Stacey Crocker

From: Ana Quintana <ana@bdventures.com>
Sent: Sunday, December 29, 2013 8:59 PM
To: Ana Quintana
Cc: Chris Lucas; Yasmin Ibarra
Subject: *IMPORTANT UPDATE_PLEASE REVIEW*BDV XII-B, LLC | Theranos Series C-1 Stock Financing+Disclosures/Acknowledgement Documents
Attachments: BDV Cover Letter re Acknowledgment (12-29-13).pdf; BDV XII-B Exhibit A to Letter re_ Theranos (A12-29-13).pdf; Black Diamond Ventures XII-B LLC - Operating Agreement.pdf; Black Diamond Ventures XII-B LLC - Subscription Agreement.pdf

Importance: High

Dear BDV Investor,

Thank you for your interest and participation in this Series C-1 Stock financing. Per our counsel's recommendation, we would like to share additional information and disclosures in the attached acknowledgment letter and accompanying Exhibit A. **Please review thoroughly, execute and return as a pdf scan and hard copy prior to your investment/as soon as possible**.

Attached previously and again, are BDV's Operating and Subscription agreements for your review, execution and transmittal at your earliest convenience. Please return executed originals at your earliest convenience to **Black Diamond Ventures XII-B, LLC** to Black Diamond Ventures, LLC, 400 N. Brand Blvd., Suite 950, Glendale, California 91203, c/o Ana Quintana and kindly wire your funds by **EOB DECEMBER 30, 2013.**

In the interest of time, please find wiring instructions:

PAY BY WIRE - DOMESTIC
BANK: Pacific Western National Bank
PAC WEST NATL PICO
ROUTING /ABA NUMBER: 122238200
FOR CREDIT TO: Black Diamond Ventures XII–B, LLC
ACCOUNT NUMBER:
BY ORDER OF: *Your Investing Entity Name*

Please feel free to contact me should you have any questions.

Cheers,
Ana

Ana L. Quintana
Principal
400 N. Brand Blvd., Suite 950
Glendale, California 91203
T | 818.245.6252
E | ana@bdventures.com
http://www.linkedin.com/in/anaquintana

Black Diamond Ventures | http://www.bdventures.com/

Black Diamond Ventures XII-B, LLC
400 N. Brand Blvd., Suite 950
Glendale, California 91203
T | 818.245.6252

December 29, 2013

Dear Black Diamond Investor:

You have expressed interest in an investment in membership interests in Black Diamond Ventures XII-B, LLC, a special purpose entity that we intend to use to make an investment in Series C-1 Preferred Stock of Theranos, Inc., a Delaware corporation. Due to the unique nature and compressed timing of this investment, we have been advised by our counsel to outline the material terms and risks of this investment for you. Attached as Exhibit A to this letter is a summary of these terms and risks for your review.

Although this information has been previously communicated to you over the last couple of weeks, we are following up further as our counsel believes we should share additional information and disclosures. As you have heard on our conference calls, we are pleased with the progress of the company and are optimistic that we are participating in building a company which will significantly change the health care industry on so many levels.

To briefly summarize, the price per share of Theranos Series C-1 Preferred Stock in the transactions closing between now and December 31, 2013 is $15/share (post-split). The transaction documents implement the 5:1 forward stock split previously approved by the board and holders of a majority of the capital stock. All terms of these transactions were unanimously approved by a special committee, consisting only of directors who are independent of the founder operating on the advice of leading counsel from the top law firms in the country. The new terms are conditioned on approval of a majority of the capital stock and a majority of the common stock held by stockholders that are independent of the founder. On the recommendation of the special committee, the Board also unanimously approved the new terms.

In fulfilling those transactions and in anticipation of future equity related transactions in 2014 (from large strategic and financial partners) and opportunities under consideration and review as the company enters its next stage of growth, the Company's board of directors and management have decided to amend and restate certain of its governing and other corporate documents, enter into new agreements, adopt a new stock incentive plan, adopt certain corporate actions in order to maintain the control necessary to continue pursuing long-term value creation, and lay the foundation for future transactions. As you may know, Elizabeth Holmes, Founder and CEO of Theranos, has always maintained majority voting control since she founded the company. Elizabeth has now solidified these terms under this new stock plan.

You should not construe the contents of this letter and attached Exhibit A as legal or investment advice, but rather, you should consult with your own attorney and personal business and tax advisers to arrive at your own evaluation of the investment.

We ask that you countersign and date this letter where indicated below, acknowledging that you have read and understand the contents of this letter. Please return your countersigned copy of this letter to us electronically via PDF or as a hard copy at the address set forth above. Again, please feel free to call Ana Quintana at 818.245.6252 or Chris Lucas at 818.245.6251 should you have any questions regarding the enclosed.

Sincerely,

BLACK DIAMOND VENTURES XII-B, LLC
By: **Black Diamond Ventures Manager XII-B, LLC, its Managing Director**

_____
Name: Christopher B. Lucas
Title: Managing Director

ACKNOWLEDGED AND
AGREED:

_____
Name of Entity

_____
Signature

_____
Print Name

_____
Title

311219393.1

EXHIBIT A

The information contained in this Exhibit and the letter to which it is attached is confidential. Accordingly, we request that you keep this Exhibit, its corresponding letter and the contents of each confidential. Please do not disclose, disseminate or otherwise give any information contained in this Exhibit or its corresponding letter to any other individual, other than your legal and financial advisors in connection with their provision of professional advice and counsel to you.

You have expressed interest in an investment in membership interests in Black Diamond Ventures XII-B, LLC ("BDV"), a special purpose entity that we intend to use to make an investment in Series C-1 Preferred Stock (the "Series C-1 Financing") of Theranos, Inc., a Delaware corporation ("Theranos"). Due to the unique nature and compressed timing of this investment, we wish to outline the material terms and material risks of this investment for you, as it directly impacts your decision to invest in BDV.

Voting Rights

The management of Theranos, Theranos's Board of Directors and an independent committee of Theranos's Board recommended that in conjunction with the Series C-1 Financing, Theranos amend and restate its governing documents to create a dual-class structure of Class A and Class B Common Stock. The purpose of this dual-class structure is to provide the founder and Chief Executive Officer of Theranos, Elizabeth Holmes (the "Founder") (who already beneficially owns a majority of Theranos's capital stock) with 100-to-1 voting rights as the sole holder of Class B Common Stock. All employee options will be issued in Class A Common Stock, and all Preferred Stock of Theranos (the "Preferred Stock") (including the Series C-1 Preferred Stock) will be convertible into Class A Common Stock, which has 1 vote per share. The Class B Common Stock receives 100 votes per share The major implications of this change for the existing holders of Preferred Stock, as well as the recipients of Class C-1 Preferred Stock (including BDV) are outlined below.

(a) **Elimination of Consent Rights; Combined Voting.** All consent rights previously held by each series of the Preferred Stock have been eliminated, and all matters on which stockholders have the right to vote are voted on an as-converted basis with the Class A and Class B Common Stock. Due to the 100-to-1 voting rights of the Class B Common Stock, the Founder will exercise unilateral stockholder control over all decisions required under law to be put to stockholders, including, but not limited to the following:

(i) election of Theranos's Board;

(ii) amendment and/or restatement of Theranos's Certificate of Incorporation (enabling the Founder to change or derogate the rights/preferences of the Preferred Stock at will);

(iii) increasing/decreasing the number of authorized shares of existing classes/series of stock of Theranos;

(iv) acquiring the equity or assets of another entity;

(v) disposing of any of the assets of Theranos or liquidating Theranos;

(vi) incurring debt;

(vii) materially changing the business of Theranos; and

(viii) creating subsidiaries.

(b) **Mandatory Conversion of Preferred into Common**. The Founder has the power, as the holder of majority voting power, to force the Preferred Stock (including the Series C-1 Preferred Stock) to convert to Class A Common Stock at will. This would mean a loss of the Series C-1's current liquidation preference (which is discussed in further detail below). This also means that that BDV may buy Series C-1 Preferred Stock today at $15.00 per share, which tomorrow may be converted into Series A Common Stock worth significantly less.

Governance

(a) **Proxy Granted to Founder to Elect Board.** In the Amended and Restated Voting Agreement to be put in place in connection with the Series C-1 Financing, the Preferred Stock has granted the Founder an irrevocable proxy and power of attorney to vote for the election and removal (with or without cause) of all members of the Board. The Founder also holds a proxy and power of attorney to vote all shares granted to employees and service providers pursuant to Theranos's stock option plan. The Founder's presence is required for a quorum of the Board and any committee of the Board on which she sits (i.e., the Founder must be present for the Board or any committee of the Board on which the Founder sits to take any action).

(b) **Stockholder Special Meetings; Inspection Rights**. Pursuant to the Amended and Restated Bylaws to be put in place in connection with the Series C-1 Financing, the stockholders of Theranos may no longer call special meetings independently of the Board or officers of Theranos. All inspection rights of Theranos's stockholders (including those previously held by the holders of Preferred Stock) are also expressly eliminated, "unless otherwise required by law or approved by the Board."

Other rights of the holders of Preferred Stock are curtailed compared to rights typically given in venture capital preferred stock financings.

(a) **Unilateral Redemption Right**. Theranos may unilaterally redeem any Preferred Stock (including the Series C-1 Preferred Stock) or Class A Common Stock at a price determined by Theranos's Board in good faith to be fair market value. There are no provisions allowing for appraisal or valuation of stock by an independent valuation expert. Furthermore, Theranos may redeem some shares and not others within a class or series.

(b) **Dividends**. Whereas typically a corporation would have to declare a dividend on all series of preferred stock before declaring a dividend on common stock, in this case, Theranos's Board can declare dividends on Common Stock to the exclusion of Preferred Stock.

This includes dividends of stock, so Theranos's Board can declare a dividend of stock on one series or class of stock to the exclusion of the others, thus diluting down the excluded classes/series of stock.

(c) Consent Right to Future Issuances. Whereas typically the approval of a majority in interest of the preferred stock (or specified series of preferred stock) would be required to approve the creation and issuance of new series of stock having rights superior to their own, in this case, Theranos's Board can create and issue additional series of stock without the approval of Preferred Stock.

(d) No Demand Registration Rights or Co-Sale Rights. Typically, preferred stockholders would receive demand registration rights and co-sale rights in a financing of this type. In this case, however, demand registration rights for Preferred Stock will be eliminated in connection with the Series C-1 Financing. The existing Right of First Refusal and Co-Sale Agreement will also be terminated in connection with the Series C-1 Financing, although a right of first refusal benefitting Theranos, and after Theranos, the Founder, stays in place via the Amended and Restated Bylaws.

(e) Liquidation Preference. Upon the occurrence of a liquidation event, Series C-1 Preferred Stock and Series C Preferred Stock receive a liquidation preference pro rata of $3.00 per share and $.564 per share, respectively. The liquidation price of the Series C-1 Preferred Stock is $3.00 per share, although the current price of the Series C-1 Preferred Stock in the Series C-1 Financing is $15.00 per share, because the Series C-1 Financing has been open since July 1, 2010 and the original price of the Series C-1 Preferred Stock at that time was $3.00 per share. This means that you are paying approximately five times more for your Series C-1 Preferred Stock than earlier investors in the same series stock paid. After the Series C-1 Preferred Stock and Series C Preferred Stock, the Series B Preferred Stock and Series A Preferred Stock then receive a liquidation preference pro rata of $.184628 per share and $.15 per share, respectively. In the event that amounts are insufficient to fully pay out the Series B and Series A, however, the Series B still receive a preference over the Series A.

(f) Participating Preferred Stock. Upon the occurrence of a liquidation event, after the Preferred Stock have received their liquidation preferences, the Preferred Stock participate with the Common Stock.

Representations, Warranties, Deliverables and Covenants given to Series C-1 Investors.

(a) The Series C-1 Preferred Stock Purchase Agreement (the "Purchase Agreement") lacks representations, warranties and deliverables standard for an investment of this type. The Purchase Agreement does not provide many of the standard representations, warranties and deliverables we would expect to see in an investment of this nature, and those that have been provided are seriously curtailed. Specifically, the Purchase Agreement does not provide the following:

(i) legal opinion,

(ii) Secretary Certificate (attaching and certifying to the authenticity of such standard deliverables as Theranos's Certificate of Incorporation, Bylaws and resolutions of its Board of Directors approving the offering);

(iii) Compliance Certificate of an officer of Theranos, certifying to the truth and correctness of Theranos's representations and warranties in the Purchase Agreement; or

(iv) representations and warranties regarding its subsidiaries (or lack thereof), financial statements, absence of materially adverse changes, good title to properties and assets, absence of liens, absence of litigation, requisite permits; required tax returns and payments, obligations to related parties, environmental and safety laws, adequacy of corporate documents, obligations of management, 83(b) elections, material contracts, requisite consents and approvals, no conflict or violation with applicable law, material customers and suppliers, and 10b-5 disclosures.

Furthermore, the Purchase Agreement provides only curtailed representations and warranties regarding employee agreements, intellectual property and Theranos's compliance with its existing agreements.

(b) The Amended and Restated Investors' Rights Agreement lacks representations, warranties and covenants typical for an investment of this type. The Amended and Restated Investors' Rights Agreement that will be put in place in connection with the Series C-1 Financing lacks a number of standard representations, warranties and covenants to the holders of Preferred Stock, including the following:

(i) pro rata right to future stock issuances;

(ii) right of first refusal to preferred stockholders after exercise by Theranos; and

(iii) standard representations and warranties, including, but not limited to, representations and warranties regarding insurance, employee agreements, employee stock, compliance with the Foreign Corrupt Practices Act and indemnification matters.

OPERATING AGREEMENT
FOR
BLACK DIAMOND VENTURES XII-B, LLC
A CALIFORNIA LIMITED LIABILITY COMPANY

This Operating Agreement is made effective as of December 23, 2013 by and among the parties listed on the signature pages hereof, with reference to the following facts:

A. On December 23, 2013, Articles of Organization for Black Diamond Ventures XII, LLC (the "Company"), a limited liability company organized under the laws of the State of California, were filed with the California Secretary of State.

B. The Parties desire to adopt and approve an operating agreement for the Company.

C. The Parties intend that the Company will be classified as a partnership for tax purposes.

NOW, THEREFORE, the parties, by this Agreement, set forth the operating agreement for the Company under the laws of the State of California upon the terms and subject to the conditions of this Agreement.

ARTICLE I

ORGANIZATIONAL MATTERS

1.1 Formation. The Members have formed a California limited liability company under the laws of the State of California by filing the Articles with the California Secretary of State and entering into this Agreement, which Agreement shall be deemed effective as of the date the Articles were so filed. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Act, control.

1.2 Name. The name of the Company shall be "Black Diamond Ventures XII-B, LLC." The business of the Company may be conducted under that name or, upon compliance with applicable laws, any other name that the Managing Director deems appropriate or advisable. The Managing Director shall file any fictitious name certificates and similar filings, and any amendments thereto, that the Managing Director considers appropriate or advisable. The phrase "LLC" shall always appear as part of the name of the Company on all correspondence, stationery, checks, invoices and any and all documents and papers executed by the Company.

1.3 Term. The Company will terminate on December 23, 2043, except that, with the consent of a Majority-in-Interest of the Members, the term of the Company may be

extended by the Managing Director for additional one-year periods (but not for more than a total of two additional years).

1.4 Office and Agent. The Company shall continuously maintain an office and registered agent in the State of California. The principal office of the Company shall be 400 North Brand Boulevard, Suite 950, Glendale, California, 91203, or such other location as the Managing Director may determine from time to time. The Company may also have such offices, anywhere within and without the State of California, as the Managing Director may determine from time to time, or the business of the Company may require. The registered agent shall be as stated in the Articles or as otherwise determined by the Managing Director.

1.5 Addresses of the Members and the Managing Director. The respective addresses of the Members and the Managing Director shall be maintained in the records of the Company at its principal executive offices. A Member shall notify the Managing Director if his or her address changes.

1.6 Purpose and Business of the Company. The Company is organized for the specific object and purpose of making an equity investment in Theranos, Inc.

1.7 Title to Properties. Real and personal property owned or purchased by Company shall be held and owned, and conveyance made, in the name of the Company. Instruments and documents providing for the acquisition, mortgage or disposition of property of the Company shall be valid and binding upon the Company, except as otherwise limited in the Agreement, if executed by the Managing Director.

ARTICLE II

DEFINITIONS; DETERMINATIONS

2.1 Definitions. For purposes of this Agreement the following capitalized terms shall have the meanings set forth below:

"Act" shall mean the Beverly-Killea Limited Liability Company Act, codified in the California Corporations Code, Section 17000 et seq., as the same may be amended from time to time.

"Affiliate" of a Member or Managing Director shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with a Member or Managing Director, as applicable. The term "control," as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.

"Assignee" shall mean the owner of an Economic Interest who has not been admitted as a Member in accordance with Section 6.2.

"Basis" of any security means the basis of such security as determined in accordance with the Code less the amount of any write-down pursuant to clause (iii) of the definition of Realized Investment Loss (as the case may be) and as further adjusted to reflect the effects of any transaction described in Section 2.2(a).

"Capital Account" has the meaning set forth in Section 3.2.

"Capital Contribution" means the aggregate amount of cash agreed to be contributed as capital by the Members, as set forth on Schedule I, plus additional expenses contributed pursuant to Section 5.7.

"Carried Interest" means the Managing Director's 20% interest in the Net Profits and Net Loss allocated to the Managing Director pursuant to Sections 3.2(c)(iii) and 3.2(d)(iii).

"Code" means the Internal Revenue Code of 1986, as in effect on the date hereof and, at the discretion of the Managing Director, including any such amendment thereto which does not change the economic terms hereof.

"Company Expenses" means all costs and expenses relating to the Company's activities and business including, but not limited to, (i) legal, accounting, auditing and other fees and expenses (including, but not limited to, expenses associated with the preparation of Company financial statements, tax returns and forms K-1), (ii) extraordinary expenses of the Company (including, but not limited to, litigation and indemnification costs and expenses, judgments and settlements), (iii) all costs and expenses attributable to acquiring, holding, monitoring and disposing of the Portfolio Company securities (including, but not limited to, registration expenses and brokerage, finders', custodial and other fees) and (iv) the Management Fee, including Organizational Expenses.

"Current Income" means all interest and dividend income (including original issue discount and payment of in-kind income) from investments (other than Short-Term Investments).

"Defaulting Member" has the meaning set forth in Section 6.14.

"Dissolution Event" shall mean the death, insanity, withdrawal, resignation, removal, retirement, expulsion, Bankruptcy or dissolution of the Managing Director.

"Economic Interest" shall mean the right to receive distributions of the Company's assets and allocations of income, gain, loss, deduction, credit and similar items from the Company pursuant to this Agreement and the Act, but shall not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company or, except as provided in Section 17106 of the Corporations Code, any right to information concerning the business and affairs of the Company.

"Effective Date" means December 23, 2013.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Indemnifying Member" has the meaning set forth in Section 6.7.

"Majority-In-Interest" shall mean those Members who hold a majority Percentage Interests as set forth in Schedule I.

"Management Fee" has the meaning set forth in Section 5.6.

"Managing Director" means Black Diamond Ventures Manager XII-B, LLC, or any other Person that may accompany or succeed such entity as a Managing Director of the Company.

"Managing Director-Sponsored Fund" means any private venture capital equity fund hereafter sponsored by the Managing Director, and the "Managing Director-Sponsored Funds" means all of such funds, collectively.

"Members" means the Persons listed in Schedule I hereto in their capacity as Members of the Company and each Assignee who is admitted to the Company as a Member pursuant to Section 6.2, so long as each such Person continues to be a Member of the Company hereunder.

"Membership Interest" shall mean a Member's entire interest in the Company including the Member's Economic Interest, the right to vote on or participate in the management, and the right to receive information concerning the business and affairs, of the Company, together with the obligations of such Member to comply with all terms and provisions of the Agreement. A Membership Interest constitutes personal property. A Member or Assignee of any Membership Interest has no interest in specific property of the Company.

"Net Loss" for any period means, (x) the sum of (1) the Company's Realized Investment Loss and (2) Company Expenses for such period minus (y) the sum of (3) the Company's Current Income and (4) Realized Investment Gain for such period.

"Net Profits" for any period means (x) the sum of (1) the Company's Current Income and (2) Realized Investment Gain for such period minus (y) the sum of (3) the Company's Realized Investment Loss and (4) Company Expenses for such period.

"NMS" means the National Association of Securities Dealers Automated Quotation System, National Market System.

"Organizational Expenses" means the reasonable expenses (including, without limitation, travel, printing, legal and accounting fees and expenses) incurred in connection with the organization and funding of the Company.

"Payout" means the time when each Member has received cumulative distributions from the Company (regardless of the source or character thereof) in an amount equal to his or her aggregate Capital Contributions. If a distribution of cash or securities causes

the Company to reach and exceed Payout, the portion of the amount distributed which was necessary to reach Payout will be deemed to have been distributed before Payout, and any remaining amount will be deemed to have been distributed after Payout.

"Percentage Interests" shall mean a Member's percentage interest in the Company as set forth in Schedule I hereto, as such percentage may be adjusted from time to time pursuant to the terms of this Agreement.

"Person" means an individual, partnership, corporation, association, joint stock company, trust, joint venture, unincorporated organization, or governmental entity or any department, agency or political subdivision thereof.

"Portfolio Company" means Theranos, Inc.

"Portfolio Company Fees" means (i) all compensation (whether in cash or securities) directly or indirectly received by the Managing Director or his employees or agents from the Portfolio Company, whether as director fees, management fees, consultant fees or investment banking fees, and (ii) all breakup fees, litigation proceeds or commitment fees received by the Managing Director or any of his employees or agents from transactions not consummated by the Company (in each case, net of all amounts necessary to reimburse the Managing Director and any of his employees or agents for all costs and expenses incurred by any of them in connection with consummated or unconsummated transactions or in connection with generating any such fees and not previously reimbursed), but not including any amount received by the Managing Director or any of his employees or agents from the Portfolio Company as reimbursement for out-of-pocket expenses directly related to the Portfolio Company.

"Prime Rate" means, on any date, a variable rate per annum equal to the rate of interest published, from time to time by *The Wall Street Journal* as the "prime rate" at large U.S. money center banks.

"Realized Investment Gain" means the difference between (i) the sum of (A) the proceeds from the sale of the Portfolio Company securities plus (B) the value (as determined pursuant to Article VIII) of the Portfolio Company securities distributed to the Members minus (ii) the Basis of such Portfolio Company securities, where such difference is a positive number.

"Realized Investment Loss" means the difference between (i) the sum of (A) the proceeds from the sale of the Portfolio Company securities plus (B) the value (as determined pursuant to Article VIII) of the Portfolio Company securities distributed to the Members minus (ii) the Basis of such Portfolio Company securities, where such difference is a negative number, minus (iii) the amount, as determined by the Managing Director, by which the Portfolio Company securities have permanently declined in value pursuant to Section 8.4.

"Securities Act" means the Securities Act of 1933, as amended.

"Short-Term Investment Income or Short-Term Investment Loss" means the income earned on Short-Term Investments, including any gains and net of any losses from

dispositions of Short-Term Investments and also net of any costs and expenses directly attributable thereto.

"Short-Term Investments" means commercial paper, governmental obligations, money market instruments, certificates of deposit and other similar obligations and securities, in each case having a maturity of one year or less at the time of purchase by the Company.

"Tax Matters Member" (as defined in Code Section 6231) shall be Christopher B. Lucas, or his successor as designated pursuant to Section 9.3.

2.2 Determinations.

(a) An "exchange of securities" will be treated as a sale if under generally accepted accounting principles the Company realizes gain or loss on such exchange, in which case, the Basis of the securities received in the exchange will be adjusted to take account of the gain or loss from such exchange.

(b) Any determination by the Members pursuant to this Agreement shall be made based upon each Member's Percentage Interest.

ARTICLE III

CAPITAL CONTRIBUTIONS

3.1 Capital Contributions; Capital Accounts and Allocations.

(a) Each Member agrees to make the Capital Contribution specified in Schedule I. Each Capital Contribution will be made by delivery of a check made payable to the Company or by means of a wire transfer of funds to an account designated by the Managing Director.

(b) The Managing Director may cause the Company to return to the Members all or any portion of any Capital Contribution which is not invested in the Portfolio Company or used to pay Company Expenses (including Management Fees) or Organizational Expenses. Each such return of Capital Contributions shall be made pro rata among all Members in the same proportion as the Members made such Capital Contributions.

3.2 Capital Accounts. A capital account ("Capital Account") will be established for each Member on the books of the Company in accordance with the rules in the Treasury Regulations promulgated under Section 704 of the Code, and will be adjusted as follows:

(a) Capital Contributions. A Member's Capital Contribution will be credited to his or her Capital Account when received by the Company.

(b) Short-Term Investment Income or Loss. Short-Term Investment Income or Loss accrued in each quarterly period will be credited or debited to the Capital Accounts of the Members pro rata according to their respective Capital Contributions.

(c) Net Profits. For any period in which the Company has Net Profits, such Net Profits shall be credited:

(i) First, in the ratio and to the extent that Net Loss was allocated under 3.2(d)(iii) below so as to offset all such Net Loss allocations with Net Profits allocations under this section 3.2(d)(ii);

(ii) Next, in the ratio and to the extent that Net Loss was allocated under 3.2(d)(ii) below so as to offset all such Net Loss allocations with Net Profit allocations;

(iii) Next, until such time as Payout is achieved, 100% to the Capital Accounts of the members pro rata according to their respective Capital Contributions; and

(iv) Then, 80% to the Capital Accounts of the Members pro rata according to their respective Capital Contributions and 20% to the Capital Account of the Managing Director.

(d) Net Loss. For any period in which the Company has Net Loss, such Net Loss shall be debited:

(i) First, in the ratio and to the extent that Net Profits were allocated under 3.2(c) above in the reverse order of such Net Profit allocations so as to offset all such Net Profit allocations with Net Loss allocations under this section;

(ii) Next, in the ratio of Member positive Capital Account balances until no Member has a positive Capital Account balance; and

(iii) Then, 100% against the Capital Account of the Managing Director.

(e) Distributions. Any amount distributed to a Member will be debited against such Member's Capital Account.

(f) Timing of Adjustments. The Managing Director normally will adjust the Member's Capital Accounts at the end of each quarterly period, but may adjust them more often if a new Member is admitted to the Company or circumstances otherwise make it advisable in the Managing Director's judgment.

ARTICLE IV

DISTRIBUTIONS

4.1 Distribution Policy. The Managing Director, at its sole discretion, shall make distributions of cash or securities at any time; provided, however, that no securities will be distributed in kind to the Members until the earlier to occur of (a) such time as such securities may be sold by or for the account of any Member pursuant to Rule 144 promulgated under the

Securities Act, or any successor rule, following the initial public offering of the Portfolio Company, (b) any sale, refinancing or similar transaction involving the Portfolio Company ("Portfolio Company Transaction") in which shareholders of the Portfolio Company receive cash, (c) any Portfolio Company Transaction in which shareholders of the Portfolio Company receive securities, provided that all restrictions affecting transfer have lapsed, or (d) final distribution of the assets of the Company to the Members pursuant to Section 7.4(b).

4.2 Cash Distributions. The Managing Director may, at its sole discretion, distribute any portion of the net amount of Current Income, cash proceeds of any sale, refinancing or similar transaction involving the Portfolio Company, as follows:

(i) Until such time as Payout is achieved, 100% of all distributions of cash shall be made to the Members pro rata according to their Capital Contributions.

(ii) After such time as Payout is achieved, all distributions of cash shall be made 20% to the Managing Director and 80% to the Members pro rata according to their Capital Contributions.

4.3 Distributions in Kind.

(a) If any securities are to be distributed in kind to the Members, such securities will first be written up or down to their value (as determined pursuant to Article VIII as of the date of such distribution), thus creating Realized Investment Gain or Realized Investment Loss (if any), which shall be allocated in accordance with Section 3.2 to the Capital Accounts of the Members, and upon the distribution of such securities to such Members, the value of such securities shall be debited, in accordance with Section 3.2, to the Capital Accounts of the Members.

(b) All distributions of securities shall be made in the ratios set forth in Section 4.2 above.

ARTICLE V

MANAGING DIRECTOR; MANAGEMENT FEES AND ORGANIZATIONAL EXPENSES

5.1 Election of Managing Director.

(a) Number, Term, and Qualifications. The Company shall initially have one (1) Managing Director. The number of Managing Directors of the Company shall be fixed from time to time by the affirmative vote or written consent of a Majority-in-Interest, provided that in no instance shall there be less than one Managing Director. Unless he resigns or is removed, the Managing Director shall hold office until a successor shall have been elected and qualified. The Managing Director shall be elected by the affirmative vote or written

consent of a Majority-in-Interest of the Members. A Managing Director need not be a Member, an individual, a resident of the State of California, or a citizen of the United States.

(b) Resignation. The Managing Director may resign at any time by giving written notice to the Members and remaining Managing Directors, if any, without prejudice to the rights, if any, of the Company under any contract to which the Managing Director is a party. The resignation of the Managing Director shall take effect upon receipt of that notice or at such later time as shall be specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of the Managing Director shall not affect the Managing Director's rights as a Member and shall not constitute a withdrawal of a Member.

(c) Removal. The Managing Director may be removed for "cause" by the affirmative vote of a Majority-in-Interest at a meeting called expressly for that purpose. For purposes of this Section, "cause" shall mean fraud, gross negligence, willful misconduct, embezzlement or breach of the Managing Director's obligations under this Agreement or any employment contract with the Company.

The resignation of the Managing Director under Section 5.1(b) above or the removal of the Managing Director under Section 5.1(c) above is considered a Disuultion Event, the occurrence of which shall be treated in accordance with Section 6.9(b)(i) and Section 7.1 hereof.

5.2 Management Authority.

(a) The management of the Company will be vested exclusively in the Managing Director, and the Managing Director will have full control over the business and affairs of the Company. The Managing Director will have the power on behalf and in the name of the Company to buy, sell, hold, sell short and otherwise invest in securities of the Portfolio Company and Short-Term Investments; to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to securities held or owned by the Company; to enter into, make, and perform all contracts and other undertakings; manage and supervise such investments and engaging in such activities incidental or ancillary thereto as the Managing Director deems necessary or advisable to carry out any and all of the objects and purposes of the Company and to perform all acts and enter into and perform all contracts and other undertakings which, in its sole and absolute discretion, the Managing Director deems necessary or advisable or incidental thereto, including the power to acquire or dispose of any security (including marketable securities).

(b) The Managing Director shall pay (i) all ordinary overhead and administrative expenses of the Company (including salaries and related benefits, rent, travel, entertainment and equipment expenses but excluding any Company Expenses and any Organizational Expenses reimbursable under Section 5.7) incurred by the Managing Director, or any of its agents or employees (to the extent not borne or reimbursed by the Portfolio Company) in connection with (A) identifying and investigating investment opportunities for the Company, (B) monitoring the Company's investments, and (C) providing Portfolio Company reports and

information to the Members, and (ii) Organizational Expenses to the extent not reimbursed under Section 5.7.

(c) All matters concerning (i) the allocation of Short-Term Investment Income, Current Income, Net Profits, Net Loss, Realized Investment Gain, Realized Investment Loss, Company Expenses, Organizational Expenses, Carried Interest and the distribution of net proceeds and the return of capital among the Members, including the withholding of taxes thereon, and (ii) accounting procedures and determinations, the amount of Management Fees payable by any Member, and other determinations not specifically and expressly provided far by the terms of this Agreement, shall be determined by the Managing Director in accordance with its reasonable interpretation of the provisions of this Agreement, whose determination shall be final and conclusive as to all the Members.

(d) No Individual Authority for a Member. No Member acting alone shall have any authority to act for, or to undertake or assume, any obligation, responsibility, debt or duty on behalf of the Company.

5.3 No Liability to Members. Neither the Managing Director nor any employee, agent or affiliate of the Managing Director (or any of their respective shareholders, Members, directors, officers, employees, agents or affiliates), shall be liable to any Member or to the Company for any action taken, or omitted to be taken, as the Managing Director, or on behalf of the Managing Director, with respect to the Company or for any action taken, or omitted to be taken, by the Managing Director, or any of its employees, agents or Affiliates (or any of their respective shareholders, Members, directors, officers, employees, agents or Affiliates), so long as such person (a) acted in good faith, (b) acted in a manner reasonably believed to be in the best interests of the Company, and (c) was neither grossly negligent nor engaged in fraud, embezzlement or willful malfeasance.

5.4 Permitted Investments. Nothing in this Agreement will restrict the Managing Director from acquiring shares of stock of the Portfolio Company, or rights convertible into or exercisable or exchangeable for any such stock, for its own account.

5.5 Other Managing Director-Sponsored Funds.

(a) The Company will not purchase from or sell to another Managing Director-Sponsored Fund, except with the prior approval of a Majority-in-Interest of the Members.

(b) The extent to which the Company purchases securities in the Portfolio Company (relative to the amount, if any, to be invested in the Portfolio Company by another Managing Director-Sponsored Fund) will be determined by the Managing Director in its sole and absolute discretion.

5.6 Management Fee.

(a) The Managing Director shall be compensated, on an annual basis, for services rendered on behalf of the Company by the payment by the Members, in cash

to the Managing Director, a fee (the "Management Fee"), equal to 2 ½% of the Capital Contributions of such Member.

(b) Partial Year. The Management Fee in any partial year will be prorated on a daily basis according to the actual number of days in such period.

(c) Portfolio Company Fees. The Management Fee payable with respect to any period will be reduced by all Portfolio Company Fees received during the immediately preceding period by the Managing Director, its employees or agents, with respect to Portfolio Company Fees, and if such Portfolio Company Fees are comprised of stock or rights convertible into or exercisable or exchangeable for stock, provided, however that such property will not be deemed to be received, for purposes of the foregoing, and therefore will not reduce the Management Fee, until such time as, and only to the extent that, the recipient thereof realizes cash proceeds with respect to such property, whether upon the sale or other transfer of such property or as distributions with respect thereto; and provided, further, that any such Portfolio Company Fees held as of the ninth anniversary of the Effective Date and not previously deemed received pursuant to this sentence will be deemed to have been received as of such date. In the event that the amount of Portfolio Company Fees to be applied against the Management Fee for any period exceeds the Management Fee for the immediately succeeding period, such excess shall be carried forward to reduce the Management Fee payable in the following period.

(d) Early Termination. In the event of an early termination of the Company pursuant to Section 7.1, the Management Fee will be payable to the Managing Director through the date six months after the final distribution in connection therewith.

5.7 Expenses. Each Member shall pay his or her pro rata share, as determined by the allocation rules in Article III, of Organizational Expenses and Company Expenses directly to the Company. The Company shall reimburse the Managing Director for Organizational Expenses and Company Expenses. The Company shall bill each Member annually in advance for the Management Fee. The Company shall bill each Member annually in arrears for other Company Expenses, unless the Managing Director determines in its sole and absolute discretion to bill each Member for Company Expenses when incurred. Such other Company Expenses billed to Members shall not exceed an aggregate $10,000 on an annual basis, unless otherwise approved by a Majority-in-Interest. For purposes of calculating gains, losses, distributions and sharing ratios, all amounts so paid shall be treated as having been paid into the Company as a Capital Contribution by each Member and as then having been paid by the Company to the Managing Director as Organizational Expenses or as Company Expenses.

5.8 No Transfer of Managing Director's Interest; No Withdrawal or Loans. The Managing Director will not sell, assign, pledge, mortgage or otherwise dispose of its Managing Director interest in the Company and will not borrow or withdraw any amount from the Company.

ARTICLE VI

MEMBERS

6.1 Limited Liability. Except as expressly set forth in this Agreement or required by law, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise, and no Member shall be liable to make a contribution to the capital of the Company to restore a negative Capital Account balance for such Member, nor shall any negative balance in a Member's Capital Account create any liability on the part of the Member to any third party. No Member shall be required to lend any funds to the Company.

6.2 Transfer of Membership Interests.

(a) A Member may not sell, assign, transfer, pledge, mortgage or otherwise dispose of all or any of its interest in the Company (including any transfer or assignment of all or any part of its interest to a Person who becomes an assignee of a beneficial interest in the Company even though not becoming a substitute Member) unless the Managing Director has consented, in its sole and absolute discretion, to such transfer or assignment in writing, except that a Member which is a trust under an employee benefit plan may, upon prior written notice to the Managing Director, assign a beneficial interest in all or a portion of its interest in the Company to any other trust under such employee benefit plan or to any other employee benefit plan having the same sponsor (in which case the transferor shall remain liable for all liabilities and obligations relating to the transferred beneficial interest). For purposes of this Section 6.2, a change in any trustee or fiduciary of a Member will not be deemed to be an assignment or transfer of a Membership Interest pursuant to this Agreement, provided any such replacement trustee or fiduciary is also a fiduciary as defined under applicable state law and provided that income and loss allocable to the Member of the Company will continue to be included in the same filings under the same employee identification number with the Internal Revenue Service. Accordingly, such a change in a trustee or fiduciary may be made without the prior written consent of the Managing Director, in its sole and absolute discretion, provided that the Member agrees to provide prompt written notice of such change to the Managing Director. The voting rights of any Member's interest shall automatically terminate upon any transfer of such interest to a trust, heir, beneficiary, guardian or conservator or upon any other transfer if the transferor no longer retains control over such voting rights and the Managing Director has not consented pursuant to Section 6.2(b) to such transferee becoming a substitute Member. No consent of any other Member will be required as a condition precedent to any such transfer or substitution. As a condition to any transfer of a Membership Interest (including a transfer not requiring the consent of the Managing Director), the transferor and the transferee shall provide such legal opinions and documentation as the Managing Director shall reasonably request; provided that if the transfer is to be made from a Member to a co-trustee or trustee as contemplated above, an officer's certificate in form reasonably satisfactory to the Managing Director shall be delivered by the Member to the Managing Director in lieu of such legal opinions and other documentation. Notwithstanding anything to the contrary contained in this Section 6.2, a Member may sell, assign, transfer or pledge all or any portion of the Member's interest in the Company to a "Related Person." A "Related Person" means (a) the spouse, children, siblings, grandchildren, parents and grandparents (such persons being referred to as

"Immediate Family Members") of (i) a Member and/or (ii) any individual holding an ownership interest in a Member (whether as shareholder, member, partner, beneficiary or otherwise), (b) any entity at least 75% directly or indirectly owned and controlled by, or trusts established for the benefit of, one or more Immediate Family Members and/or (c) any individual or entity directly or indirectly holding an ownership interest in a Member (whether as shareholder, member, partner, beneficiary or otherwise). For purposes of the foregoing, indirectly means ownership or control through one or more entities.

(b) Notwithstanding anything to the contrary contained in this Section 6.2 or Section 6.14, a transferee or assignee will not become a substitute Member without the consent of the Managing Director, which the Managing Director may grant or withhold in its sole and absolute discretion, and without executing and delivering to the Managing Director a copy of this Agreement or amendment hereto in form and substance satisfactory to the Managing Director in his sole and absolute discretion. Notwithstanding the foregoing, a Related Person shall be a substitute Member. Any substitute Member admitted to the Company with the consent of the Managing Director will succeed to all rights and be subject to all the obligations of the transferring or assigning Member with respect to the interest to which such Member was substituted.

(c) The transferor and transferee of any Member's interest shall be jointly and severally obligated to reimburse the Managing Director and the Company for all reasonable expenses (including reasonable attorneys' fees and expenses) of any transfer or proposed transfer of a Member's interest, whether or not consummated.

(d) The transferee of any Membership Interest shall be treated as having made all of the Capital Contributions made by, and received all of the distributions received by, the transferor of such interest.

(e) Anything in this Agreement to the contrary notwithstanding, no Company interest shall be transferred if such transfer would cause the Company to be classified as a publicly traded partnership under the Code.

6.3 Withdrawals or Resignations. Any Member who is under an obligation solely to render services to the Company in return for its Membership Interest may withdraw or resign as a Member at any time upon one hundred twenty (120) days' prior written notice to the Company, without prejudice to the rights, if any, of the Company or the other Members under any contract to which the withdrawing Member is a party. In the event of such withdrawal, the Member's Membership Interest shall be distributed pro rata among the other Members in accordance with each Member's Capital Account. Subject to the provisions of Section 6.2 and Section 6.14, no other Member may withdraw or resign from the Company.

6.4 No Termination. The substitution, death, insanity, dissolution (whether voluntary or involuntary) or bankruptcy of a Member will not affect the existence of the Company, and the Company will continue for the term of this Agreement until its existence is terminated as provided herein.

6.5 Formation of New Fund or Business Endeavor. No Member will, on account of entering into this Agreement or on account of his or her status as a Member of the Company, have any interest in the other business endeavors of the Managing Director or the other Members other than his or her interest in the Company, and no Member is, on account of entering into this Agreement or on account of his or her status as a Member of the Company, restricted from entering into any future business activity, including with any other Member.

6.6 Interest as a Member. To the extent that the Managing Director acquires the interest of a Defaulting Member or any other Member, the Managing Director will be deemed to be a Member with respect to such interest for all purposes of this Agreement.

6.7 Indemnification and Reimbursement for Payments on Behalf of a Member.

(a) If the Company is obligated to pay any amount to a governmental agency or to any other Person (or otherwise makes a payment) because of a Member's status or otherwise specifically attributable to a Member (including, without limitation, federal withholding taxes with respect to foreign Members, state personal property taxes, state unincorporated business taxes, etc.), then such Member (the "Indemnifying Member") shall indemnify the Company in full for the entire amount paid (including, without limitation, any interest, penalties and expenses associated with such payment). At the option of the Managing Director, the amount to be indemnified may be charged against the Capital Account of the Indemnifying Member and, at the option of the Managing Director, either:

(i) promptly upon notification of an obligation to indemnify the Company, the Indemnifying Member shall make a cash payment to the Company equal to the full amount to be indemnified (and the amount paid shall be added to the Indemnifying Member's Capital Account but shall not be deemed a Capital Contribution hereunder), or

(ii) the Company shall reduce subsequent distributions which would otherwise be made to the Indemnifying Member until the Company has recovered the amount to be indemnified (provided that the amount of such reduction shall be deemed to have been distributed for all purposes of this Agreement, but such deemed distribution shall not further reduce the Indemnifying Member's Capital Account).

(b) A Member's obligation to make contributions to the Company under this Section 6.7 shall survive the termination, dissolution, liquidation and winding up of the Company and, for purposes of this Section 6.7, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 6.7, including instituting a lawsuit to collect such contribution with interest calculated at a rate equal to the Prime Rate plus six percentage points per annum (but not in excess of the highest rate per annum permitted by law).

6.8 Section 754 Election. The Managing Director may, and upon the written request of Members holding a Majority-in-Interest the Managing Director shall, make an election provided for in Section 754 of the Code, if then permitted by applicable law.

6.9 Voting Rights.

(a) Except as expressly provided in this Agreement or the Articles, Members shall have no voting, approval or consent rights.

(b) Members shall have the right to approve or disapprove only the following matters:

(i) A decision made pursuant to Section 7.1(e) to continue the business of the Company after the occurrence of a Dissolution Event.

(ii) Except as provided in Section 6.2, the transfer of a Membership Interest and admission of the assignee as a Member of the Company.

(iii) Any amendment of the Articles or this Agreement; and

(iv) A decision to compromise the obligation of a Member to make a Capital Contribution or return money or property paid or distributed in violation of the Act.

(c) Approval by Members Holding a Majority-in-Interest. In all matters in which a vote, approval or consent of the Members is required, a vote, consent or approval of a Majority-in-Interest (or, in instances in which there are defaulting or remaining Members, non-defaulting or remaining Members who hold a Majority-in-Interest of the Membership Interests held by all non-defaulting or remaining Members) shall be sufficient to authorize or approve such act.

(d) Approval Standard. Except as otherwise specifically provided in this Agreement, all votes, approvals or consents of the Members may be given or withheld, conditioned or delayed as the Members may determine in their sole and absolute discretion.

6.10 Meetings of Members. Meetings of Members may be held at such date, time and place within or without the State of California as the Managing Director may fix from time to time.

6.11 Member as Trustee for the Company. A Member shall hold as trustee for the Company (a) specific property stated in the Articles, Agreement, or other document executed by the Member as contributed by such Member, but which was not contributed or which has been wrongfully or erroneously returned, and (b) money or other property wrongfully paid or conveyed to such Member from the Company.

6.12 No Responsibility for Preformation Commitments. In the event that any Member (or any of such Member's shareholders or Affiliates) has incurred any indebtedness or obligation prior to the date hereof that related to or otherwise affects the Company, neither the Company nor any other Member shall have any liability or responsibility for or with respect to such indebtedness or obligation unless such indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by all Members. Furthermore, neither the Company nor any Member shall be responsible or liable for any indebtedness or obligation that

is hereafter incurred by any other Member (or any of such Member's shareholders or Affiliates). In the event that a Member (or any of such Member's shareholders or Affiliates, collectively, the "Liable Member"), whether prior to or after the date hereof, incurs (or has incurred) any debt or obligation that neither the Company nor the other Members has any responsibility or liability for, the Liable Member shall indemnify and hold harmless the Company and the other Members from any liability or obligation they may incur in respect thereof.

6.13 Rights of Judgment Creditor of Member. On application to a court of competent jurisdiction by a judgment creditor of a Member, the court may charge the Member's Membership Interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an Assignee of the Member's Membership Interest. This Section does not deprive any Member of the benefit of any exemption applicable to his Membership Interest.

6.14 Member's Default on Payment of Company Expenses. If any Member (a "Defaulting Member") fails to make full payment of any portion of his or her pro rata share of the Company Expenses when due and such failure is not cured within ten (10) business days after receipt by such Member of written notice from the Managing Director with respect to such failure to pay, the Managing Director may in its discretion undertake any one or more of the following steps:

(a) The Managing Director may assist the Defaulting Member in finding a buyer for the Defaulting Member's Interest, provided that the Managing Director will have no obligation to contact any particular Member or other Person with regard to such sale.

(b) The Company may pursue and enforce all rights and remedies the Company may have against such Defaulting Member with respect thereto, including a lawsuit to collect the overdue portion of the pro rata share of the Management Fees and an other amounts due the Company or Managing Director hereunder, with interest at a rate equal to the Prime Rate plus six percentage points (but not in excess of the highest rate per annum permitted by law).

(c) The Managing Director may offer the Defaulting Member's interest to the Members (other than any Defaulting Members) pro rata in accordance with their Membership Interests on the terms set forth below. If any Member does not elect to purchase the entire interest offered to it, the remaining interest allocable to the Members will be reoffered pro rata to the Members who have purchased the entire interest offered to them until either all of such interest is acquired or no Member wishes to make a further investment. At the closing of such purchase (on a date and at a place designated by the Managing Director), each purchasing Member shall deliver a non-interest bearing, non-recourse (except to the extent of the Company interest purchased and the proceeds therefrom) ten-year promissory note (in a form approved by the Managing Director) payable to the Defaulting Member in an amount equal to the portion of the Defaulting Member's Capital Account being purchased by such Member. The Managing Director will handle the mechanics of making the offers set forth herein and will in its sole and absolute discretion impose reasonable time limits for acceptance.

(d) If the entire Defaulting Member's interest is not purchased in the manner set forth in (c) above, the Managing Director in its sole and absolute discretion may offer the remaining interest to a third party or parties on the same terms as originally offered to the Members pursuant to (c) above (in which case such third party or parties will, as a condition of purchasing such interest, become a party to this Agreement).

Notwithstanding anything contained herein to the contrary, from and after any date, (A) such Defaulting Member will have no right to receive any distributions, except for distributions made upon the Company's liquidation, (B) such Defaulting Member's Capital Account will not be credited with any Net Profits or Short-Term Investment Income which shall instead be allocated to the Members (other that any Defaulting Members) in accordance with Section 3.2 (and as adjusted to treat the Defaulting Member's Capital Contribution as equal to zero).

(e) No consent of any Member shall be required as a condition precedent to any transfer, assignment or other disposition of a Defaulting Member's interest pursuant to this Section 6.14.

ARTICLE VII

DISSOLUTION AND WINDING UP

7.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs wound up on the first to occur of the following:

(a) At the time specified in the Articles or Section 1.3 of this Agreement;

(b) The happening of any event of dissolution specified in the Articles;

(c) The entry of a decree of judicial dissolution pursuant to Corporations Code Section 17351;

(d) The vote of Members holding 80% of the Percentage Interests;

(e) The occurrence of a Dissolution Event and the failure of a Majority-in-Interest of the remaining Members to consent in accordance with Section 6.9(b)(i) to continue the business of the Company within ninety (90) days after the occurrence of such event; or

(f) The entry of a decree of judicial dissolution under the Act.

7.2 Certificate of Dissolution. As soon as possible following the occurrence of any of the events specified in Section 7.1, the Managing Directors who have not wrongfully dissolved the Company or, if none, the Members, shall execute a Certificate of Dissolution in such form prescribed by the California Secretary of State and file the Certificate as required by the Act.

7.3 Winding Up. Upon the occurrence of any event specified in Section 7.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Managing Directors who have not wrongfully dissolved the Company or, if none, the Members, shall be responsible for overseeing the winding up and liquidation of Company, shall take full account of the liabilities of Company and assets, shall either cause its assets to be sold or distributed, and if sold as promptly as is consistent with obtaining the fair market value thereof, shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 7.4. The Persons winding up the affairs of the Company shall give written notice of the commencement of winding up by mail to all known creditors and claimants whose addresses appear on the records of the Company. The Members winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

7.4 Final Allocation and Distribution.

(a) Upon termination of the Company (whether or not an early termination), the Managing Director will make a final allocation of all kinds of income, loss and expense in accordance with Article III hereof and the Company's liabilities and obligations to its creditors shall be paid or adequately provided for prior to any distributions to the Members.

(b) After determining that all the known debts and liabilities of the Company, including, without limitation, debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in the ratio of their positive Capital Account balances.

(c) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(i) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Members or Managing Directors to be adequate at the time of any Distribution of the assets pursuant to this Section.

(ii) The amount of the debt or liability has been deposited as provided in Section 2008 of the Corporations Code.

This Section 7.4(c) shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

7.5 Limitations on Payments Made in Dissolution. Except as otherwise specifically provided in this Agreement, each Member shall be entitled to look solely to the assets of the Company for the return of his or her positive Capital Account balance and shall have no recourse for his or her Capital Contribution and/or share of Net Profits (upon dissolution or otherwise) against the Managing Director or any other Member.

7.6 Certificate of Cancellation. The Managing Director or Members who filed the Certificate of Dissolution shall cause to be filed in the office of, and on a form prescribed by, the California Secretary of State, a Certificate of Cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

7.7 No Action for Dissolution. Except as expressly permitted in this Agreement, a Member shall not take any voluntary action that causes a Dissolution Event.

ARTICLE VIII

VALUATION OF COMPANY ASSETS

8.1 Normal Valuation. For purposes of this Agreement, the value of any security as of any date (or in the event such date is a holiday or other day which is not a business day, as of the next preceding business day) will be determined as follows:

(a) a security which is listed on a recognized securities exchange or the NMS will be valued at its last sales price or, if no sale occurred on such date, at the last "bid" price thereon;

(b) a security which is traded over-the-counter (other than on the NMS) will be valued at the most recent "bid" price; and

(c) all other securities will be valued on such date by the Managing Director at fair market value in such manner as it may reasonably determine.

8.2 Restrictions on Transfer or Blockage. Any security which is held under a representation that it has been acquired for investment and not with a view to public sale or distribution, or which is held subject to any other restriction, or where the size of the Company's holdings compared to the trading volume would affect its marketability, will be valued at such discount from the value determined under Section 8.1 above as the Managing Director deems necessary to reflect properly the marketability of such security.

8.3 Objection to Valuation. Prior to acting upon its final valuation of any security pursuant to Section 8.1(c) or 8.2, the Managing Director shall provide the Members with notice of the Managing Director's valuation of such security. If within 15 days after delivery of such notice Members holding a Majority-In-Interest of the Membership Interests deliver written notice to the Managing Director objecting to the valuation of such security, then the Managing Director will (at the Company's expense) cause an independent securities expert mutually acceptable to the Managing Director and Members holding a majority of the Membership Interests to review such valuation, and such expert's determination will be binding on the parties.

8.4 Write-down to Value. Any securities which have permanently declined in value as determined by the Managing Director will be written down to their value pursuant to the provisions of this Article VIII as of the date of such determination.

ARTICLE IX

ACCOUNTING, RECORDS, REPORTING BY MEMBERS

9.1 Bank Accounts. The Managing Director shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

9.2 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth herein, shall be made by the Managing Director. The Managing Director may rely upon the advice of their accountants as to whether such decisions are in accordance with generally accepted accounting principles or with accounting methods followed for federal income tax purposes.

9.3 Tax Matters for the Company Handled by Managing Director and Tax Matters Member. The Managing Director shall from time to time cause the Company to make such tax elections as they deem to be in the best interests of the Company and the Members. The Tax Matters Member shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Tax Matters Member shall oversee the Company tax affairs in the overall best interests of the Company but shall not have the right to agree to extend any statute of limitations without the approval of a Majority-in-Interest. If for any reason the Tax Matters Member can no longer serve in that capacity or ceases to be a Member or Managing Director, as the case may be, a Majority-in-Interest may designate another to be Tax Matters Member.

ARTICLE X

INDEMNIFICATION AND INSURANCE

10.1 Indemnification of Members and Managing Director. To the greatest extent not inconsistent with the Act and the other laws and public policies of the State of California, the Company shall indemnify each of their respective employees, agents and affiliates, including without limitation the Managing Director and the Members, stockholders and employees of the Managing Director, against any losses, liabilities, damages or expenses (including amounts paid for reasonable attorneys fees, judgments and settlements in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative) to which any of such Persons may become subject in connection with the Company or in connection with any involvement with the Portfolio Company (including serving as an officer, director, consultant or employee of the Portfolio Company) directly or indirectly on behalf of the Company, provided that it shall be determined in the specific case in accordance with Section 10.4 of this Article X that indemnification of such Person is permissible in the circumstances because the Person has met the standard of conduct for indemnification set forth in this Article X. Notwithstanding any provision hereof, no Member shall have any

obligation to indemnify any such Person if such indemnification would cause such Member to violate any provision of ERISA or the rules and regulations promulgated thereunder.

10.2 Advance Undertakings for Indemnification. To the greatest extent not inconsistent with the Act and other laws and public policies of the State of California, Company shall pay for or reimburse the reasonable expenses incurred by a Member or Managing Director in connection with any such proceeding as incurred in the advance of final disposition of the action, suit, or proceeding thereof if (a) the Person furnishes Company a written affirmation of the Person's good faith belief that it has met the standard of conduct for indemnification described in Section 10.4, (b) the Person furnishes the Company a written undertaking, executed personally or on such Person's behalf, to repay the advance if it is ultimately determined by a court of competent jurisdiction that such Person did not meet such standard of conduct and that it is not entitled to be indemnified, and (c) a determination is made in accordance with Section 10.5 that based upon facts then known to those making the determination, indemnification would not be precluded under this Article.

The undertaking described above must be a general obligation of the Person, subject to such reasonable limitations as the Company may permit, but need not be secured and may be accepted without reference to financial ability to make repayment. The Company shall indemnify a Member or Managing Director who is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the Person in connection with the proceeding without the requirement of a determination as set forth in Section 10.5.

10.3 Advancement of Expenses. Upon demand by a Member or Managing Director for indemnification or advancement of expenses incurred in defending a civil or criminal suit or proceeding, as the case may be, the Company shall expeditiously determine whether the Member or Managing Director is entitled thereto in accordance with this Article X. The indemnification and advancement of expenses provided for under this Article X shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Agreement.

10.4 Standards of Conduct for Indemnification. Indemnification of a Managing Director or Member is permissible under this Article X only if (a) such Person conducted itself in good faith, and (b) reasonably believed that its conduct was in or at least not opposed to Company's best interest; and (c) in the case of any criminal proceeding, it had no reasonable cause to believe its conduct was unlawful. The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the Person did not meet the standard of conduct described in this Section 10.4.

10.5 Procedures to Determine Indemnification. A determination as to whether indemnification of or advancement of expenses is permissible shall be made by any one of the following procedures:

(a) By the Members in good faith by a vote of a Majority-in-Interest of Members not at the time parties to the proceedings; or

(b) By counsel to the Company.

10.6 Court Order of Indemnification. A Member or Managing Director of Company who is a party to a proceeding may apply for indemnification from Company to the court, if any, conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice the court considers necessary, may order indemnification if it determines:

(a) In a proceeding in which the Member or Managing Director is wholly successful, on the merits or otherwise, the Member or Managing Director is entitled to indemnification under this Article, in which case the court shall order Company to pay the Member or Managing Director its reasonable expenses incurred to obtain such court ordered indemnification; or

(b) The Member or Managing Director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Member or Managing Director met the standard of conduct set forth in Section 10.4 above.

10.7 Described Indemnification Rights Nonexhaustive. Nothing contained in this Article shall limit or preclude the exercise or be deemed exclusive of any right under the law, by contract or otherwise, relating to indemnification of or advancement of expenses to any Person who is or was a Member or Managing Director of the Company or is or was serving at the Company's request as a director, officer, partner, Managing Director, trustee, employee, or agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not.

10.8 Construction of Indemnification Rights. Nothing contained in this Article X shall limit the ability of the Company to otherwise indemnify or advance expenses to any person. It is the intent of this Article to provide indemnification to Members and Managing Director to the fullest extent now or hereafter permitted by the law consistent with the terms and conditions of this Article X. Indemnification shall be provided in accordance with this Article X irrespective of the nature of the legal or equitable theory upon which a claim is made including without limitation negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of ERISA or violation of any other state or federal law.

10.9 Definitions for Indemnification Provisions.

(a) "Expenses" mean all direct and indirect costs (including without limitation, counsel fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement or appeal of a proceeding or establishing or enforcing a right to indemnification under this Article, applicable law or otherwise.

(b) "Liabilities" mean the obligations (including one incurred by way of settlement) to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(c) "Party" means a Person who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(d) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal.

10.10 Insurance for Indemnification. To the greatest extent not inconsistent with the Act and other laws and public policies of the State of California, the Company may purchase and maintain insurance or other financial arrangements for the benefit of any Person who is or was a Member or Managing Director, employee or agent, against any liability asserted against or expenses incurred by such Person in any capacity or arising out of such Person's service with Company, whether or not Company would have the power to indemnify such Person against such liability. The other financial arrangements made by Company may include:

(a) The creation of a trust fund;

(b) The establishment of a program of self-insurance;

(c) The securing of its obligation of indemnification by granting a security interest or other lien on any assets of the Company; or

(d) The establishment of a letter of credit, guaranty or surety.

No financial arrangement may provide protection for a Person adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for intentional misconduct, fraud, or a knowing violation of law, except with respect to the advancement of expenses or indemnification ordered by a court.

ARTICLE XI

INVESTMENT REPRESENTATIONS

Each Member hereby represents and warrants to, and agrees with, the Managing Director, the other Members, and the Company as follows:

11.1 "Accredited Investor"; Preexisting Relationship or Experience. (a) He or she is an "accredited investor" as defined in Rule 501(a) of the general Rules and Regulations promulgated under the Securities Act by the Securities and Exchange Commission (the "SEC"), (b) he or she has a preexisting personal or business relationship with the Company or one or more of its or control Persons, or (c) by reason of his or her business or financial experience, or by reason of the business or financial experience of his or her financial advisor who is unaffiliated with and who is not compensated, directly or indirectly, by the Company or any

affiliate or selling agent of the Company, he or she is capable of evaluating the risks and merits of an investment in the Membership Interest and of protecting his or her own interests in connection with this investment.

11.2 No Advertising. He or she has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Membership Interest.

11.3 Investment Intent. He or she is acquiring the Membership Interest for investment purposes for his or her own account only and not with a view to or for sale in connection with any distribution of all or any part of the Membership Interest. No other Person will have any direct or indirect beneficial interest in or right to the Membership Interest.

11.4 Purpose of Entity. If the Member is a corporation, partnership, limited liability company, trust, or other entity, it was not organized for the specific purpose of acquiring the Membership Interest.

11.5 No Registration of Membership Interest. He or she acknowledges that the Membership Interest has not been registered under the Securities Act, or qualified under the California Corporate Securities Law of 1968, as amended, or any other applicable blue sky laws in reliance, in part, on his or her representations, warranties, and agreements herein.

11.6 Membership Interest is a Restricted Security. He or she understands that the Membership Interest is a "restricted security" under the Securities Act in that the Membership Interest will be acquired from the Company in a transaction not involving a public offering, and that the Membership Interest may be resold without registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interest must be held indefinitely. In this connection, he or she understands the resale limitations imposed by the Securities Act and is familiar with SEC Rule 144, as presently in effect, and the conditions which must be met in order for that Rule to be available for resale of "restricted securities," including the requirement that the securities must be held for at least one year after purchase thereof from the Company prior to resale (two years in the absence of publicly available information about the Company) and the condition that there be available to the public current information about the Company under certain circumstances. He or she understands that the Company has not made such information available to the public and has no present plans to do so.

11.7 No Obligation to Register. He or she represents, warrants, and agrees that the Company and the Managing Director are under no obligation to register or qualify the Membership Interest under the Securities Act or under any state securities law, or to assist him or her in complying with any exemption from registration and qualification.

11.8 No Disposition in Violation of Law. Without limiting the representations set forth above, and without limiting Article VII of this Agreement, he or she will not make any disposition of all or any part of the Membership Interest which will result in the violation by him or her or by the Company of the Securities Act, the California Corporate Securities Law of 1968,

or any other applicable securities laws. Without limiting the foregoing, he or she agrees not to make any disposition of all or any part of the Membership Interest unless and until:

(a) There is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement and any applicable requirements of state securities laws; or

(b) (i) He or she has notified the Company of the proposed disposition and has furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (ii) if reasonably requested by the Managing Director, he or she has furnished the Company with a written opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of any securities under the Securities Act or the consent of or a permit from appropriate authorities under any applicable state securities law.

11.9 Investment Risk. He or she acknowledges that the Membership Interest is a speculative investment which involves a substantial degree of risk of loss by him or her of his or her entire investment in the Company, that he or she understands and takes full cognizance of the risk factors related to the purchase of the Membership Interest, and that the Company is newly organized and has no financial or operating history. He or she is financially able to bear the economic risk of an investment in the Membership Interest, including the total loss thereof.

11.10 Information Reviewed. He or she has received and reviewed the Agreement and all business plan information for the Company, and all other information he or she considers necessary or appropriate for deciding whether to purchase the Membership Interest.

11.11 No Representations By Company. Neither the Managing Director, any agent or employee of the Company or of the Managing Director, or any other Person has at any time expressly or implicitly represented, guaranteed, or warranted to him or her that he or she may freely transfer the Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Membership Interest, that past performance or experience on the part of the Managing Director or its Affiliates or any other Person in any way indicates the predictable results of the ownership of the Membership Interest or of the overall Company business, that any Distributions from the Company operations or otherwise will be made to the Members by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company.

11.12 Consultation with Attorney. He or she has been advised to consult with his or her own attorney regarding all legal matters concerning an investment in the Company and the tax consequences of participating in the Company, and has done so, to the extent he or she considers necessary.

11.13 Tax Consequences. He or she acknowledges that he or she will look solely to, and rely upon, his or her own advisers with respect to the tax consequences of this investment.

11.14 No Assurance of Tax Benefits. He or she acknowledges that there can be no assurance that the Code or the Treasury Regulations will not be amended or interpreted in the future in such a manner so as to deprive the Company and the Members of some or all of the tax benefits they might now receive, nor that some of the deductions claimed by the Company or the allocations of items of income, gain, loss, deduction, or credit among the Members may not be challenged by the Internal Revenue Service or state or local tax authorities.

11.15 Indemnity. He or she shall defend, indemnify and hold harmless the Company, each and every Managing Director, each and every other Member, and any officers, directors, shareholders, Managing Directors, members, employees, partners, agents, attorneys, registered representatives, and control Persons of any such entity who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by him or her including, without limitation, the information in this Agreement, against losses, liabilities, and expenses of the Company, each and every Managing Director, each and every other Member, and any officers, directors, shareholders, Managing Directors, members, employees, partners, attorneys, accountants, agents, registered representatives, and control Persons of any such Person (including attorneys' fees, judgments, fines, and amounts paid in settlement, payable as incurred) incurred by such Person in connection with such action, suit, proceeding, or the like.

ARTICLE XII

MISCELLANEOUS

12.1 Counsel to the Company. Counsel to the Company may also be counsel to an Affiliate of a Member or Managing Director. The Managing Director may execute on behalf of the Company and the Members any consent to the representation of the Company that counsel may request pursuant to the California Rules of Professional Conduct or similar rules in any other jurisdiction ("Rules"). The Company has initially selected Manatt, Phelps & Phillips, LLP ("Company Counsel") as legal counsel to the Company. Each Member acknowledges that Company Counsel does not represent any Member in connection with their acquisition of or participation, and ownership interest, in the Company in the absence of a clear and explicit written agreement to such effect between the Member and Company Counsel, and that in the absence of any such agreement Company Counsel shall owe no duties directly to a Member. Notwithstanding any adversity that may develop, in the event any dispute or controversy arises between any Members and the Company, or between any Members or the Company, on the one hand, and a Managing Director (or Affiliate of a Managing Director) that Company Counsel represents, on the other hand, then each Member agrees that Company Counsel may represent either the Company or such Managing Director (or his or her Affiliate) or both, in any such dispute or controversy to the extent permitted by the Rules, and each Member hereby consents to such representation. Each Member further acknowledges that: Company Counsel has represented solely the interests of the Company in connection with the formation of the Company and the preparation and negotiation of this Agreement and while communications with Company Counsel concerning the formation of the Company, its Members and Managing

Director may be confidential with respect to third parties, no Member has any expectation that such communications are confidential with respect to each other.

12.2 Complete Agreement. This Agreement, and the Articles constitute the complete and exclusive statement of agreement among the Members and Managing Director with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members and Managing Director or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or Managing Director or have any force or effect whatsoever. To the extent that any provision of the Articles conflict with any provision of this Agreement, the Articles shall control.

12.3 Amendments. This Agreement may be amended by the Managing Director in any manner that does not adversely affect the rights of any Member and the Managing Director shall furnish notice of any such amendment to the Members. This Agreement may also be amended by action taken by both (a) the Managing Director and (b) the Members owning a Majority-In-Interest of the Capital Accounts of all the Members at the time of the amendment, provided that such amendment does not discriminate among the Members.

12.4 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine, or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Treasury Regulations, the Act, Corporations Code or other statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

12.5 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

12.6 Interpretation. In the event any claim is made by any Member relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or his or her counsel.

12.7 References to this Agreement. Numbered or lettered articles, sections and subsections herein contained refer to articles, sections and subsections of this Agreement unless otherwise expressly stated.

12.8 Jurisdiction. Each Member hereby consents to the exclusive jurisdiction of the state and federal courts sitting in California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each Member further agrees that personal jurisdiction over him or her may be effected by service of process by registered or certified mail addressed as provided in Section 12.11 of this Agreement, and that when so made shall be as if served upon him or her personally within the State of California.

12.9 Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby.

12.10 Additional Documents and Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

12.11 Notices. Any notice to be given or to be served upon the Company or any party hereto in connection with this Agreement must be in writing (which may include facsimile) and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice. Such notices will be given to a Member or Managing Director at the address specified in Schedule I hereto. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice will be given.

12.12 Reliance on Authority of Person Signing Agreement. If a Member is not a natural person, neither the Company nor any Member will (a) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

12.13 No Interest in Company Property; Waiver of Action for Partition. No Member or Assignee has any interest in specific property of the Company. Without limiting the foregoing, each Member and Assignee irrevocably waives during the term of the Company any right that he or she may have to maintain any action for partition with respect to the property of the Company.

12.14 Attorney Fees. In the event that any dispute between the Company and the Members or among the Members should result in litigation or arbitration, the prevailing party in such dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorney fees and costs incurred in enforcing such judgment and an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law. For the purposes of this Section: (a) attorney fees shall include, without limitation, fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation and (b) "prevailing party" shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

12.15 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Person may be lawfully entitled.

12.16 Statement of Restrictions. This Agreement and any amendments hereto constitute an "Initial Transaction Statement" as described in California Commercial Code Section 8408.

12.17 No Third Party Beneficiary. The Agreement is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of the Agreement as a third party beneficiary or otherwise.

12.18 Not for Benefit of Creditors. The provisions of the Agreement are intended only for the regulation of relations among Members and Company and the Agreement is not intended for the benefit of a creditor who is not a Member and does not grant any rights to or confer any benefits on any creditor who is not a Member or any other Person who is not a Member, a Managing Director, or an officer.

12.19 Publicity. None of the parties will make any disclosure of the transactions contemplated by the Agreement or any related agreements, or any discussions in connection therewith, without the prior written consent of each of the other parties. The preceding sentence shall not apply to any disclosure required to be made by the Act or other applicable law as reasonably determined by counsel to the party determining that such disclosure is required, except that such party, whenever practicable, shall be required to consult with the other parties concerning the timing and content of such disclosure before making it.

12.20 Warranties and Representations. Each Member separately represents and warrants that he/she/it is not a party to any pending or threatened suit, action or legal, administrative, arbitration or other proceeding which might materially and adversely affect the business of the Company or the transactions contemplated by this Agreement, nor does such Member know of any facts which are likely with the passage of time to give rise to such a suit, action or proceeding. Each Member separately represents and warrants that he/she/it is not a party to any agreement, understanding, commitment or other obligation that prohibits or restricts such Member's performance under this Agreement.

12.21 No Representations. Each of the Members acknowledges and agrees (a) that no representation or promise not expressly contained in this Agreement has been made by any of the other Members or by any of such Member's agents, employees, representatives or attorneys; and (b) that this Agreement is not being entered into on the basis of, or in reliance upon, any promise or representation, express or implied, other than such as are set forth expressly in this Agreement.

12.22 Binding Effect of Agreement. This Agreement, including Section 6.2 hereof, shall be binding on the successors, assigns and the legal representatives of each of the Members.

12.23 Counterparts. This Agreement may be executed in more than one counterpart with the same effect as if the Members executing the several counterparts had all executed one document.

12.24 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the principles of conflicts of law thereof.

The Managing Director and all of the Members of Black Diamond Ventures XII-B, LLC, a California limited liability company, have executed this Agreement, effective as of the date first written above.

Managing Director:

BLACK DIAMOND VENTURES MANAGER XII-B, LLC, a California limited liability company

_____
Christopher B. Lucas
Managing Director

Member:

By _____
Print or Type Name

By _____
Signature

Its _____
Title (for Members other than individuals)

OPERATING AGREEMENT
FOR
BLACK DIAMOND VENTURES XII-B, LLC,
A CALIFORNIA LIMITED LIABILITY COMPANY

DECEMBER 23, 2013

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

SCHEDULE I

MEMBERS AND MANAGING DIRECTORS AS OF

December 23, 2013

Member's Name	Member's Capital Contribution	Member's Percentage Interest
Managing Director's Name Black Diamond Ventures Manager XII-B, LLC		

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If you delete the section break above the Table of Contents/Authorities, you will overwrite the headers and footers of the main document with Table of Contents/Authorities headers and footers.

To delete the Table of Contents/Authorities, begin your selection at the section break above the TOC/TOA section and continue through the end of this message.

Black Diamond Ventures XII-B, LLC
SUBSCRIPTION AGREEMENT

Black Diamond Ventures XII-B, LLC
400 N. Brand Blvd., Suite 950
Glendale, CA 91203

Ladies and Gentlemen:

The undersigned subscribing investor (the "undersigned") in connection with a prospective investment in Membership Interests ("Interests") in Black Diamond Ventures XII-B, LLC, a California limited liability company (the "Company"), hereby agrees as follows:

1. Subscription.

(a) The undersigned, intending to be legally bound, hereby irrevocably subscribes for Interests in the Company and agrees: (i) to make a capital contribution to the Company in the amount set forth on the signature page hereof in accordance with the terms and conditions described herein and in the Operating Agreement for Black Diamond Ventures XII-B, LLC dated December 23, 2013 ("LLC Agreement"); (ii) as provided in the LLC Agreement to become a Member of the Company; and (iii) to be bound by the terms of the LLC Agreement.

(b) The undersigned acknowledges and agrees that the undersigned is not entitled to cancel, terminate or revoke this subscription, any agreements of the undersigned hereunder, or the power of attorney granted hereby, except as otherwise set forth in this Section 1(b), and such subscription, agreements and power of attorney shall survive (i) changes in the transaction, documents and instruments described in the information furnished to the undersigned ("Information") which in the aggregate are not material or which are contemplated by such Information, and (ii) the death or disability of the undersigned; provided, however, that if the Managing Director does not accept this subscription, then this subscription, all agreements of the undersigned hereunder and the power of attorney granted hereby shall be cancelled and this Subscription Agreement will be of no force and effect.

(c) The undersigned hereby irrevocably constitutes and appoints the Managing Director of the Company the undersigned's true and lawful representative and attorney-in-fact in the undersigned's name, place and stead, (1) to receive and pay over to the Company on behalf of the undersigned, to the extent set forth in this Subscription Agreement, all funds received hereunder, (2) to complete or correct, on behalf of the undersigned, all documents to be executed by the undersigned in connection with the undersigned's subscription for Interests, including, without limitation, filling in or amending amounts, dates, and other pertinent information, and (3) provided that no such action shall, in any manner whatsoever, impose any liability upon any Member beyond that contained in the LLC Agreement, to execute, acknowledge, swear to and file: (i) any counterparts of the LLC Agreement to be entered into pursuant to this Subscription Agreement and any amendments to which the undersigned is a signatory, (ii) any amendments to any such amendments as provided in the LLC Agreement),

(iii) any agreements or other documents of any kind necessary or desirable to accomplish the business, purpose and objectives of the Company, as limited and defined in the LLC Agreement, (iv) any certificates of the limited liability company required by law and all amendments thereto, (v) all certificates and other instruments necessary to qualify, or continue the qualification of, the Company in the states where it may be doing business, (vi) all assignments, conveyances or other instruments or documents necessary to effect the dissolution of the Company, and (vii) all other filings with agencies of the federal government, of any state or local government, or of any other jurisdiction, which the Managing Director considers necessary or desirable to carry out the purposes of this Subscription Agreement, the LLC Agreement and the business of the Company. This power of attorney shall be deemed coupled with an interest, shall be irrevocable, shall survive the transfer of the undersigned's Interest and shall survive, and shall not be affected by, the subsequent death, disability, incapacity, incompetency, termination, bankruptcy, insolvency or dissolution of the undersigned.

2. Payment. The undersigned shall either (i) enclose herewith a certified or official bank check payable to Black Diamond Ventures XII-B, LLC, or (ii) transmit by wire transfer the amount of the capital contribution of the undersigned to an account designated by the Company pursuant to arrangements to be made with California Federal Bank.

3. Acceptance of Subscription. The undersigned understands and agrees that the Company in its sole discretion reserves the right to accept or reject this or any other subscription in whole or in part or to cancel the offering. No subscription shall be deemed accepted until the undersigned has been admitted as a Member in the Company. Such admission shall be deemed an acceptance of this subscription by the Company and the Managing Director. If this subscription is rejected by the Company in whole or in part, or if the offering is cancelled, the Company shall promptly return all or part of the funds received from the undersigned, as the case may be, without interest, and this Subscription Agreement shall thereafter be for the amount accepted, or of no further force or effect if the subscription is rejected in full, or the offering is cancelled.

4. Representations and Warranties. The undersigned hereby acknowledges, represents and warrants to, and agrees with, the Company as follows:

(a) The undersigned understands that the offering and sale of the Interests is intended to be exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") and/or regulations thereunder and exempt from registration or qualification under any state law, and in accordance therewith and in furtherance thereof, the undersigned for the undersigned and the undersigned's heirs, personal representatives, successors and assigns represents and warrants and agrees as follows:

(i) The undersigned and/or the undersigned's advisor(s) has/have received the Information and has/have carefully reviewed it and understand(s) the information contained therein as well as the LLC Agreement.

(ii) Standard financial information relating to the Portfolio Company (as such term is defined in the LLC Agreement) have not been provided to the Company, the Managing Director or the undersigned in connection with the undersigned's investment in the

Interests, but not withstanding the foregoing, the undersigned agrees that all documents, records, and books pertaining to this investment (including, without limitation, the Information) that the undersigned believes necessary for consideration and evaluation of the investment have been made available for inspection by the undersigned, and the undersigned's attorney(ies), accountant(s), or advisor(s).

(iii) The undersigned and/or the undersigned's advisor(s) has/have had a reasonable opportunity to ask questions of and receive answers from a person or persons on behalf of the Company concerning the terms and conditions of offering of the Interests and all such questions have been answered to the full satisfaction of the undersigned and/or the undersigned's advisors, and the undersigned has/have had the opportunity to obtain any additional Information which the Company possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of the Information or any other information furnished in connection with the investment.

(iv) No oral or written representations have been made other than as stated, or in addition to those stated, in the Information, and no oral or written information furnished to the undersigned or the undersigned's advisors in connection with the offering of the Interests were in any way inconsistent with the information stated in the information.

(v) The undersigned is not subscribing for the Interests as a result of or subsequent to any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio, or presented at any seminar or meeting, or any solicitation of a subscription by a person other than a representative of the Company.

(vi) If the undersigned is a natural person, the undersigned has reached the age of majority in the state in which the undersigned resides.

(vii) If the undersigned is not a natural person, the undersigned was not formed, and is not being utilized, for the specific purpose of acquiring the Interests, or, if it has been organized for such specific purpose, each of its beneficial owners is a separately "accredited investor" within the meaning given to such term in Regulation D under the Securities Act. in the event the undersigned was formed for the specific purpose of acquiring the Interests, each of the beneficial owners will complete and return to the Managing Director a copy of this Subscription Agreement verifying such individual's accredited investor status.

(viii) Either (A) the undersigned is not purchasing the Interests with the assets of any employee benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA") or a plan subject to Section 4975 of the Internal Revenue Code of 1986 (the "Code"), or other similar law or (B) the use of such assets to acquire the Interests does not constitute a non-exempt prohibited transaction for purposes of ERISA and Section 4975 of the Code.

(ix) The undersigned has consulted to the extent deemed appropriate by the undersigned with the undersigned's own advisers as to the financial, tax, legal and related matters concerning an investment in the Interests and on that basis believes that an investment in

the Interests is suitable and appropriate to the undersigned and has adequate means of providing for the undersigned's current financial needs and contingencies, is able to bear the substantial economic risks of an investment in the Interests for an indefinite period of time, has no need for liquidity in such investment, and, at the present time, could afford a complete loss of such investment.

(x) The undersigned or the undersigned's purchaser representative (including the undersigned's professional advisor(s), who are unaffiliated with and are not compensated by the Company or any affiliate or Selling Agent of the Company, as the case may be), has such knowledge and experience in financial, tax, and business matters so as to enable the undersigned to evaluate the merits and risks of an investment in the Interests, to protect the undersigned's own interests in connection with the investment, and to make an informed investment decision with respect thereto.

(xi) The undersigned is not relying on the Company with respect to the tax and other economic considerations of an investment.

(xii) The undersigned understands and acknowledges that the Interests have not been registered under the Securities Act or any state securities law, that transferability of the Interests is restricted under such laws and that consequently the undersigned must bear the economic risks of investment for an indefinite period. The undersigned will not sell or otherwise transfer the Interests without registration under the Securities Act or applicable state securities laws or an exemption therefrom. The undersigned represents that the undersigned is purchasing the Interests for the undersigned's own account, for investment and not with a view to or in connection with resale or distribution except in compliance with the Securities Act and applicable state law. The undersigned has not offered or sold any portion of the Interests being acquired nor does the undersigned have any present intention of dividing such Interests with others or of selling, distributing or otherwise disposing of any portion of such Interests either currently or after the passage of a fixed or determinable period of time or upon the occurrence or non-occurrence of any predetermined event or circumstance in violation of the Securities Act or applicable state law. The undersigned is aware that an exemption from the registration requirements of the Securities Act pursuant to Rule 144 promulgated thereunder is not presently available; that the Company has no obligation to register the Interests or to make available an exemption from the registration requirements pursuant to such Rule 144 or any successor rule for resale of the Interests.

(xiii) The undersigned recognizes that investment in the Company involves substantial risks, including loss of the entire amount of such investment, and has taken full cognizance of and understands all of the risks related to the purchase of the Interests.

(xiv) If the undersigned is a natural person, the undersigned maintains the undersigned's domicile and in not merely a transient or temporary resident in the state and at the residence address shown on the signature page of this Subscription Agreement; and if the undersigned is not a natural person, the undersigned's principal place of business is in the state and at the business address shown on the signature page of this Subscription Agreement. The offer of the Interests was made to the undersigned in such state, and the undersigned intends that the state securities laws of that state (excluding any other state law) shall govern this transaction.

(b) The undersigned has a preexisting personal or business relationship with the Company, or its Managing Director to enable the undersigned to be aware of the character, business acumen and general business and financial circumstances of the person with whom such relationship exists.

(c) The undersigned is an "accredited investor" within the meaning given to such term in Regulation D promulgated under the Securities Act. The undersigned agrees, prior to ceasing to be a Member, to notify the Company of any change that would make the representations and warranties set forth in this Section 4(c) inaccurate or untrue or any change provided to the Company by the undersigned. **The undersigned has initialed *all* appropriate blank(s) next to the description of "Accredited Investor" as defined in Regulation D under the Securities Act** applicable to the undersigned.

(Initial) ____ (i) The undersigned is a natural person who had individual income (without including any income of the person's spouse) of more than $200,000 in each of the most recent two years or joint income with the undersigned's spouse in excess of $300,000 in each of the two most recent years and who reasonably expects to reach that same income level in the current year.

(Initial) ____ (ii) The undersigned is a natural person whose individual net worth, or joint net worth with the undersigned's spouse, is in excess of $1,000,000.[1]

(Initial) ____ (iii) The undersigned is an executive officer, manager or managing member of the Company or an executive officer, manager or managing member of the Managing Director.

(Initial) ____ (iv) The undersigned is an organization described in Section 501(c)(3) of the Code, a corporation, a Massachusetts or similar business trust, or a partnership, not formed for the specific purpose of acquiring the Interests,[2] with total assets in excess of $5,000,000.

(Initial) ____ (v) The undersigned is a trust, with total assets in excess of $5,000,000, which was not formed for the purpose of acquiring the Interests and whose purchase

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[1] For purposes of calculating net worth under this paragraph (the amount of assets in excess of liabilities): (A) the value of the person's primary residence shall not be included as an asset; (B) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the sale of the Interests, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of sale of the Interests exceeds the amount outstanding 60 days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and (C) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence at the time of the sale of the Interests shall be included as a liability.

[2] The undersigned may be deemed to be "formed for the specific purpose of acquiring the Interests" if either (A) the amount of the undersigned's subscription for Interests exceeds 40% of the total assets of the undersigned or (B) interest holders of the undersigned are able to decide individually whether to participate, or the extent of their participation, in the undersigned's investment in the Company (i.e., holders of interests of the undersigned are able to determine whether their capital will form part of the capital invested by the undersigned in the Company).

is directed by a person who has such knowledge and experience in financial business matters that such person is capable of evaluating the risks and merits of an investment in the Interests.

(Initial) ____ (vi) The undersigned is a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity; a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended.

(Initial) ____ (vii) The undersigned is an insurance company as defined in Section 2(13) of the Securities Act.

(Initial) ____ (viii) The undersigned is an investment company registered under the Investment Company Act of 1940, as amended. The undersigned acknowledges and agrees that the Company may limit the undersigned's subscription in the Interests to less than 10% of the Company's outstanding Interests.

(Initial) ____ (ix) The undersigned is a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940.

(Initial) ____ (x) The undersigned is a small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

(Initial) ____ (xi) The undersigned is a plan established and maintained by a state, its political subdivisions, or an agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, with total assets in excess of $5,000,000, or an employee benefit plan within the meaning of Title I of ERISA, if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if the employee benefit plan is a self-directed plan, the investment decisions are made solely by persons that are accredited investors as defined in Regulation D under the Securities Act. If the undersigned is, or is acting on behalf of, a trust established under an employee benefit plan as defined in and subject to ERISA, or a "plan" subject to Section 4975 of the Code (collectively, "Plans"): (A) it is aware of and has taken into consideration its fiduciary duties including the diversification requirements of Section 404(a)(1)(c) of ERISA; (B) it has concluded that its proposed investment in the Company is a prudent one; (C) the fiduciary trustee or other person signing this Subscription Agreement on behalf of the undersigned is independent of the Managing Director; (D) this subscription and the investment contemplated hereby are in accordance with all requirements applicable to the Plan under its governing instruments and under ERISA; (E) the undersigned acknowledges and agrees that the Managing Director is not a "fiduciary" (within the meaning of Section 3(21) of ERISA) with respect to any assets of the Plan by reason of the undersigned's investment in the Company and that the undersigned has not and is not relying on the Managing Director to provide, and it has not provided, any kind of investment advice with respect to the Company's purchase; (F) the undersigned acknowledges and agrees that in the event the managing Director or any member, employee, agent or Affiliate of the Managing Director is ever held to be a fiduciary of the Plan, the person acting for the Plan

and not the Managing Director nor any member, employee, agent or Affiliate of the Managing Director will bear the fiduciary responsibility to the Plan with respect to the overall prudence, liquidity nd diversification of the underlying assets (including the specific investments, as they may be constituted from time to time) of the Company; and (G) the undersigned acknowledges and agrees that the Managing Director may, in its sole discretion, for the purpose of avoiding "significant participation" by Plans, restrict investments in the Company by the Plan, exclude additional investments by the Plan or require the Plan to withdraw part or all of the Plan's investment in the Company at any time and from time to time.

(Initial) ____ (xii) The undersigned is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

(Initial) ____ (xiii) The undersigned is an entity, including a grantor trust, in which all of the equity owners meet the requirements of at least one of the above subparagraphs for accredited investors. For this purpose, a beneficiary of a trust is not an equity owner, but the grantor of a grantor trust is an equity owner.

(d) The Financial Industry Regulatory Authority ("FINRA) restricts certain persons from holding a beneficial interest in "new issues," which is defined by FINRA Rule 5130 to mean any initial public offering of equity securities. The Company may, from time to time, directly or indirectly participate in new issues, from which allocations to certain persons may be restricted. In order to determine the undersigned's eligibility to participate in new issues, the undersigned must complete Schedule A attached hereto. **If the undersigned fails to supply all the information requested in Schedule A, the undersigned will not be eligible to participate in new issues.**

(e) The undersigned's overall commitment to investments which are not readily marketable is reasonable in relation to the undersigned's net worth.

(f) The undersigned agrees to notify the Managing Director immediately if any representation or warranty contained in this Subscription Agreement, including all attachments, becomes untrue at any time. The undersigned agrees to provide such information and execute and deliver such documents as the Company may reasonably request to determine the undersigned's eligibility to purchase Interests in the Company or to verify the accuracy of the undersigned's representations and warranties herein, to comply with any law or regulation to which the Company may be subject or for any other reasonable purpose.

(g) The undersigned hereby agrees to provide such information and to execute and deliver such documents as may reasonably be necessary to comply with any and all laws and ordinances to which the Company is subject, including without limitation, such additional information as the Company may deem appropriate with regard to the undersigned's suitability to invest in the Company.

(h) The undersigned acknowledges:

(i) In making an investment decision the undersigned has relied on the undersigned's own examination of the Company and the terms of the Offering, including the merits and risks involved. THESE INTERESTS HAVE NOT BEEN RECOMMENDED OR

APPROVED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THE INFORMATION IN THIS DOCUMENT OR ANY OTHER INFORMATION FURNISHED TO THE UNDERSIGNED. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(ii) The execution and delivery by the undersigned and compliance by the undersigned with this Subscription Agreement, the LLC Agreement and each other document required to be executed and delivered by the undersigned in connection with this subscription for Interests does not conflict with, or constitute a default under, any instrument governing the undersigned, any law, regulation or order, or any agreement to which the undersigned is a party or by which the undersigned is bound.

(iii) This Subscription Agreement and the LLC Agreement have been duly executed by the undersigned and constitutes, and, in the case of the LLC Agreement, when the undersigned is admitted as a Member, will constitute, a valid and legally binding agreement of the undersigned, enforceable against the undersigned according to their terms.

(iv) The undersigned, if executing this Subscription Agreement in a representative or fiduciary capacity, has full power and authority to execute and deliver this Subscription Agreement in such capacity and on behalf of the subscribing individual, ward, partnership, trust, estate, corporation, or other entity for whom the undersigned is executing this Subscription Agreement, and such individual, ward, partnership, trust, estate, corporation, or other entity has full right and power to perform pursuant to this Subscription Agreement and make an investment in the Company.

(v) The representations, warranties, and agreements of the undersigned contained herein and in any other writing delivered in connection with the transactions contemplated hereby are made with the intent that they be relied on by the Company and the Managing Director in determining the undersigned's suitability as a purchaser of an Interest, shall be true and correct in all respects on and as of the date of the acceptance of the subscription, as if made on and as of such date, and shall survive the execution and delivery of this Subscription Agreement and the purchase of the Interests.

(vi) The undersigned acknowledges and agrees that the LLC Agreement, together with the representations set forth in this Subscription Agreement, shall contain the entire understanding and agreement with respect to the undersigned's subscription for, and purchase and ownership of, the Interests, and shall supersede any and all other written materials respecting the Company, including, but not limited to, the Information. Other than as set forth herein or in the LLC Agreement or the Information, the undersigned is not relying upon any other information, representation or warranty by the Company, the Managing Director or any agent or representative of them in determining whether to invest in the Company.

(m) The undersigned agrees that, except in cases of actual fraud or willful misconduct or gross negligence, it shall have no actionable claim or claims against the Company, the Managing Director, any of their respective partners members, employees, agents or any

respective Affiliate (as defined in the LLC Agreement) of any of the foregoing, with respect to or arising out of any information, statement or projection respecting the Company, whether written or oral, and including, but not limited to, any such information, statement or projection made or provided in the Information, which is not fully expressed in this Subscription Agreement, the LLC Agreement, or in any side letter to which the undersigned is a party. Further, the undersigned acknowledges and agrees that this Subscription Agreement and any side letter to which the undersigned is a party are each separate agreements by and between the undersigned and the Managing Director.

(n) The undersigned acknowledges that the Company, and the Managing Director and certain of their Affiliates are subject to certain anti-money laundering and related provisions and otherwise prohibited from engaging in transactions with, or providing services to, certain foreign countries, territories, entities and individuals, including without limitation, specially designated nationals, specially designated narcotics traffickers and other parties subject to United States government or United Nations sanctions and embargo programs. In furtherance of the foregoing:

(i) The undersigned hereby represents and warrants the following and shall promptly notify the Managing Director if any of the following ceases to be true and accurate:

A. To the best of the undersigned's knowledge based upon appropriate diligence and investigation, none of the cash or property that the undersigned has paid or will pay or contribute to the Company has been or shall be derived from or related to any activity that is deemed criminal under United States law, nor will the proposed investment by the undersigned in the Company, which is being made on its own behalf or, if applicable, on behalf of any beneficial owners, directly or indirectly contravene United States federal, state, international or other laws or regulations, including, without limitation, the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the USA Patriot Act and the United States International Money Laundering Abatement and Financial Anti-Terrorist Act of 2001 (collectively, the "AML Laws").

B. No contribution or payment by the undersigned to the Company or the Managing Director, to the extent within the undersigned's control, shall cause the Company or Managing Director to be in violation of any AML Laws.

(ii) The undersigned understands and agrees that if at any time it is discovered that any of the representations in this Section 4(n)(ii) are untrue or inaccurate, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the Managing Director may undertake appropriate actions to ensure compliance with applicable law or regulation, including, but not limited to, segregation or redemption of the undersigned's investment in the Company.

(iii) The undersigned is not (i) identified on the U.S. Department of Treasury Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons (the "SDN List") codified at 31 CFR Ch. V Annex A, as amended from time to

time;[3] (ii) owned or controlled by or acting on behalf of any person or entity listed on the SDN List; (iii) the target of any sanction, regulation or law promulgated by OFAC or any other U.S. governmental entity (such sanctions, regulations and laws, together with any supplement or amendment thereto, the "U.S. Sanctions Laws") such that the entry into this Subscription Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws; or (iv) owned or controlled by or acting on behalf of any person or entity that is the target of any U.S. Sanctions Laws such that the entry into this Subscription Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws.

(iv) The undersigned understands, acknowledges, represents and agrees (i) that the acceptance of this Subscription Agreement, together with the appropriate remittance, will not breach any applicable money laundering or related rules or regulations (including, without limitation, any statutes, rules or regulations in effect under the laws of the United States pertaining to prohibitions on money laundering or to transacting business or dealing in property that may be blocked or may belong to Specially Designated Nationals (as such term is used by the OFAC); (ii) to promptly provide to the Company or the Managing Director, any administrator administrating the Company (the "Administrator"), or any other party designated for receipt of such information, documentation verifying its identity and/or source of funds, as well as the identity of any of its legal or beneficial owners or related parties or Affiliates; (iii) that, due to anti-money laundering requirements within their respective jurisdictions (which requirements are in effect at the time this Subscription Agreement is submitted to the Company or the Managing Director or which become effective at any future time), the Company and the Managing Director may require further evidence of the undersigned's identity and/or source of funds before this Subscription Agreement can be processed, and the Company or the Managing Director may be required to take such other actions as may be necessary for the Company or the Managing Director to comply with such anti-money laundering regulations; (iv) that it hereby consents to disclosure to third parties of information provided pursuant to this Section 2(p); and (v) to hold harmless and indemnify each of the Company, the Managing Director and their respective Affiliates against any losses arising from the failure to process the undersigned's Subscription Agreement if the undersigned does not provide such requested information.

(v) The undersigned understands, acknowledges, represents and agrees that many jurisdictions are in the process of changing or creating anti-money laundering, embargo and trade sanctions, or similar laws, regulations, requirements (whether or not with force of law) or regulatory policies and that many financial intermediaries are in the process of changing or creating responsive disclosure and compliance policies (collectively, "Requirements"), and that the Company and/or the Managing Director, as applicable, could be requested or required to obtain certain assurances from the undersigned and disclose information pertaining to the undersigned to governmental, regulatory or other authorities or to financial intermediaries or engage in further due diligence or take other related actions in the future. The undersigned understands, acknowledges, represents and agrees that it is the Company's and the Managing Director's policy to comply with Requirements to which it is or may become subject and to interpret them broadly in favor of disclosure. The undersigned hereby agrees, and by reason of owning any Interests will be deemed to have agreed, to provide additional information or take such other actions as may be necessary or advisable for the Company (in the Managing

[3] The OFAC SDN list may be found at http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html.

Director's sole judgment) and/or the Managing Director to comply with any Requirements, related legal process or appropriate requests (whether formal or informal) or otherwise. The undersigned hereby consents, and by reason of owning any Interests will be deemed to have consented, to any disclosure by the Company and its agents or delegates to relevant third parties of information pertaining to such undersigned in respect of Requirements or information requests related thereto. If the undersigned is acquiring its Interests through a broker-dealer, the undersigned hereby expressly consents to such broker-dealer or its Affiliates sharing any and all customer identification, "know your client," anti-money laundering and other similar identifying personal and/or corporate, organizational or beneficial ownership information or data that may be, or is, subject to any privacy laws with the Company, the Managing Director and their respective Affiliates, designees, officers, employees, directors, partners, agents, legal representatives and controlling persons.

(vi) The undersigned understands, acknowledges and agrees that the Company may not accept any amounts from a prospective Limited Partner if it cannot make the representations set forth in this Section 2(p). If an existing Limited Partner cannot make these representations, the Company and/or the Managing Director may take such action as may be required under applicable law and the LLC Agreement. The undersigned is advised that, by law, the Company and/or the Managing Director may be obligated to "freeze the account" of the undersigned by prohibiting additional subscriptions from the undersigned, declining any withdrawal requests and/or segregating the assets in the account in compliance with governmental regulations, and the Company and/or the Managing Director may also be required to report such action and to disclose the undersigned's identity to applicable governmental authorities. The undersigned further acknowledges that the Company and/or the Managing Director may, by written notice to the undersigned, suspend the payment of withdrawal proceeds payable to the undersigned if the Company and/or the Managing Director reasonably deems it necessary to do so to comply with anti-money laundering regulations applicable to the Company and/or the Managing Director or any of the Company's other service providers.

(vii) The undersigned understands, acknowledges, represents and agrees that, to the best of its knowledge, none of (i) the undersigned; (ii) any person controlling or controlled by the undersigned; (iii) if the undersigned is a privately held entity, any person having a beneficial interest in the undersigned; or (iv) any person for whom the undersigned is acting as agent or nominee in connection with this investment is a senior foreign political figure[4] or any immediate family member[5] or close associate[6] of a senior foreign political figure as such terms are defined in the footnotes below.

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[4] A "senior foreign political figure" is defined as a senior official in the executive, legislative, administrative, military or judicial branches of a non-U.S. government (whether elected or not), a senior official of a major non-U.S. political party or a senior executive of a non-U.S. government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

[5] "Immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

[6] A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure and includes a person who

(viii) If the undersigned is a non-U.S. banking institution (a "Non-U.S. Bank") or if the undersigned receives deposits from, makes payments on behalf of, or handles other financial transactions related to, a Non-U.S. Bank, the undersigned understands, acknowledges, represents and agrees to the Company that: (i) the Non-U.S. Bank has a fixed address, other than solely an electronic address, in a country in which the Non-U.S. Bank is authorized to conduct banking activities; (ii) the Non-U.S. Bank employs one or more individuals on a full-time basis; (iii) the Non-U.S. Bank maintains operating records related to its banking activities; (iv) the Non-U.S. Bank is subject to inspection by the banking authority that licensed the Non-U.S. Bank to conduct banking activities; and (v) the Non-U.S. Bank does not provide banking services to any other Non-U.S. Bank that does not have a physical presence in any country and that is not a regulated Affiliate.

(ix) The undersigned agrees to notify the Company and/or the Managing Director promptly in writing should the undersigned become aware of any change in the information set forth in these representations.

(x) The undersigned acknowledges that the Company, the Managing Director or any administrator or management company or company acting on behalf of the Company may require further documentation verifying the undersigned's identity or the identity of the undersigned's beneficial owners, if any, and the source of funds used to purchase the Interest. The undersigned hereby agrees to provide such documentation as may be requested by the Managing Director. Furthermore, the undersigned acknowledges and agrees that the Company or Managing Director may release confidential information regarding the undersigned and, if applicable, any of the undersigned's beneficial owners, to government authorities if the Managing Director, in its sole discretion, determines after consultation with counsel that releasing such information is in the best interest of the Company in light of any AML Law.

(o) Upon the Managing Director's acceptance of this Subscription by admitting the undersigned to the Company, and receipt of the minimum subscriptions, the undersigned's contribution to the Company deposited herewith may be transferred to the Company.

5. Indemnification. The undersigned agrees to indemnify and hold harmless the Company and its Managing Director and any of their partners, members, employers, agents or any respective Affiliate from and against any and all loss, liability, claim, damage, and expense whatsoever (including, without limitation, any and all expenses including attorneys fees reasonably incurred in investigating, preparing, or defending against any litigation commenced or threatened or any claim whatsoever) arising out of or based upon any breach of a representation or warranty or breach or failure by the undersigned to comply with any covenant or agreement made by the undersigned herein or in any other document furnished by the undersigned to any of the foregoing in connection with this transaction, including without limitation arising as a result of the sale or distribution of the Interests by the undersigned in violation of the Securities Act or other applicable law. This indemnity is given in favor of the Managing Director in its own capacity and as trustee and agent for and on behalf of each beneficiary of a party to this Subscription Agreement.

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is in a position to conduct substantial U.S. and non-U.S. financial transactions on behalf of the senior foreign political figure.

6. Irrevocability; Binding Effect; Entire Agreement. The undersigned hereby acknowledges and agrees that the subscription hereunder is irrevocable by the undersigned, that, except as required by law, the undersigned is not entitled to cancel, terminate, or revoke this Subscription Agreement or any agreements of the undersigned hereunder, and that this Subscription Agreement and such other agreements shall survive the death or disability of the undersigned and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives, and permitted assigns. If the undersigned is more than one person, the obligations of the undersigned hereunder shall be joint and several and the agreements, representations, warranties, and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and his/her heirs, executors, administrators, successors, legal representatives, and permitted assigns. This Subscription Agreement sets forth the entire agreement and understanding among the parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements and understandings relating to the subject matter hereof.

7. Modification. Neither this Subscription Agreement nor any provision hereof shall be waived, modified, discharged, or terminated except by an instrument in writing signed by the party against whom any such waiver, modification, discharge, or termination is sought.

8. Notices. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be mailed by certified mail, return receipt requested, sent by reputable overnight delivery service, or be personally delivered to the party to whom it is to be given (a) if to the Company, at the address set forth above, or (b) if to the undersigned, at the address set forth on the signature page hereof (or, in either case, to such other address as the party shall have furnished in writing in accordance with the provision of this Section 8). Any notice or other communication given by certified mail shall be deemed given two business days after deposit in the mail, one business day after deposit with a reputable overnight delivery service, or on personal delivery, except for a notice changing a party's address which shall be deemed given at the time of receipt thereof.

9. Assignability. This Subscription Agreement and the rights and obligations hereunder are not transferable or assignable by the undersigned.

10. Applicable Law. This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of California as applied to residents of California executing contracts wholly to be performed in California.

11. Nature of Subscriber. The undersigned is (check one):

☐ (a) One or more individuals;
☐ (b) A corporation;
☐ (c) A partnership;
☐ (d) A limited liability company;
☐ (e) A trust; or
☐ (f) Another entity or organization, namely (please specify) _____

IN WITNESS WHEREOF, the undersigned has executed this Subscription Agreement.

_____

Subscriber Name (Please Print)

_____

Subscriber Name, (Please Print)
[If more than one.]

_____

Residence Address

_____

City, State, Zip Code

_____

State in which Subscription Agreement signed
[if other than state of residence]:

_____

_____

E-mail Address

State and date of organization, if entity:

_____

Total Amount of Investment:

$_____

Fill in Mailing Address only if different from Residence Address:

_____

Mailing Address

_____

City, State, Zip Code

_____

Signature of Investor(s) (individual)

_____

Signature of Investor(s) (individual),
[if more than one]

By: _____

Signature of Authorized
Representative (if an organization)

Authorized Representative (Please Print)

_____

_____

Title (Please Print)

Date of execution by Investor(s):

_____

_____

Social Security or Taxpayer I.D. No. (If joint purchase indicate both numbers)

Please check appropriate box:
U.S. Citizen: Yes:____ No:____

EXHIBIT A

CERTIFICATE OF PARTNERSHIP INVESTOR

CERTIFICATE OF _____ (the "Partnership")
(Name of Partnership)

The undersigned, constituting all of the partners of the Partnership who must consent to the proposed investment by the Partnership, hereby certify as follows:

1. That the Partnership commenced business on and was established pursuant to a Partnership Agreement dated _____ (the "Agreement").

2. That a true and correct copy of the Agreement is attached hereto and that, as of the date hereof, the Agreement has not been amended (except as to any attached amendments) or revoked and is still in full force and effect.

3. That, we have the authority to determine, and have determined, (i) that the investment in, and the purchase of an interest in Black Diamond Ventures XII-B, LLC is of benefit to the Partnership and (ii) to make such investment on behalf of the Partnership.

4. That_____
_____ is
(are) authorized to execute all necessary documents in connection with the Partnership's investment in Black Diamond Ventures XII-B, LLC.

IN WITNESS WHEREOF, I/we have executed this certificate as the General Partner(s) of the Partnership this ___ day of _____ 201_ and declare that it is truthful and correct.

_____
(Name of Partnership)

By:_____
General Partner

By:_____
General Partner

(attach additional sheets if necessary)

EXHIBIT B
CERTIFICATE OF LIMITED LIABILITY COMPANY INVESTOR

CERTIFICATE OF _____ (the "Limited Liability Company")
(Name of Limited Liability Company)

The undersigned, constituting all of the members of the Limited Liability Company who must consent to the proposed investment by the Limited Liability Company, hereby certify as follows:

1. That the Limited Liability Company commenced business on and was established pursuant to an Operating Agreement dated _____ (the "Agreement").

2. That a true and correct copy of the Agreement is attached hereto and that, as of the date hereof, the Agreement has not been amended (except as to any attached amendments) or revoked and is still in full force and effect.

3. That, we have the authority to determine, and have determined, (i) that the investment in, and the purchase of an interest in _____, is of benefit to the Limited Liability Company and (ii) to make such investment on behalf of the Limited Liability Company.

4. That _____ is (are) authorized to execute all necessary documents in connection with the Limited Liability Company's investment in _____.

IN WITNESS WHEREOF, I/we have executed this certificate as the Managing Member(s) and/or _____ of the Limited Liability Company this ___ day of _____ 201__ and declare that it is truthful and correct.

_____
(Name of Limited Liability Company)

By:_____
Managing Member or _____

By:_____
Managing Member or _____

(attach additional sheets if necessary)

EXHIBIT C

CERTIFICATE OF TRUST INVESTOR

CERTIFICATE OF _____ (the "Trust")
(Name of Trust)

The undersigned, constituting all of the trustees of the Trust who must consent to the proposed investment by the Trust, hereby certify as follows:

1. That the Trust was established pursuant to a Trust Agreement dated _____ (the "Agreement").

2. That a true and correct copy of the Agreement is attached hereto and that, as of the date hereof, the Agreement has not been amended (except as to any attached amendments) or revoked and is still in full force and effect.

3. That, as the Trustee(s) of the Trust, I/we have determined that an investment in, and the purchase of, an interest in Black Diamond Ventures XII-B, LLC, is of benefit to the Trust and have determined to make such investment on behalf of the Trust.

4. That _____
_____
is/are authorized to execute on behalf of the Trust, any and all documents in connection with the Trust's investment in Black Diamond Ventures XII-B, LLC.

IN WITNESS WHEREOF, we have executed this certificate as the Trustee(s) of the Trust this ___ day of _____, 201_, and declare that it is truthful and correct.

_____
(Name of Trust)

By:_____
Trustee

By:_____
Trustee

(attach additional sheets if necessary)

EXHIBIT D

CERTIFICATE OF CORPORATE INVESTOR

CERTIFICATE OF _____ (the "Corporation")
(Name of Corporation)

The undersigned, being the duly elected and acting Secretary or Assistant Secretary of the Corporation, hereby certifies as follows:

1. That the Corporation was incorporated under the laws of the State of _____ and commenced business on _____.

2. That a true and correct copy of the Certificate or Articles of Incorporation and Bylaws of the Corporation are attached hereto and that, as of the date hereof, the Certificate, Articles of Incorporation and Bylaws have not been amended (except as to any attached amendments) or revoked and are still in full force and effect.

3. That the Board of Directors of the Corporation has determined that the investment in, and the purchase of, an interest in Black Diamond Ventures XII-B, LLC, is of benefit to the Corporation and has determined to make such investment on behalf of the Corporation. Attached hereto is a true, correct and complete copy of resolutions of the Board of Directors (or an appropriate committee thereof) of the Corporation duly authorizing this investment, and said resolutions have not been revoked, rescinded or modified and, at the date hereof, are in full force and effect.

4. That the following named individuals are duly elected officers of the Corporation, who hold the offices set opposite their respective names and who are duly authorized to execute any and all documents in connection with the Corporation's investment in Black Diamond Ventures XII-B, LLC, and that the signatures written opposite their names and titles are correct and genuine signatures.

Name		Title		Signature

IN WITNESS THEREOF, I have executed this certificate and affixed the seal of the Corporation this ____ day of _____, 201_, and declare that it is truthful and correct.

_____
(Name of Corporation)

By:_____
Name:
Title:

SIGNATURE PAGE FOR

LIMITED LIABILITY COMPANY AGREEMENT

OF

BLACK DIAMOND VENTURES XII-B, LLC

A CALIFORNIA LIMITED LIABILITY COMPANY

I understand that the signature(s) subscribed below together with the signatures on the counterpart pages will be attached to the Operating Agreement for Black Diamond Ventures XII-B, LLC, a California limited liability company.

MEMBERS:

Date: _____

_____
Print Name of Member

_____
Signature
Title (for Members other than individuals)

SCHEDULE A

VERIFICATION OF STATUS AS ELIGIBLE PARTICIPANT IN "NEW ISSUES"

PLEASE INITIAL ALL APPLICABLE STATEMENTS BELOW

A. The undersigned is any of the following:

1. ____ A FINRA member firm or other broker-dealer.

2. ____ An general partner or associated person of a FINRA member firm or other broker-dealer (other than a limited business broker-dealer)[7].

3. ____ An agent of a FINRA member firm or other broker-dealer (other than a limited business broker-dealer) that is engaged in the investment banking or securities business.

4. ____ An immediate family member[8] of a person specified in 2 or 3 above if such person (i) receives from, or provides to, the immediate family member material support;[9] (ii) is employed by or associated with the member, or an affiliate of the member, selling the new issue to the immediate family member; or (iii) has the ability to control the allocation of the new issue..

5. ____ A finder or other person acting in a fiduciary capacity to the managing underwriter of the new issue, including, but limited to, attorneys, accountants and financial consultants.

6. ____ A person who has the authority to buy or sell securities for a bank, savings and loan institution, insurance company, investment company, investment adviser or collective investment account[10].

7. ____ An immediate family member of a person specified in 6 or 7 above who receives from, or provides to, such person material support.

8. ____ A person listed (or required to be listed) in Schedule A of Form BD (other than with respect to a limited broker-dealer), except persons identified by an ownership code of less than 10%.

9. ____ A person listed (or required to be listed) in Schedule B of Form BD (other than with respect to a limited broker-dealer), except persons whose listing on Schedule B relates to an ownership interest in a person listed on Schedule A identified by an ownership code of less than 10%.

10. ____ A person listed (or required to be listed) in Schedule C of Form BD that meets the criteria specified in 8 and 9 above.

11. ____ A person that directly or indirectly owns 10% or more of a public reporting company that is listed (or required to be listed) in Schedule A of Form BD, other than a reporting company that is listed on a national securities exchange or traded on the NASDAQ or other than with respect to a limited business broker-dealer.

12. ____ A person that directly or indirectly owns 25% or more of a public reporting company that is listed (or required to be listed) in Schedule B of Form BD, other than a reporting company that is listed on a national securities exchange or traded on the NASDAQ or other than with respect to a limited business broker-dealer.

13. ____ An immediate family member of a person specified in 8-12 above unless such person (i) does not receive from, or provide to, the immediate family member material support; (ii) is not an owner of the member, or an affiliate of the member, selling the new issue to the immediate family

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[7] "Limited business broker-dealer" means a broker-dealer whose authorization to engage in the securities business is limited solely to the purchase and sale of investment company/variable contracts securities and direct participation program securities.

[8] "Immediate family member" includes a person's parents, mother-in-law, father-in-law, spouse, brother, sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law and children and any other individual to whom the person provides material support.

[9] "Material support" means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Members of the immediate family living in the same household are deemed to be providing one another with material support.

[10] "Collective investment account" means any hedge fund, investment partnership, investment corporation or any other collective investment vehicle that is engaged primarily in the purchase and/or sale of securities but does not include a family investment vehicle (i.e., a legal entity that is beneficially owned solely by immediate family members) or an investment club (i.e., a group of friends, neighbors or business associates or others that pool their money to invest in securities and are collectively responsible for making investment decisions).

member; and (iii) has no ability to control the allocation of a new issue.

14. ____ An account in which any of the persons referred to in 1 through 13 above has a beneficial interest.

(a) If the undersigned initialed this statement (14), does the undersigned employ "carve out" procedures in accordance with FINRA Rule 5130?

_____ Yes _____ No

(b) If the undersigned responded "No" to question 14(a), please provide the percentage of the account that is beneficially owned by persons listed in 1 through 13 above.

_____%

15. ____ An executive officer or director of a public company[11].

Name of company: _____

_____

_____

16. ____ An executive officer or director of a covered non-public company[12].

Name of company: _____

_____

_____

17. ____ A person who receives material support from an executive officer or director of a public company or covered non-public company.

Name of company: _____

_____

_____

18. ____ A collective investment account in which an executive officer or director of a public company[13] or covered non-public company[14], or any person that receives material support from any such executive officer or director (each, a "**Restricted Participant**"), has a beneficial interest.

(a) If the undersigned initialed this statement (18), please indicate the name of each public company or covered non-public company with respect to which a person with a beneficial interest in the undersigned is a Restricted Participant and the aggregate percentage share of beneficial interests in the undersigned that is held by such company's Restricted Participants.

Name of company: _____ ____%

_____ ____%

_____ ____%

(b) If the undersigned initialed this statement (18), do the Restricted Participants affiliated with each public company or covered non-public company hold, in the aggregate, more than 25% of the beneficial interests in the undersigned that participate in new issues received by the undersigned?

_____ Yes _____ No

[11] "Public company" means any company that is registered under Section 12 of the Exchange Act or files periodic reports pursuant to Section 15(d) of the Exchange Act.

[12] "Covered non-public company" means any non-public company satisfying the following criteria: (i) income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.

[13] "Public company" means any company that is registered under Section 12 of the Exchange Act or files periodic reports pursuant to Section 15(d) of the Exchange Act.

[14] "Covered non-public company" means any non-public company satisfying the following criteria: (i) income of at least $1 million in the last fiscal year or in two of the last three fiscal years and shareholders' equity of at least $15 million; (ii) shareholders' equity of at least $30 million and a two-year operating history; or (iii) total assets and total revenue of at least $75 million in the latest fiscal year or in two of the last three fiscal years.

(c) If the undersigned initialed this statement (18), please indicate the name of each public company or covered non-public company to which the Restricted Participants are affiliated and the aggregate percentage share of beneficial interests in the undersigned that participate in new issues held by such Restricted Participants in such company.

Name of company: _____ ____%

_____ ____%

_____ ____%

19. ____ The undersigned is none of the above.

B. If any of statements 1-18 in Part A was initialed, please complete the following:

The undersigned is any of the following (please check all applicable):

1. ____ An investment company registered under the 1940 Act.

2. ____ A common trust fund or similar fund described in Section 3(a)(12)(A)(iii) of the Exchange Act, that (i) has investments from 1,000 or more accounts and (ii) does not limit beneficial interests in such fund principally to trust accounts of persons enumerated in Part A above (each, a "**Restricted Person**").

3. ____ An insurance company general, separate, or investment account, provided that (i) the account is funded by premiums from 1,000 or more policyholders, or, if a general account, the insurance company has 1,000 or more policyholders and (ii) the insurance company does not limit the policyholders whose premiums are used to fund the account principally to Restricted Persons, or, if a general account, the insurance company does not limit its policyholders principally to Restricted Persons.

4. ____ An account whose beneficial interests that are owned by Restricted Persons do not exceed in the aggregate 10% of such account.

5. ____ A publicly traded entity (other than a broker-dealer or an affiliate of a broker-dealer where such broker-dealer is authorized to engage in the public offering of new issues either as a selling group member or underwriter) that (i) is listed on a national securities exchange or traded on the NASDAQ or (ii) is a foreign issuer whose securities meet the quantitative designation for listing on a national securities exchange or trading on the NASDAQ.

6. ____ An investment company organized under the laws of a foreign jurisdiction, provided that (i) the investment company is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority and (ii) no person owning more than 5% of the shares of the investment company is a Restricted Person.

7. ____ An ERISA benefits plan that is qualified under Section 401(a) of the Code, provided such plan is not sponsored solely by a broker-dealer.

8. ____ A state or municipal government benefits plan that is subject to state and/or municipal regulation.

9. ____ A tax-exempt charitable organization under Section 501(c)(3) of the Code.

10. ____ A church plan under Section 414(e) of the Code.