

carta

CAPITAL CALL LINE OF CREDIT

# Loan and Security Agreement

## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this “**Agreement**”) is entered into as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), among \_\_\_\_\_ (“**Bank**”), \_\_\_\_\_, a \_\_\_\_\_ (“**Borrower**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**General Partner**”), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank.

### RECITALS

Borrower wishes to obtain credit from Bank, and Bank desires to extend credit to Borrower. This Agreement sets forth the terms on which Bank will advance funds to Borrower, and Borrower will repay the amounts owing to Bank.

### AGREEMENT

The parties agree as follows:

#### 1. **DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“**Advance**” a cash advance or any other extension of credit by Bank for the benefit of Borrower under the Revolving Line.

“**Affiliate**” means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, and any Person that is controlled by or is under common control with such Person. For the purposes of this definition, “control” of a Person means the power to, directly or indirectly, (i) vote more than 50% of the securities having ordinary voting power for the election of directors or equivalent governing body of any such Person or (ii) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“**Alternative Investment Vehicle**” is any Person other than Borrower or General Partner that has the right to enforce any Capital Commitment or to otherwise call, demand, or receive any Uncalled Committed Capital or Capital Contribution Proceeds.

“**Availability Amount**” is an amount equal to the lesser of (a)(i) the Revolving Line minus (ii) the outstanding principal balance of any Advances or (b) the Borrowing Base.

“**Bank**” is defined in the preamble hereof.

“**Bank Expenses**” means all reasonable costs or expenses (including reasonable attorneys’ fees and expenses) incurred in connection with the

preparation, negotiation, administration, and enforcement of the Loan Documents; reasonable Collateral audit fees; and Bank's reasonable attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Event of Default, whether or not suit is brought.

**"Borrower"** is defined in the preamble hereof.

**"Borrower's Books"** means all of Borrower's books and records including: ledgers; records concerning Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs and the equipment containing such information.

**"Borrowing Base"** is (a) fifty percent (50%) of the amount of the Uncalled Committed Capital of all Included Investors, minus (b) all Indebtedness of Borrower (other than the outstanding principal balance of any Advances).

**"Borrowing Base Certificate"** means a Borrowing Base Certificate in substantially the form attached hereto as Exhibit C.

**"Business Day"** means any day that is not a Saturday, Sunday, or other day on which banks in the State of New York or the State of Washington are authorized or required to close.

**"Capital Call"** means a request to the Partners in accordance with the Fund Agreement for a Capital Contribution.

**"Capital Commitments"** means the aggregate cash committed by the Partners to the capital of Borrower under the Fund Agreement or, solely to the extent applicable, their respective Subscription Agreements.

**"Capital Contribution"** means a cash contribution by each Partner to the capital of Borrower pursuant to a Capital Call.

**"Capital Contribution Account"** is defined in Section 6.6(a).

**"Capital Contribution Proceeds"** means the cash proceeds of Capital Contributions.

**"Cash Equivalents"** are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue.

**“Code”** is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank’s Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

**“Collateral”** means the property described on Exhibit A attached hereto.

**“Compliance Certificate”** means a Compliance Certificate in substantially the form attached hereto as Exhibit D.

**“Contingent Obligation”** means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another entity or individual, including, without limitation, any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by such Person, or in respect of which such Person is otherwise directly or indirectly liable; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards, or merchant services issued or provided for the account of such Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

**“Control Agreement”** is any control agreement entered into among the depository institution at which Borrower maintains a Capital Contribution Account, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Capital Contribution Account.

**“Daily Balance”** means the principal amount of the Obligations owed at the end of a given day.

**“Defaulting Partner”** means any Partner who repudiates or fails to comply in all respects with any portion of a Capital Call made by General Partner, unless (a) such failure has been cured within the period of time provided for in the Fund Agreement, or (b) Bank elects in writing, in its sole discretion, to waive any such non-compliance.

**“Effective Date”** means the effective date of this Agreement set forth in the preamble of this Agreement.

**“Event of Default”** means any one or more of the events specified in Section 8.

**“Extended Maturity Date”** is defined in Section 2.1(d).

**“Extension Notice”** is defined in Section 2.1(d).

**“Fund Agreement”** means, with respect to Borrower, that certain XXXXXXXXXXXX, dated as of [XXXXXXXX] by and among the General Partner and the Limited Partners, as amended through the Effective Date, in the form delivered to Bank as of the Effective Date, and with respect to any Alternative Investment Vehicle that has the right to receive the proceeds of a Capital Call, the applicable partnership agreement, in the form delivered to Bank as of the date such Alternative Investment Vehicle becomes a borrower under this Agreement, in each case, as may be further amended in accordance with the terms of this Agreement.

**“Fund Documents”** means the Fund Agreement, the Subscription Agreement, Side Letter and any other Organizational Document of Borrower.

**“FX Contracts”** means contracts between Borrower and Bank for foreign exchange transactions.

**“GAAP”** means generally accepted accounting principles as in effect from time to time.

**“General Partner”** is defined in the preamble hereof.

**“Included Investors”** means the list of investors approved by Bank in writing as “Included Investors” on the Effective Date; provided, that upon the acquisition by any investor (by means of a transfer, an additional closing or otherwise) that was not an Included Investor as of the Effective Date of any Partner’s or Partners’ Capital Commitment, Borrower shall provide Bank written notice of such new investor along with such financial and other disclosure regarding such new investor as Bank may reasonably request, and Bank shall provide Borrower its written decision regarding

whether such new investor is an Included Investor within five (5) Business Days after its receipt of such notice.

**"Indebtedness"** means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations, and (d) all Contingent Obligations.

**"Initial Capital Contribution"** means the receipt by Borrower or General Partner of all Capital Contribution Proceeds from a Capital Call made pursuant to and in accordance with the Fund Documents, in an amount greater than or equal to five percent (5.0%) of Capital Commitments.

**"Insolvency Proceeding"** means any proceeding commenced by or against any Person under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, or proceedings seeking reorganization, arrangement, or other relief.

**"Investment"** means any beneficial ownership of equity interests (including stock, partnership interest or other securities) of any Person, or any loan, advance or capital contribution to any Person.

**"Investment Period"** means the period during which Borrower or General Partner may make Capital Calls to the Partners for purposes of making Investments and paying the Obligations, whether defined in the Fund Agreement as an "investment period", "commitment period" or otherwise.

**"IRC"** means the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

**"Key Person"** means [\_\_\_\_\_].

**"Lien"** means any mortgage, lien, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind.

**"Limited Partners"** are the limited partners set forth in the Fund Agreement.

**"Loan Documents"** means, collectively, this Agreement, any Control Agreement, and any other agreement entered into in connection with this Agreement, all as amended or extended from time to time.

**"Material Adverse Effect"** means a material adverse effect on (a) the business operations or condition (financial or otherwise) of Borrower, (b) the ability of Borrower to repay the Obligations or otherwise perform its obligations under the

Loan Documents, or (c) the Collateral or the perfection or priority of Bank's Lien thereon.

**"Obligations"** means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by Borrower pursuant to this Agreement or any other Loan Documents, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding.

**"OFAC"** is the Office of Foreign Assets Control of the United States Department of the Treasury.

**"Operating Agreement"** means the XXXXXXXXXXXX of the General Partner, dated as of XXXXXXXXXXXX, in the form delivered to Bank as of the Effective Date, and as may be amended, restated or otherwise modified from time to time.

**"Organizational Documents"** means, for any entity, certified true copies of its constituent or organizational documents, including: (a) in the case of any partnership, trust or other form of business entity, the partnership or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the Secretary of State or other department in the state of its formation, all side letters entered into by or on its behalf or otherwise binding upon it, in each case, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, and good standing certificates, each as issued by a Secretary of State or other comparable official for the jurisdictions in which such entity does business; (b) in the case of any limited liability company, the articles or certificate of formation and its operating agreement or limited liability company agreement, all side letters entered into by or on its behalf or otherwise binding upon it, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, and good standing certificates, each as issued by a Secretary of State or other comparable official for the jurisdictions in which such entity does business; and (c) in the case of a corporation, the certificate and articles of incorporation and its bylaws, all side letters entered into by or on its behalf or otherwise binding upon it, as the same may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, and good standing certificates, each as issued by a Secretary of State or other comparable official for the jurisdictions in which such entity does business.

**"Partner"** or **"Partners"** are the Limited Partners and General Partner.

**"Patriot Act"** means USA PATRIOT ACT (Title III of Pub. L. 107-56 (signed into law October 26, 2011)).

**"Payment/Advance Form"** means a Payment/Advance Form in substantially the form attached hereto as Exhibit B.

**“Periodic Payments”** means all installments or similar recurring payments that Borrower may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any Loan Documents now or hereafter in existence between Borrower and Bank.

**“Permitted Indebtedness”** means:

- (a) Indebtedness of Borrower in favor of Bank arising under this Agreement or any other Loan Document;
- (b) Indebtedness existing on the Effective Date and disclosed in the Schedule of Borrower;
- (c) Indebtedness secured by liens permitted under clauses (a) and (c) of the definition of Permitted Liens hereunder;
- (d) unsecured trade debt in the ordinary course of business;
- (e) unsecured Indebtedness under currency, interest rate or other bona fide hedge agreements and prime brokerage agreements; and
- (f) Indebtedness arising from guarantees entered into by Borrower for the benefit of Borrower’s Portfolio Companies as permitted under the terms of the Fund Documents.

**“Permitted Investment”** means:

- (a) Investments existing on the Effective Date disclosed in the Schedule of Borrower;
- (b) Investments consisting of Cash Equivalents; and
- (c) Investments made in accordance with the Fund Agreement.

**“Permitted Liens”** means the following:

- (a) Any Liens existing on the Effective Date and disclosed in the Schedule of Borrower or arising under this Agreement or the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank’s security interests;
- (c) Liens incurred in connection with the extension, renewal or refinancing of the Indebtedness secured by Liens of the type described in clauses (a) and (b) above, provided that any extension, renewal or replacement Lien shall be



limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase;

(d) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions; provided, however, that (i) to the extent Capital Contributions are deposited therein, Bank has a first priority perfected security interest in the amounts held in such deposit and/or securities accounts and (ii) such accounts are permitted to be maintained pursuant to Section 6.6 of this Agreement; and

(e) Liens arising from attachments, judgments, decrees or attachments in circumstances not constituting an Event of Default under Sections 8.5 and 8.8.

**"Person"** means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

**"Portfolio Company"** or **"Portfolio Companies"** means Persons in which Borrower has made and retains Investments in accordance with its Fund Documents.

**"Prime Rate"** means the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

**"Registered Organization"** means any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

**"Responsible Officer"** means each of the vice president, chief financial officer, or president of General Partner.

**"Revolving Line"** means the facility hereunder, pursuant to which Borrower may request Bank to issue Advances of up to a maximum aggregate outstanding principal amount of the lesser of (a) XXXXXXXXXX Dollars (\$XXXXXX) or (b) XXXX percent (X%) of the aggregate Capital Commitments of all Included Investors, as specified in Section 2.1 hereof.

**“Revolving Maturity Date”** means the three hundred sixty-fourth (364<sup>th</sup>) day from the Effective Date, as the same may be extended pursuant to the terms and conditions of Section 2.1(d).

**“Rollover Request”** is defined in Section 2.1(d).

**“Sanctioned Person”** means any Person named on the list of Specially Designated Nationals maintained by OFAC.

**“Sanctions”** means any sanctions administered or enforced by OFAC, the U.S. Department of State, or other relevant sanctions authority.

**“Schedule”** means, individually and collectively, the disclosure schedules attached hereto and approved by Bank.

**“Side Letter”** means any agreement between any Partner and either Borrower or General Partner or both that modifies or amends any term of the Fund Agreement or any Subscription Agreement, or affects any Partner’s Capital Commitment.

**“Subscription Agreement”** is any agreement evidencing the Capital Commitments of a Partner.

**“Subsidiary”** means as to any particular parent corporation or organization, any other corporation or organization more than 50% of the outstanding ordinary voting shares or other equity interests of which is at the time directly or indirectly owned by such parent corporation or organization or by any one or more other entities which are themselves subsidiaries of such parent corporation or organization.

**“Uncalled Committed Capital”** means, with respect to the Partners, the aggregate remaining amount of Capital Contributions that Borrower has a right to require from the Partners under their respective Fund Documents without condition upon the making of any Capital Calls in accordance with such Fund Documents, excluding (i) capital attributable to Defaulting Partners, (ii) for any Limited Partner with Capital Commitments representing more than twenty percent (20%) of the total Capital Commitments of Borrower, capital from such Limited Partner that exceeds twenty percent (20%) of the total Capital Commitments of Borrower, and (iii) with respect to any Partner that has claimed or exercised an excuse, exclusion or cancellation right pursuant to the Fund Documents, the amount of such Partner’s Capital Commitment affected by such excuse, exclusion, or cancellation.

**1.2 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP, as applied by Borrower, and all calculations made hereunder shall be made in accordance with GAAP, as applied by Borrower. When used herein, the terms “financial statements” shall include the notes, if any, and schedules thereto.

## 2. LOAN AND TERMS OF PAYMENT

### 2.1 Advances.

(a) **Promise to Pay.** Borrower promises to pay to Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Advances made by Bank to Borrower as and when due hereunder, together with interest on the unpaid principal amount of such Advances at rates in accordance with the terms hereof.

(b) **Advances.** Subject to and upon the terms and conditions of this Agreement, Borrower may request Advances in an aggregate principal amount not to exceed the Availability Amount. Subject to the terms and conditions of this Agreement, amounts borrowed pursuant to this Section may be repaid and reborrowed at any time prior to the Revolving Maturity Date. All Advances under this Section shall be immediately due and payable on the earlier of (i) ninety (90) days after such Advance is made, or (ii) the Revolving Maturity Date, together with any accrued but unpaid interest. Borrower may prepay any Advance without penalty or premium.

(c) **Borrowing Procedures.** Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission, email or telephone no later than 12:00 p.m. Pacific Time, on the Business Day that the Advance is to be made. Each such notification shall be promptly confirmed by a Payment/Advance Form. Bank is authorized to make Advances under this Agreement, based upon written instructions received from a Responsible Officer, or without instructions if in Bank's discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will distribute Advances made under this Section 2.1 in accordance with Borrower's written instructions.

(d) **Extended Maturity Date.** On any Business Day occurring prior to the Revolving Maturity Date, a Responsible Officer may submit to Bank, on behalf of Borrower and according to Section 10, a written request (a "**Rollover Request**") to extend the Revolving Maturity Date up to the first anniversary of the Revolving Maturity Date or, if such date is not a Business Day, the immediately preceding Business Day (such date, the "**Extended Maturity Date**"). Submission by Borrower of a Rollover Request shall be deemed to be a restatement of each representation and warranty made by Borrower in Section 5 as of the date of such Rollover Request. After receipt of a Rollover Request, Bank shall determine, in its sole discretion, whether to consent to such Rollover Request. If granted by Bank, (i) Bank shall provide Borrower with notice of its consent to a Rollover Request, substantially in the form of Exhibit E, attached hereto (an "**Extension Notice**"), in accordance with

Section 10 and (ii) as of the date of such Extension Notice, all references to the Revolving Maturity Date in this Agreement shall be deemed to be references to the Extended Maturity Date. If Bank does not provide Borrower with an Extension Notice after receiving a Rollover Request on or prior to the Revolving Maturity Date, such Rollover Request shall be deemed to have been denied by Bank, the Revolving Maturity Date shall not be extended and Borrower shall not be permitted to submit any subsequent Rollover Requests. If Bank consents to Borrower's initial Rollover Request, Borrower may submit no more than one subsequent Rollover Request.

## **2.2 Interest Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as set forth in Section 2.2(b), the Advances shall bear interest, on the outstanding Daily Balance thereof, at a per annum rate equal to the Prime Rate minus two quarters of one percent (0.50%) with deposits at Coastal Coastal Community Bank or Prime Rate, minus one quarters of one percent (0.25%) without deposits at Coastal Community Bank.

(b) **Default Rate.** Immediately upon the occurrence and during the continuance of an Event of Default, overdue and unpaid amounts under the Loan Documents shall bear interest at a rate per annum equal to three percent (3.0%) above the rate that is otherwise applicable thereto unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) **Payments.** Interest hereunder shall be due and payable on the first calendar day of each month during the term hereof. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of Borrower's deposit accounts or against the Revolving Line, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder. All payments shall be free and clear of any taxes, withholdings, duties, impositions or other charges, to the end that Bank will receive the entire amount of any Obligations payable hereunder, regardless of source of payment.

(d) **Computation.** In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(e) **Overadvance.** If at any time the Obligations exceed the lesser of the Revolving Line or the Borrowing Base, Borrower shall immediately pay Bank the amount of such excess, in cash, on account of such Obligations.

(f) **Late Charge.** If any installment of interest is not paid within ten (10) days after the date on which it is due, Borrower shall immediately pay a late charge equal to five percent (5%) of such installment to Bank to compensate Bank for administrative costs and expenses incurred in connection with such late payment. Borrower agrees that the actual damages suffered by Bank because of any late installment payment are extremely difficult and impracticable to ascertain, and the late charge described in this Section represents a reasonable attempt to fix such damages under the circumstances existing at the time this Agreement is executed. Bank's acceptance of any late charge shall not constitute a waiver of any of the terms of this Agreement and shall not affect Bank's right to enforce any of its rights and remedies against any Person liable for payment of this Agreement.

**2.3 Fees.** Borrower shall pay to Bank the following:

(a) **Subscription Fees.** A non-refundable annual subscription fee equal to XXXXXX Thousand Dollars (\$XX,XXX), payable in quarterly installments, commencing on the Effective Date, and, thereafter, due on the first (1<sup>st</sup>) Business Day of each subsequent quarter. Borrower shall not be entitled to any credit, rebate or repayment of any such subscription fee previously paid to Bank pursuant to this Section 2.3(a) notwithstanding any termination of the Agreement or the suspension or termination of Bank's obligation to make Advances hereunder.

(b) **Bank Expenses.** On the Effective Date or such later date as determined by Bank, all Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank).

**2.4 Term.** This Agreement shall become effective on the Effective Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations remain outstanding or Bank has any obligation to make Advances under this Agreement. Notwithstanding termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Advance.** The obligation of Bank to make the initial Advance is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, the following:

(a) this Agreement, duly executed by Borrower and General Partner;

- (b) the Schedules, together with any attachments thereto, completed by Borrower and General Partner;
- (c) duly executed original signatures to the Control Agreements;
- (d) UCC National Form Financing Statement (one each for Borrower and General Partner);
- (e) a certificate of Borrower and General Partner with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement and any other Loan Document;
- (f) the Certificate of Formation of Borrower, certified by the Delaware Secretary of State;
- (g) copy of the executed Fund Agreement;
- (h) copies of the executed Subscription Agreements;
- (i) copies of executed Side Letters;
- (j) duly executed original signature to a LP acknowledgment letter from any Limited Partner with Capital Commitments representing more than forty percent (40%) of the total Capital Commitments of Borrower (the “**LP Investor Letter**”);
- (k) evidence that the Initial Capital Contribution has occurred;
- (l) the Certificate of Formation of General Partner, certified by the Delaware Secretary of State;
- (m) an executed copy of the Operating Agreement;
- (n) payment of the fees and expenses then due and payable, as specified in Section 2.3 hereof; and
- (o) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

**3.2 Conditions Precedent to all Advances.** The obligation of Bank to make each Advance, including the initial Advance, is further subject to the following conditions:

- (a) timely receipt by Bank of the Payment/Advance Form as provided in Section 2.1, together with a completed Borrowing Base Certificate;

(b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of such Payment/Advance Form and on the effective date of each Advance as though made at and as of each such date other than (i) those representations and warranties made as of a specific date, which shall be true and correct in all material respects as of such specific date, and (ii) those representations and warranties that have been rendered incorrect or incomplete as a result of any action permitted to be taken or omitted pursuant to the terms of this Agreement or consented to in writing by Bank. The making of each Advance shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the accuracy of the facts referred to in this Section 3.2; and

(c) in Bank's sole but reasonable discretion, there has not been a Material Adverse Effect.

#### **4. CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower and General Partner each hereby grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by Borrower and General Partner of its respective covenants and duties under the Loan Documents. Except as set forth in the Schedule of Borrower and General Partner, such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof.

**4.2 Authorization to File Financing Statements.** Borrower and General Partner each authorizes Bank to file financing statements on or after the Effective Date, without notice to Borrower or General Partner, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder.

**4.3 Delivery of Additional Documentation Required.** Borrower and General Partner shall each, from time to time, execute and deliver to Bank, at the request of Bank, all financing statements and other documents that Bank may reasonably request, in form reasonably satisfactory to Bank, to perfect and continue the perfection of Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

**4.4 Right to Inspect.** Bank (through any of its officers, employees, or agents) shall have the right, upon reasonable prior written notice, from time to time during Borrower's usual business hours but no more than once a year (unless an Event of Default has occurred and is continuing), to inspect Borrower's Books and to make copies thereof and to check, test, and appraise the Collateral or the amount, condition of, or any other matter relating to, the Borrower or the Collateral.

## 5. REPRESENTATIONS AND WARRANTIES

Borrower and General Partner each represents and warrants as follows:

**5.1 Due Organization and Qualification.** Borrower and General Partner each is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified. Borrower and General Partner are each qualified and licensed to do business in any state in which such qualification and licensing is required, except where the failure to be so qualified could not be reasonably likely to have a Material Adverse Effect.

**5.2 Due Authorization; No Conflict.** The execution, delivery, and performance of the Loan Documents have been duly authorized, and do not (a) conflict with or constitute a breach of any provision contained in the Fund Documents, or (b) constitute an event of default under any material agreement to which Borrower or General Partner is a party or by which Borrower or General Partner is bound. Borrower and General Partner each is not in default under any material agreement to which it is a party or by which it is bound.

**5.3 Encumbrances.** Borrower and General each has valid title to its property, free and clear of Liens, except for Permitted Liens.

**5.4 Operating Agreement, Charter Documents.** Except for amendments that are not likely to delay or reduce payments of Capital Contributions, or adversely affect the right to make and enforce a Capital Call or adversely affect the ability of Borrower to satisfy its obligations under this Agreement, the Fund Documents of Borrower and the Operating Agreement and other organizational documents of General Partner are in full force and effect in the forms presented to Bank as of the Effective Date. Except as promptly disclosed from time to time in writing to Bank, no Partner has withdrawn from Borrower or has failed to make any Capital Contributions in response to any Capital Calls requested by Borrower in such Capital Call.

**5.5 Capital Calls.** Except as set forth on the Schedule attached hereto, there are no restrictions with respect to the right to make, or exceptions to the obligation of Partners to fund, Capital Calls. All Uncalled Committed Capital is due and owing directly to Borrower. Except as promptly disclosed from time to time in writing to Bank pursuant to the requirements of Section 6.3(h), no Partner has failed to make any Capital Contributions required to be made under the Fund Documents in accordance with any Capital Calls made in accordance with the Fund Documents. No Person other than Borrower and General Partner on behalf of Borrower is entitled to receive Capital Contributions or has any rights to Uncalled Committed Capital.



**5.6 Name; Location of Chief Executive Office.** Borrower has not done business under any name other than that specified on the signature page hereof. The chief executive office of Borrower is located at the address indicated in Section 10 hereof.

**5.7 Litigation.** Except as disclosed to Bank (in writing) pursuant to Section 6.3(e), there are no actions or proceedings pending by or against Borrower before any court or administrative agency which would reasonably be expected to result in damages or costs to Borrower of more than, individually or in the aggregate, One Hundred Thousand Dollars (\$100,000) not covered by independent third party insurance as to which liability has been accepted by the carrier providing such insurance.

**5.8 No Material Adverse Change in Financial Statements.** All consolidated and consolidating financial statements related to Borrower and any Affiliate that Bank has received from Borrower fairly present in all material respects Borrower's financial condition as of the date thereof (and, as to unaudited financial statements, subject to year-end adjustments and the inclusion of footnotes and Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or the consolidating financial condition of Borrower since the date of the most recent of such financial statements submitted to Bank.

**5.9 Solvency, Payment of Debts.** Borrower is solvent and able to pay its debts (including trade debts) as they mature.

**5.10 Regulatory Compliance.** Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Borrower has not violated any statutes, laws, ordinances or rules applicable to it, to the extent such violation could reasonably be expected to have a Material Adverse Effect.

**5.11 Taxes.** Borrower has filed or caused to be filed all tax returns required to be filed, and has paid, or has made adequate provision for the payment of, all taxes reflected therein, except for such taxes that are being contested in good faith and by proper proceedings and against which adequate reserves are being maintained.

**5.12 Investments.** Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

**5.13 Government Consents.** Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all

notices to, all governmental authorities that are necessary for the continued operation of Borrower's business as currently conducted, the failure to obtain which could have a Material Adverse Effect.

**5.14 Investment Period.** No expiration, termination, or suspension of the Investment Period has occurred, and no fact, event or circumstance exists or has occurred or is likely to occur, that would or reasonably could result in the early expiration, early termination or suspension of the Investment Period, including, without limitation, the departure of any key person, in accordance with the Fund Agreement.

**5.15 Sanctions; Anti-Corruption; Patriot Act Compliance.** No Borrower, General Partner, any director, officer or employee of Borrower or General Partner is a Person (i) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) who engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner violative of such Section 2, (iii) who is on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order, or (iv) who is a Sanctioned Person. Borrower and General Partner are in compliance with the Patriot Act to the extent applicable. No Advances will be used, directly or (to its knowledge) indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving money, or anything else of value, to any Person in violation of the United States Foreign Corrupt Practices Act of 1977, as amended, or any other applicable anti-corruption law. Borrower, General Partner and their respective Subsidiaries have conducted their business in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote compliance with such laws and with this Section.

**5.16 Full Disclosure.** No written factual representation, warranty or other statement made by Borrower in any certificate or written statement furnished to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

## 6. **AFFIRMATIVE COVENANTS**

Borrower and, as applicable, General Partner shall do all of the following:

**6.1 Good Standing.** Borrower and General Partner shall each maintain its legal existence in its jurisdiction of formation and maintain qualification and good standing in each jurisdiction in which it is required to do so other than such jurisdiction in which the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Borrower and General Partner shall maintain in force all licenses, approvals and agreements necessary for the conduct of its business as currently conducted, to the extent failure to maintain the same would reasonably be expected to have a Material Adverse Effect.

**6.2 Government Compliance.** Borrower and General Partner shall comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a Material Adverse Effect.

**6.3 Financial Statements, Reports, Certificates.** Borrower shall deliver to Bank:

(a) As soon as available, but no later than [XXXX] (XX) days after the last day of each fiscal quarter of Borrower (other than the last fiscal quarter of each fiscal year of Borrower), a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such quarter, certified by a Responsible Officer and in a form reasonably acceptable to Bank, together with valuation schedules for Portfolio Investments and any reports delivered during such fiscal quarter to Partners according to the terms of the Fund Documents (the "**Quarterly Financial Statements**");

(b) As soon as available, but no later than [XXXX] (XXX) days after the last day of each fiscal year of Borrower, audited consolidated financial statements of Borrower, prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Bank in its reasonable discretion and together with valuation schedules for Portfolio Investments and any reports delivered to Partners according to the terms of the Fund Documents with respect to such fiscal year not otherwise delivered to Bank pursuant to Section 6.3(a) (the "**Annual Financial Statements**");

(c) Together with the Quarterly Financial Statements and Annual Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer;

(d) promptly upon distribution, copies of all statements, reports and notices generally sent or made available by Borrower to its Partners;

- (e) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened against Borrower that is reasonably likely to result in damages or costs to Borrower of One Hundred Thousand Dollars (\$100,000) or more;
- (f) a Borrowing Base Certificate with each Advance request;
- (g) an updated roster of Partners within thirty (30) days of any additional closings, including the Subscription Agreements of any new Partners;
- (h) a prompt notice of any failure to receive any Capital Contributions within ten (10) Business Days of when due in accordance with a Capital Call, and, upon Bank's request, the identity of any Partner that so fails to make its Capital Contribution within ten (10) Business Days of when due;
- (i) a prompt notice of any Partner's claim or exercise of any excuse, exclusion or cancellation right with respect to any Capital Call or Permitted Investment;
- (j) a prompt notice within thirty (30) days of (i) any transfer of any Partner's interest in Borrower which is equal to or exceeds five percent (5.0%) of Capital Commitments and (ii) the identity of the Person that acquires such interest in Borrower after the Closing Date;
- (k) an LP Investor Letter to the extent required pursuant to Section 3.1(j); and
- (l) such other financial information as Bank may reasonably request from time to time.

**6.4 Fund Agreement.** Borrower shall cause the Fund Agreement to remain in full force and effect in the form presented to Bank on the Effective Date, except for amendments that do not (a) adversely affect Borrower's or General Partner's right or ability (i) to make or enforce Capital Calls or reduce in any material manner the rights of Borrower to the Uncalled Committed Capital (including any material reduction in the amount thereof or any material change in the time or manner in which the Uncalled Committed capital is or may be payable), (ii) to receive Capital Contributions and other payments from the Partners, or (iii) to satisfy Borrower's obligations under this Agreement, and (b) otherwise adversely affect the rights or remedies of Bank under the Loan Documents in any material respect. General Partner shall cause each of the Partners to make contributions to Borrower in accordance with the Fund Documents, shall enforce substantially all of the rights and obligations under the Fund Documents, including without limitation the right to request Capital Contributions, and shall not amend, waive or release any of such rights without Bank's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

**6.5 Taxes.** Borrower shall make, due and timely payment or deposit of all material federal, state, and local taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make, timely payment or deposit of all material tax payments and withholding taxes required of it by applicable laws, and will, upon request, furnish Bank with proof satisfactory to Bank indicating that Borrower has made such payments or deposits; provided that Borrower need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by Borrower.

**6.6 Deposit Accounts.**

(a) Borrower shall maintain with the financial institutions disclosed in the Schedule of Borrower all accounts into which Capital Contributions are or may be deposited (each, a “**Capital Contribution Account**”).

(b) In addition to and without limiting the restrictions in (a), Borrower shall provide Bank five (5) days prior written notice before establishing any Capital Contribution Account at or with any bank or financial institution other than with the financial institutions disclosed in the Schedule of Borrower. For each Capital Contribution Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Capital Contribution Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Capital Contribution Account to perfect Bank’s Lien in such Capital Contribution Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank.

**6.7 Use of Proceeds.**

(a) Borrower shall use the proceeds of the Advances solely to fund Permitted Investments and related expenses, all in accordance with the Fund Documents, and for no other purpose.

(b) Borrower will not, directly or indirectly, use the proceeds of the Advances, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities or business of or with any Person, or in any country or territory, that at the time of such funding, is, or whose government is, the subject of Sanctions in violation of applicable law, or (ii) in any other manner that would result in a violation of Sanctions by any Person.

**6.8 Further Assurances.** At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

## 7. **NEGATIVE COVENANTS**

Borrower will not, and General Partner will not permit Borrower to, do any of the following:

**7.1 Dispositions.** Convey, sell, lease, transfer or otherwise dispose of (collectively, a “**Transfer**”) all or any part of its business or property, other than Transfers of securities, and cash in the ordinary course of Borrower’s business.

**7.2 Change in Business; Key Person or Executive Office.** Engage in any business other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto); or cease to conduct business in the manner conducted by Borrower as of the Effective Date; or if any Key Person ceases to be actively engaged in the management of Borrower and General Partner; or without thirty (30) days prior written notification to Bank, relocate its chief executive office or state of formation; or without Bank’s prior written consent change the date on which its fiscal year ends.

**7.3 Mergers or Acquisitions.** Merge or consolidate with or into any other business organization, or acquire all or substantially all of the capital stock or property of another Person, other than Permitted Investments.

**7.4 Indebtedness.** Create, incur, assume or be or remain liable with respect to any Indebtedness other than Permitted Indebtedness.

**7.5 Encumbrances.** Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income other than Permitted Liens, or agree with any Person other than Bank not to grant a security interest in, or otherwise encumber, any of its property.

**7.6 Distributions.** Pay any dividends or make any other distribution or payment to its Partners other than in accordance with the Fund Documents, provided no such distribution or payment may be made if an Event of Default has occurred and is continuing or would exist after giving effect thereto.

**7.7 Investments.** Directly or indirectly acquire or own, or make any Investment in or to any Person other than Permitted Investments.

**7.8 Transactions with Affiliates.** Other than as permitted by the Fund Documents, directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower except for transactions that are in the ordinary course of Borrower’s business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm’s length transaction with a non-affiliated Person.

**7.9 Compliance.** Become an “investment company” or be controlled by an “investment company,” within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Advance for such purpose, or violate any law or regulation, which violation could have a Material Adverse Effect.

**7.10 Transfers by Partners; Admission of Partners.** Borrower shall not permit any Transfer of any Partner’s or Partners’ Capital Commitment unless permitted pursuant to this Section 7.10. Borrower shall notify Bank of any such Transfer of more than five percent (5.0%) of the aggregate Capital Commitments at least five (5) Business Days before the proposed Transfer, and shall, promptly upon receipt thereof, deliver to Bank copies of any proposed assignment agreement and other documentation delivered to, or required of such Partner by, the applicable General Partner. In order for a new Partner to be deemed to be an Included Investor, such new Partner must satisfy the criteria therefor as set out in this Agreement. If the transfer of a Partner’s or Partners’ Capital Commitment to a new Partner would result in a mandatory prepayment hereunder (due to the transferee not being designated as an Included Investor), such mandatory prepayment shall be calculated and paid to Bank prior to the effectiveness of the transfer. Borrower shall not permit any transfer by a Partner of all or any portion of its interest in Borrower to a Sanctioned Person or which would result in a material violation of any applicable law, regulation, or order.

**7.11 Alternative Investment Vehicles.** Cause or permit any Alternative Investment Vehicle to exist other than an Alternative Investment Vehicle that has, in the case of an Alternative Investment Vehicle that has the right to receive the proceeds of a Capital Call, joined this Agreement as a co-borrower, and in the case of an Alternative Investment Vehicle that has the right to make a Capital Call, joined this Agreement on terms substantially similar to General Partner, and in each case, pursuant to Loan Documents acceptable to Bank. In connection therewith, Borrower or General Partner shall provide Bank with authority documents acceptable to Bank, including, without limitation, a certificate from the Secretary of State or registrar of such Alternative Investment Vehicle’s jurisdiction of formation certifying that such Alternative Investment Vehicle is validly existing and is in good standing in such jurisdiction.

## **8. EVENTS OF DEFAULT**

Any one or more of the following events shall constitute an Event of Default under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal or interest on any Advance on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3)

Business Day cure period shall not apply to payments due on the Revolving Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Advance will be made during the cure period);

## **8.2 Covenant Default.**

(a) Borrower or General Partner fails or neglects to perform any obligation in Sections 2.2(e), 6.2, 6.4, 6.5, or 6.6, or violates any covenant contained in Section 7; or

(b) If Borrower or General Partner fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement, in any of the Loan Documents, or in any other present or future agreement among Borrower, General Partner, and Bank and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure such default within ten (10) days after Borrower or General Partner receives notice thereof or any officer of Borrower or General Partner becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower or General Partner be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower or General Partner shall have an additional reasonable period (that shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default (provided that no Advances will be required to be made during such cure period);

**8.3 Partnership.** If (a) General Partner fails to remain general partner of Borrower or (b) any event occurs which results in the termination of (i) Borrower's status as a limited partnership or (ii) the Fund Agreement;

**8.4 Material Adverse Effect.** If there occurs any circumstance or any circumstances which would reasonably be expected to have a Material Adverse Effect;

**8.5 Attachment.** If any material portion of Borrower's or General Partner's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or Person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim in the aggregate amount in excess of One Hundred Thousand Dollars (\$100,000), which judgment becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any



of the assets of Borrower or General Partner by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower or General Partner, as applicable, receives notice thereof, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower or General Partner, as applicable (provided that no Advances will be required to be made during such cure period) or is covered by adequate insurance;

**8.6 Insolvency or Bankruptcy.** If Borrower or General Partner becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower or General Partner, or if an Insolvency Proceeding is commenced against Borrower or General Partner and is not dismissed or stayed within forty-five (45) days (provided that no Advances will be made prior to the dismissal of such Insolvency Proceeding);

**8.7 Other Agreements.** If there is a default or other failure to perform beyond any applicable cure period and to the extent not waived in any agreement to which Borrower or General Partner is a party or by which it is bound resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Hundred Thousand Dollars (\$100,000) or which could reasonably be expected to have a Material Adverse Effect;

**8.8 Judgments.** If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Thousand Dollars (\$100,000) (to the extent not covered by insurance) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days (provided that no Advances will be made prior to the satisfaction or stay of such judgment);

**8.9 Capital Call Funding.** If (a) greater than or equal to five percent (5.0%) of any Capital Call issued by Borrower or General Partner is not funded within ten (10) Business Days of when due under the terms of such Capital Call (regardless of any grace period or notice requirement set forth in the Fund Agreement or otherwise), or (b) General Partner, Management Company (as defined in the Fund Agreement), or any Affiliate of Borrower or General Partner fails to fund any portion of a Capital Contribution due from such General Partner or Affiliate on or before the date such Capital Contribution is due (regardless of any grace period or notice requirement set forth in the Fund Documents or otherwise; provided, however, that for purposes of the foregoing, a limited partner will not by virtue of its status as a limited partner under the Fund Agreement be considered to be an Affiliate of Borrower or General Partner);

**8.10 Investment Period.** Borrower's Investment Period is terminated or suspended for any reason;

**8.11 Cross-Default.** A default after any applicable grace or cure period or an “event of default” occurs under any loan arrangement between Bank and Borrower, General Partner, and any management company of Borrower; or

**8.12 Misrepresentations.** If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or any other Loan Document.

## **9. BANK’S RIGHTS AND REMEDIES**

**9.1 Rights and Remedies.** Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, immediately due and payable (provided, however, that upon the occurrence of an Event of Default described in Section 8.6, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, upon terms and in whatever order that Bank reasonably considers advisable;

(d) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. Borrower agrees to assemble the Collateral and/or any documents relating to the right to make or enforce Capital Calls if Bank so requires, and to make such documents and/or the Collateral available to Bank as Bank may designate. Borrower authorizes Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank’s determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower’s owned premises, Borrower hereby grants Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank’s rights or remedies provided herein, at law, in equity, or otherwise;

(e) Dispose of the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such

manner and at such places (including Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate, in each case, in compliance with applicable law;

(f) Bank may credit bid and purchase at any public sale; and

(g) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

**9.2 Right of Setoff; Deposit Accounts.** Upon the occurrence and during the continuance of an Event of Default, Bank is authorized by Borrower, at any time and from time to time, (a) to set off against, and to appropriate and apply to the payment of, the obligations and liabilities of Borrower under the Loan Documents (whether matured or unmatured, fixed or contingent or liquidated or unliquidated) any and all amounts owing by Bank to Borrower (whether payable in U.S. Dollars or any other currency, whether matured or unmatured, and, in the case of deposits, whether general or special, time or demand and however evidenced) and (b) pending any such action, to the extent necessary, to hold such amounts as collateral to secure such obligations and liabilities and to return as unpaid for insufficient funds any and all checks and other items drawn against any deposits so held as Bank in its sole discretion may elect.

**9.3 Power of Attorney; Capital Calls.**

(a) Effective only upon the occurrence and during the continuance of an Event of Default, Borrower or General Partner, as applicable, hereby irrevocably appoints Bank (and any of Bank's designated officers, or employees) as Borrower's or General Partner's true and lawful attorney, as applicable, to: (A) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (B) endorse Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (C) sign Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (D) dispose of any Collateral; (E) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (F) make or request Capital Calls in an amount sufficient to satisfy all Obligations and enforce the obligation of any Partners to make Capital Contributions; (G) notify any or all Partners to make all payments due or to become due in connection with Capital Calls directly to Bank; (H) exercise and enforce every right, power, remedy, authority, option and privilege and take all steps, actions, suits or proceedings necessary to make Capital Calls and to receive Capital Contribution Proceeds and any other rights to call for additional Capital Contributions as contemplated by the Fund Agreement, any Subscription Agreement or any Side Letter, including, without limitation, the right

to make Capital Calls; (I) enforce the payment thereof and the related terms of the Fund Documents; (J) make allowances or adjustments related to the funding of Capital Calls; (K) compromise any claims related to the Collateral or the failure of any Partner to fund Capital Calls; and (L) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Borrower where permitted by law. The appointment of Bank as attorney-in-fact in accordance with the foregoing, and each and every one of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Advances hereunder is terminated.

(b) In addition to and without limiting the foregoing, upon the occurrence and during the continuance of an Event of Default, Borrower and General Partner shall, upon request by Bank, immediately take any and all action necessary to make a Capital Call pursuant to the terms of the Fund Documents in an amount sufficient to repay all outstanding Obligations and cause and direct the proceeds of such Capital Call to be delivered directly to Bank. Each of Borrower and General Partner acknowledges and agrees that Bank will be irreparably harmed should Borrower or General Partner, as applicable, fail to take any such action, including, without limitation, the failure to make a Capital Call or deliver the proceeds of such Capital Call to Bank as set forth above. Each of Borrower and General Partner further acknowledges and agrees that Bank has the right, and it is appropriate for Bank, upon the occurrence and during the continuance of an Event of Default, to seek injunctive relief to compel Borrower or General Partner, as applicable, to take any such action, including, without limitation, making a Capital Call or delivering Capital Contribution Proceeds to Bank, in a court of competent jurisdiction as set forth in Section 11. Borrower and General Partner each hereby waives its right to oppose Bank's request for such injunctive relief.

**9.4 Payments Collection.** At any time after the occurrence and during the continuance of an Event of Default, Bank may notify any Person owing funds to Borrower of Bank's security interest in such funds and verify the amount so owing. Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

**9.5 Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

**9.6 Remedies Cumulative.** Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

**9.7 Waivers.** Each of Borrower and General Partner waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower or General Partner may in any way be liable. General Partner waives any right to require Bank to (i) proceed against Borrower, any other guarantor or any other Person; (ii) proceed against or exhaust any security held from Borrower; (iii) marshal any assets of Borrower; or (iv) pursue any other remedy in Bank's power whatsoever. Bank may, at its election, exercise or decline or fail to exercise any right or remedy it may have against Borrower or any security held by Bank, including without limitation the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of General Partner hereunder. General Partner waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower other than payment of the Obligations. General Partner waives any setoff, defense or counterclaim that Borrower may have against Bank. General Partner waives any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation or any other rights against Borrower. General Partner shall have no right of subrogation or reimbursement, contribution or other rights against Borrower for as long as any Obligations remain outstanding, and General Partner waives any right to enforce any remedy that Bank now has or may hereafter have against Borrower for as long as any Obligations (other than Contingent Obligations for which no claim has been asserted) remain outstanding. General Partner waives all rights to participate in any security now or hereafter held by Bank for as long as any Obligations (other than Contingent Obligations for which no claim has been asserted) remain outstanding. General Partner waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Agreement and of the existence, creation, or incurring of new or additional indebtedness. General Partner assumes the responsibility for being and keeping itself informed of the financial condition of Borrower and of all other circumstances bearing upon the risk of nonpayment of any indebtedness or nonperformance of any obligation of Borrower, warrants to Bank that it will keep so informed, and agrees that absent a request for particular

information by General Partner, Bank shall have no duty to advise General Partner of information known to Bank regarding such condition or any such circumstances.

**10. NOTICES**

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by email to Borrower or General Partner or to Bank, as the case may be, at its addresses set forth below:

If to Borrower      XXXXXXXXXXXXXXXX  
or General          XXXXXXXXXXXXXXXX  
Partner:            XXXXXXXXXXXXXXXX

Attn: XXXXXXXXXXXX  
Email: XXXXXXXXXXXX

If to Bank:        \_\_\_\_\_  
                          \_\_\_\_\_

Attn: XXXXXXXXXXXX  
Email: XXXXXXXXXXXX

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

**11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER**

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to principles of conflicts of law. Jurisdiction shall lie in the State of New York; provided, however, that if for any reason Bank cannot avail itself of such courts in the State of New York, Borrower accepts jurisdiction of the courts in King County, Washington. All disputes, controversies, claims, actions and similar proceedings arising with respect to Borrower’s account or any related agreement or transaction shall be brought in the federal or state courts located within the Southern District of New York, New York. BANK, BORROWER, AND GENERAL PARTNER EACH ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY

IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY BANK, BORROWER, OR GENERAL PARTNER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM.

## **12. GENERAL PROVISIONS**

**12.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted, conditioned, or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower or General Partner to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder.

**12.2 Indemnification.** Borrower and General Partner shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against, except for losses caused solely by Bank's bad faith, gross negligence or willful misconduct: (a) all obligations, demands, claims, losses, investigations, damages, and liabilities of any kind claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; (b) all obligations, demands, claims, losses, investigations, damages, and liabilities of any kind or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Borrower whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses); (c) and all obligations, demands, claims, losses, investigations, damages, and liabilities of any kind or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to Borrower's negligence.

**12.3 Time of Essence.** Time is of the essence for the performance of all obligations set forth in this Agreement.

**12.4 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**12.5 Amendments in Writing, Integration.** Neither this Agreement nor the Loan Documents can be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

**12.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

**12.7 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Bank has any obligation to make Advances to Borrower. The obligations of Borrower to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

**12.8 Patriot Act Notice.** Bank notifies Borrower that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies Borrower, which information includes names and addresses and other information that will allow Bank to identify Borrower in accordance with the Patriot Act.

**12.9 Advice of Counsel.** Borrower and General Partner have freely and voluntarily entered into this Agreement after an adequate opportunity and sufficient period of time to review, analyze and discuss all terms and conditions of this Agreement and all factual and legal matters relevant hereto with counsel freely and independently chosen by it. Borrower and General Partner further acknowledge that they have actively and with full understanding participated in the negotiation of this Agreement after consultation and review with their respective counsel.

**12.10 Confidentiality.** In handling any confidential information Bank and all employees and agents of Bank, including but not limited to accountants, shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to the subsidiaries or affiliates of Bank in connection with their present or prospective business relations with Borrower, (ii) to prospective transferees or purchasers of any interest in the Advances (provided, however, that any prospective transferee or purchaser shall have entered into an agreement containing provisions substantially the same as those in this Section), (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Bank, and (v) as Bank may determine in connection with the enforcement of any remedies hereunder. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Bank when disclosed to Bank, or becomes part of the public domain after disclosure to Bank through no fault of Bank;



or (b) is disclosed to Bank by a third party, provided Bank does not have actual knowledge that such third party is prohibited from disclosing such information.

**12.11 Electronic Execution of Documents.** The word “execution,” “signed,” “signature,” and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

[Signature Page Follows.]



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

XXXXXXXXXXXXXXXXXXXXX  
By: XXXXXXXXXXXXXXXXXXX

By: \_\_\_\_\_  
Name: XXXXXXXXXXXXXXXX  
Title: XXXXXXXXXXXXXXXX

**GENERAL PARTNER:**

XXXXXXXXXXXXXXXXXXXXX

By: \_\_\_\_\_  
Name: XXXXXXXXXXXXXXXX  
Title: XXXXXXXXXXXXXXXX

**BANK:**

XXXXXXXXXXXXXXXXXXXXX

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

The Collateral consists of all of the respective right, title, and interest of each of Borrower and General Partner in and to the following personal property:

(a) All Capital Contributions, Capital Contribution Proceeds, Capital Calls, and all other proceeds and rights to payment from the Partners, whether as a result of Capital Calls, or otherwise, and all general intangibles related thereto;

(b) All rights to (i) make Capital Calls and request Capital Contributions from any Partner, (ii) exercise and enforce every right, power, remedy, authority, option and privilege and take all steps, actions, suits or proceedings necessary to make Capital Calls and to receive Capital Contribution Proceeds and any other rights to call for additional Capital Contributions as contemplated by the Fund Documents, including, without limitation, the right to make Capital Calls, and (iii) enforce the payment thereof and the related terms of the Fund Documents and all rights in respect of Capital Calls against each Partner thereunder;

(c) All deposit accounts into which Capital Contributions are, have been or may be made;

(d) All Borrower's Books relating to the foregoing; and

(e) All claims, rights and interests in any of the above and all proceeds of the foregoing and all general intangibles related thereto;

Notwithstanding the foregoing, the Collateral shall not include any interest of Borrower in the capital stock of any Portfolio Company, but shall include any dividends or distributions paid or made on account of such capital stock and any proceeds arising out of the disposition of such stock. If Borrower grants a security interest in such capital stock to any Person in violation of this Agreement, then the Collateral will automatically be deemed to include such capital stock, effective as of the Effective Date.



BANK USE ONLY

TELEPHONE REQUEST:

The following person is authorized to request the loan payment transfer/loan advance on the advance designated account and is known to me.

\_\_\_\_\_  
Authorized Requester

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Received By (Bank)

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Authorized Signature (Bank)

**EXHIBIT C**

**BORROWING BASE CERTIFICATE**

**Borrower: XXXXXXXXXXXXXXXX**  
**Commitment Amount: \$XXXXXXXXXX**

<b>1.</b>	<b>Commitment Amount</b>	<b>\$ _____</b>
<b>2.</b>	<b>Uncalled Committed Capital of all Included Investors</b>	<b>\$ _____</b>
<b>3.</b>	<b>50% of Line 2</b>	<b>\$ _____</b>
<b>4.</b>	<b>Capital Commitments of all Included Investors</b>	<b>\$ _____</b>
<b>5.</b>	<b>XX% of Line 4</b>	<b>\$ _____</b>
<b>6.</b>	<b>Outstanding Advances</b>	<b>\$ _____</b>
<b>7.</b>	<b>Availability (least of 1, 3 or 5 minus 6)</b>	<b>\$ _____</b>

**The undersigned represents and warrants that the formulation above sets forth the true, complete and correct amount of the Uncalled Committed Capital as of the date set forth below.**

**The undersigned represents and warrants that this is true, complete and correct, and that the information in this Borrowing Base Certificate complies with the representations and warranties in the Loan and Security Agreement between the undersigned and XXXXXXXXX.**

**COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

XXXXXXXXXXXXXXXXXXXXXXXXXX  
By: XXXXXXXXXXXXXXXXXXXX, its General Partner

By: \_\_\_\_\_  
Authorized Signer

Date: \_\_\_\_\_



**EXHIBIT D**

**COMPLIANCE CERTIFICATE**

TO: XXXXXXXXXXXXXXXXXXXXX

FROM: XXXXXXXXXXXXXXXXXXXXX

The undersigned authorized officer of \_\_\_\_\_, a \_\_\_\_\_, hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement between Borrower, General Partner, and Bank (the "Agreement"), (i) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct in all material respects as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

**Please indicate compliance status by circling Yes/No under "Complies" column.**

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>	
Annual (CPA Audited)	FYE within 120 days	Yes	No
LP Reports, Capital Table and Financial Statements	Quarterly w/in 45 days (3/31, 6/30, and 9/30), and w/in 45 days (12/31)	Yes	No
Borrowing Base Certificate	With each Advance request, quarterly and annual financials	Yes	No
LP Roster	w/in 30 days of any closing	Yes	No
 <u>Financial Covenants</u>	 <u>Required</u>	 <u>Actual</u>	 <u>Complies</u>
Maximum Defaulting LPs	5% of Capital Call	_____	Yes No

Has Borrower failed to receive any Capital Contributions within 10 business days of when due in accordance with a Capital Call? Yes/No

If Yes, please provide the name of the Partner, the date and the amount of such Capital Call.

**Comments Regarding Exceptions:**

\_\_\_\_\_

Sincerely,

\_\_\_\_\_

SIGNATURE

\_\_\_\_\_

TITLE

\_\_\_\_\_

DATE

BANK USE ONLY	
Received by: _____	AUTHORIZED SIGNER
Date: _____	
Verified: _____	AUTHORIZED SIGNER
Date: _____	
Compliance Status	Yes No



**EXHIBIT E**

**FORM OF EXTENSION NOTICE**

Date: [\_\_\_\_\_]

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

Re: Notice of Consent to Rollover Request dated [INSERT DATE OF ROLLOVER REQUEST]

Ladies and Gentlemen:

Reference is made to that certain Loan and Security Agreement, dated as of \_\_\_\_\_ (as amended, restated or otherwise modified from time to time, the "**Loan Agreement**"), between Borrower, as borrower, General Partner, as general partner of Borrower, and XXXXXXXXX, as bank. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

We have received your Rollover Request, dated as of the date set forth above. We hereby notify you that we hereby consent to such Rollover Request effective as of the date hereof. The new Maturity Date is \_\_\_\_\_.

Other than as provided herein, the terms of the Loan Agreement shall remain in full force and effect. This Extension Notice shall be deemed to be a Loan Document and will be construed and interpreted in accordance with the laws governing the terms of the Loan Agreement.

Thank you,

XXXXXXXXXX  
Name:  
Title:



Schedule to Loan and Security Agreement  
[Borrower]

The exact legal name of Borrower is (attach a copy of the formation documents, e.g., articles, partnership agreement): XXXXXXXXXXXXXXXX

Borrower's State of formation: \_\_\_\_\_

Borrower has operated under only the following other names (if none, so state):

\_\_\_\_\_

All other addresses at which Borrower does business are as follows (attach additional sheets if necessary and include all warehouse addresses):

\_\_\_\_\_

Borrower has deposit accounts and/or investment accounts located only at the following institutions:

\_\_\_\_\_

List Acct. Numbers: \_\_\_\_\_

Liens existing on the Effective Date and disclosed to and consented to by Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Investments existing on the Effective Date and disclosed to and consented to by Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Indebtedness on the Effective Date and disclosed to and consented to by Bank:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Borrower is not subject to litigation which would have a material adverse effect on Borrower's financial condition, except the following (attach additional comments, if needed):

Tax ID Number \_\_\_\_\_

Organizational Number, if any: \_\_\_\_\_



Schedule to Loan and Security Agreement  
[General Partner]

The exact legal name of General Partner is (attach a copy of the formation documents, e.g., articles, partnership agreement): XXXXXXXXXXXXXXXXXXXXXXXX

General Partner's State of formation: \_\_\_\_\_

General Partner has operated under only the following other names (if none, so state):  
\_\_\_\_\_

All other addresses at which the General Partner does business are as follows (attach additional sheets if necessary and include all warehouse addresses):  
\_\_\_\_\_

General Partner has deposit accounts and/or investment accounts located only at the following institutions:  
\_\_\_\_\_

List Acct. Numbers: \_\_\_\_\_

Liens existing on the Effective Date and disclosed to and consented to by Bank:  
\_\_\_\_\_  
\_\_\_\_\_

Investments existing on the Effective Date and disclosed to and consented to by Bank:  
\_\_\_\_\_  
\_\_\_\_\_

Indebtedness on the Effective Date and disclosed to and consented to by Bank:  
\_\_\_\_\_  
\_\_\_\_\_

General Partner is not subject to litigation which would have a material adverse effect on the General Partner's financial condition, except the following (attach additional comments, if needed):  
\_\_\_\_\_  
\_\_\_\_\_

Tax ID Number \_\_\_\_\_

Organizational Number, if any: \_\_\_\_\_



**AUTHORIZATION FOR AUTOMATIC DEBIT AND PAYMENT ON A LOAN WITH  
XXXXXXXXXX**

BORROWER NAME AND ADDRESS:

LOAN/ LINE AMOUNT: \$XXXXXXXXXXXX

LOAN NUMBER: \_\_\_\_\_

Borrower hereby authorizes XXXXXXXXXX (Bank) to charge the below-listed Checking Account at \_\_\_\_\_ (the "**Account**") for facility fees, principal, interest and other payments as and when they become due on the above referenced loan.

Borrower further understands and agrees that if the Account does not have a sufficient balance on a day that a payment is to be debited from the Account, Bank may, at Bank's option, suspend further efforts to debit the Account and look to Borrower for the current payment and all subsequent payments until such time as all payments under this Agreement are current. In no event shall the availability of any credit line that Borrower may have with Bank be used in determining whether the Account has a sufficient balance. At Bank's option and sole discretion, Bank may resume debiting the Account without further instructions from Borrower once all payments are current. In the event that Bank does not resume debiting the Account, Bank shall provide Borrower with a written termination notice. Furthermore, Borrower acknowledges and agrees that this Agreement shall be considered terminated by Borrower, without the necessity of any notice by either party, in the event Borrower closes the Account.

Executed on the \_\_\_ day of \_\_\_\_\_.

**BORROWER:**

XXXXXXXXXXXXXXXXXXXX

By: XXXXXXXXXXXXXXX, its general partner

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

Name:

Title:

**BORROWER Account Information:**

Bank: \_\_\_\_\_

ABA Routing #: \_\_\_\_\_

Checking Account #: \_\_\_\_\_