will be affected by any allocation of net gain to the General Partner in proportion to the amount of net gain allocated to them for the year in question. Limited Partners who make initial or additional capital contributions or completely or partially withdraw from the Partnership as of any date other than the last day of a year, will be subject to a similar allocation to the General Partner of net gain otherwise allocable to them for the partial year period following their contribution or prior to their withdrawal solely with respect to the amount so contributed or withdrawn. If a partial withdrawal is effected at a time when the withdrawing Limited Partner's capital interest has a net loss position, such net loss shall be reduced pro rata on account of the partial withdrawal.

Investors will become Limited Partners at different times during the course of any year. In order to permit the Partnership to effect the allocation with respect to as many Limited Partners as possible at the same time each year, that is, as of December 31, the Partnership will, in its discretion, either effect the first allocation with respect to a Limited Partner as of December 31 of the first calendar year in which such Limited Partner has been in the Partnership, with respect to a period of less than 12 months, or as of December 31 of the second calendar year in which such Limited Partner has been in the Partnership with respect to a period longer than 12 months. In either case, all subsequent allocations will be effected for the 12 months ending December 31 of each year.

Prospective investors in the Partnership should be aware that:

(a) the General Partner's right to receive an allocation of net gain may create an incentive for the General Partner to make investments on behalf of the Partnership that are riskier or more speculative than would be the case in the absence of such performance allocation;

(b) the allocation of net gain will be based on the unrealized appreciation of the Partnership's investments as well as its realized gains;

(c) the allocation of net gain will be determined annually with reference to the preceding 12-month period (or, as noted above, a shorter period in the case of the first allocation with respect to a Limited Partner who makes his or her initial investment in the Partnership at any time other than the first day of a year) and will be measured by the amount of net gain allocable to the Limited Partners with respect to such period; provided, however, that an allocation will be effected for such period only if (i) the cumulative net gain allocated to the Limited Partners through the end of such period (after taking into account any allocations to the General Partner for prior years) exceeds the High Watermark and (ii) the net gain allocable to such Limited Partner for such period represents a percentage return on such Limited Partner's capital contributions (as of the beginning of such year) of not less than the Hurdle Rate for such period;

(d) securities held by the Partnership for which market quotations are not readily available will be valued by the General Partner in the manner set forth in the Partnership Agreement; and

(e) the General Partner's allocation of net gain may be greater or less than compensation charged by other investment advisors for comparable services.

**Custody and Brokerage Arrangements.** The Partnership's securities and other assets will be held in the custody of such custodians or depositaries as the General Partner may select from time to time. In addition, the General Partner will select such brokers or clearing agents to act for the Partnership as it deems necessary or desirable. The General Partner will attempt to obtain from any broker the lowest net price and best execution available, consistent with the Partnership's investment objectives and good practice. In any event, fees and commissions paid by the Partnership to any broker or custodian shall be reasonable in relation to the services provided and comparable to fees and commissions charged by other brokers or custodians to unaffiliated institutional customers for similar transactions at the time, although they may not necessarily be the lowest charges obtainable. In selecting any broker or custodian, the General Partner may take into account the fact that it has furnished the General Partner with statistical, research or other information or services which may enhance the General Partner's services generally, whether or not such services are of any benefit to the Partnership.

**Experts.** The Partnership has retained Christy & Viener, New York, New York, as legal counsel.

#### **USE OF PROCEEDS**

All of the proceeds of this Offering, less up to \$25,000 of organizational and selling expenses reimbursable to the General Partner (at a rate of \$5,000 per year over the first five years of the Partnership), will be utilized for the investment program of the Partnership, less whatever reserves for Partnership expenses are deemed appropriate by the General Partner.

#### **RISK FACTORS**

A prospective investor should carefully consider, in addition to the factors discussed elsewhere in this Memorandum, the following risk factors before subscribing for an Interest:

##### **General**

As a Partnership investing primarily in stocks, the Partnership will be subject to normal market risks, such as the risk that stock prices in general may decline over short or extended periods. The stock market tends to be cyclical, with periods in which stock prices generally rise or decline. There is no assurance that the investment objectives of the Partnership will be achieved. In addition, the Partnership does not expect to make frequent or substantial cash distributions. Accordingly, an investment in the Partnership may not be suitable for

investors with a need for current income. Further, an investment in the Partnership should not be considered as a complete investment program.

**Diversification; Unspecified Investments**

The ability of the Partnership to diversify its investments will depend in part on the aggregate amount invested in the Partnership by the Limited Partners. The smaller the number of subscriptions received, the more difficult diversification of the Partnership's investments may be to achieve. Prospective investors have only limited information as to the specific assets of the Partnership or other relevant economic and financial information which, if available, would assist them in evaluating the merits of investing in the Partnership. Investors must depend on the ability of the General Partner with respect to the selection of investments.

**Reliance on the General Partner and Exponential**

The Limited Partners will have no right or power to take part in or direct the management of the Partnership. All decisions with respect to the Partnership's management and investments will be made by the General Partner and Exponential. Although Messrs. Seghers and Dickey have substantial experience in securities investment and finance, this is the first time that they have operated a limited partnership of the size, and with the objectives, of the Partnership. Further, at least initially, the ability of the Partnership to attain its objectives will depend almost entirely on Messrs. Seghers and Dickey. Should their services no longer be available, the impact on the Partnership would be adverse and it is unclear whether or not the Partnership could continue to operate in such event.

**Investment in Unlisted or Restricted Securities**

Although the Partnership expects to invest principally in listed equity securities, it is possible that it may also invest in unlisted or unregistered and restricted equity securities of start-up and development stage companies, which may involve a high degree of business and financial risk. Because of the absence of any substantial trading market for these investments, and, as to unregistered securities, the imposition of restrictions on resale, the Partnership might take longer to liquidate these positions than would be the case for publicly-traded securities. Although these securities may be resold in privately negotiated transactions, the prices on these sales could be less than those originally paid by the Partnership. Further, issuers whose securities are not publicly traded may not be subject to public disclosure and other investor protection requirements applicable to publicly-traded securities.

**Limited Liquidity**

There is no public trading market for the Interests and none is expected to develop. Further, the Partnership Agreement restricts the transferability of the Interests. While a Limited Partner will have the right to withdraw its investment in the Partnership after one year, any such withdrawal may only be made as of the end of a fiscal quarter of the Partnership, and there can be no assurance that the value of a Limited Partner's interest in the Partnership may not decrease between the time such Limited Partner determines to withdraw and the effective date of such withdrawal. Further, the Partnership Agreement provides that, under certain conditions

(such as prevailing market conditions which make the determination of the value of an interest in the Partnership impossible or impracticable) the General Partner may suspend the right of Limited Partners to withdraw or may limit withdrawals on a single occasion to 50% of a Limited Partner's then current Capital Interest if the General Partner deems such limitation to be appropriate in the circumstances to effect an orderly liquidation of Partnership assets or otherwise to protect the interests of non-withdrawing Partners.

#### **Conflicts of Interest**

The General Partner does not believe that it will encounter significant conflicts of interest in fulfilling its duties to the Partnership. In the event of such conflicts, certain provisions of the Partnership Agreement are designed to protect the interests of the Limited Partners. In addition, the General Partner is accountable to each Limited Partner as a fiduciary and consequently must exercise good faith and integrity in handling Partnership affairs. There can be no assurance, however, that possible conflicts of interest will not arise, including:

**Competition for Management Services.** The General Partner, Exponential and Messrs. Seghers and Dickey will devote as much of their time to the business of the Partnership as in their judgment is reasonably required. They may have conflicts of interest in allocating management time, services and functions among the Partnership and any other partnerships or other ventures which may be organized by the General Partner or its affiliates.

**Competition for Investments.** The General Partner and its affiliates are engaged for their own accounts, and for the accounts of others, in investing in equity and debt securities. The General Partner and its affiliates may organize other limited partnerships with investment objectives similar to those of the Partnership. The Partnership Agreement generally provides that the General Partner will not be obligated to present any particular investment opportunity to the Partnership, even if such opportunity is of a character which, if presented to the Partnership, could be taken by it. The General Partner will attempt to resolve any conflicts of interest between the Partnership and others by exercising the good faith required of a fiduciary, and the General Partner believes that it generally will be able to resolve any conflicts on an equitable basis.

### **TERMS OF THE OFFERING**

#### **General**

The Partnership is offering Interests solely to qualified investors who have no need for liquidity in their investments. See "Risk Factors -- Limited Liquidity".

The Interests are being offered subject to prior sale, to the General Partner's right to reject any subscription, in whole or in part, or to withdrawal of this Offering, in whole or in part, at any time. The Partnership expects to continue to offer Interests, and may admit additional Limited Partners from time to time, for an indefinite period. While there is no maximum dollar amount of Interests that the Partnership may sell, the General Partner would expect to terminate this Offering after the sale of \$50,000,000 of Interests.

The minimum investment is \$100,000, although the General Partner may accept subscriptions for less. After December 31, 1998, the General Partner will have the right to redeem and repurchase the Interest of any Limited Partner who has not invested at least \$100,000 in the Partnership. See "Summary of the Partnership Agreement – Partnership Finances" and "-- Optional Redemptions".

Subscriptions will be fully payable at one or more closings of this Offering. Subscriptions will be payable by certified or bank check or by wire transfer to the Partnership's account. Closings will occur from time to time as of the end of any month.

Investors should understand that an Interest does not represent a fixed percentage of the Partnership or entitle a Limited Partner to a fixed share of the Partnership's income. Rather, an Interest consists primarily of such Limited Partner's Capital Account and Unrealized Profit and Loss Account and is determined with reference to such accounts and the total capital of the Partnership. See "Summary of the Partnership – Partnership Finances".

#### **Manner of Subscribing**

Each investor who wishes to subscribe for an Interest will be required to (i) complete, execute and deliver to the General Partner two copies of a Subscription Agreement, (ii) complete, execute, and deliver to the General Partner a Confidential Offeree Questionnaire and (iii) pay, by certified or bank check or by wire transfer to the Partnership's account an amount equal to the full subscription price for the Interest subscribed. Subscription payments will be accepted at one or more closings. Following receipt of a signed Subscription Agreement, at least five business days' notice will be given to an investor prior to the date of the closing of his or her investment. Forms of the Subscription Agreement and Confidential Offeree Questionnaire are exhibits to this Agreement.

#### **Private Placement**

The Interests have not been registered under any federal or state securities law. The offering and sale of the Interests is being made solely to investors who qualify as "accredited" or "sophisticated" investors (1) in reliance on the "private placement" exemption from registration provided in Section 4(2) of the Securities Act of 1933 (the "1933 Act") and Rule 506 of Regulation D thereunder and (2) in reliance on appropriate exemptions from state registration and qualification requirements where available. See the Subscription Agreement and Confidential Offeree Questionnaire attached as exhibits to this Memorandum.

### **SUMMARY OF THE PARTNERSHIP AGREEMENT**

The rights and obligations of the Partners are governed by the Partnership Agreement which is set forth in Exhibit A to this Memorandum. Prospective investors should read the Partnership Agreement carefully before executing the Subscription Agreement. The following discussion of the Partnership Agreement and related matters is intended to be a summary only, does not purport to be complete and is qualified by reference to the Partnership Agreement in its entirety.



### **Responsibilities of the General Partner**

The General Partner has the exclusive management and control of all aspects of the business of the Partnership, including the management of the Partnership's investment portfolio. In the course of its portfolio management, the General Partner may, in its absolute discretion, but in accordance with the Partnership's investment objectives and policies, buy, sell and otherwise deal in investments, when and on such terms as it determines to be in the best interests of the Partnership. With the consent of a majority in interest of the Limited Partners, and on not less than 90 days' notice to the Limited Partners, the General Partner may transfer its interest in the Partnership to any person or entity. See Sections 204 and 210 and Article Ten of the Partnership Agreement.

### **Partnership Finances**

A Partner's interest in the Partnership will consist of the Capital Account and Unrealized Profit and Loss Account maintained for the Partner on the books of the Partnership, the value of each of which will be calculated not less frequently than as of the end of each fiscal quarter of the Partnership. The Unrealized Profit and Loss Account will be credited and charged with the unrealized appreciation and depreciation in the value of the Partnership's investments. (Such valuations will be made by the General Partner in accordance with the procedures described below.) The Capital Account will be credited with a Partner's contributions to the Partnership as well as the amount of the Partnership's net income allocable to the Partner and charged with the amount of the Partnership's distributions to the Partner and the amount of the Partnership's net losses allocable to the Partner. Allocations and distributions will be made among the Partners in proportion to their respective capital interests. See Sections 306, 501 and 602 of the Partnership Agreement.

Subject to the availability of Partnership cash and to the maintenance of such cash reserves as the General Partner may deem advisable, the Partnership, on the written request of a Limited Partner given not less than 60 days prior to the requested date of distribution and not more frequently than once each year, will endeavor to distribute to such Limited Partner cash in an amount equal to the Partnership's net income allocated to such Limited Partner for the previous fiscal year times the highest applicable marginal rate of federal, state and local personal income taxation. Apart from such distributions, the Partnership does not intend to make any or substantial distributions of cash to the Partners prior to the dissolution of the Partnership, although the General Partner has the right to make distributions of cash to Partners in its discretion, and will, from time to time, distribute amounts allocated to the General Partner's capital account to cover its expenses incurred in managing the Partnership. See Section 505 of the Partnership Agreement.

The General Partner will value the Partnership's investments in the manner set forth in Section 306 of the Partnership Agreement.

### **Withdrawals**

Subject to certain restrictions, following the first anniversary date of its initial investment in the Partnership, a Limited Partner may withdraw all or part of its interest in the

Partnership quarterly, on at least 30 days' notice to the Partnership. The Partnership will, as soon as possible, pay the value of any Partnership interest withdrawn (determined as of the fiscal quarter end), together with interest thereon (at a rate per annum equal to the 90-day U.S. Treasury Bill rate then in effect) from the last day of the relevant fiscal quarter to the date of payment; provided, however, that in the case of complete withdrawals only, the Partnership may elect to pay only 90% of the value of the Partnership interest withdrawn. The remaining 10% will be retained by the Partnership until the completion of the audit of the Partnership's financial statements for the fiscal year in which such withdrawal occurs, for the purpose of effecting any adjustments with respect to the value of the withdrawn Partnership interest shown to be appropriate by such audited financial statements. Amounts payable on withdrawal will also be reduced to the extent of any net gain allocations owed to the General Partner (see "Management -- Allocation of Net Gain").

Withdrawals will be paid in cash or, at the discretion of the General Partner, in securities selected by the General Partner or by a combination of cash and such securities. The right of withdrawal may be suspended by the General Partner during any period in which it determines that interests may not be fairly valued. See Sections 305 and 306 of the Partnership Agreement.

#### **Optional Redemptions**

After December 31, 1998, the General Partner will have the right to cause the Partnership to redeem and repurchase the Interest of any Limited Partner who has not invested at least \$100,000 in the Partnership. The Partnership would redeem the Interest at a price equal to the amount of the Capital Account and Unrealized Profit and Loss Account maintained for such Limited Partner, less the amount of any net gain allocation owed to the General Partner (see "Management -- Allocation of Net Gain"). Any such redemption would be made as of the end of a calendar quarter and would only be effected if, at the time, the redemption price would be in excess of all amounts previously contributed by such Limited Partner to the Partnership, less the amount of any distributions previously made by the Partnership to such Limited Partner. The General Partner would expect to redeem Interests only in the event that the number of Limited Partners approaches the 99-Limited Partner limit imposed on the Partnership in order to maintain its exemption from registration as an investment company under the Investment Company Act of 1940.

#### **Treatment of "Hot Issues"**

The General Partner may, from time to time, invest Partnership assets in securities which are being publicly offered and which are expected to sell at a premium over the public offering price in the secondary market during such public offering. The National Association of Securities Dealers, Inc. (the "NASD") has adopted certain rules which restrict the ability of persons associated with broker-dealers or who could have other relationships with broker-dealers to trade in such "hot issue" securities. In order to comply with the NASD rules, the Partnership will segregate from its other assets any "hot issue" securities it acquires and any Partner who has any relationship to a broker-dealer covered by such NASD rules will not be allocated any gains or losses associated with such investments. See Section 507 of the Partnership Agreement.

## **Reports**

Limited Partners will receive annual reports, including audited financial statements and, in the General Partner's discretion, a condensed schedule of investments (including valuations), and quarterly reports including unaudited financial statements.

## **Exculpation and Indemnification of the General Partner and its Affiliates**

The Partnership Agreement exculpates the General Partner, to the fullest extent permitted by law, from liability for any act, omission or error of judgment in performing its duties to the Partnership if it acts in good faith and in a manner it reasonably believes to be within the scope of authority granted to it and in or not opposed to the best interests of the Partnership, unless such liability arises out of the gross negligence or willful misconduct of the General Partner in the performance of its fiduciary duty to the Limited Partners. The Partnership Agreement also provides for indemnification by the Partnership of the General Partner and its affiliates, to the fullest extent permitted by law, for liabilities incurred in its capacity as general partner of the Partnership, except for acts of gross negligence or willful misconduct. As a result of such exculpation and indemnification provisions, a Limited Partner may have a more limited right of action than he would otherwise have in the absence of such provisions. Limited Partners will be notified if any indemnification is made and of the reasons therefor. See Sections 802 and 803 of the Partnership Agreement.

The investment advisory agreement between the Partnership and Exponential provides for similar exculpation and indemnification of Exponential.

## **Term and Dissolution**

The Partnership will continue until December 31, 2006, at which time it will be dissolved, unless the General Partner and a majority in interest of the Limited Partners determines otherwise. The Partnership may be dissolved at an earlier date if certain contingencies occur. On dissolution of the Partnership, it will be liquidated and the proceeds thereof will be distributed to the Partners in proportion to their interests in the Partnership. A final accounting will be made by the General Partner and furnished to all Limited Partners. See Sections 901 and 902 of the Partnership Agreement.

## **Amendments**

The Partnership Agreement may not be modified or amended except with the written consent of the General Partner and a majority in interest of the Limited Partners, except that, for certain limited purposes relating to administrative matters, the General Partner, without the consent of the Limited Partners, may amend the Partnership Agreement. Any amendment which would have a material adverse effect on the rights or interest of any Limited Partner, would also require the consent of such Limited Partner. See Sections 1206 and 1207 of the Partnership Agreement.

### **Restrictions on Transfer**

A Limited Partner may not transfer any portion of its Interest without (i) the prior written consent of the General Partner (except on the death of an individual Limited Partner or by operation of law pursuant to the reorganization of a Limited Partner), which consent may be withheld in the General Partner's sole and absolute discretion, and (ii) receipt by the General Partner of an opinion of counsel that such transfer would not result in a violation of the federal or any applicable state securities laws, the Partnership being required to register as an investment company under the Investment Company Act of 1940 or the termination of the Partnership for tax purposes. See Sections 1101-1107 of the Partnership Agreement.

## **TAX CONSEQUENCES**

### **General**

This is a summary of certain United States federal income tax considerations that may be relevant to prospective investors, based on the Internal Revenue Code of 1986, as amended (the "Code"), administrative regulations and rulings of the Department of the Treasury and judicial decisions, all of which are subject to change. This summary is not intended as a substitute for careful tax planning. The applicability of Code provisions to individual investors will vary. Accordingly, prospective investors are urged to consult with their own tax advisors with specific reference to their own tax situations and potential changes in applicable law.

### **Qualification as a Partnership**

Christy & Viener, counsel to the Partnership, has rendered an opinion that the Partnership will be classified as a partnership, rather than as an association taxable as a corporation, for federal income tax purposes. The opinion is based on a number of assumptions which are set forth in the opinion. A copy of Christy & Viener's opinion will be furnished to prospective investors on request. The opinion is not binding on the Internal Revenue Service (the "IRS"). The Partnership will not apply for an IRS ruling as to its qualification as a partnership and would not, in any case, fulfill all of the conditions required by the IRS to be met before it would issue a favorable ruling on partnership status.

If the Partnership were treated as an association taxable as a corporation for federal income tax purposes, it would itself be taxed on its taxable income at corporate rates. In such case, the amount of the Partnership's cash otherwise available for distribution to the Limited Partners would be reduced by the amount of such tax. Cash distributions would be treated as dividends in the hands of the Limited Partners subject to tax as ordinary income to the extent of Partnership earnings and profits. Further, any losses incurred by the Partnership would only be allowed as deductions for the Partnership, rather than being passed through to the Limited Partners.

Certain partnerships are treated as corporations for federal income tax purposes if they are deemed to be "publicly-traded partnerships". A partnership can be found to be publicly-

traded if interests therein are traded on an established securities market or are readily tradeable on a secondary market or the substantial equivalent thereof. The IRS has stated that partnership interests will not be considered readily tradeable on a secondary market (or substantial equivalent) if (i) such interests are issued in transactions that are not registered under the 1933 Act and (ii) the partnership does not have more than 100 partners.

In determining the number of partners, the beneficial owners of grantor trusts, partnerships and S corporations ("flow-through entities") which are partners in a partnership will be counted if substantially all of the value of the beneficial owners' interest in the flow-through entity is attributable to the flow-through entity's interest, direct or indirect, in the partnership and the "principal purpose test" is violated. This test is violated if a principal purpose of the use of the flow-through entity is to permit a partnership to satisfy the 100-partner limitation.

Inasmuch as, among other things, the Partnership may not have more than 99 Limited Partners, and, based on information requested of investors, the Partnership intends to limit its Limited Partners so as to satisfy the 100-partner limitation, the Partnership should not be treated as a publicly-traded partnership for federal income tax purposes.

#### **General Tax Treatment of the Partnership and the Limited Partners**

So long as the Partnership is classified as a partnership for federal income tax purposes, the Partnership itself will not be subject to federal income tax. Rather, each Limited Partner is required to report on its own tax return its allocable share of the items of income, gain, loss, deduction, credit and tax preference of the Partnership, whether or not any actual distributions are made to such Limited Partner during the taxable year. (The tax treatment of foreign Limited Partners is discussed below under "Foreign Limited Partners".)

Since the Partnership uses the accrual method of accounting, it reports its taxable income or loss on its information return based on the accrual of items of income and expense. Each Limited Partner reports its distributive share of any such income or loss for its taxable year in which the taxable year of the Partnership ends, even if the Limited Partner is on the cash method of accounting. The fiscal year of the Partnership is the calendar year.

A Limited Partner's tax basis for its Interest will be relevant in determining, among other things, the income tax consequences of Partnership distributions, the deductibility of Partnership losses, and gain or loss on the sale of the Interest. Generally, this basis will be equal to the Limited Partner's subscription price for its Interest, plus any additional capital contributions, plus its share of those liabilities of the Partnership with respect to which neither the General Partner nor any of the Limited Partners has any personal liability. Each Limited Partner will increase the tax basis of its Interest by the amount of its allocable share of the Partnership's taxable income for any year, and reduce the tax basis of its Interest by the amount of its allocable share of the Partnership's taxable loss and by the amount of any cash distributed by the Partnership to it during such year. Any reduction of its share of the Partnership's nonrecourse indebtedness will also reduce its basis.

If the tax basis of a Limited Partner's Interest is reduced to zero through cash distributions, allocation of loss or reduction of nonrecourse indebtedness, the amount of any

further cash distributions (or any reduction in Partnership nonrecourse indebtedness) in excess of its share of the income reported by the Partnership for any year will generally be treated as gain from the sale or exchange of a capital asset. A Limited Partner will also recognize gain or loss on the complete liquidation of its Interest, measured by the difference between the amount received and the Limited Partner's tax basis in its Interest. Any gain or loss recognized on complete liquidation or as a result of distributions in excess of tax basis will, in general, be treated as capital gain or loss, and such capital gain or loss will be treated as long term capital gain or loss if the Limited Partner has held its Interest for more than one year at the time the gain or loss is recognized.

### **Trading or Investing**

A number of the tax consequences attendant on an investment in the Partnership, such as the deductibility of certain types of Partnership losses (see below), will depend on whether the Partnership is treated as being engaged in "trading" or "investing". The Partnership could be treated as engaged entirely in trading or entirely in investing, or as a trader with respect to some of its activities and an investor with respect to others. In general, a taxpayer is treated as a trader if it engages in a large number of transactions and holds securities for a short period of time to earn short-swing profits, and as an investor if it holds securities for a longer period of time in order to realize capital appreciation. The General Partner believes that most, if not all, of the anticipated transactions of the Partnership will be treated as trading activities and anticipates filing the Partnership's information tax returns accordingly. The Partnership's actual activities may differ from those that are currently anticipated or the IRS may take a different position than the General Partner as to whether some or all of the Partnership's activities constitute trading. Accordingly, the General Partner cannot predict with any certainty as to the extent that its operations will constitute trading and the extent that it will constitute investing.

### **Limits on Deductibility**

The income tax law contains a number of provisions that can restrict a Limited Partner's ability to deduct on its own tax return Partnership losses that are allocable to it. A Limited Partner may only deduct its share of the Partnership's taxable loss and deductions to the extent of its tax basis for its Interest. Partnership losses which exceed the Limited Partner's tax basis may be carried over indefinitely and, subject to the other limitations discussed below, deducted in any future year to the extent its tax basis may have increased above zero.

In addition, Limited Partners which are individuals or certain closely-held corporations may be limited in their use of Partnership losses by the so-called "at risk" rules. Under these rules, Partnership losses cannot be deducted except to the extent of a Limited Partner's "at risk amount" which, in general, will include its unrecovered capital contributions and its share of undistributed Partnership taxable income.

A non-corporate Limited Partner may be subject to certain "investment interest" limitations. These rules would limit the deduction for investment interest to the Limited Partner's net investment income, that is, the excess of investment income (generally interest, dividends and capital gains) over investment expenses (other than interest expense). For this purpose, the Limited Partner's net investment income and investment interest expense from all sources,

including Partnership investment activities, would be aggregated. Partnership interest expense would include interest expense incurred either by the Partnership or by a Limited Partner to finance the purchase of its Interest.

To the extent that the Partnership is treated as engaged in investing, a non-corporate Limited Partner may not be allowed to deduct a portion of the Partnership's miscellaneous expenses. Certain miscellaneous itemized deductions (such as accounting expenses) of non-corporate taxpayers are allowable only to the extent they exceed a "floor" amount equal to 2% of the taxpayer's adjusted gross income. Any deductions not allowable by virtue of this rule will not be treated as investment expenses for purposes of the investment interest limitation, and will also in effect not be deductible for alternative minimum tax purposes. These limitations should not apply, however, to the extent the Partnership is treated as engaging in trading.

Regardless of whether the Partnership is treated as a trader or an investor with respect to any specific transactions, gain or loss realized on the disposition of a securities position generally will be treated as a capital gain or loss. Under certain circumstances, however, gain or loss arising from fluctuations between the relative values of the U.S. dollar and the currency in which the position is denominated will be treated as ordinary gain or loss. Capital losses generally may be deducted only to the extent of capital gains, except for non-corporate taxpayers who are allowed to deduct \$3,000 of capital losses per year against ordinary income without regard to capital gains. Corporate taxpayers may carry back unused capital losses for three years and may carry forward such losses for five years. Non-corporate taxpayers may carry forward unused capital losses indefinitely, but may not carry them back.

#### **Foreign Taxes**

Dividends, interest and other income received by the Partnership from sources outside the United States may be subject to withholding and other taxes imposed by such foreign jurisdictions at varying rates. A Limited Partner will be treated for federal income tax purposes as having paid its pro rata portion of such foreign taxes and, in general, should be able either to credit such portion against its federal income taxes due or to deduct such portion from its taxable income for federal income tax purposes.

#### **State and Local Taxes**

In addition to federal income taxes, Limited Partners may be subject to other taxes, such as state and local income taxes. Information needed by Limited Partners to file all state and local income tax returns will be supplied by the Partnership's accountants. Each prospective Limited Partner should consult with its own tax advisor with regard to state and local taxes.

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The preceding discussion is a summary of some of the important tax considerations relevant to an investment in the Partnership. It does not purport to be a complete analysis of all relevant tax considerations or a complete listing of all potential tax

**risks inherent in purchasing and holding an Interest. This discussion does not address tax considerations affecting investors which are not United States persons. Prospective investors in the Partnership are urged to consult with their own tax advisors.**

### **ERISA CONSIDERATIONS**

The following is a summary of certain non-tax considerations arising under ERISA and the Code with respect to an investment in the Partnership by an employee benefit plan subject to ERISA (a "Plan"). This summary is based on the applicable provisions of such statutes and relevant regulations, rulings and interpretive releases issued by the Department of Labor or the IRS. No assurance can be given that legislative or administrative changes or court decisions may not occur which might significantly modify this summary. Any such changes may or may not apply to transactions entered into prior to the date of their enactment.

This summary should be considered by fiduciaries of any potential investor which is a Plan before assets of the Plan are invested in the Partnership. Further, inasmuch as the following discussion of ERISA and the Code is general and subject to future legislation and regulations, plan fiduciaries considering the investment of Plan assets in the Partnership should consult with their own counsel and advisors with respect to the ERISA considerations of such an investment.

**General Fiduciary Requirements.** In considering an investment in the Partnership, Plan fiduciaries should carefully consider whether the investment would be consistent with their fiduciary responsibilities to their Plans, particularly those responsibilities described in Section 404 of ERISA. A fiduciary should consider, among other things, whether the investment would (i) be prudent for the Plan, given the nature of the securities in which the Partnership will invest, (ii) be consistent with the Plan's current and anticipated needs for liquidity, given the limitations set forth in the Partnership Agreement on a Limited Partner's ability to withdraw from or reduce its interest in the Partnership, (iii) permit the Plan's investment portfolio to remain adequately diversified, given the fact that ERISA requires that a Plan's investments be adequately diversified so as to minimize the risk of a large loss, unless it is clearly prudent not to do so, (iv) be permitted under the governing Plan documents, (v) involve a potential for conflicts of interest among the General Partners and the Partnership and (vi) result in any unrelated business taxable income to the Plan. A fiduciary should also consider the reasonableness of the compensation to be paid to the General Partners in comparison to that payable to others for similar investments.

In the Subscription Agreement, any Plan which proposes to invest in the Partnership will be required to represent that its fiduciaries understand the Partnership's investment objectives and policies and that the decision to invest Plan assets in the Partnership is consistent with the applicable provisions of ERISA and the fulfillment of their fiduciary responsibilities to the Plan.

**Plan Assets.** In order that the General Partners not be deemed to be a "fiduciary" for purposes of ERISA of any Limited Partner which is a Plan, the Partnership may limit the participation of Plans in the Partnership. Under ERISA, a party is considered to be a fiduciary of a Plan if it exercises discretionary authority or control over the management or disposition of plan



assets or renders individualized advice to a Plan for a fee which serves as the primary basis for the Plan's investment decisions regarding such assets. Under the Department of Labor's "plan asset" regulations, when a Plan purchases an equity interest in another entity, the Plan's assets are deemed to include not only its investment in such entity but an undivided interest in the underlying assets of such entity unless (i) the equity interest is a "publicly-offered security" or a security issued by a registered investment company, (ii) the entity is an "operating company" (as defined in such regulations) or (iii) the equity participation in the entity by Plans is not "significant", that is, less than 25% of each class of equity security issued by such entity (exclusive, in the case of the Partnership, of such securities held by the General Partners and their affiliates) is owned by Plans. The Interests are not publicly offered or issued by a registered investment company and, the Partnership will not qualify as an operating company. Accordingly, so that the assets of the Partnership are not deemed to be "plan assets", the Partnership may limit the acquisition or transfer of interests in the Partnership unless, after giving effect to such acquisition or transfer, the total interest in the Partnership owned by Plans would be less than 25% in the aggregate of all interests in the Partnership.

**Pre-Existing Relationships.** If the General Partner or any of its affiliates may be considered a fiduciary under ERISA of any Plan because of a pre-existing relationship with such Plan, neither the General Partner nor any such affiliate will recommend an investment in the Partnership by such Plan.

**EXHIBIT A**

**AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**EXPONENTIAL RETURNS, L.P.**

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**AGREEMENT OF LIMITED PARTNERSHIP**

**OF**

**EXPONENTIAL RETURNS, L.P.**

AGREEMENT, dated as of November 20, 1996, among EXPONENTIAL RETURNS MANAGEMENT, L.P., a Texas limited partnership ("ERM"), as general partner, CONRAD P. SEGHERS and JAMES R. DICKEY, each as a limited partner, and the parties who from time to time hereafter enter into this Agreement as limited partners.

**W I T N E S S E T H:**

The parties, desiring to form a limited partnership, and in consideration of the mutual agreements set forth below, agree as follows:

**ARTICLE ONE**

**Definitions**

As used in this Agreement, the following terms have the following meanings:

"Act" means the Texas Revised Limited Partnership Act, Article 6132a-12, as amended from time to time.

"Additional Partner" means any Partner admitted to the Partnership by the General Partner pursuant to Section 302(a) after the date hereof.

"Affiliate" means, when used with reference to a specified Person, (a) any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, (b) any Person who is an officer, director, partner or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, director, partner or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person who, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest in, the specified Person or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities or in which the specified Person has a substantial beneficial interest, (d) any person who is an officer, director, general partner, trustee or holder of 10% of the voting securities or beneficial interests of any of the Persons specified in clauses (a), (b) or (c) above and (e) any relative or spouse of the specified Person.

"Agreement" means this Agreement of Limited Partnership, as it may be amended, supplemented or restated from time to time, as the context requires.

**"Bankruptcy"** means and shall be deemed to have occurred with respect to a Person if such Person (a) makes an assignment for the benefit of creditors, (b) is adjudged a bankrupt or insolvent, or has entered against it an order for relief in any bankruptcy or insolvency proceeding, (c) files a petition or answer seeking for itself any reorganization, arrangement, winding-up, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation or fails to have any proceeding for such relief instituted against it by others dismissed within 120 days following its commencement, (d) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of the nature described in clause (c) above or (e) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of it or all or any substantial part of its properties or, if such appointment is made without its consent, such appointment is not vacated or stayed within 90 days or, if stayed, such appointment is not vacated within 90 days after the expiration of any such stay.

**"Capital Account"** means, with respect to any Partner, the Capital Account maintained for such Partner pursuant to Article Five, and shall equal the net Contributions by such Partner, plus or minus the adjustments described in Article Five.

**"Capital Interest"** means, with respect to any Partner, the sum (or net amount) of such Partner's Capital Account and Unrealized Profit and Loss Account.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

**"Contribution"** has the meaning specified in Section 301.

**"Cumulative Net Gain"** means with respect to any Limited Partner, (i) the cumulative amount of Net Income, less the cumulative amount of Net Loss, allocated to such Limited Partner through and as of the end of the Fiscal Year or other period in question, plus (ii) the amount of any positive balance, or less the amount of any negative balance, in such Limited Partner's Unrealized Profit and Loss Account as of the end of such period.

**"Fiscal Quarter"** refers to any period of three months (or, less, in the case of the first and final Fiscal Quarters of the Partnership) ending on March 31, June 30, September 30 or December 31 (or the date of termination of the Partnership, in the case of the final Fiscal Quarter of the Partnership).

**"Fiscal Year"** has the meaning specified in Section 601.

**"General Partner"** means ERM or any Person who, at the time of reference thereto, serves as the general partner of the Partnership.

**"High Watermark"** has the meaning specified in Section 305(d).

**"Hurdle Rate"** means with respect to any Fiscal Year, the rate determined by the General Partner by averaging the "bond equivalent yields" on the one-year United States Treasury Bills auctioned immediately prior to the last business day of each Fiscal Quarter during such Fiscal Year, as reported in *The Wall Street Journal* (under the "Ask Yld." column) on the last

business day of each such Fiscal Quarter. With respect to any Fiscal Year in which a Partner makes an initial or additional Contribution on any day other than the first day of such Fiscal Year, the Hurdle Rate for such Fiscal Year shall equal the average of the "bond equivalent yields" on the one-year United States Treasury Bills auctioned immediately prior to each Fiscal Quarter end which occurs after the day on which such Contribution is made. With respect to any Fiscal Year in which a Partner effects a withdrawal of all or a portion of its Capital Interest on any day other than the last day of such Fiscal Year, the Hurdle Rate for such Fiscal Year shall equal the average of the "bond equivalent yields" on the one-year United States Treasury Bills auctioned immediately prior to each Fiscal Quarter end which occurs before the day on which such withdrawal occurs.

**"Interest"** of a Partner at any time means the entire ownership interest of a Partner in the Partnership at such time, consisting of such Partner's Capital Interest and including the right of such Partner to any and all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement.

**"Limited Partner"** means any Person who is a limited partner, which, except as otherwise indicated, shall include an Additional Partner (other than an Additional General Partner) or a Substituted Limited Partner, at the time of reference thereto, in such Person's capacity as a limited partner of the Partnership.

**"Majority in Interest of the Limited Partners"** means Limited Partners whose aggregate Capital Interests constitute more than 50% of all of the Capital Interests of the Limited Partners.

**"Memorandum"** means the Offering Memorandum relating to the offering of Interests, as it may be amended or supplemented from time to time, and which includes, among other exhibits, a form of this Agreement.

**"Net Contribution"** has the meaning specified in Section 205.

**"Net Gain"** means, with respect to any Limited Partner, the excess, if any, for the Fiscal Year (or other period) in question, of Net Income allocated to the Limited Partner under Section 501(a) over any Net Loss allocated to the Limited Partner under Section 501(b), plus the amount of any increase, or less the amount of any decrease, in the Limited Partner's Unrealized Profit and Loss Account for such Fiscal Year (or other period), as determined under Section 501(c), after the credits and charges referred to in clauses (ii) and (iii) of Section 501(c) are given effect.

**"Net Income"** and **"Net Loss"** for any period means the net income or net loss of the Partnership during such period after payment or provision for all expenses incurred in connection with the Partnership's investments. Net Income and Net Loss shall be determined in accordance with the Partnership's method of accounting and without regard to any basis adjustment under Section 743 of the Code.



**"Net Unrealized Profit" and "Net Unrealized Loss"** of the Partnership in any period means, at any time, the aggregate net unrealized appreciation or depreciation during such period with respect to all investment positions of the Partnership, determined by comparing the respective fair market value of each investment position on (a) the later of (i) the first day of such period or (ii) the date on which such investment position is established and (b) the earlier of (i) the last day of such period or (ii) the date of the disposition of such investment position.

**"Opening Balance"** means, with respect to any Partner during any period, such Partner's Capital Interest at the beginning of such period.

**"Partners"** means the General Partner and all of the Limited Partners, including any Additional Partner and any Substituted Limited Partner.

**"Partnership"** means the limited partnership formed pursuant to this Agreement, as it may from time to time be constituted.

**"Partnership Expenses"** has the meaning specified in Section 209.

**"Person"** means any individual, partnership, corporation, trust, governmental plan, governmental unit or other entity.

**"Substituted Limited Partner"** has the meaning specified in Section 1102.

**"Transfer"** has the meaning specified in Section 1101.

**"Unrealized Profit and Loss Account"** means, with respect to any Partner, the Unrealized Profit and Loss Account maintained for such Partner pursuant to Article Five.

**"Valuation Date"** means the last day of any calendar month.

All other defined terms used in this Agreement have the respective meanings assigned to them in the Sections in which they appear.

## ARTICLE TWO

### General

**Section 201. Formation and Term.** The Partners have formed the Partnership pursuant and subject to the Act, for the purpose of making the investments and engaging in the business described in Section 401 and any other lawful business for which partnerships may be formed under the Act. The term of the Partnership shall commence on the date hereof and shall continue until December 31, 2006, at which time it shall dissolve and liquidate pursuant to Article Nine. The term of the Partnership may be extended beyond, or terminated prior to, December 31, 2006, by the vote of the General Partner and a Majority in Interest of the Limited Partners.

**Section 202. Name of Partnership.** The firm name shall be Exponential Returns, L.P.

**Section 203. Principal Place of Business.** The principal place of business and registered office of the Partnership shall be c/o Exponential Returns Management, L.P., 6157 Crestmont Drive, Dallas, Texas 75214, or such other place as the General Partner may determine. The name and address of the Partnership's registered agent in the State of Texas is James R. Dickey, 6157 Crestmont Drive, Dallas, Texas 75214.

**Section 204. Management.** The Partnership shall be managed and operated exclusively by the General Partner, which shall have all of the rights, powers and obligations of a general partner of a limited partnership under the Act and otherwise as provided by law. The Limited Partners shall have no part in the management of the Partnership and shall have no authority or right to act on behalf of the Partnership in connection with any matter. The General Partner shall devote its best efforts to the Partnership business in accordance with procedures established by it, but shall not be precluded from engaging in other business activities or from organizing and managing other similar partnerships.

Each of the Limited Partners agrees that all determinations, decisions and actions made or taken by the General Partner shall be conclusive and binding on the Partnership, the Limited Partners and their respective successors and assigns.

The General Partner shall have the power, among other things, on behalf of the Partnership:

(a) to invest and reinvest the funds of the Partnership in equity securities of all kinds (including, without limitation, common stock, preferred stock, warrants and debentures and other debt securities convertible into common or preferred stock) issued by corporations, partnerships, associations or other entities and governments and governmental authorities, in public or private transactions and whether or not such securities are readily marketable or of a speculative nature (all of the foregoing are referred to together as "investments"), and, generally, to deal with funds, securities and other assets of the Partnership as if the General Partner was the absolute owner thereof, all as the General Partner in its discretion may determine;

(b) to invest and reinvest the funds of the Partnership in short-term, high yield corporate debt instruments, short-term U.S. Treasury obligations, other short-term money market investments (including, without limitation, dollar-denominated treasury obligations of foreign governments, domestic or foreign bank certificates of deposit or other short-term instruments and other notes and bonds having short maturities or call features that the General Partner believes will be exercised in the short term), and to deposit the funds of the Partnership on a temporary basis in accounts bearing interest at a fair market rate, which may be a variable rate;

(c) to acquire investments on margin or borrow, pledge, mortgage, lend or hypothecate investments or use leverage by borrowing funds from banks or brokerage firms, all subject to any applicable margin regulations and requirements;

(d) to (i) purchase and sell or write put and call options on securities, (ii) purchase securities on a when-issued or delayed delivery basis and (iii) sell securities on a "short-sale" or "short sale against the box" basis;

(e) to vote any investments owned by the Partnership on such matters as are submitted to the holders of such investments;

(f) to arrange for the custody of investments and other assets of the Partnership and, where desirable, to cause such investments or assets to be acquired or held in the name of one or more nominees on behalf of the Partnership, and to direct custodians and nominees to deliver investments and other assets of the Partnership for the purpose of effecting transactions or otherwise;

(g) to execute any agreement, contract, certificate or instrument necessary or desirable in connection with the conduct of the Partnership's business or affairs;

(h) to incur reasonable expenditures for the conduct of the Partnership's business and to pay all expenses, debts and obligations of the Partnership;

(i) to employ, retain and dismiss any employees, agents, attorneys, accountants, advisors, brokers, consultants and custodians of Partnership assets, including, without limitation, any who are Affiliates of the General Partner, such as Exponential Returns Management LLC, the general partner of the General Partner, which is being retained as an investment advisor to the Partnership, and to delegate to such parties any of its powers under this Section 204, so long as the compensation to be paid to any such Affiliates is comparable to that which would be payable to unaffiliated third parties for comparable services;

(j) to institute, defend, compromise or settle any action, suit or proceeding with respect to the business and affairs of the Partnership;

(k) to open, maintain and close bank accounts and to sign checks drawn on such accounts; and

(l) generally, to engage in any kind of activity necessary or desirable to achieve the purposes of the Partnership and as may be lawfully carried on or performed by a partnership under the laws of each jurisdiction in which the Partnership is then doing business.

**Section 205. Reimbursement of Organizational Expenses.** The General Partner shall deduct from the Limited Partners' Contributions, an amount equal to the costs and expenses incurred by the General Partner in organizing the Partnership and selling the Interests, which deductions shall in no event exceed \$25,000 in the aggregate. The General Partner shall effect such reimbursement at the rate of \$5,000 per year over the first five Fiscal Years of the Partnership and shall deduct the amount to be reimbursed pro rata among the Limited Partners in accordance with their respective Contributions. For accounting purposes, such reimbursed amounts shall be capitalized as organizational costs and amortized over 60 months. The excess of any Contribution over the reimbursement deduction applicable to it is referred to as the "Net Contribution".

**Section 206. Liability of Partners.** Except as provided herein or by the Act, the General Partner shall have the liabilities of a partner in a partnership without limited partners to persons other than the Partnership and the Limited Partners. The Limited Partners shall have no liability under this Agreement except as provided herein or by the Act. The General Partner shall be liable for the debts and obligations of the Partnership to the full extent of its assets, but shall, as among the Partners, be entitled to require the prior exhaustion of the Partnership's assets and be entitled to the benefits of the indemnity provided in Article Eight. Each Limited Partner shall be liable for the debts and obligations of the Partnership only to the extent of its Interest.

**Section 207. Reliance by Third Parties.** Any Person dealing with the Partnership shall be entitled to rely conclusively upon the power and authority of the General Partner as set forth herein. Further, any Person dealing with the Partnership or the General Partner may rely on a certificate signed by the General Partner, as to (a) the identity of the General Partner or any Limited Partner, (b) the existence or nonexistence of any fact which constitutes a condition precedent to acts by the General Partner or any agent or employee of the Partnership or which are in any other manner pertinent to the affairs of the Partnership, (c) the authority of the General Partner or any agent or employee of the Partnership to execute and deliver any instrument or document of the Partnership, (d) any act or failure to act by the Partnership or (e) as to any other matter whatsoever involving the Partnership.

**Section 208. Number of Partners.** The Partnership shall not at any time have more than 100 Partners, including the General Partner.

**Section 209. Partnership Expenses.** The General Partner shall be solely responsible for payment of the expenses of operating the Partnership, excluding the organizational and selling expenses reimbursable to the General Partner pursuant to Section 205, and excluding the following "Partnership Expenses":

(a) all taxes or governmental charges, all brokerage fees, advisory fees, commissions, transfer fees, brokerage commissions, and any other expenses, charges or fees, including, without limitation, attorneys' and accountants' fees and disbursements, incurred or payable in connection with the sale, or purchase of any investments;

(b) any other taxes or governmental charges payable by the Partnership or the Limited Partners;

(c) all costs incurred in connection with the preparation of the Partnership's federal, state or other tax returns and the financial statements and reports prepared pursuant to Sections 602 or 605;

(d) any costs and expenses of any litigation involving the Partnership and the amount of any judgment or settlement paid in connection therewith, excluding, however, the costs and expenses of any litigation, judgment or settlement in which the General Partner is found culpable of willful misfeasance or bad faith;

(e) any amounts payable by the Partnership as interest on a Capital Interest being withdrawn by a Partner pursuant to Section 304; and

(f) all costs and expenses for indemnity or contribution payable by the Partnership to any Person, whether payable under Article Eight or otherwise and whether payable in connection with any litigation involving the Partnership or otherwise.

No expenses or fees paid by the General Partner shall constitute a contribution to the Partnership. The Partnership shall be responsible for all Partnership Expenses set forth above incurred by it or by the General Partner on its behalf. All such Partnership Expenses shall be paid out of cash funds of the Partnership determined by the General Partner to be available for such purpose; provided, however, that the General Partner may, in its sole discretion, advance funds to the Partnership for the payment of such Partnership Expenses and shall be entitled to the reimbursement of any funds so advanced.

**Section 210. Restrictions on Authority of General Partner.** The General Partner shall not have authority to:

- (a) confess or consent to a judgment against the Partnership;
- (b) possess Partnership property, or assign any rights in specific Partnership property, for other than a Partnership purpose;
- (c) admit a Person as an Additional Partner, except as provided in Section 302(a) and Articles Ten and Eleven;
- (d) knowingly perform any act that would subject any Limited Partner to liability as a general partner in any jurisdiction;
- (e) except as provided in Section 204(c), borrow money, issue, make or endorse promissory notes or other evidences of indebtedness or mortgage or otherwise encumber any assets of the Partnership;
- (f) except as provided in Section 204(c), make loans to, or guarantee the indebtedness of, any party, including, without limitation, the General Partner and its Affiliates;
- (g) purchase or write options on stock indices or purchase or write interest rate or stock index futures contracts or related options, or engage in interest rate hedging transactions, commodity or commodity futures transactions or derivatives trading;
- (h) do any act in contravention of the Partnership's Certificate of Limited Partnership, as it may be amended;
- (i) do any act which makes it impossible to carry on the ordinary business of the Partnership;
- (j) do any act which would require the Partnership to register (or to seek an exemption from registration) as an investment company under the Investment Company Act of 1940: or

(k) make any material change in the Partnership's purposes set forth in this Agreement.

**Section 211. Title to Property.** All property of the Partnership shall be held in the name of the Partnership or a nominee of the Partnership and shall be deemed to be owned by the Partnership, and no Partner shall have any ownership interest in such property.

**Section 212. Filings.** The Partners shall from time to time execute or cause to be executed all such certificates (including limited partnership and fictitious name certificates) or other documents or cause to be made all such filings, recordings, publications or other acts as may be necessary or desirable to comply with the requirements for the formation and operation of a limited partnership under the laws of the State of Texas, for the purpose of qualifying the Partnership to do business as a foreign limited partnership under the laws of any other jurisdiction in which the Partnership may conduct business and, generally, to establish and protect the limited liability of the Limited Partners under the laws of any such jurisdiction.

### ARTICLE THREE

#### Contributions, Withdrawals and Capital Interests

**Section 301. Contributions.** The General Partner shall maintain a register that sets forth the amount of cash (or the value of any other property) which each Partner has initially contributed to the Partnership. Such amount, as increased by any additional Contributions as provided in Section 302, is referred to as the "Contribution" of such Partner. The General Partner shall, from time to time, make additional Contributions, as and if needed, so that it shall at all times maintain a Capital Interest equal to at least 1% (or such smaller percentage as may be permitted by applicable Internal Revenue Service regulations and rulings) of the aggregate Capital Interests of all of the Partners.

#### Section 302. Additional Interests.

(a) The Partnership may offer and sell additional Interests from time to time to Persons who are not then Partners; provided, however, that any such sale shall be effective only as of the first business day following the next Valuation Date to occur. Such Persons may be admitted to the Partnership as Additional Partners by the General Partner without the consent of the Limited Partners; provided, however, that, if the General Partner proposes to admit as an Additional General Partner any Person who is not an Affiliate of the General Partner, the written consent of a Majority in Interest of the Limited Partners shall be a condition to such admission.

(b) Subject to the last sentence of this Section 302(b), any Partner may make additional Contributions to the Partnership, on at least ten days' prior written notice to the General Partner, and, unless the General Partner otherwise determines, in an amount not less than \$10,000. Any such additional Contribution shall be deemed to be made effective as of the Valuation Date next following the General Partner's receipt thereof. Additional Contributions may be made in cash or in the form of a reinvestment of distributions pursuant to Section 505. The General Partner may refuse to accept all or any part of any additional Contribution.

**Section 303. No Interest on Contributions.** No interest shall be paid by the Partnership to any Partner with respect to any Contribution, Capital Account or Unrealized Profit and Loss Account.

**Section 304. No Priority Among Partners.** No Partner shall have priority over any other Partner either as to the return of its Contribution or as to distributions made by the Partnership. Except as provided in Section 309, no specific time has been agreed on for the repayment of, or the payment of any return on, any Contribution. No Partner shall have the right to demand or receive property other than cash in return for its Contribution or as a distribution of income. Each Partner shall look solely to the assets of the Partnership for the return of its Contribution, and if such assets are insufficient for such purpose, no Partner shall have any recourse against any other Partner as a result thereof.

**Section 305. Withdrawals.**

(a) A Partner shall not have the right to withdraw from the Partnership any portion of its Capital Interest except as follows:

(i) as provided in Article Nine;

(ii) as to any Limited Partner, following the first anniversary date of its initial Contribution, as of the close of business on the last day of any Fiscal Quarter, provided that the Limited Partner has given at least 30 days' prior written notice of such withdrawal to the General Partner; or

(iii) as to the General Partner, as of the close of business on the last day of any Fiscal Quarter; provided, however, that, unless the General Partner wishes to completely withdraw from the Partnership, it shall maintain at all times a Capital Interest equal to at least 1% (or such smaller percentage as may be permitted by applicable Internal Revenue Service regulations and rulings) of the aggregate Capital Interests of all of the Partners.

A date as of which any withdrawal is effected is referred to as a "Withdrawal Date". Subject to the remaining provisions of this Section 305, the amount of the Capital Interest to be withdrawn by a Partner shall be payable as soon as practicable after the valuation of such Capital Interest as of the Withdrawal Date, together with interest thereon (at a rate per annum equal to the 90-day United States Treasury Bill rate in effect on the Withdrawal Date) from the Withdrawal Date to the date of payment; provided, however, that in the case of complete withdrawals of a Capital Interest only, the Partnership may pay only 90% of the value of the Capital Interest withdrawn at the time of withdrawal. The remaining 10% shall be retained by the Partnership until the completion of the audit of the Partnership's financial statements for the Fiscal Year in which such withdrawal occurs, for the purpose of effecting any adjustments with respect to the value of the withdrawn Capital Interest shown to be appropriate by such audited financial statements. The interest payable as provided above shall be treated as a Partnership Expense for the Fiscal Quarter in which it is paid.

(b) If, as a result of a requested withdrawal by a Limited Partner, the amount of such Limited Partner's remaining Capital Interest would be less than \$100,000, the General

Partner, in its sole discretion, may require such Limited Partner to withdraw its entire Capital Interest.

(c) Withdrawals shall be paid in cash or, at the discretion of the General Partner, in securities selected by the General Partner or by a combination of cash and such securities. If the General Partner suspends the valuation of Capital Interests pursuant to Section 306(e), the General Partner may also suspend the right of the Partners to withdraw their Capital Interests under this Section 305 until such time as the General Partner, in its reasonable discretion, determines that the value of the Capital Interests may again be fairly valued.

(d) If a Limited Partner (who is not an Affiliate of the General Partner) completely withdraws from the Partnership as of any date other than the last day of a Fiscal Year, and if (i) the Cumulative Net Gain allocated to such Limited Partner through the date of withdrawal, after taking into account any allocations pursuant to Section 503 for prior Fiscal Years, exceeds the highest amount of Cumulative Net Gain allocated to such Limited Partner as of the end of any prior Fiscal Year (the "High Watermark") and (ii) the Net Gain allocated to such Limited Partner through the date of withdrawal represents a percentage return on such Limited Partner's Contributions as of the first day of such Fiscal Year of not less than the Hurdle Rate for such Fiscal Year, then (A) the amount payable by the Partnership with respect to the withdrawn Capital Interest shall be reduced, in addition to the amounts contemplated in Section 504, by an amount equal to 20% of the tentative allocation to such Limited Partner of Net Gain for the partial Fiscal Year in which the Withdrawal Date occurs in excess of any portion thereof which must be counted towards the Cumulative Net Gain allocated to such Limited Partner in order for it to exceed the High Watermark and (B) a corresponding amount shall be allocated to the General Partner pursuant to Section 503.

Similar appropriate adjustments shall be made in the event that a Limited Partner effects a partial withdrawal from the Partnership. See Section 504.

#### **Section 306. Accounts; Credits and Debits.**

(a) The Capital Interest of each Partner shall be as shown in the Capital Account and Unrealized Profit and Loss Account maintained for such Partner on the Partnership books. The Capital Account of each Partner shall be credited with the amount of such Partner's Contributions and the amount of Net Income credited to the Capital Account of such Partner pursuant to Article Five. The Capital Account of each Partner shall be charged with the amount of any distribution to such Partner pursuant to Section 504 and the amount of Net Loss charged to the Capital Account of such Partner pursuant to Article Five. The Unrealized Profit and Loss Account of each Partner shall be credited and charged with the amounts specified in Article Five.

(b) The value of the Capital Account and Unrealized Profit and Loss Account of each Partner shall be calculated by the General Partner no less frequently than as of the close of business on each Valuation Date. If a Valuation Date is not a business day, however, the Capital Account and the Unrealized Profit and Loss Account shall be determined as of the close of business on the next preceding business day, and references to the Valuation Date shall be deemed to be to such next preceding business date in such circumstances.



(c) Unless a different valuation method is adopted by the General Partner and the Limited Partners are notified of such adoption, the General Partner shall determine the value of each of the Partnership's investments included in the Partners' Unrealized Profit and Loss Accounts as follows:

(i) for any security listed or traded on any domestic or foreign national or other recognized securities exchange or on the NASDAQ National Market System (the "NASDAQ/NMS"), the value of such security shall be the last reported sales price on the Valuation Date on the largest exchange on which such security traded on such date, or on the NASDAQ/NMS, as the case may be. If no sale of such security occurred on the Valuation Date, the value of such security shall be the last reported bid quotation (or if the Partnership has a short position in such security, the last reported asked quotation) therefor on the Valuation Date on the largest exchange on which it is traded on such date, or on the NASDAQ/NMS, as the case may be;

(ii) for any security that is not listed or traded on an exchange or the NASDAQ/NMS, the value of such security shall be the last reported bid quotation (or asked quotation for short positions) for such security on the Valuation Date, as provided by the principal market makers; and

(iii) for any investment referred to in subparagraphs (i) and (ii) of this Section 306(c) for which no last sales price or bid quotation is reported on the Valuation Date, or for any other investment, the value shall be the most recent bid quotation (or asked quotation for short positions) for such investment available from the principal market makers for such investments. If recent market quotations are not readily available for any investments or if the General Partner determines, in its reasonable discretion, that available market quotations do not fairly represent the value of such investments, such investments shall be valued at their fair value using methods determined in good faith by the General Partner.

Certain short-term investments having a maturity of 90 days or less, which the General Partner deems to be cash equivalents, shall be valued at cost, plus any accrued interest or discount earned and included in interest receivable in the Partnership's books and records. The General Partner may, in its reasonable discretion, establish other methods for determining such value whenever such other methods are deemed by it to be necessary or appropriate.

(d) In determining the value of investments, any assets or liabilities initially expressed in terms of foreign currencies shall be translated into U.S. dollars at the official exchange rate or, alternatively, at the mean of the current bid and asked prices of such currencies against the U.S. dollar last quoted by a major bank that is a regular participant in the foreign exchange market or on the basis of a pricing service that takes into account the quotes provided by a number of such major banks. If neither of these alternatives is available or both are deemed not to provide a suitable method for converting a foreign currency into U.S. dollars, the General Partner in good faith shall establish a conversion rate for such currency.

(e) The General Partner shall have the right to suspend the determination of the value of Capital Interests for any period during which, in its sole judgment, due to then prevailing market conditions or other reasons, it is impossible or impractical to do so.

**Section 307. Optional Redemptions.** At any time after December 31, 1998, the General Partner shall have the right to cause the Partnership to redeem and repurchase the Interest of any Limited Partner whose Contribution is then less than \$100,000. The General Partner shall notify any such Limited Partner of the Partnership's intention to effect such a redemption not less than 30 days prior to the proposed date of redemption, which shall be the last day of the then current Fiscal Quarter. The Partnership shall pay to such Limited Partner, in cash, a redemption price for such Limited Partner's entire Capital Interest equal to the amount of the Capital Account and the amount of the Unrealized Profit and Loss Account maintained for such Limited Partner, valued as of the date of redemption, less any amount allocable to the General Partner pursuant to Section 503, calculated as provided in Section 305(d) as if the redemption were a complete withdrawal. Such payment shall be made not later than the 30th day following the date of redemption. The Partnership shall have the right to effect such a redemption only if the redemption price shall be in excess of all Contributions of such Limited Partner, less the amount of any distributions previously made by the Partnership to such Limited Partner.

**Section 308. Determinations of the General Partner Conclusive.** Any valuation of the Capital Interest of any Partner, or of the Partnership's investments pursuant to Section 306(c), in either case as determined in good faith by the General Partner, shall be binding and conclusive on each Partner and any other interested Person unless such Partner or interested Person objects to such valuation in writing within 30 days after receipt by the Partner of a statement of its Capital Interest, or of the valuation of the Partnership's investments, pursuant to Section 602, and, in the absence of such written objection, the correctness of such statement shall not be questioned by any Partner or other Person. If a Partner timely objects to any such statement, the General Partner and such Partner shall attempt to resolve such dispute promptly. If they are unable do to so, the dispute shall be submitted to arbitration pursuant to Section 1201.

**Section 309. Interest of Creditors.** A creditor, including a Partner, who makes a nonrecourse loan to the Partnership shall not have or acquire at any time, as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership, other than as a secured creditor with respect to specific assets.

## ARTICLE FOUR

### Investment Matters

**Section 401. Investments Generally.** The assets of the Partnership shall be invested primarily in equity securities of domestic issuers (including, without limitation, common stock, preferred stock, warrants, debentures and other debt securities convertible into common or preferred stock, equity interests in trusts and partnerships, and options and rights with respect to such securities). The principal objective of the Partnership is to realize capital appreciation from its investments. The Partnership may also seek current income from investments in dividend-paying stocks and temporary investments in short-term, high yield corporate bonds. The

Partnership may, from time to time, also invest the funds of the Partnership in other short-term investments described in Section 204(b), pending application to the investments described above or for temporary defensive purposes.

**Section 402. Brokerage and Custody.** The General Partner shall select such brokers to effect the purchase, sale and other acquisition or disposition of investments, and such custodians to maintain custody thereof, as it deems appropriate, which may include brokers or custodians which are Affiliates of, or otherwise associated with, the General Partner. The General Partner shall attempt to obtain from any broker the lowest net price and best execution available, consistent with the Partnership's investment objectives and good practice. In any event, fees and commissions paid by the Partnership to any broker or custodian shall be reasonable in relation to the services provided and comparable to fees and commissions charged by other brokers or custodians to unaffiliated institutional customers for similar transactions at the time, although they may not necessarily be the lowest charges obtainable. In selecting any broker or custodian, the General Partner may take into account the fact that it has furnished the General Partner with statistical, research or other information or services which may enhance the General Partner's services generally, whether or not such services are of any benefit to the Partnership.

**Section 403. Management Fee.** The Partnership shall pay the General Partner, for its services to the Partnership, a quarterly management fee, in advance, equal to 0.25% (approximately 1.0% per annum) of the aggregate Capital Interests of the Limited Partners (other than those who are also Affiliates of the General Partner). The management fee for any Fiscal Quarter shall be paid on the first day of such Fiscal Quarter and shall be calculated on the basis of the Capital Interests as of the end of the immediately preceding Fiscal Quarter, except that the management fee payable after the first closing of the offering of Interests shall be payable on or before the 5th day after such closing and shall be calculated on the basis of the Capital Interests as of the date of such closing. The management fee shall be an expense of the Partnership chargeable to the Capital Accounts of the Limited Partners (other than those who are also Affiliates of the General Partner).

**Section 404. Other Business of Partners.** Any Partner and any Affiliate of any Partner may engage in or possess any interest in any other business venture of any kind, alone or with others, whether or not such ventures are competitive with the business of the Partnership (including, in the case of the General Partner and its Affiliates, the organization and management of other limited partnerships to invest in the investments described in Section 401). Neither the Partnership nor any Partner shall have any right, by virtue of this Agreement or the partnership relationship created hereby, in or to such independent ventures or the income, profits or losses derived therefrom. The pursuit of such ventures, even if competitive with the business of the Partnership, shall not be deemed wrongful or improper. No Partner nor any Affiliate thereof shall be obligated to present to the Partnership any particular investment opportunity, even if such opportunity is of a character which, if presented to the Partnership, could be taken by the Partnership, and each Partner and its Affiliates shall have the right to take for their own account (individually or as a trustee, partner or fiduciary), or to recommend to others, any such particular investment opportunity.

## **ARTICLE FIVE**

### **Allocations and Distributions**

**Section 501. Interim Allocations.** Not less frequently than as of the end of each Fiscal Quarter of the Partnership, the Capital Accounts and the Unrealized Profit and Loss Accounts of the Partners shall be tentatively credited and charged with the amounts set forth in this Section 501.

(a) **Net Income.** Net Income for each Fiscal Quarter (or shorter period) shall be allocated as follows and in the following order of priority:

(i) The portion of such Net Income that is attributable to gains and losses from the closing of investment positions, up to an amount equal to the aggregate of the positive balances in the Partners' Unrealized Profit and Loss Accounts after the allocation thereto under Section 501(c)(i) for such Fiscal Quarter (or shorter period), shall be credited to the Capital Accounts of the Partners having such positive balances and in proportion to such positive balances;

(ii) Any remaining balance of Net Income shall be credited to the Capital Accounts of the Partners in proportion to their respective Opening Balances; and

(iii) In allocating Net Income under this Section 501(a), net long-term or short-term capital gain or loss and ordinary income or loss shall be allocated among the Partners in the proportions that Net Income is allocated under this Section 501(a).

(b) **Net Loss.** Net Loss for each Fiscal Quarter (or shorter period) shall be allocated as follows and in the following order of priority:

(i) The portion of such Net Loss that is attributable to gains and losses from the closing of investment positions, up to an amount equal to the aggregate of the negative balances in the Partners' Unrealized Profit and Loss Accounts after the allocation thereto under Section 501(c)(i) for such Fiscal Quarter (or shorter period), shall be charged to the Capital Accounts of the Partners having such negative balances and in proportion to such negative balances;

(ii) Any remaining balance of Net Loss shall be charged to the Capital Accounts of the Partners in proportion to their respective Opening Balances; and

(iii) In allocating Net Loss under this Section 501(b), net long-term or short-term capital gain or loss and ordinary income or loss shall be allocated among the Partners in the proportions that Net Loss is allocated under this Section 501(b).

(c) **Unrealized Profit and Loss.** The Partners' Unrealized Profit and Loss Accounts shall be credited and charged in each Fiscal Quarter (or shorter period) as follows and in the following order of priority:

(i) The Partners' Unrealized Profit and Loss Accounts shall be credited or charged with the Partnership's Net Unrealized Profits or Net Unrealized Losses for such Fiscal Quarter (or shorter period). The amount so credited or charged shall be allocated among the Partners in proportion to the Partners' respective Opening Balances;

(ii) If the Capital Account of any Partner is credited with an amount of Net Income under Section 501(a), then such Partner's Unrealized Profit and Loss Account shall be charged with an amount equal to the amount of Net Income so credited; and

(iii) If the Capital Account of any Partner is charged with an amount of Net Loss under Section 501(b), then such Partner's Unrealized Profit and Loss Account shall be credited with an amount equal to the amount of Net Loss so charged.

**Section 502. Final Allocations.** Subject to Section 503, the allocations of Net Income, Net Loss and Net Unrealized Profit and Net Unrealized Loss for each Partner for a Fiscal Year shall equal the sum of the amounts allocated to such Partner under Section 501 for the four Fiscal Quarters of such Fiscal Year. The final allocations for a Fiscal Year under this Section 502 shall supersede the interim quarterly allocations for such year under Section 501.

**Section 503. Allocation of Net Gain to the General Partner.** Subject to the last paragraph of this Section 503, on determination of the final allocations for any Fiscal Year pursuant to Section 502:

(a) if the amount of Cumulative Net Gain allocated to a Limited Partner (who is not an Affiliate of the General Partner) through the end of such Fiscal Year, after taking into account any allocations pursuant to this Section 503 for prior Fiscal Years, exceeds the High Watermark (as defined in Section 305(d)); and

(b) if the Net Gain allocated to such Limited Partner for such Fiscal Year represents a percentage return on such Limited Partner's Contributions (calculated as provided below) as of the first day of such Fiscal Year of not less than the Hurdle Rate for such Fiscal Year; then

(c) the General Partner shall be allocated an amount equal to 20% of the allocation of Net Gain for such Fiscal Year otherwise allocable to such Limited Partner (exclusive of any portion thereof which must be counted towards the Cumulative Net Gain allocated to such Limited Partner through the end of such Fiscal Year in order for it to exceed the High Watermark). The amount so allocable to the General Partner shall be treated as being attributable to amounts otherwise allocable to the Limited Partner's Capital Account and Unrealized Profit and Loss Account, in proportion to the respective amounts otherwise so allocable.

The percentage return on a Limited Partner's Contributions for any Fiscal Year shall be determined on the basis of a year of 365 or 366 days, as the case may be. With respect to any Fiscal Year in which a Limited Partner makes an initial or additional Contribution or effects a withdrawal of all or a portion of its Capital Interest on any day other than the first or

last day of such Fiscal Year, the percentage return for such Fiscal Year, solely with respect to the amount so contributed or withdrawn, shall equal the percentage return actually realized on such amount after the Contribution or prior to the withdrawal, as the case may be, times the total number of days in such Fiscal Year (either 365 or 366) and divided by the number of days in such Fiscal Year after the Contribution or prior to the withdrawal, as the case may be.

Limited Partners may be admitted to the Partnership at different times during the course of any year. In order to permit the Partnership to effect the allocation with respect to as many Limited Partners as possible as of the end of the Fiscal Year, the Partnership shall, in its discretion, either effect the first allocation with respect to a Limited Partner as of the end of the first Fiscal Year in which such Limited Partner has been in the Partnership, with respect to a period of less than 12 months, or as of the end of the second Fiscal Year in which such Limited Partner has been in the Partnership, with respect to a period longer than 12 months. In either case, all subsequent allocations shall be effected for the 12 months ending on the last day of each Fiscal Year.

**Section 504. Special Rules for Withdrawing Limited Partners.**

(a) To the extent a Limited Partner withdraws its Capital Interest from the Partnership (other than through distributions under Section 505), the Withdrawal Date shall be treated for purposes of Section 502 as the last day of a Fiscal Year with respect to the withdrawn Capital Interest and the amount of the withdrawn Capital Interest shall be calculated accordingly. In addition, the amount payable by the Partnership with respect to the withdrawn Capital Interest shall be reduced by such Capital Interest's proportionate share of any reserve for debts, obligations and liabilities of the Partnership not otherwise reflected in the Partners' Capital Interests, such reserve to be determined by the General Partner in its reasonable discretion. Notwithstanding the reduction in payment described in the preceding sentence, the Capital Interest of the withdrawing Partner shall be charged with the full amount of the reserve so allocated to it.

(b) If a Partner withdraws part, but not all, of its Capital Interest, (i) the withdrawal shall be charged entirely against such Partner's Capital Account and not against such Partner's Unrealized Profit and Loss Account and (ii) the amount, if any, of any Net Loss and Net Unrealized Loss in such Partner's Capital Account and Unrealized Profit and Loss Account shall be reduced pro rata in proportion to the amount of the Partner's Capital Interest withdrawn.

(c) Notwithstanding the provisions of Section 501, if a Partner withdraws all of its Capital Interest, the General Partner, in its sole discretion, may make a special allocation to such Partner for federal income tax purposes of the gains or losses recognized by the Partnership from the closing of investment positions in such manner as will eliminate any balance in the withdrawing Partner's Unrealized Profit and Loss Account as of the date of withdrawal.

**Section 505. Distributions to Partners.**

(a) Subject to the availability of Partnership cash and to the maintenance of such cash reserves as the General Partner may deem advisable, the General Partner, on the written request of a Partner given not less than 60 days prior to the requested date of distribution and not more frequently than once each Fiscal Year, shall endeavor to distribute to such Partner, an

amount not greater than the product of (i) the Net Income allocated to such Partner for the prior Fiscal Year times (ii) the highest marginal rate of federal, state and local personal income taxation applicable to such Partner. In determining such marginal rate, the General Partner may take into account the extent to which the Net Income for such Fiscal Year is comprised of capital gain and ordinary income.

(b) Except as provided in Section 505(a), the General Partner, in its sole discretion, shall determine the amounts, if any, to be distributed to the Partners, and the times when such distributions are to be made, but the General Partner shall not be required to make any distributions (except as contemplated under Article Nine) or distributions in any particular amount or at any particular time or times. Any amounts distributed may include any combination of income, capital gains or return of capital. The General Partner shall notify the Partners at least 15 days in advance of any distribution of the amount and date of such distribution. Any distributions, including the final distribution on termination of the Partnership, shall be in cash, shall be made to the Partners in proportion to their respective Capital Interests, and shall be charged against the Partners' Capital Accounts. The General Partner shall have the right to distribute in cash to the General Partner amounts allocated to its Capital Account to the extent necessary to cover its expenses incurred in managing the Partnership.

**Section 506. Intention of the Parties.** The allocations of profit and loss provided for in Sections 501 through 504, and the making of distributions as provided for in Section 505, are intended to comply with the safe harbor for securities partnerships set forth in Section 1.704-3(e)(3)(iii) of the Treasury Regulations, incorporating the full netting approach referred to in Section 1.704-3(e)(3)(v) thereof. The allocation and distribution provisions are also intended to comply with the substantial economic effect rules of Section 1.704-1(b) of the Treasury Regulations. Accordingly, such Treasury Regulations shall be taken into account in implementing the provisions of this Article Five.

Notwithstanding anything in this Article Five to the contrary, if any Partner unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii) (d)(4), (5) or (6) of the Treasury Regulations which cause a deficit, or increase the deficit, in the Partner's Capital Account, items of Partnership gross income and gain shall be allocated to the Partner in an amount and manner sufficient to eliminate the deficit in its Capital Account as quickly as possible. It is intended that this Section 506 be treated as a "qualified income offset" within the meaning of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

**Section 507. Reinvestment of Distributions.** A Limited Partner may elect to have any distribution declared by the General Partner pursuant to Section 504 reinvested in such Limited Partner's Capital Account, by so notifying the General Partner in writing at least 15 days prior to the date of the distribution, unless the General Partner has previously notified such Limited Partner that it shall not accept the reinvestment of such distribution. Any such reinvestment shall be deemed an additional net Contribution.

**Section 508. Special Allocations for Hot Issues.** The General Partner may, from time to time, invest Partnership assets in securities which are being publicly offered and which are expected to sell at a premium over the public offering price in the secondary market during such public offering and, accordingly, would be deemed to be "hot issues" for purposes of

the Interpretation of Article III, Section 1 of the Rules of Fair Practice adopted by the Board of Governors of the National Association of Securities Dealers, Inc. (the "Interpretation"). In such event, in order to comply with the requirements of the Interpretation, the Partnership shall (a) establish a separate brokerage account for its hot issue purchases, (b) segregate such hot issues and any proceeds thereof from other assets of the Partnership so that no Partner who is a "restricted person" for purposes of the Interpretation shall have any interest in such hot issues and proceeds, (c) allocate any profits and losses attributable to such hot issues only among the Partners who are not "restricted persons" and (d) effect such adjustments in the Partners' Capital Accounts (through, among other things, the creation of multiple Capital Accounts per Partner for hot issue and non-hot issue investments and the increase in the interest of any Partner who is a "restricted person" in the assets of the Partnership which are not hot issues to an extent appropriate to offset such Partners' lack of any interest in such hot issues) and in the implementation of the provisions of this Article Five as are necessary and appropriate to give effect to the foregoing and to comply with the Interpretation.

## ARTICLE SIX

### General Accounting Provisions

**Section 601. Fiscal Year.** The Fiscal Year of the Partnership for financial statement and Federal income tax purposes shall end on December 31 of each year; provided that the final Fiscal Year of the Partnership shall end on the date of termination of the Partnership.

### Section 602. Capital Determined; Financial Statements and Reports.

(a) The Capital Interests of the Partners shall be ascertained and determined as of the close of business on each Valuation Date, and as of the close of business on any other date as the General Partner shall determine. At each such time, the books of account of the Partnership shall be closed and appropriate financial statements shall be prepared reflecting the Capital Interests of the Partners in accordance with Articles Three and Five. At least annually, the financial statements shall be audited by such independent certified public accountants as are selected by the General Partner.

(b) After the end of each Fiscal Year, the General Partner shall cause the Partnership's independent certified public accountants to prepare and transmit, as promptly as practicable, and in any event within 75 days of the close of the Fiscal Year, a report setting forth in sufficient detail such transactions effected by the Partnership during such Fiscal Year as shall enable each Partner to prepare its federal income tax return. The General Partner shall mail such report to each Partner and former Partner (or its successor or legal representative) who may require such information in preparing its Federal income tax return, such information to include a copy of the Partnership's information return filed for Federal income tax purposes.

(c) Further, the General Partner shall prepare and transmit to each Partner, as promptly as practicable, and in any event (i) within 90 days of the close of each Fiscal Year, audited financial statements of the Partnership prepared in accordance with this Section 602, with, in the General Partner's discretion, a condensed schedule of investments (including valuations)



and (ii) within 45 days of the close of each Fiscal Quarter other than the last Fiscal Quarter of each fiscal year, unaudited financial statements of the Partnership. Quarterly schedules of investments shall be provided to each Partner who so requests.

**Section 603. Valuations by the General Partner.** In determining the accounts of the Partnership for all purposes, the assets and liabilities of the Partnership may be taken at such valuations as the General Partner in its sole discretion determines, and the Partnership may, but shall not be required to, set up reserves against doubtful accounts and contingent and unliquidated liabilities.

**Section 604. Books and Records.** The General Partner shall maintain complete and accurate books and records of all matters relating to the Partnership. Each Limited Partner and its representatives shall have access to such books and records at any time during reasonable business hours for proper purposes, upon at least ten business days' notice. The Partnership shall maintain its books and records on the accrual method and shall utilize generally accepted accounting principles consistently applied in the preparation of its annual financial statements. All decisions as to accounting principles and tax elections (including, without limitation, elections as to depreciation methods) shall be made by the General Partner.

**Section 605. Tax Elections.** The General Partner may, in its sole discretion, make or revoke the election referred to in Section 754 of the Code or any similar provision enacted in lieu thereof or any other election under the Code.

**Section 606. Information Tax Returns.** The General Partner shall cause to be prepared and filed all federal and state information tax returns required of the Partnership.

**Section 607. Designation of Tax Matters Partner.** The General Partner is designated as the Tax Matters Partner, under Section 6231(a)(7) of the Code, with respect to the Partnership. The Tax Matters Partner is specifically directed and authorized to take whatever steps it deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required under regulations of the United States Department of the Treasury. Expenses of such administrative proceedings undertaken by the Tax Matters Partner shall be expenses of the Partnership. Further, the cost of any adjustments to a Partner and the cost of any resulting audits or adjustments of such Partner's tax return, shall be borne solely by the affected Partner.

## ARTICLE SEVEN

### As to Firm Name

In the event of a termination and dissolution of the Partnership, neither the firm name, nor the right to its use, nor the related goodwill, if any, shall be considered as an asset of the Partnership, and no valuation shall be put thereon for the purpose of liquidation or any distribution, or for any other purpose whatsoever, nor shall any value ever be placed thereon as between the Partners and the successors or assigns or personal representatives of any Partner.

## ARTICLE EIGHT

### Exculpation and Indemnification

**Section 801. General Fiduciary Duty.** The General Partner shall be under a fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners, including the safekeeping and use of all Partnership funds and assets, whether or not in the General Partner's possession or control, and the General Partner shall not employ, or permit another party to employ, such funds and assets in any manner except for the exclusive benefit of the Partnership. Neither the General Partner nor any of its Affiliates shall receive any remuneration for any service it may perform for the Partnership other than as permitted under this Agreement.

**Section 802. Limitation on Liability of General Partner.** To the fullest extent permitted under applicable law, the General Partner shall not be liable in damages or otherwise to the Partnership or any of the Limited Partners for any act or omission or error in judgment in performing its duties under this Agreement if it acted in good faith and in a manner it reasonably believed to be within the scope of the authority granted by this Agreement and in or not opposed to the best interests of the Partnership; provided, however, that the General Partner shall not be relieved of liability in respect of any claim, issue or matter arising out of its gross negligence or willful misconduct in the performance of its fiduciary duties to the Limited Partners. The General Partner may consult with attorneys and accountants in respect of the Partnership's affairs and shall be fully protected and justified in acting or failing to act in accordance with the advice or opinion of such attorneys or accountants, provided that they have been selected with reasonable care. The General Partner shall have no liability for the acts or omissions of any broker, depository, custodian or other financial institution that it retains or uses with respect to the assets of the Partnership, except on account of gross negligence or willful misconduct in the selection thereof. The foregoing limitations on the liability of the General Partner shall not apply to the extent, and shall in no event constitute a waiver or limitation, of any right which the Partnership or any Limited Partner has under the federal or any applicable state securities laws which cannot be waived, including any right which may impose liability, under certain circumstances, on persons even if they act in good faith and with due care.

**Section 803. Indemnification.** To the fullest extent permitted under applicable law and subject to the limitations set forth in Section 802:

(a) In any threatened, pending or completed action, suit or proceeding in which the General Partner or any of its Affiliates was or is a party or is threatened to be made a party by reason of the fact that the General Partner is or was the General Partner of the Partnership or that such Affiliate is or was affiliated therewith (other than an action by or in the right of the Partnership), the Partnership shall indemnify the General Partner or such Affiliate against judgments, fines and amounts paid in settlement and expenses, including, without limitation, attorneys' and accountants' fees and disbursements, actually and reasonably incurred by the General Partner or such Affiliate in connection with such action, suit or proceeding, or in connection with an appeal therein, if it is determined in accordance with Section 11.06 of the Act that the General Partner or such Affiliate acted in good faith and in a manner reasonably believed

to be in or not opposed to the best interests of the Partnership (and, in the case of a criminal proceeding, the General Partner or such Affiliate had no reasonable cause to believe that it or his conduct was unlawful), and provided that the conduct of the General Partner or such Affiliate is not adjudged to have constituted gross negligence, willful misconduct or an intentional breach of the General Partner's fiduciary obligations in the performance of its duties to the Partnership. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the General Partner or such Affiliate did not act in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Partnership.

(b) In any threatened, pending or completed action, suit or proceeding by or in the right of the Partnership, to which the General Partner or any of its Affiliates was or is a party or is threatened to be made a party, involving an alleged cause of action by one or more Limited Partners for damages arising from the activities of the General Partner or such Affiliate in the performance or management of the business or affairs of the Partnership as prescribed by this Agreement, the Partnership shall indemnify the General Partner or such Affiliate against judgments, fines and amounts paid in settlement and expenses, including, without limitation, attorneys' and accountants' fees and disbursements, actually and reasonably incurred by the General Partner or such Affiliate in connection with such action, suit or proceeding, or in connection with an appeal therein, if it is determined in accordance with Section 11.06 of the Act that the General Partner or such Affiliate acted in good faith and in a manner it reasonably believed to be in or not opposed to the best interests of the Partnership (and, in the case of a criminal proceeding, the General Partner or such Affiliate had no reasonable cause to believe that it or his conduct was unlawful), and provided that the conduct of the General Partner or such Affiliate is not adjudged to have constituted gross negligence, willful misconduct or an intentional breach of the General Partner's fiduciary obligations in the performance of its duties to the Partnership (unless and only to the extent that the court in which such action, suit or proceeding was brought shall determine upon application, that, despite the adjudication of liabilities, but in view of all circumstances of the case, the General Partner or such Affiliate is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper).

(c) To the extent that the General Partner or any of its Affiliates has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sub-paragraphs (a) or (b) of this Section 803, or in connection with any appeal therein, or in defense of any claim, issue or matter therein, the Partnership shall indemnify the General Partner or such Affiliate to the full extent permitted by law against the expenses, including, without limitation, attorneys' and accountants' fees and disbursements, actually and reasonably incurred by the General Partner or such Affiliate in connection therewith.

(d) Expenses incurred by the General Partner or any of its Affiliates in defending an action, suit or proceeding shall, from time to time, be paid by the Partnership in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the General Partner or such Affiliate to repay such amount if it is ultimately determined that it is not entitled to be indemnified by the Partnership as authorized in this Section 803.

(e) The indemnification and advancement of expenses provided by this Section 804 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may otherwise be entitled.

(f) Notwithstanding the foregoing, the Partnership shall not indemnify the General Partner or any of its Affiliates against any liability, loss or damage incurred by it in conjunction with any claim involving allegations that the securities laws of any jurisdiction have been violated unless (i) there has been a successful adjudication on the merits as the result of a trial or (ii) such claim has been dismissed with prejudice on the merits by a court of competent jurisdiction and a court of competent jurisdiction approves such indemnification. In no event shall the Partnership bear any portion of the cost of any liability insurance which insures the General Partner against any liability as to which indemnification is not allowed under this Section 803.

(g) If for any reason (other than the gross negligence or willful misconduct of the General Partner), the foregoing indemnification is unavailable to the General Partner, or insufficient to hold it harmless, then the Partnership shall contribute to the amount paid or payable by the General Partner as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by the Partnership on the one hand and the General Partner on the other hand but also the relative fault of the Partnership and such General Partner, as well as any relevant equitable considerations. The reimbursement, indemnity and contribution obligations of the Partnership under this subparagraph (g) shall be in addition to any liability which the Partnership may otherwise have, shall extend upon the same terms and conditions to the officers, directors, employees and controlling persons (if any) of the General Partner and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Partnership, the General Partner and any such persons. The provisions of this Section 804 shall survive any termination of this Agreement.

(h) Notwithstanding the foregoing, nothing in this Article Eight shall exculpate or exonerate any party from liability, or indemnify any party against loss, for any violation of the federal or any state securities laws, or for any other intentional or criminal wrongdoing.

## ARTICLE NINE

### Duration and Dissolution of the Partnership

**Section 901. Events Causing Dissolution.** The Partnership shall terminate on the happening of any of the following events:

- (a) the expiration of the term of the Partnership on December 31, 2006;
- (b) the complete withdrawal, Bankruptcy or dissolution of the General Partner;
- (c) the disposition of all of the assets of the Partnership;
- (d) the death or permanent disability of both Conrad P. Seghers and James R. Dickey; or
- (e) the happening of any other event causing the dissolution of the Partnership under the Act.

Dissolution of the Partnership shall be effective on the day on which the event occurs giving rise to the dissolution, but the Partnership shall not terminate until the Partnership's Certificate of Limited Partnership is canceled and the assets of the Partnership are distributed as provided in Section 902. Notwithstanding any such dissolution, prior to the termination of the Partnership, the business of the Partnership and the affairs of the Partners, as such, shall continue to be governed by this Agreement. If the Partnership is dissolved pursuant to clause (b) or (d) of this Section 901, a Majority in Interest of the Limited Partners shall appoint a special liquidator to facilitate the liquidation of the Partnership in the manner described in Section 902. Notwithstanding the foregoing, if the Partnership is dissolved pursuant to clause (b) or (d) of this Section 901, the Partnership may be reconstituted and not dissolved if a Majority in Interest of the Limited Partners so votes within 90 days after the occurrence of such dissolution event, provided, that such vote shall also designate a new General Partner.

**Section 902. Dissolution Procedures.**

(a) On dissolution of the Partnership, the General Partner (or a special liquidator) shall proceed diligently to wind up the affairs of the Partnership, to liquidate its assets and distribute the proceeds thereof as provided in Section 902(e) and to cause the cancellation of the Partnership's Certificate of Limited Partnership. During the interim, the General Partner (or special liquidator) shall, to the extent consistent with such liquidation and dissolution, continue to operate the business of the Partnership, exercising in connection therewith all of the authority of the General Partner as set forth in this Agreement, but shall have no further authority to bind the Partnership except to wind up its affairs in compliance herewith.

(b) On dissolution of the Partnership, the General Partner (or special liquidator) shall make or cause to be made a complete and accurate accounting of the assets, liabilities and operations of the Partnership, as, of and through the last day of the month in which the dissolution occurs.

(c) Distributions in dissolution may be made in cash or in kind or in combinations thereof. Distributions in kind shall be made subject to reasonable conditions and restrictions necessary or advisable in order to preserve the value of the assets so distributed or to comply with applicable securities laws. The General Partner shall use its best judgment as to the most advantageous time for the Partnership to sell its assets or to make distributions in kind. In this regard, if the General Partner determines that an immediate sale of all or part of the Partnership's assets would cause undue loss to the Partners, the General Partner, in order to avoid such loss, may, after having so notified all of the Limited Partners, defer liquidation of, and withhold from distribution for a reasonable time, any assets of the Partnership other than those necessary to satisfy the Partnership's debts and obligations. Assets to be distributed in kind shall be distributed on the basis of the fair market value thereof, as determined by the General Partner, and any Partner entitled to any interest in such assets shall receive such interest as a tenant-in-common with all other Partners so entitled.

(d) As expeditiously as possible, the General Partner (or special liquidator) shall distribute the assets of the Partnership in the following order of priority:

(i) payment of all liabilities and obligations of the Partnership, other than liabilities or obligations to the Partners, shall be made or provided for, whether by the establishment of such reserves as the General Partner (or special liquidator) shall deem appropriate or otherwise;

(ii) payment of all expenses of the liquidation;

(iii) the establishment of such reserves as are deemed necessary by the General Partner (or special liquidator);

(iv) payment of any loans or advances made to the Partnership, first by any Limited Partner and then by the General Partner; and

(v) to all of the Partners in accordance with their respective Capital Interests.

**Section 903. Withdrawal or Death of a Limited Partner.** The withdrawal, death or incompetency of a Limited Partner shall not dissolve the Partnership. On the death of an individual Limited Partner, the rights and obligations of such Limited Partner shall accrue to his or her estate. Except as expressly provided in this Agreement, no Bankruptcy or other event affecting a Limited Partner shall affect this Agreement.

## ARTICLE TEN

### Transferability of the General Partner's Interest

The General Partner may not sell, transfer, assign, pledge or otherwise dispose of all or any part of their Interests; provided, however, that the foregoing limitation shall not apply to a disposition by the General Partner to any of its Affiliates. In this regard, the General Partner shall have the right to assign its rights to receive all or a portion of any allocation of net gain contemplated by Section 503 to one or more of its Affiliates, and each Limited Partner hereby consents to any such assignment. In the case of any such assignment, the assignees shall be admitted as Additional Limited Partners to the extent of their assigned interests. The General Partner may also transfer its interest in the Partnership to any Person with the prior consent of a Majority in Interest of the Limited Partners.

## ARTICLE ELEVEN

### Transferability of a Limited Partner's Interest

**Section 1101. Restrictions on Transfer.** Notwithstanding any other provision of this Article Eleven, no sale, assignment, pledge, transfer or other disposition of all or any portion of a Limited Partner's Interest (a "Transfer") may be made without the prior written consent of the General Partner, which consent may be given or withheld in the sole and absolute discretion of the General Partner (except for transfers on the death of an individual Limited Partner, by will

or the laws of descent and distribution, or by operation of law pursuant to the reorganization of a Limited Partner), and without the following conditions being satisfied:

(a) counsel for the Partnership is not of the opinion that the Transfer (i) would be in violation of the securities laws of any jurisdiction, (ii) would require the Partnership to register or to seek an exemption from registration as an investment company under the Investment Company Act of 1940, (iii) would cause the General Partner to be a "fiduciary" within the meaning of Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the proposed transferee or any other party or (iv) would result in the termination of the Partnership for federal income tax purposes;

(b) an instrument of assignment executed and acknowledged by the transferor and the transferee evidencing, among other things, the agreement of the transferee to be bound by all of the provisions of this Agreement, containing appropriate investment representations of the transferee and otherwise in form and substance satisfactory to counsel for the Partnership, is delivered to the General Partner; and

(c) the transferor or the transferee pays all of the Partnership's costs incurred in connection with the Transfer and, if applicable, the transferee's becoming a Substitute Limited Partner, including, without limitation, the costs of preparing and filing any necessary amendments to the Partnership's Certificate of Limited Partnership and the reasonable fees and disbursements of the Partnership's counsel.

Any purported Transfer in violation of this Section 1101 shall be null and void as against the Partnership, except as otherwise provided by law.

**Section 1102. Indemnification by Transferor.** If the Partnership or either General Partner becomes involved in any capacity in any action, proceeding or investigation in connection with any Transfer by a Limited Partner, or the admission into the Partnership of such transferring Limited Partner's transferee or assignee (any such transferee or assignee, when so admitted, being called a "Substituted Limited Partner"), the transferring Limited Partner shall periodically reimburse each of the Partnership and the General Partner, on demand, for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith. The transferring Limited Partner shall also indemnify the Partnership and the General Partner, to the fullest extent permitted under applicable law, against any losses, claims, damages or liabilities to which they may become subject in connection with such Transfer. The reimbursement and indemnity obligations of the transferring Limited Partner under this Section 1102 shall be in addition to any liability which the transferring Limited Partner may otherwise have, shall extend upon the same terms and conditions to the officers, directors, employees and controlling Persons (if any) of the General Partner and shall be binding on and inure to the benefit of any successors, assigns, heirs and personal representatives of the Partnership, the General Partner and any such Persons. The foregoing provisions shall survive any termination of this Agreement.

**Section 1103. Effect and Effective Date.** No Transfer by a Limited Partner shall be effective for any purpose until the first business day after the Valuation Date next following the date on which the General Partner actually receives the instrument of assignment

with respect thereto. No Transfer by a Limited Partner shall relieve it of any obligations or liabilities under this Agreement unless and until such obligations and liabilities are assumed by a transferee who is admitted as a Substituted Limited Partner pursuant to Section 1105. A transferee who does not become a Substituted Limited Partner shall have no rights as a Limited Partner except to receive its share of allocations and distributions pursuant to this Agreement and any other rights of an assignee of a limited partnership interest under the Act, and any such transferee who desires to make a further assignment of its interest in the Partnership shall be subject to all of the provisions of this Article Eleven to the same extent as if it were a Substituted Limited Partner.

**Section 1104. Status of Transferor.** Any Limited Partner which transfers all of its Interest shall cease to be a Limited Partner, except that, unless and until a Substituted Limited Partner is admitted in its stead, such assigning Limited Partner shall retain the statutory rights of an assignor of a limited partner's interest under the Act. Anything herein to the contrary notwithstanding, both the Partnership and the General Partner shall be entitled to treat the assignor of an Interest as the absolute owner thereof in all respects, and shall incur no liability for distributions made in good faith to it, until such time as the assignee of the Interest has been admitted into the Partnership as a Substituted Limited Partner.

**Section 1105. Substituted Limited Partners.** No Limited Partner shall, except as stated in Section 1101, have the right to substitute an assignee, transferee, donee, heir, legatee, distributee or other recipient of all or any fraction of such Limited Partner's Interest as a Limited Partner in its place. Any such assignee, transferee, donee, heir, legatee, distributee or other recipient of an Interest (whether pursuant to a voluntary or involuntary Transfer) shall be admitted to the Partnership as a Substituted Limited Partner only (i) by satisfying the requirements of Sections 1101 and 1106, (ii) on the receipt of any necessary governmental consents and (iii) on an amendment to this Agreement and the Partnership's Certificate of Limited Partnership recorded in the proper records of each jurisdiction in which such recordation is necessary to qualify the Partnership to conduct business or to preserve the limited liability of the Limited Partners.

**Section 1106. Conditions of Admission.** Each Substituted Limited Partner, as a condition to its admission as a Limited Partner, shall execute and acknowledge such instruments, in form and substance satisfactory to the General Partner, as the General Partner reasonably deems necessary or desirable to effectuate such admission and to confirm the agreement of the Substituted Limited Partner to be bound by all the terms and provisions of this Agreement with respect to the Interest acquired.

**Section 1107. Transfers During a Fiscal Year.** In the event of the Transfer of a Partner's Interest at any time other than at the end of the Partnership's fiscal year, the distributive shares of the various items of Partnership income, gain, loss and expense as computed for tax purposes shall be allocated between the transferor and the transferee on such proper basis as the transferor and the transferee shall agree; provided, however, that no such allocation shall be effective unless (i) the transferor and the transferee give the Partnership written notice, prior to the effective date of such Transfer, stating their agreement that such allocation shall be made on such proper basis, (ii) the General Partner consents to such allocation and (iii) the transferor and the transferee agree to reimburse the Partnership for any incremental accounting fees and other expenses incurred by the Partnership in making such allocation.



## ARTICLE TWELVE

### Miscellaneous

**Section 1201. Resolution of Disputes.** If any dispute or disagreement respecting the Partnership or the relationship among any of the Partners cannot be resolved, such matter shall be submitted to arbitration before the American Arbitration Association in Dallas, Texas, in accordance with its Commercial Arbitration Rules and the decision of the arbitrators shall be conclusive and binding upon each of the Partners and upon their successors, assigns and personal representatives.

**Section 1202. No Bill for Partnership Accounting.** Subject to any mandatory provisions of law or to circumstances involving a breach of this Agreement, each of the Partners agrees that it shall not (except with the consent of the General Partner) file a bill for Partnership accounting, or otherwise proceed adversely in any way whatsoever against the other Partners or the Partnership.

**Section 1203. Grant of Power of Attorney.** Each Limited Partner, by the execution of this Agreement, or by authorizing such execution on its behalf, does irrevocably make, constitute and appoint the General Partner, with full power of substitution and resubstitution, as his true and lawful attorney and agent, with full power and authority in its name, place and stead to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices:

(a) all certificates and amended certificates of limited partnership, fictitious or assumed name certificates and other certificates and instruments (including counterparts of this Agreement) which the General Partner deems necessary or desirable to qualify or continue the Partnership as a limited partnership or to conduct the business of the Partnership in the jurisdictions in which the Partnership may conduct business;

(b) all amendments to this Agreement adopted in accordance with the terms of this Agreement;

(c) all certificates of dissolution, conveyances and other instruments which the General Partner deems necessary or desirable to effect the dissolution and termination of the Partnership; and

(d) any other instrument which is now or may hereafter be required by law to be filed on behalf of the Partnership or which is necessary or desirable to reflect the exercise by either General Partner of any power granted to it under this Agreement in connection with the conduct of the Partnership's business and affairs.

The power of attorney granted pursuant to this Section 1203 shall be deemed to be coupled with an interest, shall be irrevocable and shall survive any of the disabilities with respect to any Limited Partner referred to in Section 903 and, for the purpose of admitting a substituted Limited Partner, the assignment by such Limited Partner of its interest in the Partnership.

**Section 1204. Binding Nature of Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns and personal representatives of each of the Partners.

**Section 1205. Execution of Agreement.** This Agreement may be executed in more than one counterpart with the same effect as if the Partners executing the several counterparts had all executed the same counterpart; provided, however, that each separate counterpart shall have been executed by the General Partner.

**Section 1206. Amendments.** This Agreement may be amended by the written agreement of the General Partner and a Majority in Interest of the Limited Partners; provided, however, that without the consent of each Partner, if any, to be adversely affected by any amendment, this Agreement may not be amended to (a) convert any Limited Partner's interest in the Partnership into that of a General Partner, (b) otherwise modify the limited liability of a Limited Partner, (c) increase the Contribution required to be made by any Limited Partner or (d) modify the interest of any Limited Partner in allocations or distributions.

**Section 1207. Amendments Without Consent.** In addition to amendments pursuant to Section 1206, amendments of this Agreement may be made from time to time by the General Partner, without the consent of any of the Limited Partners, (a) to cure any ambiguity, or to correct or supplement any provision hereof which may be inconsistent with any other provision hereof, (b) to delete or add any provision of this Agreement required to be so deleted or added by any state or provincial securities commissioner or similar official, which addition or deletion is deemed by such commission or official to be for the benefit or protection of the Limited Partners, (c) to revise this Agreement as necessary to comply or conform with any revisions in applicable laws governing the Partnership and (d) to reflect the admission of Substituted Limited Partners or a general partner substituted in the Partnership without the consent of the Limited Partners; provided, however, that no amendment shall be adopted pursuant to clauses (a) through (c) above unless the adoption thereof, in the reasonable opinion of the General Partner, is for the benefit of or not adverse to the interest of the Limited Partners and in the opinion of counsel, does not affect the limited liability of the Limited Partners or the status of the Partnership as a partnership for income tax purposes.

**Section 1208. Execution of Amendments.** If this Agreement is amended as a result of substituting a Limited Partner, the amendment to this Agreement shall be signed by each General Partner, the Person to be substituted and the assigning Limited Partner. If this Agreement is amended to reflect the designation of an additional or substituted General Partner, such amendment shall be signed by each General Partner and by such additional or substituted General Partner.

**Section 1209. Notices.** Any written notice herein required to be given to the Partnership by any of the Partners shall be deemed to have been given if addressed to Exponential Returns, L.P., c/o Exponential Management LLC, 6157 Crestmont Drive, Dallas, Texas 75214. Any written notice required to be given to a Limited Partner shall be deemed to be given if addressed to such Partner at the address set forth in the Partnership's records (or such other address as such Partner shall have specified in writing to the Partnership) and deposited in the United States mails.

**Section 1210. Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. In particular, it shall be construed to the maximum extent possible to comply with all of the terms and conditions of the Act. If, nevertheless, it shall be determined by a court of competent jurisdiction that any provision or wording of this Agreement shall be invalid or unenforceable under said Act or other applicable law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of any applicable law, and, in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable provisions.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

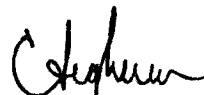
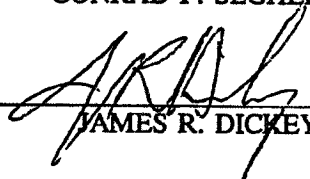
**GENERAL PARTNER:**

**EXPONENTIAL RETURNS MANAGEMENT, L.P.**

By: **EXPONENTIAL MANAGEMENT LLC,**  
as General Partner

By   
\_\_\_\_\_  
Conrad P. Seghers  
Chief Executive Officer

**LIMITED PARTNERS:**

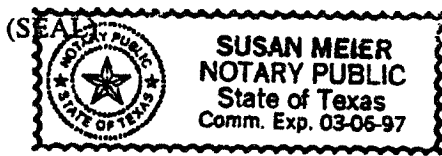
  
\_\_\_\_\_  
CONRAD P. SEGHERS  
  
\_\_\_\_\_  
JAMES R. DICKEY

**ACKNOWLEDGMENTS**

STATE OF TEXAS            )  
  ) ss:  
COUNTY OF DALLAS        )

On this 20th day of November 1996, before the undersigned, a Notary Public in and for the County of Dallas, personally appeared Conrad P. Seghers, known to me to be the person whose name is subscribed to the foregoing Agreement of Limited Partnership and known to me to be the Chief Executive Officer of Exponential Management LLC., general partner of Exponential Returns Management, L.P., and acknowledged to me that he executed the same as an official and duly authorized act of such entity for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County and on the day and year first above written.

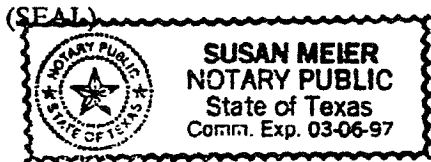


*Susan Meier*  
\_\_\_\_\_  
Notary Public

STATE OF TEXAS            )  
  ) ss:  
COUNTY OF DALLAS        )

On this 20th day of November 1996, before the undersigned, a Notary Public in and for the County of Dallas, personally appeared Conrad P. Seghers, known to me to be the person whose name is subscribed to the foregoing Agreement of Limited Partnership and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County and on the day and year first above written.



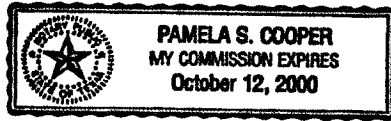
*Susan Meier*  
\_\_\_\_\_  
Notary Public

STATE OF TEXAS            )  
  ) ss:  
COUNTY OF DALLAS        )

On this 21 day of November 1996, before the undersigned, a Notary Public in and for the County of Dallas, personally appeared James R. Dickey, known to me to be the person whose name is subscribed to the foregoing Agreement of Limited Partnership and acknowledged to me that he executed the same as his free and voluntary act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County and on the day and year first above written.

(SEAL)



*Pamela S. Cooper*  
\_\_\_\_\_  
Notary Public

**EXPONENTIAL RETURNS, L.P.**

**INSTRUCTIONS FOR SUBSCRIBING**

Two copies of a Subscription Agreement to subscribe to purchase a limited partnership interest (an "Interest") in Exponential Returns, L.P. (the "Partnership") are attached. Please follow these instructions:

1. Please read the entire Subscription Agreement before you sign it.
2. Please complete and sign the Signature Page on both copies of the Subscription Agreement. The signature on both copies must be notarized. Be sure to indicate in the space provided on the Signature Page the dollar amount of the Interest for which you wish to subscribe. Please note that the minimum subscription is for \$100,000, unless otherwise determined by the General Partner of the Partnership. Also note that the Signature Page will be attached to, and become part of, the Agreement of Limited Partnership of the Partnership.
3. Please complete and sign the Confidential Offeree Questionnaire. Please answer all questions.
4. Attach a certified or bank check, payable to the order of "Exponential Returns, L.P. -- Special Account", in the amount of the full subscription price for the Interest subscribed. Alternatively, you may make arrangements to wire funds to the Partnership by contacting Conrad P. Seghers or James R. Dickey of the General Partner.
5. Forward BOTH copies of the Subscription Agreement, the Confidential Offeree Questionnaire and your check (if paying by check) to:

Exponential Returns, L.P.  
c/o Exponential Returns Management, L.P.  
6157 Crestmont Drive  
Dallas, Texas 75214

If you have any questions with regard to this procedure, please contact Dr. Seghers or Mr. Dickey at (214) 692-8385.

**EXPONENTIAL RETURNS, L.P.**  
c/o Exponential Returns Management, L.P.  
6157 Crestmont Drive, Dallas, Texas 75214

**SUBSCRIPTION AGREEMENT**

To: \_\_\_\_\_  
Name of Purchaser

This will confirm your agreement to become a limited partner of Exponential Returns, L.P., a Texas limited partnership (the "Partnership"), and to purchase a limited partnership interest in the Partnership (an "Interest").

**1. Subscription and Sale.**

**1.1 Subscription.** Subject to the terms and conditions of this Agreement, you irrevocably subscribe for, and agree to purchase, an Interest for the subscription price indicated on the Signature Page of this Agreement, and you agree to become a limited partner of the Partnership. You are tendering to the Partnership with this Agreement (i) two completed and signed copies of this Agreement, (ii) a completed and signed Confidential Offeree Questionnaire and (iii) a certified or bank check in the amount of the subscription price, payable to the order of "Exponential Returns, L.P. -- Special Account" (or you are concurrently wire transferring such amount to such special account).

**1.2 Acceptance or Rejection of Subscription.** All funds tendered by you will be held in a segregated interest-bearing account pending acceptance or rejection of this Agreement and the closing of your purchase of the Interest. This Agreement will either be accepted, in whole or in part, subject to the prior sale of Interests, or rejected, by the General Partner of the Partnership as promptly as is practicable. If this Agreement is accepted only in part, you agree to purchase such smaller Interest as the General Partner determines to sell to you. If this Agreement is rejected for any reason, including, without limitation, the termination of the offering of Interests by the Partnership, this Agreement and all funds tendered with it promptly will be returned to you, with interest and without deduction of any kind, and this Agreement will be void and of no further force or effect. Deposit and collection of the check tendered, or receipt of funds wired, with this Agreement will not constitute acceptance of this Agreement.

**1.3 Closing.** Subscriptions will be accepted at one or more Closings, as described in the Offering Memorandum relating to this offering (the "Memorandum"). On Closing, the subscription evidenced hereby, if not previously rejected, will be accepted, in whole or in part, and the Partnership will execute a copy of this Agreement and return it to you. At such time, the

Signature Page of this Agreement will be attached to and become a part of the Agreement of Limited Partnership of the Partnership (the "Partnership Agreement"), as well as of this Agreement, and will be effective to evidence your execution and delivery of the Partnership Agreement. If your subscription is accepted only in part, this Agreement will be marked to indicate such fact and the Partnership will return to you the portion of the funds tendered by you representing the unaccepted portion of your subscription, with interest and without deduction of any kind. The Interest subscribed for will not be deemed to be issued to, or owned by, you until this Agreement has been accepted by the General Partner.

**1.4 Payment of Interest.** On Closing, all interest earned on your subscription funds will be paid to you. Interest will be calculated from the day such funds are received by the Partnership to the date of Closing, termination of the offering or rejection of a subscription, as the case may be.

**2. Representations and Warranties of the Purchaser.** You represent and warrant to the Partnership and the General Partner as follows:

**2.1 Non-Registration.** You acknowledge that the Interest to be acquired by you is not and will not be registered under the Securities Act of 1933 (the "Act") or any state securities law in reliance on exemptions from such registration, and that such reliance is based in part on your representations and warranties set forth in this Section 2 and on the information set forth in the Confidential Offeree Questionnaire tendered by you to the Partnership with this Agreement.

**2.2 Information.** You have received, carefully read and understood the Memorandum, which includes as an exhibit a copy of the Partnership Agreement. You have been provided with the opportunity to ask questions of, and to receive answers from, the General Partner and its representatives concerning the Partnership and the Interests and have been provided by the General Partner with access to all information pertaining to the Partnership to which you have requested access.

**2.3 Investment Intent; Limitations on Resale.** You are acquiring your Interest solely for your own account, for investment and not with a view to, or for resale in connection with, any distribution. You understand that the Interest being acquired by you will be an illiquid investment, as it is unlikely that a market will develop in the Interests and because the Interest may not be sold, transferred or otherwise disposed of (other than through withdrawal from the Partnership pursuant to Article Three of the Partnership Agreement) except pursuant to the provisions of Article Eleven of the Partnership Agreement and an effective registration statement under the Act or an exemption from such registration, and that in the absence of such registration or exemption, an Interest must be held indefinitely. **IF YOU ARE A RESIDENT OF PENNSYLVANIA, YOU AGREE THAT, IN ANY EVENT, YOU SHALL NOT RESELL ANY PORTION OF YOUR INTEREST DURING THE 12-MONTH PERIOD COMMENCING WITH THE DATE OF YOUR PURCHASE OF YOUR INTEREST.**

**2.4 Speculative Nature of Investment.** You understand that your investment in the Partnership is speculative and is subject to certain risks and may remain so for an indefinite period and that no federal or state agency has reviewed or made any recommendation or endorsement with respect to the Interests.



**2.5 No Solicitation.** At no time in connection with the offer or sale of Interests were you solicited by any leaflet, public promotional meeting, circular, newspaper or magazine article, radio or television advertisement or any other form of general advertising.

**2.6 Investment Company Act Non-Registration.** You understand that the Partnership is not and will not be registered as an investment company under the Investment Company Act of 1940, by reason of Section 3(c)(1) thereof which excludes from the definition of an investment company any issuer which has not made and does not presently propose to make a public offering of its securities and whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons. In this regard, you were not formed for the purpose of investing in the Partnership nor did your stockholders, partners, grantors or participants contribute additional capital to you for the purpose of such investment. Further, if you are purchasing an interest in the Partnership which will constitute in excess of 10% of all interests in the Partnership at Closing, your interest in the Partnership, together with your interests in all other entities that, pursuant solely to Section 3(c)(1) of such statute, are excluded from the definition of investment company, will not represent more than 10% of your total assets.

**2.7 Allocation of Net Gain to the General Partner.** You understand that the General Partner will receive an annual performance allocation of a portion of the Partnership's net gain for managing the Partnership's investments. You confirm that, prior to your execution of this Agreement, you have reviewed the provisions of the Partnership Agreement pertinent to the allocation (Sections 503 and 305(d)) and the disclosures regarding it set forth in the Memorandum and that you have been advised, among other things, that:

(a) the General Partner's right to receive an allocation of net gain may create an incentive for the General Partner to make investments on behalf of the Partnership that are riskier or more speculative than would be the case in the absence of such performance allocation;

(b) the allocation of net gain will be based on the unrealized appreciation of the Partnership's investments as well as its realized gains;

(c) the allocation of net gain will be determined annually with reference to the preceding 12-month period (or possibly a shorter period in the case of the first allocation) and will be measured by the amount of net gain allocable to the Limited Partners with respect to such period; provided, however, that an allocation will be effected for such period only if (i) the cumulative net gain allocated to the Limited Partners through the end of such period (after taking into account any allocations to the General Partner for prior years) exceeds the High Watermark (as defined in the Memorandum) and (ii) the net gain allocable to such Limited Partner for such period represents a percentage return on such Limited Partner's capital contributions (as of the beginning of such year) of not less than the Hurdle Rate (as defined in the Memorandum);

(d) securities held by the Partnership for which market quotations are not readily available will be valued by the General Partner in the manner set forth in the Partnership Agreement; and

(e) the General Partner's allocation of net gain may be greater or less than compensation charged by other investment advisors for comparable services.

**2.8 Status.** If you are a corporation, partnership, trust or other entity, you are an "accredited investor", as that term is defined in Rule 501(a) of Regulation D under the Act (see the Confidential Offeree Questionnaire for a list of the types of accredited investors). If you are a natural person, you are at least 21 years of age and you either are an "accredited investor" or meet the experience standards set forth in Section 2.9 below.

**2.9 Experience; Financial Ability.** You, or if you are a corporation, partnership, trust or other entity, you by and through your officers, directors, trustees, employees or other advisors, (i) are experienced in evaluating companies such as the Partnership, (ii) have determined that an Interest is a suitable investment for you and (iii) have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of your investment in the Partnership. You have the financial ability to bear the economic risks of your entire investment for an indefinite period and no need for liquidity with respect to your investment in the Partnership, and, if you are a natural person, you have adequate means for providing for your current needs and personal contingencies.

**2.10 Further Information.** The information which you are furnishing hereunder and in the Confidential Offeree Questionnaire and any information which you subsequently furnish to the Partnership with respect to your financial position and business experience, is correct and complete as of the date of this Agreement or as of the date it is furnished, whichever is later. If there is any material change in such information prior to the date that this Agreement is accepted by the Partnership, you will immediately furnish such revised or corrected information to the Partnership.

**2.11 Due Authority, Etc.** If you are a corporation, partnership, trust or other entity: (a) you are duly organized, validly existing and in good standing under the laws of the jurisdiction of your formation and have all requisite power and authority to own your properties and assets and to carry on your business, (b) you have the requisite power and authority to execute this Agreement and the Partnership Agreement and to carry out the transactions contemplated hereby and thereby, (c) your execution and performance of this Agreement and the Partnership Agreement does not and will not result in any violation of, or conflict with, any term of your charter, by-laws, partnership agreement or indenture of trust, as the case may be, or any instrument to which you are a party or by which you are bound or any law or regulation applicable to you, (d) your execution and performance of this Agreement and the Partnership Agreement has been duly authorized by all necessary corporate or other action, (e) you were not specifically formed to invest in the Partnership and (f) the individual who has executed this Agreement on your behalf was duly authorized to do so by all requisite corporate or other action and, on request of the Partnership, you will furnish appropriate evidence of the authority of such individual to act on your behalf.

**2.12 Valid Obligation.** This Agreement and the Partnership Agreement have been duly executed and delivered by or on behalf of you and, if and when accepted by the Partnership, in whole or in part, will constitute your legal, valid and binding obligations, enforceable in accordance with their respective terms (except as may be limited by principles of equity or bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally).

**2.13 Reliance on Own Advisors.** You confirm that, in making your decision to invest in the Partnership, you have relied, as to legal and tax-related matters concerning the investment, on independent investigations made by you and any advisor or representative that you may have consulted, including your own legal, tax and other advisors, and that you and your advisors or representatives have investigated your investment in the Partnership to the extent you and they have deemed advisable.

**2.14 Further ERISA Matters.** If you are an employee benefit plan within the meaning of ERISA, you and your plan fiduciaries are not affiliated with, and are independent of, the General Partner and are informed of and understand the Partnership's investment objectives, policies and strategies. Your plan fiduciaries believe that the decision to invest your plan assets in the Partnership is consistent with the provisions of ERISA that require prudence in investment and diversification of plan assets and impose other fiduciary responsibilities. Further, your plan fiduciaries have considered the following factors with respect to your investment in the Partnership and have determined that, in view of such considerations, an investment in the Partnership is consistent with their fiduciary responsibilities under ERISA:

(a) the role such investment will play in the portion of your portfolio that such plan fiduciaries manage;

(b) whether the investment is reasonably designed as part of the portion of the portfolio managed by such plan fiduciaries to further your purposes, taking into account both the risk of loss and opportunity for gain that could result;

(c) the composition of the portion of the portfolio managed by such plan fiduciaries with regard to diversification;

(d) the liquidity and current rate of return of the portion of the portfolio managed by such plan fiduciaries relative to your anticipated cash flow requirements; and

(e) the projected return of the portion of the portfolio managed by such plan fiduciaries relative to your funding objectives.

This agreement has been executed on your behalf by a duly designated Named Fiduciary (within the meaning of Section 402(a)(2) of ERISA).

**2.15 Restricted Investors.** If you are a restricted investor (see the Confidential Investor Questionnaire), you understand that all securities acquired by the Partnership which are part of a public offering and which are expected to sell at a premium over the offering price in the secondary market during such offering ("hot issues") will be segregated by the Partnership, that no Limited Partner who is a "restricted investor" shall receive any allocation of profits from such account, and that all Limited Partners who are not restricted investors shall be allocated such profits from trading in hot issues ratably in proportion to the interest of each such non-restricted Limited Partner in the Partnership (excluding for these purposes the interests in the Partnership held by Limited Partners who are restricted investors).

**2.16 Address.** The address set forth on the Signature Page of this Agreement is your true and correct address and you have no present intention of becoming a resident or domiciliary of any jurisdiction other than the one indicated by your address.

**2.17 Fees and Commissions.** No fees or commissions have been paid or are payable by you in connection with this Agreement and the issuance of an Interest to you.

**3. Miscellaneous.**

**3.1 Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to its subject matter, merges and supersedes any prior or contemporaneous understanding among them with respect to its subject matter, and will not be modified, amended or terminated except by another agreement in writing executed by you and the Partnership. Failure of a party to enforce one or more of the provisions of this Agreement or to require at any time performance of any of the obligations hereof will not be construed to be a waiver of such provisions by such party nor to in any way affect the validity of this Agreement or such party's right thereafter to enforce each and every provision of this Agreement, nor to preclude such party from taking any other action at any time which it would legally be entitled to take.

**3.2 Binding Effect.** This Agreement will be binding on and will inure to the benefit of the parties and their respective successors and permissible assigns.

**3.3 Construction.** References to Sections herein are to the sections of this Agreement. Headings used in this Agreement are for convenience only and will not be used in the construction of this Agreement.

**3.4 Survival of Representations and Warranties.** You agree that all representations, warranties and agreements contained herein will survive the execution, delivery and performance of this Agreement.

**3.5 Communications.** All notices and other communications under this Agreement will be in writing and will be deemed to have been given at the time when delivered personally by hand or overnight courier or when mailed in any United States post office enclosed in a registered or certified postpaid envelope and addressed to the Partnership at its address set forth at the beginning of this Agreement or to you at the address set forth by you on the Signature Page of this Agreement, as the case may be, or to such other address as any party may specify by notice to the other; provided, however, that any notice of change of address shall be effective only on receipt.

**3.6 Governing Law.** This Agreement will in all respects be governed by and construed in accordance with the laws of the State of Texas applicable to agreements made and fully to be performed in such state, without giving effect to conflict of laws principles.

**3.7 FOR FLORIDA RESIDENTS.** EACH FLORIDA RESIDENT WHO SUBSCRIBES TO PURCHASE AN INTEREST HAS THE RIGHT TO WITHDRAW HIS SUBSCRIPTION AND TO RECEIVE A FULL REFUND OF ALL MONIES PAID WITHIN THREE BUSINESS DAYS AFTER THE EXECUTION OF THIS SUBSCRIPTION

AGREEMENT OR PAYMENT FOR SUCH INTEREST IS MADE, WHICHEVER IS LATER. SUCH WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH THIS WITHDRAWAL, A SUBSCRIBER NEED ONLY SEND A LETTER OR TELEGRAM TO THE PARTNERSHIP INDICATING HIS INTENTION TO WITHDRAW. SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED THIRD BUSINESS DAY. A LETTER SHOULD BE MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE ITS RECEIPT AND TO EVIDENCE THE TIME OF MAILING.

**3.8 FOR PENNSYLVANIA RESIDENTS.** EACH PENNSYLVANIA RESIDENT WHO SUBSCRIBES TO PURCHASE AN INTEREST HAS THE RIGHT TO WITHDRAW HIS SUBSCRIPTION AND TO RECEIVE A FULL REFUND OF ALL MONIES PAID WITHIN TWO BUSINESS DAYS AFTER RECEIPT BY THE PARTNERSHIP OF HIS WRITTEN BINDING CONTRACT OF PURCHASE. SUCH WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH THIS WITHDRAWAL, A SUBSCRIBER NEED ONLY SEND A LETTER OR TELEGRAM TO THE PARTNERSHIP INDICATING HIS INTENTION TO WITHDRAW. SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED SECOND BUSINESS DAY. A LETTER SHOULD BE MAILED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ENSURE ITS RECEIPT AND TO EVIDENCE THE TIME OF MAILING. SHOULD THE REQUEST BE MADE ORALLY, YOU SHOULD ASK FOR WRITTEN CONFIRMATION THAT IT HAS BEEN RECEIVED.

**LIMITED PARTNER'S SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date noted below.

**INDIVIDUALS:**

**ENTITIES:**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name of Subscriber

\_\_\_\_\_  
Signature

By \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Signature (if Joint Tenants  
or Tenants in Common)

\_\_\_\_\_  
Print Name of Signatory and  
Capacity in which Signed

**Subscriber Information**

Address (Residence for individuals;  
business for others):

Social Security or Tax ID No.: \_\_\_\_\_

Street

City

State

Zip Code

Dollar Amount You Wish to Invest: \$ \_\_\_\_\_. This is the amount of your Interest and your Subscription Price. This amount is also your opening Capital Account in the Partnership.

**For the Partnership's Use Only**

Agreed and Accepted as to \$ \_\_\_\_\_.

Dated: \_\_\_\_\_, 199\_.

EXPONENTIAL RETURNS, L.P.

By: Exponential Returns Management, L.P.,  
as General Partner

By: Exponential Management LLC,  
as General Partner

By \_\_\_\_\_

(This Signature Page will be attached to and become a part of the Agreement of Limited Partnership of Exponential Returns, L.P.)

**CORPORATE, PARTNERSHIP OR TRUST ACKNOWLEDGMENT**

STATE OF )  
 ) ss.:  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 199\_, before the undersigned, a Notary Public, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing Agreement and known to me to be the \_\_\_\_\_ of \_\_\_\_\_ and acknowledged to me that he/she executed the same as an official and duly authorized act of such entity for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County and on the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF )  
 ) ss.:  
COUNTY OF )

On this \_\_\_ day of \_\_\_\_\_, 199\_ before the undersigned, a Notary Public, personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the foregoing Agreement, as his/her free and voluntary act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State and County and on the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public

**EXHIBIT C**

**EXPONENTIAL RETURNS, L.P.**

**CONFIDENTIAL OFFEREE QUESTIONNAIRE**

Prospective purchasers of limited partnership interests ("Interests") in Exponential Returns, L.P. (the "Partnership") must meet certain suitability requirements in order for the Partnership to comply with the private offering exemption of the Securities Act of 1933, as amended (the "Act"), Regulation D promulgated thereunder and exemptions of applicable state securities laws. In order to establish that purchasers meet these requirements and are qualified to invest in the Partnership, purchasers must complete this Confidential Offeree Questionnaire and return it to the Partnership, c/o Exponential Returns Management, L.P., 6157 Crestmont Drive, Dallas, Texas 75214.

Each purchaser must be either an "accredited investor", as defined in Rule 501(a) of Regulation D under the Act, or a "sophisticated investor". A sophisticated investor is one who, alone or together with his or her representative has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment. This Questionnaire elicits information as to the accredited investor status of a prospective purchaser and which may afford the Partnership a reasonable basis for believing that the purchaser or any person making the investment decision for the purchaser has the requisite knowledge and experience in financial and business matters.

If an entity purchasing an Interest has been formed for this transaction or if the individual owners of the purchasing entity may elect whether to participate in each investment of that entity, then each individual owner of such entity must be an accredited investor or a sophisticated investor and each must complete a Confidential Offeree Questionnaire, or the general partner or other authorized representative of such entity must complete the Confidential Offeree Questionnaire on each such person's behalf.

All information provided in this Confidential Offeree Questionnaire will at all times be kept strictly confidential. It may be necessary, however, for the Partnership to verify the information contained in this Confidential Offeree Questionnaire to establish that the requirements of applicable securities laws are satisfied. Furthermore, the Partnership may give this Confidential Offeree Questionnaire to its legal counsel to establish the availability of an exemption. By signing this Confidential Offeree Questionnaire, investors agree to such uses of this Confidential Offeree Questionnaire by the Partnership.

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**A. General Information**

1. The investment is being made by, and beneficial ownership of the Interest purchased should be shown on the Partnership's records in the name of:

\_\_\_\_\_

2. Social Security or Tax Identification Number: \_\_\_\_\_

3. Name and Title of Person completing this Questionnaire:

\_\_\_\_\_

4. Purchaser's Address and Telephone Number (residence for individuals; business for others):

\_\_\_\_\_  
(Street and Number)

\_\_\_\_\_  
(City) (State) (Zip Code)

Telephone Number: \_\_\_\_\_

**B. Investor Information (for entities only, not individuals):**

1. Type of entity (check one):

Corporation	_____	Trust	_____
Partnership	_____	LLC/LLP	_____
Other	_____		

2. Date of Formation: \_\_\_\_\_

3. The entity was organized for the specific purpose of acquiring the Interest: Yes \_\_\_\_\_ No \_\_\_\_\_

4. Number of shareholders, partners, members or beneficiaries \_\_\_\_\_

5. Individual shareholders, partners, members or beneficiaries within the entity may elect whether to participate in the entity's investments: Yes \_\_\_ No \_\_\_

6. The entity has made other investments in securities: Yes \_\_\_\_\_ No \_\_\_\_\_

**C. Accreditation Criteria**

Please mark the category or categories on the next two pages that apply to you:

- \_\_\_\_\_ (a) A bank as defined in §3(a)(2) of the Act or a savings and loan association or other institution as defined in §3(a)(5)(A) of the Act, acting in its individual or fiduciary capacity.
- \_\_\_\_\_ (b) A broker-dealer registered under §15 of the Securities Exchange Act of 1934.
- \_\_\_\_\_ (c) An insurance company as defined in §2(13) of the Act.
- \_\_\_\_\_ (d) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in §2(a)(48) of the Investment Company Act of 1940.
- \_\_\_\_\_ (e) A small business investment company licensed by the U.S. Small Business Administration under §301(c) or (d) of the Small Business Investment Act of 1958.
- \_\_\_\_\_ (f) A plan established and maintained by a state or its political subdivisions or any agency or instrumentality of a state or its political subdivisions for the benefit of its employees, with total assets in excess of \$5,000,000.
- \_\_\_\_\_ (g) An employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, and either (I) the decision to invest in the Partnership has been made by a plan fiduciary, as defined in §3(21) of such Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, (II) the plan has total assets in excess of \$5,000,000 or (III) if the plan is a self-directed plan, the investment decision is made solely by persons who are accredited investors.
- \_\_\_\_\_ (h) A private business development company as defined in §202(a)(22) of the Investment Advisers Act of 1940.
- \_\_\_\_\_ (i) An organization described in §501(c)(3) of the Internal Revenue Code of 1986, a corporation, a Massachusetts or similar business trust or a partnership, not formed for the specific purpose of acquiring an Interest, with total assets in excess of \$5,000,000.
- \_\_\_\_\_ (j) A director, executive officer or general partner of the Partnership, or any director or executive officer of a general partner of the Partnership.

- \_\_\_\_\_ (k) An individual whose net worth,\* or joint net worth\* with his or her spouse, exceeds \$1,000,000.
- \_\_\_\_\_ (l) An individual who had an income\* in excess of \$200,000 in each of the two most recent years or joint income with his or her spouse in excess of \$300,000 in each of those years and who reasonably expects to reach the same income level in the current year.
- \_\_\_\_\_ (m) A trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring an Interest and whose purchase is directed by a sophisticated investor as described in Rule 506(b)(2)(ii) under the Act.
- \_\_\_\_\_ (n) An entity in which all of the equity owners are qualified under any of paragraphs (a) through (m) above.
- \_\_\_\_\_ (o) None of the above.

**D. Investment Background**

1. The purchaser's net worth is more than \$1,000,000: Yes \_\_\_\_\_ No \_\_\_\_\_

2. Provide the following information about the purchaser's previous private offering investment experience:

<u>Name of Venture</u>	<u>Activity of Venture (e.g. R&amp;D, venture capital)</u>	<u>U.S. Dollar Amount of Original Investment</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. List any other investment experience not mentioned above: \_\_\_\_\_

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\* "Net worth" means the excess of total assets at fair market value, including home and personal property, over total liabilities. For Item (l), "Income" means adjusted gross income, as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following (but not including amounts attributable to a spouse or to property owned by a spouse): (i) the amount of tax exempt interest income received, (ii) the amount of losses claimed as a limited partner in a limited partnership, (iii) any deduction claimed for depletion, (iv) amounts contributed to an IRA or Keogh retirement plan, (v) alimony paid and (vi) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to §1202 of the Internal Revenue Code.

4. The purchaser by reason of its business or financial experience considers itself able to protect its own interests in an investment in the Partnership:

Yes \_\_\_\_\_ No \_\_\_\_\_

5. The purchaser is able to bear the economic risk of an investment in the Partnership: Yes \_\_\_\_\_ No \_\_\_\_\_

6. The purchaser believes it can afford a complete loss of its investment in the Partnership: Yes \_\_\_\_\_ No \_\_\_\_\_

**E. Restricted Investors**

1. Rules of the National Association of Securities Dealers, Inc. ("NASD") require the Partnership to segregate "hot issue" securities. Any purchaser who is in any of the following categories may be considered a "restricted investor" who may not be entitled to participate in any of the Partnership's profits from investments in hot issues. (Please check all that apply.)

\_\_\_\_\_ A broker-dealer and member of the NASD (an "NASD member").

\_\_\_\_\_ An officer, director, general partner, employee or agent of an NASD member or of any other broker-dealer, or a person associated with an NASD member or with any other broker-dealer, or who is a member of the immediate family of any such person.

\_\_\_\_\_ A finder with respect to a public offering or a person acting in a fiduciary capacity to a managing underwriter, including among others, attorneys, accountants and financial consultants, or a person who is supported, directly or indirectly, to a material extent by any such person.

\_\_\_\_\_ A senior officer of a bank, savings and loan institution, insurance company, investment company, investment advisory firm, or any other institutional type account (including, hedge funds, investment partnerships, investment corporations, or investment clubs), domestic or foreign, or a person in the securities department of, or an employee of any other person who may influence or whose activities directly or indirectly involve or are related to the function of buying or selling securities for, any bank, savings and loan institution, insurance company, investment company, investment advisory firm, or other institutional type account, domestic or foreign, or who is supported, directly or indirectly, to a material extent by any such person.

\_\_\_\_\_ A domestic or foreign investment partnership or corporation, hedge fund, investment club or similar account in which any person described in the preceding four paragraphs has a beneficial interest. (Note: any such entity or account will be required, regardless of whether or not a person described in the preceding four paragraphs has a beneficial interest in it, to provide the Administrative General Partner with the list of beneficial owners, or the attorneys' or accountants' certification as to the absence of beneficial interest by restricted persons, contemplated in paragraphs A and B of the NASD's "hot issue" Interpretation.)

2. You agree to furnish to the General Partner, if so requested, a list of all business enterprises in which you participate as an employee, officer, director or investor holding 10% or

more of the equity of any such business enterprise and a description of your connection to such business (e.g. employee, officer, investor, etc.) and to provide whatever other information the General Partner may reasonably require to determine your status as either a restricted or non-restricted person.

**F. Relationship to the Partnership or Its Management**

1. Does the purchaser have a pre-existing personal or business relationship with the Partnership or the General Partner or its management? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please describe such relationship: \_\_\_\_\_

2. Does the purchaser currently own interests in the Partnership or the General Partner or any affiliate thereof? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, what interests? \_\_\_\_\_

**G. Representations and Signature**

The purchaser understands that the Partnership will be relying on the accuracy and completeness of its responses to the foregoing questions. The purchaser represents and warrants to the Partnership that (i) the responses are complete and correct and may be relied on by the Partnership and its legal counsel in determining whether the Offering of Interests is exempt from registration or qualification under the federal and applicable state securities laws and (ii) the purchaser will notify the Partnership immediately of any material change in any statement made herein that occurs prior to the closing of the proposed investment.

**INDIVIDUALS:**

**ENTITIES:**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
(Print Name of Purchaser)

\_\_\_\_\_  
Signature

By \_\_\_\_\_

\_\_\_\_\_  
Signature (If Joint Tenants  
or Tenants in Common)

\_\_\_\_\_  
(Print Title and Name of Signatory)

Dated: \_\_\_\_\_, 199\_