

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP

OF

VIACHEM, LTD.

THE LIMITED PARTNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, TRANSFERRED, OR OTHERWISE DISPOSED OF UNTIL THE HOLDER THEREOF PROVIDES EVIDENCE SATISFACTORY TO THE GENERAL PARTNER (WHICH, IN THE DISCRETION OF THE GENERAL PARTNER, MAY INCLUDE AN OPINION OF COUNSEL SATISFACTORY TO THE GENERAL PARTNER) THAT SUCH OFFER, SALE, PLEDGE, TRANSFER OR OTHER DISPOSITION WILL NOT VIOLATE APPLICABLE FEDERAL OR STATE SECURITIES LAWS.

THE PARTNERSHIP INTERESTS THAT ARE THE SUBJECT OF THIS AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP ARE SUBJECT TO RESTRICTIONS ON THE TRANSFER, SALE, PLEDGE, OR OTHER DISPOSITION AS SET FORTH IN ARTICLE 10 OF THIS AGREEMENT.

**AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF
VIACHEM, LTD.**

This Amended and Restated Agreement of Limited Partnership (the "Agreement") of Viachem, Ltd., a Texas limited partnership (the "Partnership"), is executed effective on April 30, 2007 (the "Effective Date"), by and between Viachem Specialties, Inc., a Texas corporation (the "General Partner"), and Limited Partners as set forth on Exhibit "A" attached hereto (collectively the "Limited Partners").

Reference is hereby made to that certain Agreement of Limited Partnership of Viachem, Ltd. dated as of February 22, 2006 (the "Original Agreement"), which is hereby amended and restated in its entirety.

WITNESSETH:

WHEREAS, on February 22, 2006, the Certificate of Formation of Viachem, Ltd. was filed with the Secretary of State of the State of Texas with pursuant to and in accordance with the Texas Business Organizational Code and the Texas Revised Limited Partnership Act; and

WHEREAS, the General Partner and the Limited Partners desire to adopt this Agreement to amend and restate the Original Agreement and to govern the affairs of the Partnership.

NOW, THEREFORE, in consideration of the premises, the mutual promises and agreements herein made, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the General Partner and the Limited Partners hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 ***Certain Definitions.*** As used in this Agreement, each of the following terms has the meaning given to it below:

"Adjusted Capital Account Deficit" means, with respect to an interest owner, the deficit balance, if any, in the interest owner's Capital Account as of the end of the relevant Adjustment Period, after giving effect to the following adjustments:

(a) Each Capital Account will be increased to reflect any amounts that such interest owner is obligated to restore to the Partnership or is deemed to be obligated to restore under Treasury Regulations Sections 1.704-1(b)(2)(ii)(c) and 1.704-2(g) and (i)(5); and

(b) Each Capital Account will be decreased by the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6).

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This definition of Adjusted Capital Account Deficit and the application of the term in the manner provided in this Agreement are intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and will be interpreted consistently with those provisions.

"Adjustment Period" means any period of time that begins on the effective date of the filing of the Certificate with the Secretary of State of the State of Texas (in the case of the first Adjustment Period) or the day following the end of the immediately preceding Adjustment Period (with respect to each subsequent Adjustment Period) and ends on the first to occur of: (a) the last day of a fiscal year, (b) the day immediately preceding the date of the "liquidation" of a partner's interest in the Partnership (within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations), or (c) the date on which the Partnership is terminated pursuant to Section 12.1(d) following dissolution.

"Capital Account" means, with respect to any interest owner, the capital account maintained for such interest owner in accordance with the rules of Section 1.704-1(b)(2)(iv) of the Regulations. Subject to Section 1.704-1(b)(2)(iv) of the Regulations:

(a) To each interest owner's Capital Account there will be credited such interest owner's capital contribution (net of liabilities that the Partnership is considered to assume or to take subject to under Code Section 752 to the extent such liabilities were not taken into account in determining the capital contribution) and such interest owner's distributive share of profits and any items in the nature of income or gain that are specially allocated pursuant to Section 4.3.

(b) To each interest owner's Capital Account there will be debited the amount of cash and the gross asset value of any property distributed to such interest owner pursuant to any provision of this Agreement (net of liabilities that such interest owner is considered to assume or to take subject to under Code Section 752) and such interest owner's distributive share of losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 4.3.

(c) In the event all or a portion of a interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred interest in the Partnership.

The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Regulations, and they will be interpreted and applied in a manner consistent with such Regulations.

"Distributable Cash" of the Partnership means all cash funds of the Partnership on hand at any time after payment of all expenses of the Partnership payable as of such time, as reduced by the amount of the working capital reserve and of the liquidation escrow, if any, at such time, as determined by the General Partner in its sole discretion.

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"Event of Withdrawal" means, with respect to the General Partner, the occurrence of any of the following events:

(a) The General Partner gives written notice to the other partners of its withdrawal and such withdrawal becomes effective under Section 5.8;

(b) any of the events specified in Section 4.02(a)(6), (7), (8), (9) or (10) of the Texas Revised Limited Partnership Act or any corresponding provisions of the Texas Business Organizations Code (collectively the "Partnership Act") occurs with respect to The General Partner (unless a Majority in Interest of the Limited Partners agree that such event will not constitute an Event of Withdrawal, which agreement will be deemed for purposes of the Partnership Act to be the equivalent of this Agreement providing that such event is not an Event of Withdrawal); or

(c) any other event that, pursuant to the following paragraph, a Majority in Interest of the Limited Partners agrees is an Event of Withdrawal.

To the extent the Partnership Act permits modification of the provisions of Section 4.02(a) of the Partnership Act, no other event that would be an event of withdrawal with respect to The General Partner under Subsection 4.02(a) of the Partnership Act will be an Event of Withdrawal unless a Majority in Interest of the Limited Partners agree that such event will constitute an Event of Withdrawal).

"Gross Income" means, for each Adjustment Period, an amount equal to the Partnership's gross income as determined for federal income tax purposes for the Adjustment Period but computed with the adjustments in paragraphs (a) through (f) of the definition of "Profits" and "Losses."

"Liquidating Manager" means the General Partner or Partners who did not wrongfully dissolve the Partnership who remain after the Partnership is dissolved, if its business is not properly carried on, or, in the absence of any such remaining General Partner, the person or persons selected to effect the liquidation of the Partnership by a Majority in Interest of the Limited Partners or, in both the absence of any such General Partner and the failure of the Limited Partners to select a Liquidating Manager within the period of time during which the Partnership's business may be properly continued following its dissolution, the person or persons appointed by a court of competent jurisdiction pursuant to Section 8.04(a) of the Partnership Act.

"Majority in Interest" means, with respect to any group of Partners, one or more Partners of that group who, together with their direct and indirect assignees who have not been admitted as a substituted Partner in respect of any Partnership Interest transferred by such partner or partners, own more than 51% of the Sharing Ratios owned by all Partners of that group (or such assignees).

"Partially Adjusted Capital Account" means, with respect to any interest owner as of the close of business on the last day of any Adjustment Period, the Capital Account of such interest owner as of the beginning of such Adjustment Period, after giving effect to all allocations of

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items of income, gain, loss, or deduction not included in net Profit and net Loss and all capital contributions and distributions during such period but before giving effect to any allocations of net Profit or net Loss for such period pursuant to Section 4.2, increased by (a) such interest owner's share of Partnership minimum gain, as determined pursuant to Regulations Section 1.704-(2)(d), as of the end of such Adjustment Period and (b) such interest owner's share of Partner nonrecourse debt minimum gain, as determined pursuant to Regulations Section 1.704-(2)(i), as of the end of such Adjustment Period.

"Profits" and *"Losses"* means, for each Adjustment Period, the Partnership's taxable income or taxable loss for the Adjustment Period, as determined under Section 703(a) of the Code and Section 1.703-1 of the Regulations (and for this purpose all items of income, gain, loss, or deduction required to be stated separately under Section 703(a)(1) of the Code will be included in taxable income or taxable loss), but with the following adjustments:

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

(b) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Regulations that are not otherwise taken into account in computing Profits and Losses will be subtracted from such taxable income or loss;

(c) In the event the gross asset value of any Partnership asset is adjusted, the amount of such adjustment will be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(d) Gain or loss resulting from any disposition of any Partnership asset with respect to which gain or loss is recognized for federal income tax purposes will be computed by reference to the gross asset value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its gross asset value;

(e) The depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss will be taken into account for such Adjustment Period in accordance with Section 1.704-1(b)(2)(iv)(g) of the Regulations;

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

(g) Notwithstanding any other provisions of this definition, any items that are specially allocated pursuant to Section 4.3 will not be taken into account in computing Profits and Losses.

If the Partnership's taxable income or taxable loss for the Adjustment Period, as adjusted in the manner provided in paragraphs (a) through (g) above, is a positive amount, the amount will be the Partnership's Profits for the Adjustment Period; and if negative, the amount will be the Partnership's Losses for the Adjustment Period. The amounts of the items of Partnership income, gain, loss, or deduction available to be specially allocated pursuant to Section 4.3 will be determined by applying rules analogous to those set forth in clauses (a) through (f) above.

1.2 ***Other Definitions; References to Definitions.*** Other terms defined herein have the meanings so given them. Each reference in this Agreement to a definition is a reference to a definition contained in this Agreement, unless the context expressly provides otherwise.

ARTICLE 2. ORGANIZATIONAL MATTERS

2.1 ***Formation.*** The Partnership has been organized as a Texas limited partnership by filing the Certificate in the office of the Secretary of State of the State of Texas under and pursuant to the Partnership Act.

2.2 ***Name.*** The name of the Partnership is "Viachem, Ltd." The business of the Partnership will at all times be conducted under such name unless the General Partner selects another name or names in which the Partnership will conduct business.

2.3 ***Name and Address of Partners.*** The name and address of each partner of the Partnership are set forth on Exhibit A. Each such person shown on Exhibit A on the effective date of this Agreement is admitted to the Partnership as the General Partner or limited partner, as designated on Exhibit A. Any change in the status of a partner, the dilutions of the partners' interest, the name and address of each person who later becomes a partner, and any change in the address of any partner of which the Partnership is given notice will be as set forth in the records of the Partnership and Exhibit A will be deemed amended appropriately. The General Partner may substitute a new Exhibit A (indicating its effective date) to reflect such additional and/or different information. The records of the Partnership will be *prima facie* evidence of the status of any person as a partner or interest owner.

2.4 ***Registered Office and Registered Agent.*** The General Partner will use commercially reasonable efforts to ensure that the Partnership maintains a registered office and registered agent in the State of Texas. The initial registered office and registered agent of the Partnership in the State of Texas will be as set forth in the Certificate. The General Partner may at any time designate a new or successor registered office or registered agent, or both.

2.5 ***Principal Office and Other Offices.*** The principal address and place of business of the Partnership and the place where the Partnership's books and records will be kept will be 2701 North Dallas Parkway, Suite 250, Plano, Texas 75093 or such other place as the General Partner may designate from time to time by notice to the other partners. The Partnership may

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have such other office or offices as the General Partner may designate from time to time by notice to the other Partners.

2.6 *Purpose.*

(a) The purposes of the Partnership shall be to conduct the following activities: (i) organize and operate a business to buy and sell chemicals products throughout the United States, and internationally; (ii) contract with manufacturers of chemicals to handle the sales and distribution of their products; (iii) engage to carry on and engage in any and all other general business activities incidental or reasonably related to the business of the Partnership, including, without limitation, borrowing money from any source, whether secured or unsecured, pledging assets of the Partnership to secure the indebtedness and obligations of the Partnership and/or of affiliates of the Partnership, and contracting for necessary or desirable services of professionals and others; (iv) sell, encumber, pledge, exchange or otherwise dispose of all or any portion of the assets of the Partnership; (v) otherwise deal with the business and undertake any and all actions necessary or incidental to any of the foregoing activities.

(b) The Partnership shall be a partnership only for the purposes specified hereinabove, and this Agreement shall not be deemed to create a partnership between the partners with respect to any activities whatsoever other than the activities within the purposes of the Partnership as specified above.

(c) No partner shall have the power to bind, to act for or to assume any obligation or responsibility on behalf of the other partners or the Partnership, except as specifically authorized by this Agreement.

2.7 *Certificate; Foreign Qualification.* The Certificate was filed with the Secretary of State of the State of Texas and will be amended from time to time as required by the Partnership Act. Upon the request of the General Partner, each other partner will immediately execute all certificates and other documents consistent with the terms of this Agreement that the General Partner believes are necessary or desirable for the General Partner to accomplish all filing, recording, publishing, and other acts as may be appropriate to comply with all requirements to form, operate, qualify, continue, and terminate the Partnership as (a) a limited partnership under the Partnership Act and the laws of the State of Texas and (b) a limited partnership, or a partnership in which each Partner other than the General Partner has limited liability, in all other jurisdictions where the Partnership proposes to operate.

2.8 *Governmental Certificates.* Prior to commencing any activities in any jurisdiction other than the State of Texas, the partners will execute and acknowledge, and the Partnership will promptly file or record with the proper offices in such jurisdiction, such certificates as are required or permitted by any partnership or fictitious name act or similar statute in effect in such jurisdiction or political subdivision. The Partners will further execute and acknowledge, and the Partnership will promptly file or record as aforesaid, such amended certificates or additional certificates as may from time to time be required to permit the continued existence and operation of the Partnership.

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2.9 **Term.** The Partnership's existence will commence on the effective date of the initial filing of the Certificate with the Secretary of State of the State of Texas and will continue until the Partnership terminates pursuant to Section 12.1(d) following dissolution. The Partnership may not conduct business until the Certificate has been filed with the Secretary of State of the State of Texas.

2.10 **Merger.** The Partnership may effect or participate in a merger, as such term is defined in the Partnership Act, or enter into an agreement to do so, with the consent of the General Partner and of a Majority in Interest of the Limited Partners.

ARTICLE 3. CAPITAL CONTRIBUTIONS

3.1 **Initial Capital Contributions and Sharing Ratios.**

(a) **Effective Date Capital Contributions.** Contemporaneously with the execution of this Agreement, each Partner will contribute to the capital of the Partnership the amount of cash as agreed with the General Partner and all be assigned its sharing ratios as set forth across from such Partner's name on Exhibit A. The contribution required to purchase a Partnership Interest may vary among Partners and will be determined in the sole discretion of the General Partner. Each new partner will dilute the interest of all other partners. The Partnership Interest (the "Partnership Interest") shall represent the Partner's interest in the Partnership and used to determine the Partner's Sharing Ratios.

(b) **Sharing Ratios.** Each Partnership Interests shall, from time to time, have associated with it a Sharing Ratio. Immediately after the capital contributions required by this Section 3.1 have been made, the Sharing Ratios of each person who hereafter becomes a Partner and any changes in the Sharing Ratios contemplated by Section 3.2 or Section 3.4 shall be as set forth in the records of the Partnership and Exhibit A will be deemed amended appropriately. The General Partner is hereby authorized to substitute a new Exhibit A (indicating the effective date) to reflect such new or changed Sharing Ratios. The records of the Partnership shall be prima facie evidence of the Sharing Ratio of any Partner.

3.2 **Additional Partners.** Additional Partnership Interests may be added and additional Limited Partners may be admitted at prices (at a minimum of \$25,000 per Partnership percentage point) to be determined by the General Partner in its sole discretion, and the additional Partnership Interests may have the same or different rights, powers, capital contributions, and duties as preexisting Partnership Interests may be created and issued to persons (including existing Partners) and such persons may be admitted as Partners on such terms and conditions as the General Partner may determine at the time of admission. The General Partner has the authority to and shall reflect the issuance of additional partnership interests and/or the creation of any partnership interests that, in each case, is approved in accordance with this Agreement, in an amendment to this Agreement. Any such admission is effective only after the new Partner has executed and delivered to the General Partner a

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document including the new Partner's address for notices, its agreement to be bound by this Agreement, and its representation and warranty that the representations and warranties in Section 6.3 are true and correct with respect to the new Partner. Upon admission of a new Partner, that new Partner shall automatically be vested with the Sharing Ratio and status rights related to the Partnership Interest in respect of which such partner is admitted and Exhibit A shall be, and shall be deemed to be, automatically amended to reflect such admission, including any changes in the identity, address, and/or Sharing Ratio of any or all of the Partners resulting from such admission. The General Partner is hereby authorized to substitute a new Exhibit A (indicating its effective date) to reflect such admissions and such changes. The provisions of this Section 3.2 shall not apply to Partnership Interests that are transferred by a Partner.

3.3 *No Additional Capital Contributions.* No Partner will be required to make any capital contributions to the Partnership unless otherwise agreed to in writing by the Partner from whom such additional capital contribution is sought.

3.4 *Return of Contributions.* No Partner is entitled to the return of any part of its capital contributions or to be paid interest in respect of either its capital account or its capital contributions. Except as provided in Section 3.7, an unreturned capital contribution is not a liability of the Partnership or of any Partner or interest owner. Except as provided in Section 3.7, no Partner or is required to contribute or to lend any cash or property to the Partnership to enable the Partnership to return any Partner's capital contributions.

3.5 *Capital Accounts.* There will be established for each partner a Capital Account on the books of the Partnership to be maintained and adjusted pursuant to this Agreement. The General Partner, in its sole discretion, may maintain such other accounts for the Partners as it deems necessary or appropriate for financial reporting purposes.

3.6 *Other Provisions With Respect to Capital Contributions.* Except as otherwise provided in this Agreement, no Partner will be entitled to priority over any other Partner or with respect to a return of its capital contributions. No payment of fees, salary, loans, or other amounts to a Partner or (other than a distribution expressly characterized as a return of capital contributions under this Agreement) will be considered a return of capital contributions. No Limited Partner shall be personally liable for the debts of the Partnership beyond such Limited Partner's capital contribution.

3.7 *No Duty to Restore Negative Capital Account.* Except to the extent otherwise required herein or agreed to in writing by a Partner or no Partner is required to contribute or lend any cash to the Partnership to enable the Partnership to return any other Partner's capital contribution or to make any distribution to any Partner even if such Partner or interest owner has a deficit balance in its Capital Account.

ARTICLE 4. DISTRIBUTIONS AND ALLOCATIONS

4.1 *Distributions of Distributable Cash.* Distributable Cash will be distributed by the Partnership at such times as the General Partner determines, in its sole discretion. Distributions of cash or property in respect of a Partnership Interest will be made only to the person who,

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according to the books and records of the Partnership, is the holder of such Partnership Interest in respect of which such distribution is made on the date of such distribution. Approved transfers of Partnership Interests shall be effective on the later of last day of the month in which the transfer was made the last day of the month in which the Partnership receives written notice of the transfer. The General Partner, in its sole discretion, will determine the date for any distribution of Distributable Cash. Notwithstanding any other provision of this Article 4, in the event that the Partnership shall report taxable Profits for a given tax year, the General Partner shall make, on or before the March 31 following such tax year, tax distributions for the Partners equal to (i) the income allocated to each Partner, multiplied by (ii) the then-current highest individual marginal income tax rate.

(a) The Distributable Cash from operations, if any, will be applied by the Partnership or distributed to the Partners in the following order of priority:

(i) First, to the repayment of Partner loans, with Partner loans that have been outstanding the longest to be repaid first and if two or more Partners have Partner loans that have been outstanding for equal periods, repayment of such loans will be made in proportion to such Partners' respective outstanding loan balances, with payments applied first to accrued but unpaid interest and then to unreturned principal; and then

(ii) Next, to the Partners, to the extent of and in proportion to in their respective pro rata unreturned capital contributions; and then

(iii) Next, to the Partners, pro rata in accordance with their respective Sharing Ratios.

(b) The Distributable Cash from a capital transaction (i.e., other than from operations), if any, will be applied by the Partnership or distributed to the Partners in the following order of priority:

(i) First, to the repayment of Partner loans, with Partner loans that have been outstanding the longest to be repaid first and if two or more Partners have Partner loans that have been outstanding for equal periods, repayment of such loans will be made in proportion to such Partners' respective outstanding loan balances, with payments applied first to accrued but unpaid interest and then to unreturned principal; and then

(ii) Next, the Partners, to the extent of and in proportion to their respective total capital contributions until each Partner has received a preferred return equal to (A) four (4) times such Partner's total capital contributions, until aggregate proceeds of \$12,500,000 have been distributed pursuant to this provision, (B) three (3) times such Partner's total capital contributions, until aggregate proceeds of an additional \$12,500,000 (for an aggregate total of \$25,000,000) have been distributed pursuant to this provision, and thereafter, (C) two (2) times such

Partner's total capital contributions for aggregate proceeds in excess of \$25,000,000; and then

(iii) Next, to the Partners, pro rata in accordance with their respective sharing ratios.

4.2 **Allocation of Profits and Losses.** After application of Sections 4.3 and 4.4, Profits and Losses for each Adjustment Period will be initially allocated among the Partners to reflect the distributions to such Partners as provided in Sections 4.1(a) and (b) in excess of their respective capital contributions, and thereafter a money the Partners so as to reduce, proportionately, in the case of Profits, the excess of their respective Capital Accounts over their respective (Partially Adjusted Capital Accounts) for such Adjustment Period and, in the case of Losses, the excess of their respective Partially Adjusted Capital Accounts over their respective Capital Accounts for such Adjustment Period. No portion of Profits or Losses for any Adjustment Period will be allocated to a partner, in the case of Profits, whose Partially Adjusted Capital Account is greater than or equal to its Capital Account or, in the case of Losses, whose target Capital Account is greater than or equal to its Partially Adjusted Capital Account for such Adjustment Period.

4.3 **Special Allocations.** The following special allocations will be made in the following order before allocations of Profits and Losses are made:

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement to the contrary, if in any Adjustment Period there is a net decrease in Partnership minimum gain, then each partner will first be allocated items of Gross Income for the Adjustment Period (and, if necessary, subsequent Adjustment Periods) in an amount equal to the portion of the Partner's share of the net decrease in Partnership minimum gain, determined in accordance with Section 1.704-2(g) of the Regulations that is attributable to the disposition of Partnership property subject to one or more nonrecourse liabilities of the Partnership that are not partner nonrecourse debts; *provided, however*, if there is insufficient Gross Income in an Adjustment Period to make the above allocation for all partners for the Adjustment Period, the Gross Income will be allocated among the partners in proportion to the respective amounts they would have been allocated had there been an unlimited amount of Gross Income for the Adjustment Period.

(b) **Minimum Gain Chargeback for Partner Nonrecourse Debt.** Notwithstanding any other provision of this Agreement to the contrary other than Subsection 4.3(a), if in any Adjustment Period there is a net decrease in partner nonrecourse debt minimum gain, then each partner will first be allocated items of Gross Income for the Adjustment Period (and, if necessary, subsequent Adjustment Periods) in an amount equal to the portion of the partner's share of the net decrease in the Minimum Gain during the Adjustment Period (as determined in accordance with Section 1.704-2(i) of the Regulations) attributable to the disposition of Partnership property subject to one or more partner nonrecourse debts; *provided, however*, if there is insufficient Gross Income in an Adjustment Period to make the above allocation for all partners for the year,

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the Gross Income will be allocated among the partners in proportion to the respective amounts they would have been allocated had there been an unlimited amount of Gross Income for the Adjustment Period.

(c) **Qualified Income Offset.** After application of Subsections 4.3(a) and 4.3(b), if in any taxable year a limited partner unexpectedly receives any adjustment, allocation, or distribution described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations and if the limited partner has an adjusted Capital Account deficit, items of Gross Income will be allocated to the limited partners in the amount and in the manner sufficient to eliminate the adjusted Capital Account deficit as quickly as possible; *provided, however*, that an allocation under this Subsection 4.3(c) will be made only if and to the extent that the limited partner would have an adjusted Capital Account deficit after all other allocations provided for in this Article 4 have been tentatively made as if this Subsection 4.3(c) were not in this Agreement.

(d) **Gross Income Allocation.** In the event an interest owner has a deficit Capital Account at the end of any Adjustment Period that is in excess of the sum of (i) the amount the partner is obligated to restore to the Partnership pursuant to any provision of this Agreement, (ii) the amount that the partner is deemed to be obligated to restore to the Partnership pursuant to Section 1.704-1 (b)(2)(ii)(c) of the Regulations, and (iii) the amounts that the partner is deemed to be obligated to restore to the Partnership pursuant to Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, items of Gross Income will be allocated to the partner in the amount and in the manner sufficient to eliminate such deficit as quickly as possible; *provided, however*, that an allocation under this Subsection 4.3(d) will be made only if and to the extent that the partner would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article 4 have been tentatively made as if Subsection 4.3(c) and this Subsection 4.3(d) were not in this Agreement.

(e) **Partnership Nonrecourse Deductions.** Partnership nonrecourse deductions for any Adjustment Period will be allocated among the partners in proportion to their respective Sharing Ratios.

(f) **Partner Nonrecourse Deductions.** Partner nonrecourse deductions for any Adjustment Period or other period will be allocated to the partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner nonrecourse deductions are attributable.

(g) **Basis Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset is required pursuant to Code Section 732(d), Code Section 734(b), or Code Section 743(b), the Capital Accounts of the partners will be adjusted pursuant to Section 1.704-1(b)(2)(iv)(m) of the Regulations.

4.4 ***Other Special Allocations.***

(a) If the Partnership has Profits for any Adjustment Period (determined prior to giving effect to this Section 4.4) and the balance of any partner's Partially Adjusted Capital Account is greater than the balance of its Capital Account, then the Partner with such excess balance shall be specially allocated items of Partnership deduction or loss for such Adjustment Period (to the extent available) equal to the difference between its Partially Adjusted Capital Account and its Capital Account;

(b) If the Partnership has Losses for any Adjustment Period (determined prior to giving effect to this Section 4.4) and the balance of any Partner's Partially Adjusted Capital Account is less than the balance of its Capital Account, then the Partner with such deficit balance shall be specially allocated items of Partnership income or gain for such Adjustment Period (to the extent available) equal to the difference between its Partially Adjusted Capital Account and its Capital Account; and

(c) if the Partnership has neither Profits nor Losses for any Adjustment Period (determined prior to giving effect to this Section 4.4) and, notwithstanding the application of Section 4.2, the balance of any Partner's Partially Adjusted Capital Account differs from the balance of its target Capital Account, then the Partner with a positive or negative difference, as the case may be, shall be specially allocated items of Partnership deduction or loss or income or gain, as the case may be, for such Adjustment Period (to the extent available) to eliminate the difference between its Partially Adjusted Capital Account and its Capital Account; provided, however, that no Partner shall be allocated any Losses or items in the nature of deduction or loss pursuant to Section 4.2 or this Section 4.4 to the extent that such allocation would cause or increase an Adjusted Capital Account Deficit. Allocations of Losses that would be made to a Limited Partner but for the proviso in the first sentence of this clause shall be made to the General Partner to the extent not inconsistent with such proviso. To the extent allocations of Losses cannot be made to any Partner because of such proviso, such allocations shall be made to the Partner in accordance with their respective Sharing Ratios, notwithstanding such provision.

4.5 Allocations Under Section 704(c) of the Code. In accordance with Code Section 704(c) and the Treasury Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any asset contributed to the capital of the Partnership will, solely for tax purposes, be allocated among the interest owners so as to take account of any variation between the adjusted basis of such asset to the Partnership for federal income tax purposes and the gross asset value of the property. The General Partner will make any elections or decisions relating to allocations under this Section 4.5. Allocations under this Section 4.5 are solely for purposes of federal, state, and local taxes and will not affect, or in any way be taken into account in computing, any interest owner's Capital Account or share of Profits, Losses or other items or distributions under any provision of this Agreement.

4.6 Other Distribution and Allocation Rules.

(a) **Withholding.** Notwithstanding anything to the contrary contained in this Agreement, the General Partner, in its sole discretion, may withhold from any distribution of Distributable Cash or other cash or other property to any Partner

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contemplated by this Agreement any amounts due from such interest owner to the Partnership, the General Partner, or any other person in connection with the business of the Partnership to the extent not otherwise paid. If any provision of the Code, the Regulations, or state or local law or regulations requires the Partnership to withhold any tax with respect to a Partner's distributive share of Partnership income, gain, loss, deduction, or credit, the Partnership will withhold the required amount and pay the same over to the taxing authorities as required by such provision. The amount withheld will be deducted from the amount that would otherwise be distributed to that Partner but will be treated as though it had been distributed to the Partner with respect to which the Partnership is required to withhold. If at any time the amount required to be withheld by the Partnership exceeds the amount of money that would otherwise be distributed to the Partner with respect to which the withholding requirement applies, then that Partner will make a Capital Contribution to the Partnership equal to the excess of the amount required to be withheld over the amount, if any, of money that would otherwise be distributed to that Partner and that is available to be applied against the withholding requirement. Each of the Partner represents that such Partner is not aware of any provision of the Code, the Regulations, or state or local law or regulations that currently requires withholding of any tax by the Partnership with respect to such Partner.

(b) **Allocations Upon Transfers of Partnership Interests.** If any Partnership Interest is transferred, or the Sharing Ratio is increased or decreased by reason of the admission of a new Partner or otherwise, during any Adjustment Period, then Profits, Losses, each item thereof, and all other Partnership profit and loss attributable to such Partnership Interest for such Adjustment Period will be assigned pro rata to each day in the particular period of such Adjustment Period to which such item is attributable (*i.e.*, the day on or during which it is accrued or otherwise incurred) and the amount of each such item so assigned to any such day will be allocated among the Partners based upon their respective interests in the Partnership at the close of such day. For the purpose of accounting convenience and simplicity, the Partnership will treat a transfer of, or an increase or decrease in, a Partnership Interest or an increase or decrease in an Partner's Sharing Ratios that occurs at any time during a semi-monthly period as having been consummated on the first day of such semi-monthly period, regardless of when during such semi-monthly period such transfer, increase or decrease actually occurs (*i.e.*, transfers or increases or decreases made during the first 15 days of any month will be deemed to have been made on the first day of the month and transfers or increases or decreases thereafter will be deemed to have been made on the 16th day of the month).

(c) **Recapture Items.** For purposes of determining the nature (as ordinary income or unrecaptured Section 1250 gain [as defined in Code Section 1250(h)(6)(A) ("*Unrecaptured Section 1250 Gain*")]) of any item of Gross Income, income, or gain allocated among the partners for federal income tax purposes pursuant to Section 4.2 or 4.3, the portion of such item required to be recognized as ordinary income pursuant to Code Section 1245 or unrecaptured Section 1250 gain shall be deemed to be allocated among the partners in the same proportion that they were allocated the tax depreciation deductions, or basis reductions, directly or indirectly giving rise to such treatment under Code Section 1245 or Code Section 1250(h)(6), but each Partner shall be allocated such

amounts only to the extent that such partner is allocated any tax gain from the sale or other disposition of such property. The balance of such recapture, if any, shall be allocated to the Partners whose share of tax gain exceeds their share of such recapture ("*excess gain*"), and such balance shall be allocated to each such Partners in the proportion in which the excess gain of such Partners bears to the excess gains of all such Partners.

(d) **Other Items.** Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction, and other allocations not otherwise provided for will be divided among the Partners in the same proportions as they share Profits and Losses, as the case may be, for the period during which such items were allocated.

4.7 **Working Capital Reserve.** From time to time, the General Partner, in its sole discretion, may establish and maintain a working capital reserve (herein so called). If and to the extent the General Partner determines, in its sole discretion, that funds in the working capital reserve that have not been utilized by the Partnership are no longer required to be so maintained, such funds will be released from the working capital reserve and distributed in the manner in which they would have been distributed had they not been set aside to fund such working capital reserve. The General Partner will determine, in its sole discretion, the periods to which any funds released from the working capital reserve are attributable.

4.8 **Distribution in Kind.** Unless otherwise determined by the General Partner with the written consent of a Majority in Interest of the Limited Partners, no assets will be distributed in kind, regardless of any potential unrealized depreciation or appreciation in respect thereof. Any in-kind distributions will be made proportionately among the interest owners in accordance with the percentage of the distributions the interest owners are entitled to receive.

ARTICLE 5. MANAGEMENT; CERTAIN RIGHTS AND DUTIES OF THE GENERAL PARTNER

5.1 **Management of Partnership Affairs.** The Partnership will be managed by the General Partner who will have, subject to any restrictions imposed by applicable law or expressly imposed by this Agreement, full, complete, and exclusive authority to manage and control the business, affairs, and properties of the Partnership, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Partnership's business. In addition to the powers now or hereafter granted the General Partnership of a limited partnership under applicable law or that are granted the General Partner under any provision of this Agreement, subject to the limitations described in Section 5.2 and elsewhere in this Agreement, the General Partner will have the power, for and on behalf and in the name of the Partnership, to carry out and implement the purpose of the Partnership set forth in Section 2.6 and to do all things necessary or desirable or expedient in connection therewith or incidental thereto and to manage, conduct, and supervise the day-to-day business affairs of the Partnership and, without limiting the generality of the foregoing, to cause the Partnership to do the following:

(a) to acquire, purchase, own, hold, maintain, develop, operate, sell, exchange, lease, sublet, assign, transfer, or otherwise dispose of tangible and intangible properties of any kind and character;

(b) to enter into, become bound by, and perform obligations under contracts and instruments and to make all decisions and waivers thereunder;

(c) to open, maintain, and close bank accounts, make withdrawals therefrom, and designate and change signatories on such accounts;

(d) to procure and maintain with responsible companies insurance, including general liability, bodily injury, and property damage insurance, in amounts that are available and that are generally carried by similar entities;

(e) to incur all legal, accounting, investment banking, independent financial consulting, litigation, brokerage, registration, and other fees and expenses as it may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred;

(f) to collect amounts due the Partnership, settle claims, prosecute and defend lawsuits, and handle matters with governmental agencies;

(g) to exercise the voting rights of the Partnership on account of its ownership in any other Person; *provided however*, that if the action to be voted on is one that, if taken by the Partnership itself, would require the approval of other Partners, such approval will be required before the General Partner exercises such voting rights to approve such action;

(h) to borrow funds or otherwise commit the credit of the Partnership; and

(i) to make, constitute, and appoint, by written document duly executed and acknowledged, any person who does not suffer any legal disability, contractual or otherwise, that would prohibit such person from so acting, as the Partnership's true and lawful attorney and agent for it and in its name, place, and stead and for its use and benefit to perform any act or exercise any power or authority, all as specified in such document, that The General Partner might perform or exercise in accordance with this Agreement; *provided, however*, that no such appointment will relieve the General Partner of the duties and obligations imposed on it under this Agreement or the Partnership Act.

5.2 Limitations on Powers and Authority of the General Partner. Notwithstanding the provisions of Section 5.1, the General Partner may not cause the Partnership to do any of the following without the consent of a Majority in Interest of the Limited Partners (or, in the case of subsection (a), such other consent as would be required to amend this Agreement to provide that such act would not violate this Agreement):

(a) do any act in violation of this Agreement; or

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(b) do any act that would make it impossible to carry on the ordinary business of the Partnership (except in connection with the winding up of the Partnership's business).

5.3 **No Other Authority.** No person other than the General Partner has the right or authority to act for or on behalf of the Partnership, except to the extent otherwise expressly required by this Agreement or required by provisions of the, Partnership Act as amended from time to time, or other applicable law that cannot be modified by this Agreement.

5.4 **Reliance on Authority.** In its dealings with the Partnership, a third party may rely on the authority of the General Partner to bind the Partnership without reviewing the provisions of this Agreement or confirming compliance with the provisions of this Agreement.

5.5 **Reimbursement.** The General Partner is entitled to be reimbursed for out-of-pocket costs and expenses reasonably incurred by it in performing its duties under this Agreement.

5.6 **Standards of Performance.** Except as otherwise provided in this Agreement, The General Partner will perform its duties with respect to the Partnership in good faith and will devote such time and effort to the Partnership business and operations as the General Partner believes is reasonably necessary to manage the affairs of the Partnership prudently and only to the extent that the Partnership has the funds available to permit the General Partner to perform such duties. Furthermore, the General Partner is not liable for any action taken by the General Partner in reliance on the statements, valuations, information, opinions that were prepared or presented by legal counsel, public accountants, investment bankers or other persons as to matters the General Partner believed were within the person's professional or expert competence. The General Partner is liable for acts, errors, or omissions in performing its duties with respect to the Partnership ONLY if such performance is not authorized by this Agreement and constitutes bad faith, gross negligence, or willful misconduct that is not excused by any other provision of this Agreement. **THE GENERAL PARTNER IS NOT LIABLE FOR ACTS, ERRORS, OR OMISSIONS IN PERFORMING ITS DUTIES WITH RESPECT TO THE PARTNERSHIP FOR ANY OTHER REASON, INCLUDING WITHOUT LIMITATION THE GENERAL PARTNER'S SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE, OR FOR TAKING ANY ACTION THAT IT IS AUTHORIZED TO TAKE BY THIS AGREEMENT.**

5.7 **Dealings with Partnership.** The Partnership may enter into agreements and transact business with a partner or interest owner or any affiliate of a partner or interest owner but the terms of such agreement or transaction must be no less favorable to the Partnership than those the Partnership could obtain from unrelated third parties or be approved by the General Partner.

5.8 **Right to Withdraw.** The General Partner has the right to withdraw from the Partnership as a the General Partner and such withdrawal is not wrongful, even under the circumstances described in Section 6.02(b)(2) of the Partnership Act. If a the General Partner

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voluntarily withdraws from the Partnership, the withdrawal will not be effective until the 90th day following notice of the withdrawal to all other Partners or such later date as the notice may specify. A Majority in Interest of the Limited Partners may select a new the General Partner who will be admitted to the Partnership as the General Partner. In connection with such admission, the new the General Partner will (i) make or agree to make such capital contribution as a Majority in Interest of the Limited Partners specify in exchange for the General Partner Interest entitling it to such allocations of Profits and Losses and distributions as a Majority in interest of the Limited Partners specify and (ii) execute a written instrument pursuant to which it agrees to be bound by this Agreement, specifies its address for notices, and makes such representations, warranties, and covenants as a Majority in Interest of the Limited Partners specify. Notwithstanding any other provision of the Agreement, the General Partner may not be removed by the Limited Partners.

5.9 Conversion of Interest; Right to Purchase. Simultaneously with an Event of Withdrawal with respect to the General Partner, the former the General Partner's Partnership Interest as the General Partner shall be automatically converted into that of a Limited Partner having a right to receive distributions from the Partnership and an obligation to make capital contributions to the Partnership equal to the right and obligation of the former the General Partner as the General Partner immediately prior to its ceasing to be the General Partner and the former the General Partner shall be automatically admitted to the Partnership as a Limited Partner in respect of such Partnership Interest. Furthermore, any person named as a new General Partner pursuant to Section 5.8 or 11.2 shall have, for a period of one year following such Event of Withdrawal, the right to purchase the former the General Partner's Partnership Interest for its fair market value (as determined by the General Partner using such reasonable methods as it shall adopt) if such Partnership Interest is so purchased, it shall be automatically converted into that of the General Partner having the right to receive distributions from the Partnership and an obligation to make capital contributions to the Partnership equal to the right and obligation of the former Limited Partner as a Limited Partner immediately prior to such purchase and the new the General Partner shall automatically be substituted as the General Partner in respect of such Partnership interest.

5.10 Indemnification of The General Partner.

(a) To the fullest extent permitted by law, the Partnership is required to indemnify, defend, and hold harmless each of the following:

(i) The General Partner from and against all claims it may incur as a result of having been, being, or threatened to be made a named defendant or respondent in a proceeding because it is or was the General Partner in the Partnership or is performing or had performed the obligations of the General Partner with respect to the Partnership, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THE GENERAL PARTNER'S SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE, but excluding any such items incurred as a result of something for which the General Partner is liable under Section 5.6;

(ii) Each of the affiliates of the General Partner and each of their respective officers, managers, directors, partners, owners, employees, and agents (collectively, the "*Indemnified Affiliates*") from and against all claims such person may incur as a result of having been, being, or threatened to be made a named defendant or respondent in a proceeding as a result of such Indemnified Affiliate's relationship with the General Partner or with any affiliate of The General Partner, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THE INDEMNIFIED AFFILIATE'S SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE;

(iii) The General Partner and each Indemnified Affiliate (collectively, the "*Indemnified Persons*") from and against all claims such person may incur as a result of having been, being, or threatened to be made a named defendant or respondent in a proceeding as a result of such person having served or serving at the request of the Partnership as a representative (as defined in the Partnership Act) of another Person, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THE INDEMNIFIED PERSON'S SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE;

(iv) Each Indemnified Person from and against all claims such person may incur as a result of appearing as a witness or other participation in a proceeding that involves or affects the Partnership;

(v) Each Indemnified Person from and against all claims such person may incur as a result of having performed or performing services for the Partnership, SPECIFICALLY INCLUDING CLAIMS BASED ON OR ARISING FROM THE INDEMNIFIED PERSON'S SOLE, PARTIAL, OR CONCURRENT NEGLIGENCE.

(b) The rights of an Indemnified Person under this Section include the right to be paid or reimbursed by the Partnership for expenses incurred in defending any proceeding in advance of its final disposition to the maximum extent permitted by law (as the same exists or as it may hereafter be amended to the extent the amended version is more favorable to person seeking a remedy under this Section).

(c) If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Partnership within 90 days after a written claim has been received by the Partnership, the person seeking a remedy under this Section may at any time thereafter bring suit against the Partnership to recover the unpaid amount of the claim, and if successful in whole or in part, the person seeking a remedy under this Section will also be entitled to be paid the expenses of prosecuting such claim. It will be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under law, but the burden of proving such defense will be on the Partnership. Neither of the following will be a defense to the action or create a presumption that such indemnification or advancement is not permissible: (i) the failure of the Partnership or any other person or persons who are authorized to determine if indemnification is

permissible under law to have made a determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the person seeking a remedy under this Section is permissible in the circumstances; and (ii) an actual determination by the Partnership or any other person or persons who are authorized to determine if indemnification is permissible under law that such indemnification or advancement is not permissible.

(d) The right of any Indemnified Person under this Section will survive the termination of that person's status as an Indemnified Person and the termination of this Agreement and the dissolution of the Partnership.

(e) In the event of the death of a person seeking a remedy under this Section, the right under this Section will inure to the benefit of such person's heirs, executors, administrators, and personal representatives.

(f) The rights conferred in this Section will not be exclusive of any other right that a person seeking a remedy under this Section may have or hereafter acquire under any statute, resolution of Partners, agreement, or otherwise.

5.11 ***Power of Attorney.*** Each Partner appoints the General Partner (and any liquidating manager or interim manager appointed pursuant to Section 12.1) as attorney-in-fact for such Partner for the purpose of executing, swearing to, acknowledging, and delivering all certificates, documents, and other instruments as may be necessary, appropriate, or advisable in the judgment of the General Partner (or liquidating manager or interim manager appointed pursuant to Section 12.1) in furtherance of the business of the Partnership or complying with applicable law, including filings of the type described in Section 2.7 and amendments to Exhibit A to this Agreement to reflect any admission or withdrawal of a partner in accordance with the provisions of this Agreement or any other matter approved in accordance with the provisions of this Agreement. This power of attorney is irrevocable and is coupled with an interest. On request by the General Partner (or liquidating manager or interim manager appointed pursuant to Section 12.1), each Partner will confirm its grant of this power of attorney or any use of it by the General Partner (or liquidating manager or interim manager appointed pursuant to Section 12.1) and will execute, swear to, acknowledge, and deliver any such certificate, document, or other instrument.

ARTICLE 6. RIGHTS, OBLIGATIONS, AND REPRESENTATIONS OF LIMITED PARTNERS

6.1 ***Withdrawal.*** A Limited Partner does not have the right to withdraw from the Partnership as a limited partner.

6.2 ***No Fiduciary.*** A Limited Partner owes no fiduciary duty to the Partnership of any of the other partners solely as a result of being a Limited Partner.

6.3 ***Representations of Limited Partners.*** Each Limited Partner hereby severally represents and warrants to, and agrees with, the Partnership and each other Partner as follows:

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(a) **Authorization and Validity of Agreement.** Such Limited Partner has full power and authority to execute and deliver this Agreement, to perform the obligations of such Limited Partner hereunder, and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by such Limited Partner, and the consummation by such Limited Partner of the transactions contemplated hereby, have been duly authorized and approved by such Limited Partner. This Agreement has been duly executed and delivered by such Limited Partner and is a valid and binding obligation of such Limited Partner, enforceable against such Limited Partner in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy laws and to general equitable principles. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, violate any provision of any agreement, instrument, order, regulation, judgment, or decree to which such Limited Partner is subject or by which such Limited Partner or any asset of such Limited Partner is bound. Such Limited Partner is under no legal disability, contractual or otherwise, that prohibits such Limited Partner from entering into this Agreement and performing the obligations of such Limited Partner hereunder. Such Limited Partner is the sole party in interest in the Partnership Interest of such Limited Partner under this Agreement and, as such, is vested with all legal and equitable rights in such partnership interest.

(b) **Securities Act Investment.** Such Limited Partner is acquiring the Partnership Interest of such Limited Partner for the account of such Limited Partner and not with a view to distribution thereof within the meaning of the Securities Act of 1933, as amended, or any state securities laws. Such Partnership Interest will not be transferred by such Limited Partner in contravention of that act or any applicable state securities laws.

(c) **Limits on Claims.** Pursuant to the Texas Securities Act, Art. 581-1 et seq. (the "*Texas Securities Act*"), the liability under the Texas Securities Act of a lawyer, accountant, consultant, the firm of any of the foregoing, and any other person engaged to provide services relating to an offering of securities of the Partnership ("*Service Providers*") is limited to a maximum of three times the fee paid by the Partnership or seller of the Partnership's securities to the Service Provider for the services related to the offering of the Partnership's securities, unless the trier of fact finds that such Service Provider engaged in intentional wrongdoing in providing the services. By signing below, each Limited Partner hereby acknowledges the disclosure provided in this paragraph.

ARTICLE 7. MEETINGS AND CONSENTS OF PARTNERS

7.1 *Consents and Voting.*

(a) **Sole Discretion.** A Limited Partner (including the General Partner with respect to any Partnership Interest it may have as a Limited Partner) may grant or withhold its consent or vote its interest in its sole discretion, without regard to the interests of the Partnership or any interest owner.

(b) **Only Partners of Record to Vote.** Only Partners of record, acting personally or through a qualified representative, are entitled to vote on matters submitted to a vote of Partners. A Partner is deemed present at a meeting only if present in person or through a qualified representative.

(c) **No Proxies.** Partners are not entitled to vote by proxy unless the proxy is exercised by a qualified representative.

(d) **Right to Board Seat.** The Limited Partners shall have the limited right to elect one (1) of the total members of the board of directors of the General Partner on an annual basis, and the General Partner acknowledges the limited right of the Limited Partners as a group to do so.

7.2 **Meetings.** At any time, either the General Partner or Limited Partners owning partnership interests entitling them to at least 10% of the Sharing Ratios of all Limited Partners may call a meeting of the Partners to transact business that the partners or any group of partners may conduct as provided in this Agreement. A meeting may be called by notice to all Partners entitled to vote at such meeting on or before the tenth day prior to the date of the meeting specifying the location and the time and stating the business to be transacted at the meeting. The chairperson of the meeting will be the General Partner. At the meeting, the partners may take any action included in the notice of the meeting by vote of partners present, in person or through a qualified representative, constituting partners whose consent is required for that action pursuant to the other provisions of this Agreement. With respect to other matters, the meeting must be conducted in accordance with rules that the General Partner establishes.

7.3 **Action Without Meeting.** Any action that may be taken, or that is required by law or this Agreement to be taken, by the partners or any group thereof may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, will have been signed by the Partner(s) whose consent is necessary to take the action. The consent may be in one or more counterparts. For purposes of this Section, a telegram, telex, cablegram, or similar transmission by a person or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a person will be regarded as signed by that person. In any request for consent or approval from another partner, the requesting Partner(s) may specify a response period, ending no earlier than the fifth day following the date on which the Partner whose consent or approval is sought receives the request as described in Section 13.2. If the receiving Partner does not respond by the end of this period, it will be deemed to have not consented to or approved the action set forth in the request. Prompt notice of such action will be given to each Partner who did not consent to such action in writing, but failure to give such notice will not affect the validity of such action.

7.4 **Action by Telephone Conference.** Partners may participate in and hold a meeting by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such meeting will constitute attendance and presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

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ARTICLE 8. BANK ACCOUNTS, INVESTMENTS,
GENERAL ACCOUNTING PROVISIONS, AND REPORTS.

8.1 ***Books of Account; Access; Fiscal Year.*** Books of account are to be kept at the principal office of the Partnership, and each Partner and its representatives will have reasonable access to all books, records, and accounts of the Partnership during regular business hours and will be entitled to be furnished with such other information concerning the operations and investments of the Partnership as it may reasonably request. The books of account for the Partnership will be maintained on generally accepted accounting, consistently applied, except that the Capital Accounts of the partners will be maintained in accordance with Section 3.5. The calendar year will be the accounting year of the Partnership.

8.2 ***Annual Reports.*** On or before the 120th day following the end of each fiscal year during the term of the Partnership, the General Partner will use commercially reasonable efforts to cause each other Partner to be furnished with a balance sheet, an income statement, and a statement of changes in Partners' capital of the Partnership for, and as of the end of, such year. These financial statements must be prepared in accordance with the accounting principles required by Section 8.1 and may be, if requested by a Majority in Interest of the Limited Partners, certified by a recognized firm of certified public accountants chosen by the General Partner. If they are so certified, the financial statements shall be accompanied by a report of the certified public accountants certifying the statements and stating that (a) their examination was made in accordance with generally accepted auditing standards and, in their opinion, the financial statements fairly present the financial position, financial results of operations, and changes in partners' capital in accordance with accounting principles generally employed for records kept in accordance with Section 8.1 (except as therein noted) and (b) in making the examination and reporting on the financial statements described above, nothing came to their attention that caused them to believe that (i) the income and revenues were not paid or credited in accordance with the financial and accounting provisions of this Agreement, (ii) the costs and expenses were not charged in accordance with the financial and accounting provisions of this Agreement, or (iii) the General Partner or any other Partner failed to comply in any material respect with the financial and accounting provisions of this Agreement, or if they do conclude that the General Partner or another Partner so failed, specifying the nature and period of existence of the failure. The General Partner also may cause to be prepared or delivered such other reports as it may deem appropriate. The Partnership will bear the costs of all these reports.

8.3 ***Bank Accounts.*** The General Partner will establish and maintain in the name of the Partnership one or more accounts at one or more banks. All Partnership funds will be deposited into such account(s). No other funds will be deposited into any such account. Funds deposited in any such account may be withdrawn only to pay Partnership debts or obligations, to make distributions to the Partners pursuant to this Agreement, or to make Permitted Investments.

8.4 ***Investments.*** Partnership funds may be invested in such investments as the General Partner determines ("*Permitted Investments*").

ARTICLE 9. TAXES

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9.1 **Tax Returns.** The General Partner will cause to be prepared and filed all necessary federal and state income tax returns for the Partnership, including making the elections described in Section 9.2. Each partner will furnish to the General Partner all pertinent information in its possession relating to Partnership operations that is necessary to enable the Partnership's income tax returns to be prepared and filed.

9.2 **Tax Elections.** The Partnership will make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Partnership's fiscal year;
- (b) to adopt generally accepted accounting principles, consistently applied and to keep the Partnership's books and records on the same method;
- (c) if a distribution of Partnership property as described in section 734 of the Code occurs or if a transfer of a Partnership Interest as described in section 743 of the Code occurs, on request by notice from any partner, to elect, pursuant to section 754 of the Code, to adjust the basis of Partnership properties;
- (d) to deduct and amortize the organizational expenses of the Partnership as permitted by section 709(b) of the Code; and
- (e) any other election the General Partner may deem appropriate and in the best interests of the Partners.

Neither the Partnership nor any partner may make an election for the Partnership to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law.

9.3 **Tax Matters Partner.** The General Partner will be the "tax matters partner" of the Partnership pursuant to section 6231 (a)(7) of the Code. The Tax Matters Partner shall take reasonable action to cause the Limited Partners to be treated as a "notice partner" within the meaning of Section 6231 (a) (8) of the Code. Each Partner shall be given at least five Business Days advance notice from the Tax Matters Partners of the time and place of, and shall have the right to participate in (and the Partnership and the Tax Matters Partner shall take such actions as may be necessary to cause the tax matters partner of any Subsidiary to extend to the partners the right to participate in) (i) any material aspect of any administrative proceedings relating to the determination of Partnership items at the Partnership level (or at the level of any Subsidiary) and (ii) any material discussions with the Internal Revenue Service relating to the allocations pursuant to Article 4 of this Agreement or pursuant to the partnership agreement or operating agreement of any subsidiary. The Tax Matters Partner shall not, and the Partnership shall not permit the tax matters partner of any subsidiary to, initiate any action or proceeding in any court, extend any statute of limitations, or take any other action contemplated by Sections 6222 through 6232 of the Code that would legally bind the Limited Partners, the Partnership, or any subsidiary without approval of a Majority in Interest of the Limited Partners. The Tax Matters Partner shall

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from time to time upon request of any other partner confer, and cause the Partnership's tax attorneys and accountants to confer, with such other partner and its attorneys and accountants on any matters relating to any other Partnership or subsidiary tax return or any tax election. The Tax Matters Partner will be entitled to reimbursement by the Partnership for all expenses reasonably incurred by it in representing the Partnership in any administrative or judicial proceeding relating to the tax treatment of Partnership items

ARTICLE 10. RESTRICTIONS ON CERTAIN TRANSFERS AND COMPETITIVE ACTIVITIES

10.1 **General Prohibition.** No person will make or suffer any transfer of all or any part of its partnership interest, whether now owned or hereafter acquired, except in accordance with the terms of this Agreement or upon death or disability, and any purported transfer not made in compliance with this Agreement will be void and of no force and effect.

10.2 **Transfer by the General Partner.** Each Limited Partner has entered into this Agreement, in part, based upon the identity of the General Partner. The General Partner shall not make or suffer any transfer of all or any part of its partnership interest, whether now owned or hereafter acquired, except with the prior written consent of a Majority in Interest of the Limited Partners. The Limited Partners will be excused from accepting the performance of and rendering performance to any other person as the General Partner hereunder (including any trustee or assignee of the General Partner) as to whom such prior written consent has not been rendered.

10.3 **Transfer by Limited Partner.** No Person will make or suffer any transfer of all or any part of a Limited Partner interest, whether now owned or hereafter acquired, except with the prior written consent of the General Partner. The consent shall not be unreasonably withheld if the transfer is either to an affiliate or to a member of the family of the transferor and Section 10.4 is complied with.

10.4 **Securities Laws Compliance.** The Partnership Interests have not been registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended, or the state securities laws of Texas or any other state. Without such registration, no interest owner may effect or suffer a transfer until the interest owner provides evidence satisfactory to the General Partner which, in the discretion of the General Partner, may include an opinion of counsel satisfactory to the General Partner that such registration is not required for such Transfer to the effect that any such transfer will not be in violation of the Securities Act of 1933, as amended, applicable state securities laws, or any rule or regulation promulgated thereunder.

10.5 **Substituted Partners.** Unless otherwise provided in this Agreement, an assignee of a Partner may become a substituted partner only with the consent of the General Partner.

10.6 **Amendment of Certificate of Limited Partnership.** If required by the Partnership Act, the partners will cause the certificate to be amended, if and when appropriate, to reflect the substitution or addition of partners in accordance with this Agreement.

ARTICLE 11. DISSOLUTION

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11.1 **Dissolution.** Upon the happening of the first to occur of the following events, the Partnership will be dissolved:

- (a) December 31, 2055;
- (b) the execution by the General Partner of an instrument dissolving the Partnership;
- (c) the occurrence of an Event of Withdrawal (see Section 5.8 and 5.9) with respect to The General Partner; or
- (d) the entry of a decree of judicial dissolution under Section 8.02 of the Partnership Act.

The death, insanity, disability, bankruptcy, dissolution, or other event occurring with respect to any Limited Partner will not dissolve the Partnership.

11.2 **Continuation.** If the Partnership is dissolved pursuant to clause (a) or (c) of Section 11.1, the business of the Partnership may be continued without being wound up if within 90 days after the occurrence of the event of dissolution, a Majority in Interest of the Limited Partners agree in writing to continue the business of the Partnership and, to the extent that they desire or if there is no remaining the General Partner, agree to the appointment, effective as of the date of an Event of Withdrawal, of one or more new the General Partner. If the Partnership is reconstituted, an amendment to the Certificate will be executed and filed of record.

11.3 **Interim Manager.** If the Partnership is dissolved and there is no remaining the General Partner, a Majority in Interest of the Limited Partners may appoint an interim manager of the Partnership, who will have and may exercise only the rights, powers, and duties of a the General Partner necessary to preserve the Partnership assets, until (a) a new the General Partner, if any, is elected, if the Partnership is reconstituted or (b) the liquidating manager is appointed, if the Partnership is not reconstituted. The interim manager will not be liable as the General Partner to the partners.

11.4 **Effect of Dissolution.** The dissolution will be effective on the day on which the event giving rise to the dissolution occurs, but the Partnership will not terminate until the assets have been distributed in accordance with Article 12.

ARTICLE 12. WINDING UP AND TERMINATION

12.1 **Winding Up and Termination.**

(a) **General.** As expeditiously as possible following a dissolution, the liquidating manager will proceed to wind up the affairs of the Partnership, liquidate the assets, pay the liabilities, and make liquidating distributions to the interest owners, in the following order of priority:

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(i) the liquidating manager will use commercially reasonable efforts to maximize the value of the Partnership assets and then to sell Partnership assets (which sale may be made to any or all of the partners and interest owners and their respective affiliates) and any resulting Profits or Losses from each sale will be computed and allocated to the Capital Accounts of the interest owners in the manner described in Article 4;

(ii) the liquidating manager will pay, to the extent there are funds available therefor, all of the Partnership's obligations and establish such reserves as the liquidating manager deems prudent;

(iii) all remaining cash and other Partnership property (other than the liquidation escrow) will be distributed among the interest owners in accordance with the provisions of Section 4.1.

(b) **Powers.** Until final distribution, the liquidating manager will continue to operate the Partnership properties with all of the power and authority of the General Partner.

(c) **Cost of Liquidation.** The costs of liquidation will be borne as a Partnership expense.

(d) **Termination; Release of Liquidation Escrow.** At the time such distributions are made and reserves are established in accordance with subsection (a), the Partnership will terminate, but if at any time thereafter any of the funds in the liquidation escrow are released because, in the opinion of the liquidating manager, the need for such escrow has ended, such funds will be distributed in accordance with subsection (a).

(e) **No Recourse.** No Partner will have any recourse against the Partnership or any other partner for the return of its capital contributions or any distributions not required by this Agreement except as contemplated by Section 3.7.

12.2 **Cancellation of Certificate.** On completion of the distribution of Partnership assets as provided herein, the Partnership is terminated, and the General Partner (or such other person or persons as the Partnership Act may require or permit) will cause the cancellation or cancellation of the certificate and any other filings made as provided in Section 2.7 and will take such other actions as may be necessary to terminate or reflect the termination of the Partnership.

ARTICLE 13. MISCELLANEOUS

13.1 **Amendment or Modification.** Except to the extent this Agreement otherwise provides for a change to be effected without the approval required in this Section, this Agreement may be amended or modified at any time and from time to time only by a written instrument approved by the General Partner and a Majority in Interest of the Limited Partners; *provided, however*, that (a) an amendment or modification (i) reducing an partner's share of

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distributions (other than as a result of the issuance of additional Partnership interests or adjustments to Sharing Ratios authorized without violation of this Agreement) or (ii) declaring the obligation of an Partner to make capital contributions also requires the consent of the person last admitted as a Partner with respect to the Partnership Interest of such Partner, (b) an amendment that disproportionately affects one Partner also requires the consent of the person last admitted as a Partner with respect to the Partnership Interest of such Partner, (c) an amendment that disproportionately affects one Partner also requires the consent of such Partner, (d) an amendment that disproportionately affects a group of interest owners also requires the consent of a Majority in Interest of the persons last admitted as Partners with respect to the Partnership Interests of such Partners, (e) an amendment that disproportionately affects a group of Partners also requires the consent of a Majority in Interest of such Partners, (f) an amendment or modification reducing the required measure for any consent or vote in this Agreement requires only the consent or vote of Partners having the measure theretofore required, and (g) an amendment or modification made solely to reflect the admission or withdrawal of a partner need not be approved by any Partner if the requirements set forth in this Agreement with respect to such admission or withdrawal are otherwise satisfied.

13.2 **Notices.** All notices required or permitted to be given pursuant to this Agreement will be in writing and will be personally delivered, or mailed, first class postage prepaid, or delivered by a nationally recognized express courier service, charges prepaid, if to the Partnership to the address of the Partnership's registered office (as reflected on the records of the Secretary of State of the State of Texas) and if to a Partner, to the appropriate address set forth on Exhibit A to this Agreement. Any such notice, when sent in accordance with the provisions of the preceding sentence, will be deemed to have been given and received (a) on the day personally delivered, (b) on the third day following the date mailed, or (c) twenty-four hours after shipment by such courier service. A Partner may change its address by giving notice in writing to all other Partners and interest owners in the manner set forth in this Section, stating the new address.

13.3 **Failure to Pursue Remedies.** The failure of any party to seek redress for violation, or to insist upon the strict performance, of any provision of this Agreement will not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.4 **Section Headings.** The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

13.5 **Severability of Provisions.** Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the validity of the remainder of this Agreement and the illegal or invalid provision will be enforced to the maximum extent possible to still be legal and valid.

13.6 **Governing Law; Venue.** This Agreement, and the application or interpretation thereof, will be governed exclusively by its terms and by the laws of the State of Texas. Except

for those actions, proceedings, or claims which this Agreement provides will be settled by arbitration, any action, proceeding, or claim arising out of or relating to this Agreement commenced by any partner or interest owner in its individual capacity must be prosecuted in Collin County, Texas. Each partner and interest owner waives any plea of privilege that might exist in the absence of such partner's or interest owner's agreement to prosecute such claim in Collin County, Texas, and each partner and interest owner irrevocably submits to the non-exclusive jurisdiction of the state and federal courts of the State of Texas and consents to service of process upon such partner or interest owner in any legal proceeding arising out of or in connection with this Agreement.

13.7 ***Cumulative Remedies.*** Except as otherwise expressly set forth in this Agreement, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party will not preclude or constitute a waiver of its right to use any or all other remedies. Except as otherwise expressly set forth in this Agreement, such rights and remedies are given in addition to any other rights the partners and interest owners may have by law, statute, ordinance, or otherwise.

13.8 ***Counterparts.*** This Agreement may be executed in any number of counterparts with the same effect as if the Partners had all signed the same document. All counterparts will be construed together and will constitute one instrument. In making proof of this Agreement, it will not be necessary to account for more than one counterpart executed by the person against whom enforcement is sought.

13.9 ***Successors and Assigns.*** Each and every covenant, term, provision, and agreement herein contained will be binding upon each of the Partners and their respective heirs, legal representatives, successors, and assigns and will inure to the benefit of each of the partners. Unless and until properly admitted as a Partner, no assignee will have any rights of a partner beyond those provided by the Partnership Act to assignees or otherwise expressly provided herein to assignees.

13.10 ***Construction, Sections, Exhibits, Etc.*** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter. Each reference to an "Exhibit" herein is, unless specifically indicated otherwise, a reference to an exhibit attached hereto, all of which are made a part hereof for all purposes, it being understood that if any Exhibit that is to be executed and delivered pursuant to the terms hereof contains blanks, it will be completed correctly and completely in accordance with the terms and provisions hereof and as contemplated herein prior to or at the time of its execution and delivery.

13.11 ***Further Assurances.*** In connection with this Agreement and the transactions contemplated by it, each Partner will execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

13.12 ***Waiver of Certain Rights.*** Each Partner irrevocably waives any right it may have to maintain any action for dissolution of the Partnership (other than pursuant to Article 12) or for partition of the property of the Partnership.

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13.13 *Attorneys' Fees.* If the Partnership or any Partner brings any legal action to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, costs, and expenses, in addition to any other relief to which such party may be entitled.

13.14 *Entire Agreement.* This Agreement sets forth the entire Agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, if any, related thereto.

13.15 *Third Party Beneficiaries.* Except for the Indemnified Persons, there are no third party beneficiaries of this Agreement.

Executed on the date or dates indicated below, to be effective as of the date first set forth above.

THE GENERAL PARTNER:

VIACHEM SPECIALTIES, INC.,
a Texas corporation

By: _____
Name: Michael E. Efting
Title: President

LIMITED PARTNERS:

MICHAEL E. EFTING

DARWIN H. SIMPSON

EUGENE P. SABATIER, JR.

EXHIBIT "A"

Partner Name

Capital Contribution

Sharing Ratio

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EXHIBIT "B"