

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Apple Tree Life Sciences, Inc., *et al.*,¹
Debtors.

Chapter 11

Case No. 25-12177 (LSS)

(Jointly Administered)

Re: Docket No. 373

NOTICE OF FILING OF UNREDACTED DIP OBJECTION

PLEASE TAKE NOTICE that, on February 19, 2026, Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (together, the “LPs”), filed the *[REDACTED] Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Motion for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Incur Post-Petition Debt, (B) Granting Super-Priority Administrative Expense Claims, (C) Scheduling a Final Hearing, and (D) Granting Related Relief [Docket No. 373]* (the “**Redacted DIP Objection**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that after conferring with the Debtors, the LPs hereby file an unredacted version of the Redacted DIP Objection (the “**Unredacted DIP Objection**”) attached hereto as **Exhibit 1**.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors’ service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.



Dated: March 6, 2026
Wilmington, Delaware

Respectfully Submitted,

RICHARDS, LAYTON & FINGER, P.A.

/s/ Clint M. Carlisle

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Unicorn Biotech Ventures One Ltd) and
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Exhibit 1

Unredacted DIP Objection

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Apple Tree Life Sciences, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-12177 (LSS)

(Jointly Administered)

**OBJECTION OF RIGMORA BIOTECH INVESTOR ONE LP
AND RIGMORA BIOTECH INVESTOR TWO LP TO
DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS: (A) AUTHORIZING THE DEBTORS TO INCUR POST-PETITION
DEBT, (B) GRANTING SUPER-PRIORITY ADMINISTRATIVE EXPENSE CLAIMS,
(C) SCHEDULING A FINAL HEARING, AND (D) GRANTING RELATED RELIEF**

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the “**LPs**”), respectfully submit the following objection (the “**Objection**”)² and supporting declarations of Brandon Aebersold of Rothschild & Co. US Inc., financial advisor to the LPs (the “**Aebersold Declaration**”), and Ilya A. Strebulaev, Ph.D. (the “**Strebulaev Declaration**”), both filed substantially contemporaneously herewith, to the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); MarlinSPIKE Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors’ service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Objection of Rigmora Investor One LP and Rigmora Biotech Investor Two LP to Debtors’ Motion for Entry of an Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief* [Docket No. 305] (the “**Funding Objection**”). All of the arguments and contentions in the Funding Objection, as well as the support provided by the accompanying declaration in support thereof [Docket No. 306], are incorporated herein by reference. The LPs filed their Funding Objection to the Debtors’ second funding motion filed at Docket No. 228 on January 29, 2026 (the “**Second Funding Motion**”).

Debtors' Motion for Entry of Interim and Final Orders: (A) Authorizing the Debtors to Incur Post-Petition Debt, (B) Granting Super-Priority Administrative Expense Claims, (C) Scheduling a Final Hearing, and (D) Granting Related Relief [Docket No. 313] (the “**DIP Motion**”)³ and state as follows:⁴

PRELIMINARY STATEMENT

1. The Debtors posture the DIP Motion as an alternative to the Second Funding Motion, to be considered in the event this Court denies that relief or imposes conditions and terms that are not to the Debtors' liking.⁵ But as explained below, if this Court denies the Second Funding Motion, then the DIP Motion is also doomed to failure, as many of the arguments mandating this Court's rejection of the Second Funding Motion apply equally to the DIP Motion. The DIP Motion also suffers from additional infirmities, as set forth below, including that it is unnecessary to meet the Debtors' needs, it is inferior to the LPs' funding proposal, it is infected by conflicts of interest, and it is a *sub rosa* plan of reorganization as it is improperly laden with events of default structured to create incentives for the Court to confirm the GP's preferred chapter 11 plan and deny various relief that the LPs have sought or may seek.

2. The LPs incorporate by reference all of the arguments and contentions in their Funding Objection [Docket No. 305], as well as the support provided by the accompanying declaration in support thereof [Docket No. 306] as if fully set forth in this Objection. This Objection should therefore be read in conjunction with the Funding Objection and its accompanying declaration.

³ The Debtors' accompanying declaration in support of the DIP Motion was filed at Docket No. 314 (the “**Mandarino DIP Declaration**”).

⁴ The LPs reserve all rights and waive none, including in connection with any proposed final approval of the relief requested herein.

⁵ See DIP Motion ¶ 3.

Specifically, and as further described in the Funding Objection: (1) this Court lacks *in rem* jurisdiction and statutory authority to grant liens on the Fund Assets, which under Cayman law are held on trust for the sole benefit of the Fund's limited partners, and therefore are not "property of the estate" of the Fund under section 541(a) and (d) of the Bankruptcy Code; and (2) the LPA expressly prohibits the Fund from borrowing money or agreeing to become liable for the indebtedness of other parties such as the Non-Debtor Entities, without the consent of the LPs, and these bankruptcy cases do not authorize the Debtors to abrogate those provisions of the LPA. Because these objections are equally applicable to both the Second Funding Motion and the DIP Motion, the DIP Motion does not provide an alternative to the Second Funding Motion.

3. But there is an alternative to the Second Funding Motion, one that is far superior to the DIP Motion. Last week, the LPs submitted a proposal to the Debtors as a non-binding term sheet (the "**LP Proposal**"), before the Debtors had filed their DIP Motion. Under the LP Proposal, which was spearheaded by the LPs' recently-engaged investment banker (Brandon Aegersold of Rothschild & Co), the LPs would consent to allowing the Fund to provide debtor-in-possession financing, in the form of separate loans without any cross-collateralization, to the seven debtor portfolio companies (the "**Debtor Portfolio Companies**"), as well as the Debtor management company, Apple Tree Life Sciences, Inc. ("**ATLS**"). The LP Proposal (as updated) would, if accepted, provide the Debtors with \$31.7 million in financing over a 26-week period and would pay not only the ongoing expenses of the Debtor Portfolio Companies and ATLS but also chapter 11 expenses incurred in these bankruptcy cases. The LP Proposal offers each of the Debtor Portfolio Companies a six-week runway to seek to refinance and repay their separate DIP loans from the Fund, without incurring any fees or MOIC. For any Debtor Portfolio Company unable

to refinance or repay its loan facility, each such debtor would then have an additional 20-week runway to conduct orderly asset sales under Section 363 of the Bankruptcy Code.

4. Importantly—and unlike the Debtors’ proposal in the DIP Motion—the \$31.7 million in financing, of which about \$9.1 million would be available during the first interim six-week period, is *not* conditioned upon this Court’s approval or denial of the LPs’ Amended Motion to Dismiss [Docket No. 205] the bankruptcy cases of the Fund-Level Entities (the “**Amended Motion to Dismiss**”), and thus would remain fully available to the Debtor Portfolio Companies and ATLS regardless of the outcome of that motion. The LP Proposal also makes clear that the LPs are willing to engage in separate negotiations regarding consent to additional funding, beyond the \$31.7 million, to be advanced to certain other portfolio companies of the Fund that are not in bankruptcy (the “**Non-Debtor Entities**”).

5. Rather than try to engage first with the LPs on their proposal, the Debtors rushed ahead and filed their DIP Motion less than an hour after receiving the LP Proposal and in the midst of a hearing before this Court. In the DIP Motion, the Debtors seek approval of up to \$65 million in DIP financing to be provided to the Fund, as borrower, by Oaktree Capital (the “**Oaktree DIP**”),⁶ of which only \$25 million appears to be reserved for the Debtors and up to \$40 million of which is available for funding of non-Debtor entities. But the LP Proposal is superior to the Oaktree DIP based on the three main factors the Debtors themselves claimed to have considered: cost, availability, and a path to exiting these chapter 11 cases.

6. Cost and Availability. As set forth in the Aebersold Declaration and detailed below, the cost of the Oaktree DIP is far more expensive when comparing the same funding amount to

⁶ For the avoidance of doubt, references to the Oaktree DIP are to the term sheet attached to the DIP Motion and not the summary embodied in the motion, which is inconsistent with the term sheet.

the Debtors, whether measured in absolute dollars related to fees and expenses (\$4.75 million vs. \$302,000), in fees and expenses as a percentage of DIP facility drawn (15% vs. 1%), in terms of net funding (85% vs. 99%), or in terms of IRR (approximately 76% vs. 4%). While the Oaktree DIP purports to commit \$17 million (split between Debtors and Non-Debtor Entities) on an interim basis, \$10 million of that amount is expressly conditioned upon this Court entering an order denying the Amended Motion to Dismiss as to the Fund-Level Debtors. Thus, only \$7 million of the Oaktree DIP will be available pending that determination, versus \$9.1 million that would be available immediately under the LP Proposal.⁷

7. Path to Exit. The Debtors trumpet the Oaktree DIP as providing a path to exit bankruptcy. But the Oaktree DIP is explicit in saying that Oaktree has made no commitment to any exit facility. A mere agreement to discuss a potential exit facility, which is subject to completion of full legal and business diligence, is a far cry from an available exit facility. The only thing that is certain under the Oaktree DIP is ongoing litigation between the Debtors and the LPs that will continue indefinitely—the very outcome that the Debtors disingenuously claim they are seeking to avoid.

8. Given the above, the Debtors cannot show the necessity or urgency required for this Court to approve the Oaktree DIP on an interim basis, even if this Court were to apply the less stringent business judgment standard. But here, the business judgment rule does not apply because the GP's director stands to personally benefit from the Oaktree DIP in multiple respects—

⁷ The Oaktree DIP has the additional infirmity of providing for a 180-day maturity on debt to be incurred by the Fund, which exceeds the 120-day limit under applicable SEC regulations. This would likely cause the Fund to lose the protection of its venture capital fund advisor exemption, and require prompt registration of the Fund's investment advisor with the SEC. *See* 17 C.F.R. § 275.203(l)-1(a)(3). Any of the substantial costs attributable to registration and compliance by the GP or its affiliates that are triggered by the Oaktree DIP should not be borne by or charged to the Fund. No such concern with respect to the venture capital fund advisor exemption applies to the LP Proposal because the Fund would be neither a borrower nor obligor thereunder, but rather a lender.

including payment of a \$1.4 million management fee to ATVM that is otherwise unavailable under the LP Proposal, as well as the terms of the chapter 11 plan embedded in the Oaktree DIP under which the GP will retain its interest in and control over Fund Assets and otherwise benefit. Accordingly, this Court can and should apply the entire fairness standard. In *In re Los Angeles Dodgers, LLC*, 457 B.R. 308, 313–14 (Bankr. D. Del. 2011), then-Judge Gross of this Court held, in similar circumstances where a debtor’s decision-maker was personally interested and unwilling to consider an alternative DIP proposal on more favorable terms, that approval of such financing should be evaluated under the entire fairness standard. Application of the entire fairness standard is especially appropriate where, as here, the Debtors did not delegate this decision to the independent director—who was appointed less than week before the Debtors filed their DIP Motion and was merely “consulted” during the negotiation process—even though the financial interests of the GP’s director are clearly implicated. Just as Judge Gross denied approval of the DIP financing proposed in the *Los Angeles Dodgers* bankruptcy under the rubric of entire fairness, this Court, too, should apply the entire fairness rubric and, in so doing, also deny approval of the Oaktree DIP here.

9. Finally, the Oaktree DIP cannot be approved because it constitutes an impermissible *sub rosa* plan, with numerous poison pills designed to “short circuit” the plan process for confirmation of the GP’s chapter 11 plan for the Debtors that would, were it not patently unconfirmable, strip the LPs of their interests as limited partners in the Fund. Specifically, the Oaktree DIP includes a number of events of default that, taken together, are designed to “lock up” the Debtors’ plan. One particularly egregious (and revealing) example is an event of default triggered by “any settlement with any stakeholder involving any material assets of the Debtors without approval by DIP Lenders.” It is evident that the Oaktree DIP was constructed to favor

confirmation of the GP-led plan for the Debtors at the expense of the LPs, who were not even invited to submit proposals, let alone provided any of the information to which Oaktree was clearly granted substantial access.

10. In contrast to the Oaktree DIP, the LP Proposal offers a constructive path, that can provide the Debtor Portfolio Companies with an opportunity to seek third-party debt or equity financing, or otherwise maximize their value through a marketing and sale process. Accordingly, this Court should deny the DIP Motion on both an interim and final basis. In the event that the Debtors are unwilling to negotiate in good faith the LP Proposal, and this Court denies both the Second Funding Motion and the DIP Motion, the LPs are prepared to offer the Debtors bridge funding for two (2) weeks on suitable terms, to provide the parties with an opportunity to reach agreement on the LP Proposal.

FACTUAL BACKGROUND

11. The background of this dispute is set forth elsewhere, including in the LPs' (i) the Amended Motion to Dismiss, (ii) *Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay* [Docket No. 125] (the "**Lift Stay Motion**"), and (iii) the Funding Objection, which is attached hereto as **Exhibit A**. All of those pleadings (and the arguments contained therein) are incorporated herein by reference.

12. The LPs and the Debtors previously worked together to settle two funding orders earlier in these cases. *See* Docket Nos. 102, 206. In accordance with the prior funding orders, in exchange for funding from Fund Assets, certain Debtor Portfolio Companies issued secured notes in favor of the Fund, as they had on one other occasion prepetition (such notes collectively, the "**Secured Notes**").

13. Thereafter, the Debtors filed the Second Funding Motion on January 29, 2026. In the Second Funding Motion, the Debtors sought, *inter alia*, to use \$74,109,000 of the \$96,960,925.88

funded by the LPs in accordance with the Partial Final Judgment and Order of the Delaware Court of Chancery dated December 11, 2025 (as referenced at Docket No. 79, the “**Funded Cash**”), which constitutes Fund Assets, as (a) a secured loan for Debtors Nereid and Nine Square and non-Debtor Aulos, consistent with the prior Secured Notes, and (b)(i) as equity investments for Debtors Apetor, Evercrisp, Initial, Marlinspike, and Red Queen and non-Debtors Aethon and Replicate, (ii) but if not equity investments, then as secured loans for those seven (7) entities. *See* Second Funding Motion, ¶¶ 27–29.

14. On February 12, 2026, the LPs filed their Funding Objection to the Second Funding Motion. Notwithstanding the Funding Objection, and Debtors’ on-going resistance to providing discovery regarding the Portfolio Company Debtors and their actual plans and purported funding needs, the LPs have endeavored to provide a strong, sensible, alternative approach to these chapter 11 cases.⁸ The day after objecting to the Debtors’ Second Funding Motion, on February 13, 2026, before the Debtors filed the DIP Motion, the LPs provided to counsel to the Debtors, a term sheet, which is attached to the Aebersold Declaration (the “**LP Proposal**”), under which the LPs would consent to use of \$31.7 million in Funded Cash, of which about \$9.1 million would be made available on an interim basis. As updated, the \$31.7 million would now be available over a 26-week period (versus the 18-week period proposed last week). As described in the Aebersold Declaration and the LP Proposal, the loans to be made by the Fund with the LPs’ consent would be DIP loans made separately by the Fund to each of the Debtor Portfolio Companies and to ATLS. The specific amounts committed to each of the eight (8) debtors who would be borrowers under

⁸ Debtors refused to make F.R.C.P. 30(b)(6) witnesses available until, and even after, this Court so-ordered it; those depositions are proceeding today, and raise serious questions about many of the Portfolio Company Debtors’ supposed funding needs.

the LP Proposal are provided in the LP Proposal, and were based on budgets that were previously provided (but not updated) by the Debtors. The interest rate is the federal funds rate, currently below 4%, and there are no fees payable under the LP Proposal.

15. The LP Proposal (as updated) is designed to provide each of the Debtor Portfolio Companies with the opportunity to refinance the DIP loans in the market using its own collateral. If any Debtor Portfolio Company is unsuccessful in obtaining such refinancing, that debtor will then have a 20-week period to conduct a sale process subject to agreed milestones, which gives them every opportunity to preserve their going concern value. *See* Aebersold Declaration, ¶12.

16. Shortly after receiving the LP Proposal, the Debtors filed the DIP Motion, seeking approval of the terms of a certain postpetition debtor-in-possession loan facility by and between, inter alia, the Fund as borrower, all other Debtors as guarantors, and certain funds advised by Oaktree Capital Management, L.P. and its assignees, as lenders (“**Oaktree**” and, the terms of such loan facility, the “**Oaktree DIP**” and, the corresponding term sheet attached as Exhibit 1 to the DIP Motion, the “**Oaktree Term Sheet**”). The Debtors suggest in their DIP Motion that they are only seeking alternative relief if the Funding Motion is denied, though they caveat that claim by stating that they will pursue such relief if this Court imposes terms and conditions that the Debtors find to be unsatisfactory in certain respects.

17. The Oaktree DIP provides for up to \$65 million in DIP financing, but those commitments are contemplated to be split between Debtors and Non-Debtor Entities. Oaktree purports to be providing \$17 million in financing on an interim basis, though only \$7 million of “initial interim” capacity will be available immediately if the interim DIP order is entered, with the remaining \$10 million of “final interim” capacity conditioned upon this Court’s denial of the LPs’ Amended Motion to Dismiss. The Oaktree DIP will be secured by liens on all assets of the

Debtors, including the following, which constitute Fund Assets:⁹ (i) the equity of any subsidiaries (whether a Debtor or not) held by any Debtor, which are all Fund-Level Assets (the “**Portfolio Company Equity**”), (ii) the Funded Cash, and (iii) rights to receive all funds from a pending litigation claim styled as *Shareholder Representative Services LLC solely in its capacity as representative of the Securityholders v. Alexion Pharmaceuticals, Inc.*, C.A. No. 2020- 1069-MTZ (the “**Syntimmune Litigation Proceeds**”). See Oaktree Term Sheet ¶ 24.

18. **Structural Terms.** The table below summarizes the material structural terms of the Oaktree DIP compared to the LP Proposal.¹⁰

Term	Oaktree DIP	LP Proposal
Structure		
<i>Borrower and Guarantors</i>	All Debtors (subject to non-Debtors becoming obligors in accordance with terms of intercompany facility). (¶¶ 1, 4).	All Debtors other than the Fund-Level Debtors. (¶¶ 1, 12).
<i>Interim Availability</i>	Up to \$7,000,000 in initial-interim availability upon entry of interim DIP order and satisfaction of certain conditions, with up to an additional \$10,000,000 in final-interim availability upon the Court entering an order denying the Amended Motion to Dismiss. (¶¶ 8, 11). Only up to \$10,700,000 is earmarked solely for the Debtors (subject to aggregate limit of borrowing by Non-Debtor Entities). (¶ 6).	Up to about \$9.1 million upon entry of DIP order. (¶ 1).
<i>Final Availability</i>	Up to \$48,000,000 upon entry of final DIP order. (¶ 8). Only up to \$8,400,000 is earmarked solely for the Debtors (subject to aggregate limit of borrowing by Non-Debtor Entities). (¶ 6).	Up to about \$22.5 million on the date that is 7 weeks after entry of the DIP order. (¶ 1).
<i>Funding of Debtor Portfolio Companies, management expenses, Chapter 11 Professionals</i>	Only up to \$25 million is earmarked for the Debtors including Debtor Portfolio Companies, management expenses of ATLS (including ATVM management fee), and Chapter 11 professional fees, though additional amounts may be allocated for that purpose. (The \$25 million of earmarking is implied by the \$40 million aggregate limit of borrowing by Non-Debtor Entities. (¶ 13)).	Up to \$31.7 million available to Debtor Portfolio Companies, management expenses of ATLS (but not the ATVM management fee), and Chapter 11 professional fees.
<i>Maturity Date</i>	180 days after closing, shortened to (a) 45 days after interim order if no final order entered or (b) plan effective date, material sale,	For each individual Debtor Portfolio Company and ATLS, the earlier of 26 weeks after entry

⁹ See Docket No. 238, at 18, 25–26, 47.

¹⁰ Citations in this summary table are to the Oaktree Term Sheet or LP Proposal (as updated), as applicable.

	appointment of a trustee/examiner, or conversion. (¶ 9).	of DIP order, or material sale, refinance, or plan effective date. (¶ 2).
<i>Collateral</i>	All property of the Debtors' estates, which includes Fund Assets, such as the Portfolio Company Equity, the Funded Cash, and the Syntimmune Litigation Proceeds, none of which constitute property of any Debtor's estate. (¶ 24). Includes all property of Debtor Portfolio Companies and ATLS. All property in collateral perimeter is cross-collateralized.	Excludes property of Fund-Level Entities. Includes all property of Debtor Portfolio Companies and ATLS but ring-fenced per entity. (¶ 10).
<i>Non-Debtor Funding</i>	Intercompany facility of up to \$40 million made available by Fund to Non-Debtor Entities subject to documentation and aggregate limits on borrowings. (¶¶ 13–14)	LPs are willing to have good faith discussions, negotiated separately. (¶ 1).
<i>Cross-Defaults and Guarantees</i>	Liability of borrower and guarantors is joint and several. (¶ 9).	No cross-defaults; each borrower is liable only for its tranche. (¶¶ 1(b), 12).

19. Structurally, one benefit of the LP Proposal, relative to the Oaktree DIP, is that it does not provide for any cross-collateralization among the Debtor Portfolio Companies or ATLS. Rather, each of the Debtor Portfolio Companies and ATLS is ring-fenced such that it is liable only for the DIP Commitments allocated to it under the LP Proposal. In contrast, under the Oaktree DIP, each of the Debtor Portfolio Companies is a guarantor of the full \$65 million amount of the Oaktree DIP facility.

20. Of the \$65 million in financing under the Oaktree DIP only up to \$25 million is firmly earmarked for the Debtor Portfolio Companies, management expenses of ATLS, and chapter 11 professional fees. All or some of the remaining \$40 million may be advanced by the Fund to Non-Debtor Entities pursuant to an intercompany loan facility that would effectively allow the Fund to recover, from the Non-Debtor Entities, any interest, fees and MOIC associated with such amounts. Notably, neither the DIP Motion nor the Oaktree DIP specify how much of the \$40 million will be used by the Debtors versus advanced to Non-Debtor Entities.

21. ***Economics and Fees.*** The economic and fee-related terms of the LP Proposal are materially more favorable to the Debtors than the terms of the Oaktree DIP, as reflected in summary format in the following table.¹¹

Term	Oaktree DIP	LP Proposal
<i>Fees</i>		
<i>Interest</i>	14% per annum with an additional 2% upon a default. (¶¶ 15–16).	Fed Funds Rate, which, as of February 17, 2026 was 3.64%. (¶ 3).
<i>Upfront Fees</i>	1% (PIK) of total commitment. (¶ 17).	None. (¶ 4).
<i>Undrawn Fee</i>	2% (PIK) of undrawn total commitment. (¶ 17).	None. (¶ 4).
<i>Exit Fee</i>	5% of the aggregate principal amount of the DIP Loans. (¶ 17).	None. (¶ 4).
<i>Exit Financing Work Fee</i>	\$1,000,000 (cash) upon entry of an exit financing work fee order. (¶ 17).	None. (¶ 4).
<i>Collateral Agent Fee</i>	To be specified in agent fee letter. (¶ 17).	None (N/A).
<i>Lender Prof. Fees</i>	Must be paid before receiving initial-interim funding (¶ 11(6)), and included in use of proceeds, for lender and DIP agent. (¶ 6(ii)).	None (N/A).
<i>MOIC</i>	Upon payment or other triggers, MOIC requirement of 1.15x on total commitment amount. (¶ 18).	None. (¶ 6).

22. As a result of the huge difference in fees, interest rate, and the MOIC, the Oaktree DIP is far more expensive than the LP Proposal. As shown in the chart below, this wide differential exists when comparing the same amount of funding to the Debtors. As discussed further in the Aebersold Declaration and subject to the assumptions therein (including that certain fees and costs will not be payable under the Oaktree DIP), based on the same amount of funding to the Debtors under both proposals, the LP Proposal is clearly more favorable to the estates on a number of cost metrics including, in absolute dollars related to fees and expenses (\$4.75 million vs. \$302,000), as net funding (85% vs. 99%), as a percentage of DIP facility drawn (15% vs. 1%), and based on

¹¹ Citations in this summary table are to the Oaktree Term Sheet or LP Proposal, as applicable.

IRR (approximately 76% vs. 4%). Under these circumstances, the Oaktree DIP would be more than 15 times more expensive than the cost of the funding under the LP Proposal. See Aebersold Declaration, ¶20.

<i>US\$ (thousands)</i>	Oaktree DIP	LP Proposal
Gross funding to Debtors	\$31,707	\$31,707
(-) Interest paid	(1,165)	(302)
(-) Upfront fee	(317)	–
(-) Undrawn fee	?	–
(-) Exit fee	(1,585)	–
(-) Exit financing work fee	(1,000)	–
(-) Collateral agent fee	–	–
(-) Implied payment for 1.15x MOIC	(688)	–
Net funding to Debtors	\$26,951	\$31,406

Nominal cost of DIP drawn	15%	1%
IRR of DIP drawn	76%	4%

<i>US\$ (thousands)</i>	Oaktree DIP	LP Proposal
Interest paid	\$1,165	\$302
Upfront fee	317	–
Undrawn fee	?	–
Exit fee	1,585	–
Exit financing work fee	1,000	–
Collateral agent fee	–	–
Implied payment for 1.15x MOIC	688	–
Total cost	\$4,756	\$302

DIP drawn	\$31,707	\$31,707
<i>Nominal cost of DIP drawn</i>	<i>15%</i>	<i>1%</i>
IRR of DIP drawn	76%	4%

23. **Lack of Exit Commitment.** The Oaktree DIP Term Sheet provides the Oaktree lenders with the option, in their sole discretion, to receive, as payment for the DIP obligations thereunder, equity interests in any post-reorganization successor entity to the GP or the Fund. As stated in the Oaktree Term Sheet, the “Initial DIP Lender” and the Debtors merely *agree to negotiate* the terms

of a *potential* exit liquidity facility to provide the Debtors up to approximately \$300 million, with the funds to be used only for operations and not to be paid to any limited partner.

24. ***Sub Rosa Plan.*** Notably, the DIP Term Sheet attaches the “Plan Term Sheet” for a chapter 11 plan that would strip the LPs of their property interest in the Fund, while allowing the GP to continue to obtain an interest in the Reorganized Debtors. In a brazen effort to hinder the ability of the LPs to pursue actions and remedies that would threaten confirmation of the GP’s plan for the Debtors, the Oaktree DIP contains a number of events of default, many of which are quite unusual and which, taken together, appear designed to short-circuit the confirmation process. Among the events of default are the following:¹²

- Entering into any settlement with any stakeholder involving any material assets of the Debtors without approval by DIP Lenders. (¶ 31(q)).
- Any termination of plan exclusivity without the prior consent of the Requisite DIP Lenders. (¶ 31(i)(xi)).
- The filing by any party-in-interest of any Plan of Reorganization that is not an Approved Plan (defined to mean a plan that it does not have the consent of the DIP Lenders). (¶31(i)(xii)).
- Any action in the Cayman winding-up proceeding, or any other insolvency or winding-up proceeding in the Cayman Court or any other court of competent jurisdiction (including Braeburn Inc. and Braeburn MSL, LLC). (¶ 31(e)).
- Dismissal of any bankruptcy case of the debtors that does not provide for payment in full of all DIP obligations. (¶ 31(i)(vi)).
- Appointment of an equity committee. (¶ 31(i)(v)).
- Any transfer of LP investor interests in ATP Life Science Ventures, L.P. (¶ 31(t)).

25. Taken together, the fact that the occurrence of any of these actions will trigger an event of default, which under the Oaktree DIP if approved, would afford Oaktree with remedies enabling

¹² References in this list are to the Oaktree Term Sheet, and terms used but not defined in this list shall have the meaning ascribed to them as in the Oaktree Term Sheet.

the agent (on behalf of the lenders) to foreclose on the collateral (including the Fund Assets), whether through a credit bid or otherwise. Notably, none of the other DIP financing term sheets submitted to the Debtors by other interested parties and produced in discovery contained such events of default.

26. Notwithstanding the filing of the DIP Motion, the LPs and their professionals are and remain prepared to negotiate with the Debtors over the terms of the LP Proposal, in the hope of reaching agreement before the hearings that are scheduled for tomorrow. To date, despite the best efforts of the LPs, no resolution has been achieved.

OBJECTION

I. The Court Has Neither *In Rem* Jurisdiction Nor Statutory Authority to Grant Liens on Fund Assets Because They Are Not Property of Any Estate.

27. The Debtors seek to have the Court exercise its jurisdiction and statutory authority under section 364(c) and (d) of the Bankruptcy Code, to grant liens on Fund Assets to secure obligation under the Oaktree DIP. For all of the reasons stated (in Section I and elsewhere) in the LPs' Funding Objection, all of which are fully incorporated herein by reference, the Fund Assets do not constitute "property of the estate" under applicable Cayman law and Section 541 of the Bankruptcy Code. Accordingly, this Court has no *in rem* jurisdiction to grant liens on the Fund Assets.

28. Similarly, this Court lacks statutory authority to grant such liens. Sections 364(c) and (d) of the Bankruptcy Code only authorize the granting of liens on "property of the estate," whether such lien is on unencumbered property, or such lien is junior, equal or senior to existing liens. 11 U.S.C. § 364(c)(2) (authorizing the grant of a lien on "property of the estate that is not otherwise subject to a lien"); 11 U.S.C. § 364(c)(3) (authorizing grant of "junior lien on property of the estate that is subject to a lien"); 11 U.S.C. § 364(d) (authorizing the obtaining of credit or incurrence of

debt “secured by a senior or equal lien on property of the estate that is subject to a lien” under certain conditions).

29. Given the absence of *in rem* jurisdiction and statutory authority necessary for this Court to grant liens on the Fund Assets, the DIP Motion should be denied insofar as it purports to grant liens on Fund Assets, whether or not unencumbered.¹³

II. The LPA Prohibits the Fund from Borrowing Money Without the Consent of the LPs.

30. Once again, the Debtors are seeking relief that violates the LPA. Here, the Debtors’ entry into the Oaktree DIP runs afoul of paragraph 2(i) of the LPA, which states as follows: “The Partnership shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units.”¹⁴ Under the Oaktree DIP, the “Borrower” is the Fund, in direct contravention of Section 2(i). In addition, paragraph 2(h) of the LPA similarly provides: “The Partnership shall not guarantee *or agree in any other manner* to become liable with respect to *any indebtedness or obligation of any other Person* without the prior written consent of the holders of a majority of the Preferred Units.”¹⁵ Under the Oaktree DIP, the Fund (along with all other Debtors) is effectively agreeing to become liable for up to \$40 million in capacity to be utilized by Non-Debtor Entities under an intercompany facility.

¹³ To the extent the Debtors or Oaktree believe that section 364(e) of the Bankruptcy Code will shield any grant of liens from appellate review, they are mistaken. The Supreme Court has recently held, in an analogous context, that section 363(m) of the Bankruptcy Code does not confer (or remove) *in rem* jurisdiction, and on that basis, found that an appeal was not moot and could proceed. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 301–03 (2023). Likewise, section 364(e) does not confer *in rem* jurisdiction over the Fund Assets that are not property of the estate, meaning that any reversal of an order granting such liens on property over which this Court had no jurisdiction to begin with would mean that such liens were void and of no effect.

¹⁴ See **Exhibit B**, LPA, at ¶ 2(i). The Debtors agree that the LPs hold the majority of the Preferred Units (as defined in the LPA). See Docket No. 18, ¶ 10, n.2.

¹⁵ See **Exhibit B**, LPA, at ¶ 2(h) (emphasis added).

31. The filing of a bankruptcy case does not nullify or void corporate governance terms, such as the requirement under the LPA that the GP obtain the consent of the LPs in order for the GP, in the name of the Fund for the benefit of its limited partners, to borrow money or agree in any other manner to become liable for the indebtedness of another person. For example, in *In re DocAssist, LLC*, 2014 WL 3955062, at *3 (Bankr. S.D. Fla. Aug. 12, 2014), the court rejected as “nonsense” the debtor’s request for authority to borrow more than \$25,000 without obtaining the required supermajority consent under the governance provisions of the debtor’s LLC agreement, explaining that “the filing of a [c]hapter 11 [p]etition does not operate to nullify or void regular corporate (or LLC) internal governance constraints.”¹⁶ Other courts have gone even farther in related circumstances, and have held that, under well-settled law, corporate governance provisions requiring the consent of certain equityholders to file petitions are fully enforceable in bankruptcy, and the failure to obtain such consent provides grounds for dismissal. *E.g.*, *In re Franchise Servs. N. Am., Inc.*, 891 F.3d 198, 206–07 (5th Cir. 2018), quoting *Price v. Gurney*, 324 U.S. 100, 106 (1945) (“[i]f the petitioners lack authorization under state law, the bankruptcy court ‘has no alternative but to dismiss the petition’”); *In re 3P Hightstown, LLC*, 631 B.R. 205, 211 (Bankr. D.N.J. 2021).

32. The need for the Debtors to comply with corporate governance requirements under the LPA is even more acute where, as here, the Debtors concede that the Fund is solvent.¹⁷ “When the debtor is solvent, ‘the bankruptcy rule is that where there is a *contractual* provision, valid under

¹⁶ Similar to these bankruptcy cases, certain members of the LLC in *DocAssist* filed for bankruptcy in an effort to circumvent an unfavorable state court ruling in favor of other members on corporate governance issues. *Id.* at *1-2. The court in *DocAssist* characterized the case as a “two-party dispute,” ultimately abstaining under 11 U.S.C. § 305 and dismissing the case with prejudice. *Id.* at *4.

¹⁷ See Docket No. 316, ¶ 37, n.26 (the Fund “for present purposes . . . is solvent”).

state law, . . . the bankruptcy court will enforce the contractual provision.” *Gencarelli v. UPS Cap. Bus. Credit*, 501 F.3d 1, 7 (1st Cir. 2007) (emphasis in original) (citation omitted) (also stating the “equities strongly favor holding the [solvent] debtor to [] contractual obligations”); *see also In re Los Angeles Dodgers LLC*, 465 B.R. at 32–33 (in granting a stay pending appeal, district court disagreed with bankruptcy court’s ruling that a “no shop” provision was unenforceable in solvent debtor case); *In re Energy Future Holdings Corp.*, 513 B.R. 651, 658–660 (Bankr. D. Del. 2014) (collecting cases where contract terms were enforced against solvent debtors). The sanctity afforded to corporate governance provisions in bankruptcy, combined with the “strongly favored” equitable principle that all contract terms should be enforced against solvent debtors, requires that the GP be prohibited from entering into the Oaktree DIP on behalf of the Fund without the LPs’ consent as required by the LPA.

33. Finally, for all of the reasons explained in Section II of the Funding Objection,¹⁸ which again are fully incorporated by reference, and consistent with the legal authority cited above, section 541(c)(1) of the Bankruptcy Code provides no refuge to the GP in its efforts to enlarge its corporate authority and abrogate the terms of the LPA as it sees fit. As explained in the Strebulaev Declaration, allowing venture capital funds, such as the Fund, to avoid their obligations under funds’ governing agreements, would upend the expectations of investors. Investors in venture capital expect the governing agreements, such as the LPA, to protect them from a general partner’s conflicts of interest and to prevent the general partner from investing their money in ways that the governing agreements do not permit and to which they did not agree. As discussed in the Strebulaev Declaration, if general partners were able to resort to chapter 11 to take actions that are not allowed under their governing agreements, investors would require higher returns to accept the

¹⁸ *See Exhibit A*, Funding Objection ¶¶ 60–63.

higher risk of harm, which would result in less investment in venture capital, as companies that previously would have had satisfactory returns would go unfunded due to the increased risk.

34. Accordingly, the DIP Motion should be denied, insofar as the GP is entering into the Oaktree DIP on behalf of the Fund, on the basis that the LPA does not provide the GP the authority to authorize the Fund to borrow money or assume the liability of other entities without the consent of the LPs, which has not been sought or obtained.

III. The Debtors Cannot Show that the Oaktree DIP, or any DIP Financing, is Necessary for the Debtors' Continued Operation, and Especially Not the Solvent Fund.

35. Courts applying section 364 of the Bankruptcy Code have held that a debtor may not obtain approval for debtor-in-possession financing unless it first establishes that, inter alia, the credit is necessary for the debtor's continued operation. *In re Barbara K. Enters., Inc.*, 2008 WL 2439649, at *8 (Bankr. S.D.N.Y. June 16, 2008) (citing *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990)); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (stating that requests for postpetition financing must show the funds are "necessary to preserve the assets of the estate"). The standard is even more stringent when financing is sought on an interim basis. Both the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this District are clear that the Debtors may obtain DIP financing on an interim basis "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(c)(2)(A); *see also* Local Rule 4001-2(b).

36. So far, the Debtors have made no showing that the Fund needs immediate access to the \$17 million in funding for which they are seeking approval on an interim and expedited basis. There are no payments for payroll and benefits due this week, according to the budget attached to the DIP Motion, and the largest expense over the next two weeks, outside of chapter 11 professional fees (which cannot be paid before retention of the professionals is approved by this

Court and fees are approved), is \$750,000 for a management fee to be paid to ATVM, to which the LPs object (and will not agree to fund under the LP Proposal) for the reasons explained in the Funding Objection. **Exhibit A**, Funding Objection ¶ 80. Excluding the ATVM management fee that is not payable, and chapter 11 professionals whose employment applications or fees have not been approved, the total expenses over the next two weeks appear to be less than \$1 million. And, as the Debtors have conceded, the Fund is solvent, so it strains credulity to argue that the Fund has an urgent need for funding or that failure to provide the funding could cause irreparable and immediate harm to the Fund.

37. Of course, the Oaktree DIP is also wholly unnecessary because the LP Proposal (as updated) will, if accepted, provide a readily available alternative that will enable the Debtors to continue their operations for the next 26 weeks without interruption. For all of the reasons explained above and in the Aebersold Declaration, the LP Proposal is far superior to the Oaktree DIP in every respect: structurally, economically, and avoiding events of default that will occur under the Oaktree DIP resulting from the LPs' lawful exercise of rights and remedies.

38. Accordingly, the DIP Motion should be denied as unnecessary for the Fund as borrower thereunder. But even if the Debtors could somehow show that the credit is necessary for the Fund's continued operation, the Debtors still also need to demonstrate that "[t]he terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender." *In re St. Mary Hosp.*, 96 B.R. 393, 401 (Bankr. E.D. Pa. 1988) (quoting *In re Crouse Grp. Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1988)); *In re Los Angeles Dodgers LLC*, 457 B.R. at 312. Although courts usually assess the fairness of the loan terms under the less stringent business judgment standard, that standard is inapplicable—and the heightened entire fairness standard applies—if the LPs can show one of four elements is satisfied: "(1) the directors

did not in fact make a decision[;] (2) the directors’ decision was uninformed; (3) the directors were not disinterested or independent; or (4) the directors were grossly negligent.” *In re Los Angeles Dodgers*, 457 B.R. at 313.¹⁹

39. Here, the business judgment standard should not be applied because the GP’s decision-making was uninformed, grossly negligent, and tainted by self-interest. To begin, Seth Harrison, who controls the GP, is not a disinterested decision-maker because he “derive[s] a[] personal financial benefit from” choosing the Oaktree DIP over the LP Proposal. *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000). The GP is not entitled to use of the Funded Cash to pay the \$1.4 million management fee to ATVM, which Mr. Harrison owns.²⁰ Payment of that fee is not provided under the LP Proposal,²¹ but the Oaktree DIP contains no prohibition on making that insider payment.²² And even though the GP’s own financial interests are clearly implicated, the available evidence indicates that the Debtors did *not* delegate approval or negotiation authority to the independent director (who was appointed five days before the DIP Motion was filed); instead, the independent director was merely “also consulted” during the negotiation process over the Oaktree DIP.²³ That is wholly insufficient to cleanse the GP’s financial self-interest in opting for the Oaktree DIP over

¹⁹ Cayman law, which applies to Fund governance issues, applies a higher standard on directors than Delaware law; however, for the purposes of consideration of this DIP Motion, the Court can apply the familiar Delaware framework because the Debtors cannot show that even the lower Delaware standard is satisfied.

²⁰ See *Declaration of Dr. Seth L. Harrison in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] ¶42.

²¹ See **Exhibit A** ¶¶ 58–63, 80; LP Proposal, ¶2.

²² See Oaktree DIP Term Sheet, at 2–3; DIP Motion, Ex. 2 [Docket No. 313-1], at 5–6 (indicating Management Fee will be paid in the amount of \$750,000 on February 27, 2026, and \$650,000 on April 3, 2026).

²³ See Mandarinino DIP Declaration ¶ 21.

the LP Proposal, use of Funded Cash, or for that matter, any financing that would require the Debtors to fund consistent with the requirements of the LPA.

40. The GP's decision to consent to the Oaktree DIP was also uninformed and grossly negligent. Here, the GP "acted outside the bounds of reason" because agreeing to the terms of the Oaktree DIP constitutes a breach of the LPA and exceeded the scope of the GP's powers under Cayman law. *In re Bayou Steel BD Holdings, L.L.C.*, 651 B.R. 179, 184–85 (Bankr. D. Del. 2023) (defining the pleading standard for gross negligence); *see also In re Cred Inc.*, 650 B.R. 803, 831 (Bankr. D. Del. 2023) ("Gross negligence generally requires that officers, directors, and managers fail to inform themselves fully and in a deliberate manner." (citation omitted)). As already explained, the LPA explicitly prohibits the GP from incurring any debt, borrowing any money, or agreeing to become liable for any debt of another, without the consent of the LP. Ignoring these clear restrictions on the Fund that apply not only to the DIP Motion but also to the Second Funding Motion, the GP approved those transactions without even consulting the LPs before doing so. That is all the more egregious now that the LPs have provided their *own* funding proposal that fully complies with the LPA and does not require the GP to abrogate the LPA.

41. Finally, the Oaktree DIP contemplates an exit from bankruptcy under which, improperly using the Oaktree DIP as a shield against any challenge by the LPs, the GP will seek to retain its interest in and control over the reorganized Fund, while stripping the LPs of their beneficial and rightful interest in the Fund.

42. Given the above, any decision by the GP to agree, on behalf of the Fund, to enter into the Oaktree DIP should be, and is, subject to heightened scrutiny, under which the Debtors must show that the Oaktree DIP reflects both procedural and substantive fairness, *i.e.*, "fair dealing and fair price." *In re Los Angeles Dodgers*, 457 B.R. at 313; *see also Weinberger v. UOP, Inc.*, 457

A.2d 701, 711 (Del. 1983); *Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1162 (Del. 1995). The Debtors have not met that burden. As in *In re Los Angeles Dodgers*, the existence of a competing proposal on far more favorable terms is by itself enough to show an absence of entire fairness. Further, there is nothing procedurally fair about a process that was rigged to exclude the LPs—who own more than 98% of the value of the Fund Assets—for the purpose stated in the DIP Motion of achieving a “divorce” from the LPs under a plan that would distribute, to the GP, control of the very vehicle that the GP has held hostage, over the objection of the LPs who are the beneficial owners of the Fund Assets. See DIP Motion ¶ 2.

IV. The Oaktree DIP Proposal Constitutes an Impermissible Sub Rosa Plan.

43. A debtor cannot enter into a transaction that would amount to a *sub rosa* plan of reorganization or an attempt to circumvent the chapter 11 requirements for confirmation of a plan of reorganization. See *In re Latam Airlines Grp. S.A.*, 620 B.R. 722, 812 (Bankr. S.D.N.Y. 2020). *Sub rosa* plans are prohibited to prevent a debtor in possession from entering into transactions that will, in effect, “short circuit the requirements of [c]hapter 11 for confirmation of a reorganization plan.” *Id.* at 813 (quoting *In re Iridium Operating LLC*, 478 F.3d 452, 446 (2d Cir. 2007) (reviewing the terms of a proposed DIP facility). “[A] bankruptcy court cannot, under the guise of section 364, approve financing arrangements that amount to a plan of reorganization but evade confirmation requirements.” *In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992). Courts more closely scrutinize proposed transaction, including DIPs, that provide significant control over the chapter 11 process or vault a party through the capital stack to become a primary secured lender of the debtors. See *In re Belk Props., LLC*, 421 B.R. 221, 225 (Bankr. N.D. Miss. 2009).

44. As discussed above, the terms of the Oaktree DIP, including the events of default triggered by termination of exclusivity or competing plans or challenges to the Debtors, would

“effectively lock up any future plan of reorganization to be only the Debtors’ Plan providing for the equity conversion.” *Latam Airlines*, 620 B.R. at 820. Such terms in a DIP loan, collectively, constitute an impermissible *sub rosa* plan, and provide yet another basis for this Court to deny the DIP Motion.

CONCLUSION

WHEREFORE, the LPs respectfully request that the DIP Motion be denied and for such other and further relief as the Court deems just and proper.

Dated: February 18, 2026
Wilmington, Delaware

**RICHARDS, LAYTON &
FINGER, P.A.**

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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Apple Tree Life Sciences, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-12177 (LSS)

(Jointly Administered)

**OBJECTION OF RIGMORA BIOTECH INVESTOR ONE LP AND
RIGMORA BIOTECH INVESTOR TWO LP TO DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING USE OF FUNDS TO (A) FUND
PORTFOLIO COMPANIES, (B) PAY MANAGEMENT COMPANY EXPENSES
AND (C) PAY CHAPTER 11 EXPENSES, AND (II) GRANTING RELATED RELIEF**

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd, and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the “**LPs**”), respectfully submit the following objection (the “**Objection**”) to the *Debtors' Motion for Entry of an Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief* [Docket No. 228] (the “**Second Funding Motion**”)² and state as follows:³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 1016f9.

² The Debtors' accompanying declaration in support of the Second Funding Motion was filed at Docket No. 229 (the “**Mandarino Decl.**”).

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Second Funding Motion.

PRELIMINARY STATEMENT

1. The Second Funding Motion suffers from the same insurmountable, foundational error as every other aspect of the chapter 11 cases for ATP Life Science Ventures, L.P. (the “**Fund**”) and ATP III GP, Ltd. (the “**GP**” and, together with the Fund, the “**Fund-Level Debtors**”): it fails to reckon with the actual legal status of the Fund-Level Debtors, and what that means for assets held in the name of the Fund, its limited partners’ rights, and the GP’s obligations.

2. In this motion, the error of filing the Fund-Level Debtors manifests itself in the Debtors’ flawed assumptions about their “estates” and their mistaken view that those “estates” include assets that were never the Debtors’ to begin with. The Debtors’ position violates fundamental principles of bankruptcy law that apply whenever a debtor seeks refuge in this Court, and these unorthodox cases are no exception.

3. Like any other debtor, these Debtors are subject to the rules of this Court—including the limits on its jurisdiction, the terms of the Bankruptcy Code, and the central principle at the heart of section 541 that a debtor cannot have greater property rights in its chapter 11 estate than it had prepetition. A debtor that did not own a property interest prior to filing does not acquire one by virtue of submitting its petition; a debtor that holds someone else’s property on trust does not suddenly become the owner of that property by entering chapter 11. Those basic rules allow this Court to restructure the estates of those who genuinely need its assistance, and prevent others from exploiting the unique powers of being an incumbent debtor in possession to take and use property that does not belong to them.

4. What is astonishing about these chapter 11 cases is that they were filed by the GP and the Fund in complete disregard of these principles, and of the Cayman and bankruptcy law that governs the rights that the GP and Fund purport to assert. The law itself is straightforward: as a matter of undisputed black-letter Cayman law, the Fund *itself* cannot and does not own property

or hold assets, in its own right; therefore under section 541(a), it has no prepetition assets to include in a post-petition estate. As a matter of undisputed black-letter Cayman law, the GP holds assets in the Fund's name on trust for the benefit of the LPs; therefore, under section 541(d), assets of a trust are an exception to the creation of the estate and excluded. As an exempted limited partnership under the law of the Cayman Islands (an "ELP"), the Fund is a creature of Cayman law and has no more rights than Cayman law permits; the GP may acquire or hold assets in the Fund's name on behalf of its limited partners but neither the GP nor the Fund owns that property.

5. The Debtors offer no legal or factual basis to support the conclusion (a conclusion is the very premise of their Second Funding Motion, and of the Fund-Level Debtors' cases overall), that assets denominated as assets "of the Fund" are, in fact, assets of the estates and within the jurisdiction of this Court. They cannot and do not dispute that applicable non-bankruptcy law determines the extent of a debtor's interest in property; that Cayman law governs here; or that as a matter of Cayman law, an ELP like the Fund cannot and does not own property itself, and the GP holds any assets in the name of the Fund on trust for its limited partners. As to applicable bankruptcy law, Debtors cannot and do not meaningfully dispute that under section 541(a), a debtor's estate does not include property it does not own, or under section 541(d), assets held in trust are not part of the estate. On this undisputed law, the Fund—which owns no assets—has no assets in its estate, and the GP—which holds assets only on trust for the LPs—has none either.

6. In short, none of the property held by the GP in the Fund's name and in trust for the LPs—not their capital contributions, nor the equity interests in each of the Fund's Portfolio Companies, nor any other "Fund" asset (collectively, the "**Fund Assets**")—is property of any Debtor's estate. As the LPs have said since the first-day hearing and before: the Fund-Level

Debtors do not belong in this Court, and they cannot bring into this Court assets that never belonged to them in the first place.

7. A funding motion may be an odd place to reexamine these core principles of bankruptcy and Cayman funds law, but those questions arise here because these Debtors have assumed rights in property that they do not have, and seek to use funds that are not within the jurisdiction of this Court or within the *res* of their estates. The very premise of their motion is mistaken.

8. Because property that is excluded from the Debtors' estates is outside the jurisdiction of this Court, the Court cannot grant the relief they seek. The Court lacks *in rem* jurisdiction over the \$74 million in Fund Assets that the Debtors seek permission to use and lacks statutory authority to grant the relief sought under section 363(b), because the assets sought to be used are not property of any estate.

9. To make that point is not, to be clear, to say that the Debtor Portfolio Companies cannot seek funding or should not be funded; like any other legitimate chapter 11 debtor, any of the Portfolio Companies is free to make its case for funding to its existing investors (including the LPs) and to the market at large.⁴ But the Debtors do not have a right to force the use of funds that are not theirs, are not within the estates or the jurisdiction of this Court, and are held in trust for others. The trust beneficiaries—the LPs—could *consent* to the use of funds within the chapter 11 cases, but those funds cannot be used over the LPs' objection.

10. Even in a counterfactual world, in which this Court were to disregard Cayman law and the section 541(a) and (d) principles, the Debtors' Second Funding Motion still should be denied

⁴ The Portfolio Company debtors are Apertor Pharmaceuticals, Inc., Initial Therapeutics, Inc., Marlinspike Therapeutics, Inc., Red Queen Therapeutics, Inc., Evercrisp Biosciences, Inc., Nine Square Therapeutics, Inc., and Nereid Therapeutics Incorporated (collectively, the "**Debtor Portfolio Companies**").

because it seeks to use funds for purposes that are prohibited by the Limited Partnership Agreement of the Fund (as amended from time to time, the “LPA”), which remains in force. The LPA restricts precisely the kinds of maneuvers the GP is attempting here. It prohibits the redirection of capital called for one approved purpose and company to others that have failed to satisfy that contractual prerequisite and provides that the Fund “shall not borrow money” or provide guarantees without consent of the LPs. As the Court anticipated, section 541(c)(1) does not relieve Debtors of their obligations under the LPA, including the obligation to adhere to the contractual limits on spending and budgets.

11. The relief requested in the Second Funding Motion can and should be denied as a matter of law: the funds are unavailable due to undisputed points of law and unambiguous terms of the LPA, and no factual showing can overcome that legal bar. But the facts are not on the Debtors’ side either. They seek tens of millions of dollars in funding for companies that are already many years and dollars into their investment theses, with little to show for it in terms of research progress, and nothing at all to show in terms of market interest. The Fund may have had some early successes in companies led day-to-day by another management team (who departed before these investments were made), but the Debtor Portfolio Companies followed a different path. Their story is one of promising ideas, stalled by poor management and an inability to deliver results, even after many years and many tens of millions of dollars. At this point, a good idea is not enough to warrant many millions more in investment—the opportunity cost to other companies and ideas not before this Court is too great, and companies seeking funding should be prepared to offer concrete plans, with achievable measurable goals, led by credible management—none of which is so far present here.

12. The LPs have no wish to conduct their investments by motion practice and litigation. They have invested billions of dollars in this Fund—including *all* of the equity in the Debtor Portfolio Companies.⁵ For the GP to question the LPs’ commitment to investing in promising biotech and life sciences companies would be laughable if the stakes were not so high. The LPs have invested, and will continue to invest, in promising ideas, as well as the scientists, doctors and researchers who generate, develop, test, and see them through. There are billions of dollars behind the LPs’ commitment to science. It is hard to look at the amount of money invested broadly, consistently, and over fourteen years, and seriously doubt that the LPs were and are committed investors in this space. Investors who truly face a “liquidity shortage,” as the GP likes to claim here, typically would not transfer nearly \$100 million in cash in just five days, or have invested over \$820 million with that GP in the past four years alone.⁶

13. The LPs can invest more. They would have done so already, had the GP stepped down or had the Cayman Trial proceeded to wind-up this Fund and create room for a new structure, new manager, and future investments. But as the LPs reach the end of their contingent subscription to this Fund, they do not choose to give more than that to this manager.⁷ Understandably, they do not trust a GP who has failed to recognize and honor the limit of their capital commitment to this closed-end fund, their rights to review and approve budgets, and their desire—protected by

⁵ Since Amendment No. 13, which was signed in 2019, the Fund has operated on a pool system. Ex. G, LPA Amendment No. 13 (adding ¶¶ 17(a), (b)). For certain pools, including Pool V-1 and V-2 where the Debtor Portfolio Companies sit, the LPs have contributed 100% of the capital, and Dr. Harrison and his trust have contributed none. *See* Ex. E, Chancery Court Post. Trial Op., Dec. 5, 2025, at 12–13.

⁶ Ex. A, Opening Report of Dr. Strebulaev, at 23.

⁷ Subject to appeal, including as to the LPs’ position that their deemed contributions of hundreds of millions of otherwise distributable returns counted toward satisfaction of, and in fact exhausted, their contingent subscription.

Cayman law—to seek new management when their trust has been shattered and their confidence lost.

14. So, the LPs object to this request to fund Portfolio Companies subject to the whim of this GP and its conflicted advisors. Absent information and a showing of a valid business purpose, which Debtors have not made, the LPs will not make this funding consensually. And that funding cannot be ordered by this Court because it does not have jurisdiction over the assets and it violates the LPA. It should deny the motion, hear and grant the motions to dismiss and to lift the stay, and allow the Debtor Portfolio Companies to continue their reorganization here in Delaware, without the overhang of this GP/LP dispute, and to seek funding elsewhere.

FACTUAL BACKGROUND

15. The long history of this dispute is set forth elsewhere, including in the LPs' *Amended Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for an Order Dismissing the Bankruptcy Cases of ATP Life Science Ventures L.P. and ATP III GP, Ltd* [Docket No. 205] (the "**Amended Motion to Dismiss**") and *Motion of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP for Relief from the Automatic Stay* [Docket No. 125] (the "**Lift Stay Motion**"), and are not repeated here.

16. The bulk of the LPs' Objection to the Second Funding Motion turns on questions of Cayman, bankruptcy, and contract law, as addressed in argument below.

17. The most relevant facts are summarized here:

18. The structure, management, and operation of the Fund are controlled by the terms of the LPA dated November 1, 2012, which is governed by the law of the Cayman Islands and is expressly subject to the Cayman Islands' EXEMPTED LIMITED PARTNERSHIP ACT ("**ELP Act**"). See Ex. B, LPA, ¶ 18(g)(i). The LPA has been amended 22 times. The GP, a Cayman entity owned and controlled by Dr. Harrison, holds the legal title to the Fund Assets on statutory trust for

the benefit of the limited partners (principally, the LPs) and owes fiduciary duties to the Fund's limited partners. Docket No. 126-37, *Kuwait Ports Authority v Port Link GP Ltd* [2023 (1) CILR 50] at [54], [56]; *see generally* Docket No. 126, Phillips Decl. ¶¶ 24(b), 26–27, 57–81⁸; Ex. C, Chancery Court Pre-Trial Order, Sept. 11, 2025, ¶¶ 13–15.

19. Under the LPA, the GP can only call capital for Portfolio Companies for a project and within a budget approved by the LPs, up to the LPs' contingent subscription amount. Ex. B, LPA, ¶ 5(a)(i); Ex. D, LPA Amendment No. 3, at 2 (amending LPA ¶ 5(a)(ii)(E)). The LPs have an absolute contractual right to approve or disapprove budgets proposed by the GP. Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 75–76 (“The LPA grants Rigmora the discretion to approve budgets. . . . [N]one of the relevant tests support implying a good faith term.”). This protection reflects the LPs' role as effectively the Fund's only source of capital: the LPs have contributed approximately \$2.4 billion in cash, representing 98% of the Fund's overall capital and 100% of the capital for the Debtor Portfolio Companies. Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 5, 12, 14, 17 n.99, 47; *see Declaration of Dr. Seth L. Harrison In Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the “**First Day Decl. of Dr. Seth Harrison**”) ¶¶ 10, 27.⁹

20. The capital commitments to the Fund are capped at the limited partners' contingent subscriptions, and the GP cannot raise new equity or issue additional debt without the LPs' consent. Ex. B, LPA, ¶¶ 2(h)–(i) 6(e); Ex. G, LPA Amendment 13, ¶ 9; Ex. H, LPA Amendment

⁸ Cites are to the Phillips Decl. for ease of reference and include citation to the authorities referenced and quoted therein.

⁹ Although Dr. Harrison has “invested” some capital into the Fund, he has done so primarily through an interest-free loan from the LPs, which Dr. Harrison repaid through reductions of ATVM's Management Fee or by assigning his Fund Preferred Units and distribution rights to the LPs. *See* Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 10; Ex. F, LPA Amendment No. 14, ¶¶ 5, 6(c).

20, ¶ 5. The GP for years refused to manage the Fund in accordance with those limits.¹⁰ When the LPs raised concerns that the GP was not managing the Fund in accordance with the agreed principles, the GP bristled, sued, and did not adjust its management.¹¹

21. Although the Fund had some early successes, the management teams for those companies left in 2019, and ATP¹² continued on with different teams running the newer, early-stage companies, many of which are now before this Court as debtors.¹³

22. At the Chancery Court trial, Dr. Harrison testified that, “there were also some issues with the prior team that, despite their successes, they were much more focused on investing than they were on operating.” Ex. J, Chancery Court Trial Tr., at 29:10–13. Unsurprisingly, Dr. Harrison’s shift to a team less focused on investment backfired as, starting with the 2020 vintage, many of the Portfolio Companies began to falter. Specifically, early-stage companies—including *all* of the Debtor Portfolio Companies—were exhausting their budgets or were missing the milestones embedded in the relevant investment memoranda and SPAs.¹⁴ The value of these

¹⁰ See Ex. I, Chancery Court Defendant’s Post-Trial Brief, at 3–4.

¹¹ See, e.g., Ex. J, Chancery Court Trial Tr. at 361:9–363:16 (Rybolovlev) (noting Harrison “was pretty negative” in conversations about staying within the LPs’ commitments to the Fund); *id.* at 364:22–365:7 (Rybolovlev) (“Q. How did your discussions [about how close the Fund was to exhausting the LPs’ commitments] go? A. Pretty tensely.”); *id.* at 117:20–24 (Harrison, by video) (“Q. Did you do anything to assess the amount by which the fund’s commitments to invest in its portfolio companies exceeded \$2.5 billion? A. No. Not specifically, no.”).

¹² This term has the same meaning ascribed to it in the Chancery Court’s Post-Trial Opinion.

¹³ See *Biography of Samuel Hall Talk*, SCION LIFE SCIENCES, <https://www.wsj.com/business/financial-services-roundup-market-talk-f8a6d816> (showing that Samuel Hall was instrumental in the successes of Syntimmune, Stoke, Chinook, Marengo, and Ascidian, and that Hall left ATP in 2019); See *Biography of Aaron Kantoff*, SCION LIFE SCIENCES, <https://www.wsj.com/business/financial-services-roundup-market-talk-f8a6d816> (showing that Aaron Kantoff was instrumental in the successes of Akeru, Corvidia, Syntimmune, Stoke, Marengo, and Ascidian, and that Kantoff left ATP in 2019); Ex. J, Chancery Court Trial Tr., 40:1–41:10 (Dr. Harrison describing the creation of the pool system in order to accommodate his new team).

¹⁴ See Ex. J, Chancery Trial Tr., at 195:8–15 (ATP expert, Mark Robbins, testifying that all early-stage companies missed milestones in their investment memoranda); Ex. K, Corrected Opening Report of Dr. Rimm, ¶¶ 85–87, Figure 8 (report of LPs’ expert Dr. Ilona Rimm noting that Evercrisp failed to meet milestones from its investment memorandum and that ATP had called capital for tranches with unmet milestones); *id.* ¶¶ 89–91, Figure 9 (same for Initial); *id.* ¶¶ 99–101, Figure 11 (same for Red Queen); *id.* ¶¶ 77–79, Figure 6 (same for

preclinical Portfolio Companies was declining.¹⁵ Third-party investors repeatedly declined to invest in the Debtor Portfolio Companies because of their lack of commercially relevant scientific progress.¹⁶ The GP acknowledged that challenge internally, but publicly tried to blame the Portfolio Companies' failure to generate interest from third-party investors on the nationality of the LPs' beneficial owner.¹⁷

23. In mid-May 2025, commercial negotiations instigated by the GP over reallocating funding from failing early-stage investments to more promising ones broke down when the GP withdrew its proposal after the LPs refused to grant it expanded control over funding decisions. Ex. U, Email Correspondence, May 11, 2025, at 3 ¶ 1(d), 3; Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 32. Despite his testimony in the Chancery Court trial that he had proposed

Apertor, with called capital for tranches with delayed milestones); Docket No. 229, Mandarino Decl. ¶ 9, Table 1 (listing "Unfunded Approved Budget" as "N/A" for both Nereid and Nine Square), *id.* ¶ 12 ("Regarding Debtors Nereid and Nine Square . . . the Partnership Debtor does not have further financial commitment under the Series A."); Ex. L, March 7, 2024 Correspondence Between S. Harrison and P. Eisenberg, at 2 (Dr. Harrison remarking with regard to a missed milestone by Red Queen—whose project was to develop a drug to treat COVID-19—that "covid is stale, even resented . . . I don't understand how a miss is not a miss."). The SPAs of Aethon and Marlinspike specifically identified milestones and made funding obligations contingent on the successful achievement of those milestones, among other conditions. *See* Ex. M, Aethon Stock Purchase Agreement ¶¶ 1.2(b)–(e); Ex. N, Marlinspike Stock Purchase Agreement ¶¶ 1.2(b)–(f); Ex. O, Finkelman Dep. Tr., Oct. 3, 2025, at 126:4–10.

¹⁵ *See* Ex. P, Opening Report of ATP Expert Rao at ¶ 50 (noting that "for twelve of the Portfolio Companies, the appraised fair values are essentially the invested capital," with minor adjustments including global devaluation based on performance of biotech indexes); *see also* Ex. Q, Pluris Valuation of Nereid, Jan. 31, 2025, ATP_00357796 at 357797 (valuing Nereid at \$4,950,000); Ex. R, Pluris Valuation of Marlinspike, Jan. 31, 2025, at 69 (valuing Marlinspike at \$1,240,000).

¹⁶ *See, e.g.*, Ex. S, Jardine Dep. Tr., Aug. 4, 2025, at 188:11–23; 200:15–201:17; 202:11–203:1 (describing declining interest in SARS-CoV-2 projects, such as Red Queen's, and unsuccessful business development efforts for Red Queen generally); Ex. J, Chancery Trial Tr. at 226:2–4 (Strebulaev); Ex. A, Opening Report of Dr. Strebulaev ¶¶ 62–63; *see generally* Ex. T, Email from P. Jardine to P. Eisenberg, Oct. 28, 2025, at 1 ("[I]t is the strangest thing with ATP companies but I see 'strategies' around budget and cash out options and raising new money maybe but I don't see plans to exit and make money.").

¹⁷ *See, e.g.*, Ex. J, Chancery Court Trial Tr. at 174:4–8 (Yanchik) (Fund venture partner recalled communicating to Dr. Ehlers that "the Russia factor may be an excuse for other challenges that ATP presents").

reallocation to address disagreements in the budgeting process,¹⁸ Dr. Harrison privately acknowledged that reallocation was best for the Fund. *See* Ex. V, April 4, 2025 WhatsApp Exchange between S. Harrison and A. Batarina, at 2 (“[R]eallocation from preclinical to clinical...is the right business decision for the portfolio in ANY financing context.”). That view was shared by Dr. Michael Ehlers, CEO of Ascidian, founder of Replicate, and former general ATP partner and Chief Scientific Officer; he advised Dr. Harrison that investing in early-stage companies, like the Debtor Portfolio Companies, “does not seem like the optimal capital allocation given where we are at in the fund.” Ex. J, Chancery Court Trial Tr. at 414:23–415:20; *see also* Ex. W, Aug. 20 and Aug. 21, 2024 WhatsApp Exchange between S. Harrison and M. Ehlers, at 2 (Dr. Ehlers stating that funding or reserving money for early-stage companies is “nonsensical” since they are “sketchy in the likelihood of success” and recommending reallocating money toward more advanced endeavors as a way to “unlock some important value inflections”). In communications with ATP venture partner Joe Yanchik, Dr. Ehlers even candidly characterized the continued funding of Debtor Marlinspike as “Craziness. No drug in sight” among ATP leadership. Ex. J, Chancery Court Trial. Tr., at 414:6–22 (Ehlers); *see also* Ex. X, Aug. 20, 2024 WhatsApp Exchange between M. Ehlers and J. Yanchik, at 3. The Second Funding Motion now seeks to provide millions of dollars to these companies, in ways not contemplated by the May 30 Capital Calls, LPA, or Chancery Court. *See* ¶¶ 58–59 *infra*.

¹⁸ *See* Ex. J, Chancery Court Trial Tr., at 97:19–99:2.

ARGUMENT

I. The Court Has Neither *In Rem* Jurisdiction Nor Statutory Authority to Approve the Proposed Funding Because the Fund Assets Are Not Property of Any Estate.

A. Cayman Law

24. The Cayman law at issue is the basic black-letter standard that governs the ELPs that are the backbone of the investment funds world. As one would expect from a legal regime whose rules govern the investment funds for staggering amounts of private capital,¹⁹ Cayman law is clear, and its courts are sophisticated and consistent in interpreting it. The Cayman legal regime creates orderly expectations for limited partners and the general partners who manage their investments, and those rules are understood and applied consistently over time—and have been expressly clarified by recent decisions. Cayman law consistently recognizes, at every level, that the assets acquired or held through an ELP are held by its general partner on trust for its limited partners, in accordance with the terms of the relevant limited partnership agreement and Cayman statute.

25. The Debtors do not meaningfully dispute these points, and in fact have acknowledged them to Justice Asif and in submissions to Chancellor McCormick. But they did ignore the basic precepts of Cayman law in filing the Fund-level cases and asking this Court to take jurisdiction of the Fund Assets. Because that fundamental disregard for Cayman law and its consequences are at the very heart of the problem with these cases, it is important to summarize it here.

26. **LPA.** By the terms of its LPA, Cayman law governs the Fund. The Fund is a duly-constituted ELP under Cayman law, with the GP serving in the capacity as its general partner. Ex. B, LPA, at 3, ¶ 2(f). Its limited partners and GP agreed to carry on the Fund as a partnership in

¹⁹ See *Financial Services Roundup: Market Talk*, WALL STREET JOURNAL (Jan. 27, 2026), <https://www.wsj.com/business/financial-services-roundup-market-talk-f8a6d816> (indicating that “the total number of private funds registered in the Cayman Islands reached 17,722 last year” and “Cayman funds ended 2024 with \$16 trillion in assets”).

accordance with the ELP Act. Ex. B, LPA, at Prelim. Statement (C). The Fund and the LPA are governed by Cayman law, including the ELP Act and the limitations therein. Ex. B, LPA, ¶ 18(g)(i). The GP is vested with exclusive authority as to the Fund’s management, policies, affairs, and conduct of business. Ex. B, LPA, ¶ 2(b). Under Cayman law, that authority includes holding assets on trust for the limited partners, where the Fund, as an ELP, lacks personhood and cannot hold such assets itself.

27. **Cayman Statute.** Like any Cayman ELP, the Fund is subject to the Cayman ELP Act, and to Section 16(1), which provides that *all* assets of an ELP are held by its general partner on trust, in accordance with the terms of the partnership agreement:

16(1). **Any rights or property** of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership **shall be held or deemed to be held by the general partner** and if more than one then by the general partners jointly, **upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement.**

Docket No. 126-5, ELP Act § 16(1) (emphasis added); *see also* Docket No. 126, Phillips Decl. ¶ 51 (quoting Docket No. 126-5, ELP Act § 16(1)). For the avoidance of doubt, binding Cayman case law has instructed that “the only sensible construction of the words in ELPA § 16(1) is that the general partner of an [ELP] holds its assets on trust for all the limited partners.”²⁰ “Property” as it is used in the ELP Act is understood to have a very broad meaning, which would include all

²⁰ See Docket No. 126-37, *Kuwait Ports Authority v Port Link GP Ltd* [2023 (1) CILR 50 at [51].

of the Fund Assets.²¹ The role of a general partner of an ELP is to conduct business and enter into contracts on behalf of the ELP.²²

28. ***Cayman Case Law.*** In interpreting Section 16(1), Cayman courts have concluded that when the GP holds rights or property “upon trust as an asset of the exempted limited partnership” in accordance with the terms of its partnership agreement, it does so on behalf of and for the benefit of *the limited partners*. As trust beneficiaries, the limited partners “have an equitable proprietary interest in the trust property and are entitled to have the trust duly administered in accordance with the trust instrument, if any, and the general law.”²³ “[L]imited partners [of an ELP] have a proprietary interest in the partnership assets[.]”²⁴ An ELP’s general partner is a trustee who “owes the fiduciary duties of a partner, agent, and trustee,” directly to the limited partners.²⁵ The Cayman Courts consistently recognize that Section 16 of the ELP Act “creates a statutory trust.”²⁶ The 2023 decision in *Kuwait Ports Authority v Port Link* is the leading case and is routinely cited for

²¹ See Docket No. 126-1, CAYMAN INTERPRETATION ACT (1995 Revision) § 3 (defining the term “property” for all Cayman statutes: “‘property’ includes money, goods, things in action, land and every description of property, whether real or personal; also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined”).

²² Docket No. 126-5, ELP Act § 14(2); *see also* Docket No. 126, Phillips Decl. ¶ 50 (citing Docket No. 126-5, ELP Act § 14(2)).

²³ Docket No. 126-47, *Lewin on Trusts* 20th Ed. including First Supplement at 41-002; *see also* Docket No. 126, Phillips Decl. ¶ 65 (quoting *Lewin on Trusts* at 41-002).

²⁴ Docket No. 126-44, *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [48]; *see also* Docket No. 126, Phillips Decl. ¶ 66 (quoting *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [48]).

²⁵ Docket No. 126-42, *Abraaj General Partner VIII Limited v Abraaj ABOF IV SPV Limited*, [2025] CICA (Civ) 8 at [36]; *see also* Docket No. 126-37, *Kuwait Ports Authority v Port Link GP Limited*, [2023] (1) CILR 50 at [145] (“the general partner is also a trustee”); Docket No. 126-5, ELP Act § 16(1) (“[a]ny rights or property of every description of the exempted limited partnership . . . shall be held or deemed to be held by the general partner . . . upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement”); Docket No. 126, Phillips Decl. ¶¶ 70–71 (citing Docket No. 126-37, *Kuwait Ports Authority v Port Link GP Limited*, [2023] (1) CILR 50 at [145], section 16(1) of ELP Act, and Docket No. 126-42, *Abraaj General Partner VIII Limited v Abraaj ABOF IV SPV Limited*, [2025] CICA (Civ) 8 at [36]).

²⁶ Docket No. 126-41, *Kuwait Ports Authority v Williams* [2024] UKPC 32; [2025] 1 BCLC 647 at [25]; *see also* Docket No. 126, Phillips Decl. ¶ 58 (quoting *Kuwait Ports* at [25]).

the proposition that, as a matter of Cayman law, “the only sensible construction of the words in [section 16 of the ELP Act] is that the general partner of an ELP holds its assets on trust for all the limited partners.”²⁷ The UK Privy Council, the highest appellate Court in the Cayman Islands, adopted and acknowledged this principle in its own (definitive) interpretations of Cayman law as well, recognizing just last year in its *Aquapoint* decision that “the property and rights of an ELP are held on trust ‘as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement’, such that limited partners have a proprietary interest in the partnership assets.”²⁸

29. In interpreting Section 16(1) to impose a statutory trust *for the benefit of the limited partners of the ELP*, the courts recognized that the trust could not be for the benefit of the ELP itself, because the ELP lacks “personhood” and cannot, as a matter of equally undisputed Cayman law, hold assets in its own name. Cayman ELPs lack any separate legal personality. Docket No. 126-41, *Kuwait Ports Authority v Williams* [2024] UKPC 32; [2025] 1 BCLC 647 at [35] (“An ELP has no separate legal personality”); Docket No. 126-44, *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [33] (“An ELP does not have separate legal personality but is a form of partnership”); Docket No. 126-43, *In re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106 at [32] (“an exempted limited partnership does not have any separate legal personality from the limited partners and the general partner”);²⁹ *see also* Docket No. 126, Phillips Decl. ¶ 47 (quoting *Kuwait Ports*

²⁷ Docket No. 126-37, *Kuwait Ports Authority v Port Link GP Limited* [2023] (1) CILR 50 at [51]; *see also* Docket No. 126, Phillips Decl. ¶ 58 (quoting *Kuwait Ports Authority v Port Link GP Limited* [2023] (1) CILR 50 at [51]-[57]).

²⁸ Docket No. 126-44, *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [48]; *see also* Docket No. 126, Phillips Decl. ¶ 66 n.55 (quoting *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [48]).

²⁹ More fundamentally, Justice Asif also found that a Cayman ELP cannot itself be sued or be a respondent to a just and equitable petition brought by a limited partner, and only the general partner and any intermeddling limited partners can be respondents. Even more importantly, Justice Asif’s opinion is relevant because it was not simply about ELPs as a general matter under Cayman law. Rather, Justice Asif’s opinion was as-applied to

Authority v Williams [2024] UKPC 32; [2025] 1 BCLC 647 at [35]; *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [33]; *In re ATP Life Science Ventures LP* [2025] CIGC (FSD) 106 at [32]).

30. Under Cayman law, that lack of legal personhood precludes the attribution of ownership interests to the ELP directly: “An [ELP] is not an entity with separate legal personality and *cannot own property in its own right*.”³⁰ To the extent there was any question under Cayman law as to whether an ELP had personhood such that it could own property in its own right, it was definitively resolved by the UK Privy Council’s 2025 decision in *Aquapoint* and by *Kuwait Ports Authority v Williams*. As those decisions by the highest appellate court of the Cayman Islands make clear, the GP holds assets of the ELP for the benefit of the limited partners, as the ELP lacks the legal ability as a matter of Cayman law to hold property in its own right and not that of its constituent limited partners. *See* Docket No. 126-5, ELP Act § 16(1). Likewise, where a contract is entered into for the benefit of the ELP it “shall be entered into by or on behalf of the general partner (or any agent or delegate of the general partner) on behalf of the exempted limited partnership”—the ELP itself cannot be a party to a contract. *See* Docket No. 126-5, ELP Act § 14(2); *see also, e.g.*, Ex. M, Aethon Stock Purchase Agreement, at 27; Ex. QQ, Evercrisp Stock Purchase Agreement at 23; Ex. RR, Initial Stock Purchase Agreement, at 25; Ex. SS, Red Queen Stock Purchase Agreement, at 23 (signature pages to SPAs, reflecting agreement, “By: ATP III GP, Ltd., General Partner” for the Fund as “Purchaser”).

31. ***The GP, in the related Court of Chancery Litigation.*** The GP has acknowledged both that the ELP does not hold property in its own right, and that the GP holds the assets of the ELP

the Fund specifically. The Debtors are now estopped from challenging that premise here. *See Adams v. Adams*, 738 F.3d 861, 865 (7th Cir. 2013); *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991); *In re Lason, Inc.*, 290 B.R. 504, 506 (Bankr. D. Del. 2003).

³⁰ Docket No. 126-31, *Re Padma Fund LP* [2021] (2) CILR 556 at [25] (emphasis added); *see also* Docket No. 126, Phillips Decl. ¶ 52 n.44 (quoting *Re Padma Fund LP* [2021] (2) CILR 556 at [25]).

on trust for its limited partners, through the Chancery Court testimony and disclosures of its Cayman law expert witness, Michael Bloch, KC. Mr. Bloch admitted that “the consequence of the ELP not having a separate legal personality is that its general partner holds its rights and property, including choses in action, *on trust for each of the partners.*” Ex. Y, Opening Report of Michael Bloch, KC, ¶ 25 (emphasis added). Mr. Bloch cited, quoted and endorsed the *Kuwait Ports Authority v Williams* analysis that “the general partner of an ELP holds the ELP’s assets on trust for all the limited partners.” *Id.* ¶ 31 (quoting *Kuwait Ports Authority v Williams* at [35]). And, speaking as the GP’s expert witness on Cayman law and testifying under oath at his deposition, he acknowledged that he understood the *Kuwait Ports* court’s conclusion that “the assets of an ELP are held by the general partner on a statutory trust for the limited partners” to refer to the status of an ELP under Section 16 of the ELP Act. Ex. Z, Bloch Dep. Tr., Sept. 2, 2025, at 107:24-110:14. The GP relied on Mr. Bloch and submitted his expert testimony to the Court of Chancery, and cannot disavow it now. This has long been the GP’s internal position as well: in 2021, GP counsel Covington advised that “since ATP IV is an exempt limited partnership registered in the Cayman Islands, it does not have its own legal personality,” and the GP’s general counsel, Daniel Finkelman confirmed “I agree with your conclusion.” Ex. AA, May 25, 2023 Email Exchange between W. Engels and Covington and Burling LLP, at 7, 8.³¹ Two years later, in 2023, the GC received still further confirmation when Covington noted that a prior error with respect to a people with significant control (“PSC”) analysis “may be based on an erroneous belief that ATP Life Science Ventures, L.P. had legal personality (as is the case with a US limited partnership, but not an English limited partnership),” and cited the 2021 revision of the ELP Act

³¹ These emails are from October 4, 2021; Finkelman revisited and continued the email exchange in 2023. *Id.* at 6.

to confirm to the Finkelman that “ATP Life Science Ventures, L.P. should not have legal personality.” *Id.* at 3–4, which is of course the Cayman legal premise behind the ELP’s inability to have direct ownership, as discussed above, *see supra* ¶¶ 27–30.

32. ***Justice Asif, of the Grand Court of the Cayman Islands, and the GP’s counsel, in the related Cayman Litigation.*** The very Cayman Court that has been adjudicating the on-going litigation between the LPs and the GP in the Cayman Islands has looked at this very Cayman Fund, and observed—utterly unsurprisingly and wholly consistent with dispositive Cayman law—that as an ELP organized under the laws of the Cayman Islands, the GP “acts as a trustee on behalf of the ELPs.” Ex. BB, Cayman Hr’g Tr., 31 Oct. 2025, at 04:22:12. The GP’s own counsel observed that he “wouldn’t quibble with any of that” and acknowledged that “[o]ne of the key things about the general partner is that its role includes holding the assets for the partnership legally, on behalf of the limited partnership as a whole.” *Id.* at 4:19:28, 4:22:35. Here, too, the GP’s own counsel acknowledged that same premise and obstacle to ownership, that “limited partnerships have no separate legal personality.” *Id.* at 4:16:39.

33. ***The Debtors’ Silence in Support of their Second Funding Motion.*** Against the overwhelming weight of Cayman law, the Debtors offer nothing to support their claims, in the Second Funding Motion or anywhere else, that assets held by the GP for the benefit of the limited partners are somehow property of the estate and available for their use in these cases. They offer no Cayman law expert (their own expert shared the LPs’ view); no testimony (their own general counsel agrees with the LPs and the Cayman experts); and no contrary caselaw (there is none on point). As movants, they have the burden of proof when asking this Court to exercise its *in rem* jurisdiction and statutory authority over the subject property. They cannot satisfy their burden.

34. In sum, under the LPA and the ELP Act as definitively interpreted by Cayman Courts, including the Cayman Court in this very dispute, the Fund is a creature of Cayman law, and cannot have more rights in property than Cayman law permits; when it acts as “purchaser” to acquire securities (as through the SPAs) it does so acting via the GP as only the GP is capable of entering into contracts on behalf of the Fund. Further, when capital contributions are made in cash (as with the \$97 million payment), those payments are held on trust by the GP and are to be deployed in accordance with the terms of the LPA. Neither the Fund nor the GP are the “owner” of that property.

B. Bankruptcy Law

35. Applicable bankruptcy law is just as straightforward and dispositive when it comes to assessing what these Cayman law limits on property interests of the Fund and the GP mean for their estates. While no other court has had to confront this exact question before—because no other GP has filed for chapter 11 for a multi-billion dollar solvent and valuable fund with no creditors (and, in fact, no ability to take on debt without LP consent), over the vehement objection of its limited partners, and then tried to use that solvent fund’s assets for purposes that the LPA does not permit and the LPs do not support—the Bankruptcy Code and applicable bankruptcy law are clear.

36. Two provisions of the Bankruptcy Code apply and exclude all interests in property attributable to the Fund from any of the Debtors’ bankruptcy estates. This is because (i) the Fund is unable to hold any interests in property as a matter of Cayman law, and (ii) the ELP is a trust under applicable law, and the GP serves as trustee, holding bare legal title to *all* interests in property attributable to the Fund on trust, with the limited partners holding the corresponding “proprietary” or beneficial interests. Because the Fund did not and could not hold property pre-petition as a matter of Cayman law, under section 541(a) and controlling case law, *the bankruptcy*

estate of the Fund holds no property. The Fund cannot and does not hold more in bankruptcy than it did before. And because the GP merely held legal title to Fund Assets on trust for the benefit of the Fund's limited partners, under section 541(d) and controlling case law, those assets do not constitute property of the GP's estate either.

37. Again, the Debtors' disregard for the legal framework of the Fund-Level Debtors prior to the petitions has left their chapter 11 cases in utter disarray. The Debtors knew—from the Cayman Court, their own counsel, their own expert, their outside counsel, and their general counsel—that the Fund does not hold any assets of its own and that the GP holds assets solely on trust for the benefit of the limited partners. When they filed these chapter 11 cases, the Debtors disclosed zero assets for the GP, but asserted for the Fund an interest that it does not and cannot hold. See Docket No. 239, *Schedules of Assets and Liabilities for ATP Life Science Ventures, L.P. Case No. 25-12178*, at 14; Docket No. 241, *Schedules of Assets and Liabilities for ATP III GP, Ltd. Case No. 25-12179*, at 14. When the LPs' counsel stated at the First Day Hearing that there is no property of the estate as to the Fund-Level Debtors because “the assets of the ELP are held by the general partner on trust for each of the partners and do not form part of the general partner[']s assets,”³² this is what they meant: as a matter of Cayman law, the assets that Debtors seek to bring before this Court for reallocation to the Debtor Portfolio Companies, or sale to some hypothetical new LPs, are not theirs to dispose of and are not properly before this Court. That is true of both the Fund-Level Debtors, the Fund and the GP.

38. *As to the Fund*, the assets are excluded from the bankruptcy estate and this Court's jurisdiction by the basic operation of section 541(a), which provides that a debtor's bankruptcy

³² Ex. CC, First Day Hr'g Tr., Dec. 17, 2025, at 57:23–25.

estate is limited to the interests held by the debtor prepetition and is not expanded by virtue of the filing. *See* 11 U.S.C. § 541(a).

39. The Debtors skipped over these simple threshold steps, but the Court must consider them in every case and cannot exercise jurisdiction over property as an “asset of the estate” if it never was held by the prepetition debtor. The “filing of a petition for bankruptcy protection under Chapter 11 of the Code creates an estate” by operation of law, *In re O’Brien Env’t Energy, Inc.*, 181 F.3d 527, 532 (3d Cir. 1999). Section 541(a) of the Bankruptcy Code provides that the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case,” subject to certain exceptions. 11 U.S.C. § 541(a)(1). Section 541(a) is broad but not unlimited: it includes only the interests in property held by the debtor prepetition and does not expand those interests to create a bankruptcy estate that is broader or more encompassing than the debtors’ prepetition interest. *See In re Majestic Star Casino, LLC*, 716 F.3d 736, 759 (3d Cir. 2013). It is a “general bankruptcy rule” that “[t]he estate cannot possess anything more than the debtor itself did outside bankruptcy.” *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381 (2019) (citing 11 U.S.C. § 541(a)(1)). “Whatever limitations on the debtor’s property apply outside of bankruptcy[,] apply inside of bankruptcy as well. A debtor’s property does not shrink by happenstance of bankruptcy, *but it does not expand, either.*” *Id.* at 381–82 (emphasis added) (citation modified).³³ The same limitations apply to a bankruptcy court’s *in rem* jurisdiction over property. Under 28 U.S.C. § 1334(e), the Court’s *in rem* jurisdiction extends only to “all of the property, wherever located, of the debtor as of the commencement of the case, and of property of the estate.”

³³ The U.S. Supreme Court has characterized the legislative history of *section 541(a)(1)* as indicating that “Congress intended to exclude from the estate property of others in which the debtor had some minor interest such as a lien or bare legal title.” *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 n.8 (1983).

40. Bankruptcy law is just as clear that courts should look to applicable non-bankruptcy law to determine whether the debtor has a property right such that it may enter the estate. That rule is well settled, under U.S. Supreme Court precedent recognizing that, “Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law. ...Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.” *Butner v. United States*, 440 U.S. 48, 54–55 (1979); *see also Travelers Cas. & Sure. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450–51 (2007); *In re Nejberger*, 934 F.2d 1300, 1302 (3d Cir. 1991) (“Although section 541 defines property of the estate, we must look to state law to determine if a property right exists and to stake out its dimensions.”); *In re ComedyMX, LLC*, 647 B.R. 457, 461 (Bankr. D. Del. 2022) (“Property owned by a debtor prepetition comes into the bankruptcy estate subject to whatever restrictions or limitations exist under non-bankruptcy law.”). Non-bankruptcy law can, of course, include non-U.S. law, and here, there is no dispute that Cayman law determines ownership of the Fund Assets.³⁴

41. Because under Cayman law the Fund itself did not, and could not, own any assets prior to filing its bankruptcy petition, *see supra* ¶¶ 24–34, it has no assets to include in a bankruptcy estate. The chapter 11 filing did not transform the Fund from a Cayman ELP into something else, nor did it suddenly confer more rights to own and hold property for its own interest than the Fund

³⁴ For the avoidance of doubt, applicable non-bankruptcy law may include foreign law. “In the context of § 541, there is no reason to exclude foreign law.” Memo. of Decision and Order, *In re ProBulk Inc.*, Case No. 09-14014-ALG (Bankr. S.D.N.Y. July 7, 2003). *In re Probulk Inc.*, 407 B.R. 56, 61 n.4 (Bankr. S.D.N.Y. 2009). *Despins v. Guo*, Adv. P. No. 23-05008 (JAM) (Bankr. D. Conn. Apr. 3, 2024), ECF No. 126, Memo. of Decision and Order, at 30–33 (applying English common law and referring to English law treatise to grant declaratory judgment that interests in a British Virgin Islands entity were beneficially owned by the estate), *aff’d*, *Guo v. Despins*, 2025 WL 252855 (D. Conn. Jan. 21, 2025); *Patterson v. Shumate*, 112 S.Ct. 2242, 2246 (1992) (“Nothing in § 541 suggests that the phrase “applicable nonbankruptcy law” refers, as petitioner contends, exclusively to *state* law. The text contains no limitation on ‘applicable nonbankruptcy law’ relating to the source of the law.”).

had before. Bankruptcy can be transformative, but it cannot erase the fundamental terms of a Cayman ELP, under statute, contract, or caselaw—and those terms clearly preclude attributing any ownership interest to the Cayman ELP Fund itself.

42. The GP’s reliance on paragraph 18(b) of the LPA to argue that the GP has a proprietary interest in the Fund Assets is misplaced. Paragraph 18(b) grants the GP a power of attorney to act for each of the limited partners in executing certain ministerial acts “in accordance with the terms of this [LPA] as then in effect”—for example, making amendments to the LPA that only require the Rigmora LPs’ consent and not the consent of the individual carry-holders. Ex. B, LPA ¶ 18(b). Subparagraph (ii)(A) adds that “[t]o the fullest extent permitted by law,” this power and the power granted by paragraph 5(c) is “each a special power of attorney coupled with an interest in favor of the General Partner, deemed to secure the proprietary interest of the General Partner and/or the performance of obligations owed to the General Partner, and as such shall be irrevocable and shall survive the death, disability or incapacity . . . of the Partner.” (emphasis added). This language comes from section 4(1) of the Cayman Islands Powers of Attorney Law (1996 Revision), which provides that a power of attorney can be made irrevocable if it secures “a proprietary interest of the donee of the power” or “the performance of an obligation owed to the donee.” Ex. DD, Cayman Islands Powers of Attorney Law (1996 Revision) § 4(1). The GP’s argument appears to be that because this formulaic language references “proprietary interest,” the GP must have some proprietary interest. But the GP never says what that supposed “proprietary interest” actually is, and there is none.

43. The starting point for evaluating any interest in the Fund Assets is, again, section 16(1) of the Cayman Islands Exempted Limited Partnerships Act (2025 Revision):

Any rights of property of every description of the exempted limited partnership, including . . . any right to make capital calls and

receive the proceeds thereof . . . shall be held or deemed to be held by the general partner . . . **upon trust** as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement.

Docket No. 126-5, ELP Act, § 16(1). Nothing in paragraph 18(b)(ii)(A) purports to depart from this principle that the GP holds the Fund Assets on trust. Nor can it, because the requirement that the GP holds partnership assets on trust is a statutory feature of ELPs that is not subject to the parties' agreement. It follows that the GP's "proprietary interest" (if any) secured by the power of attorney in LPA paragraph 18(b) is held solely in its capacity as a trustee on behalf of the Fund's limited partners, and does not represent an equitable interest in Fund Assets in its own right.

44. In fact, the use of the term "and/or" in paragraph 18(b)(ii)(A) suggests that the power of attorney granted in paragraph 18(b) may not secure any "proprietary interest" at all, but only "the performance of obligations owed to the general partner." *See* Ex. B, LPA ¶ 18(b). But assuming that "proprietary interest" in paragraph 18(b)(ii)(A) refers to anything at all, it could refer to the GP's right under LPA paragraph 5(c) to take possession of and sell distributions owed to a "Defaulting Partner" on the Defaulting Partner's behalf. *See id.* ¶ 5(c). That power is irrelevant here, because the LPs are not Defaulting Partners as defined in paragraph 5(c), as they have not been declared as such following an uncured default in paying a capital contribution. And in any event, paragraph 5(c) makes clear that the GP must "remit the net proceeds of [any] such sale to the Partnership" to be applied for partnership purposes, not for the GP's own interests. *Id.* This again confirms that any "proprietary interest" of the GP in the Fund is the bare legal title held by a trustee, not any equitable interest.

45. Debtors' legal support for their claim to have an interest in the assets is nonexistent. They point to *In re Leff*, 88 B.R. 105, 108 (Bankr. N.D. Tex. 1988), to argue that "when a debtor has more than a minimal equitable interest in the property in question, the property in its entirety

is property of the debtor’s estate,” hoping to find an equitable interest of the Fund or GP that might support such a conclusion here. *See* Docket No. 228, Second Funding Motion ¶ 47. There is no such interest. But, more importantly, on appeal, the district court *expressly disagreed* with the portion of the bankruptcy court’s decision on which the Debtors rely, and the district court’s decision was, in turn, affirmed by the Fifth Circuit. *See Stewart v. Olsen*, 878 F.2d 1432 (Table) (5th Cir. 1989) (affirming opinion from *Stewart v. Olson*, 93 B.R. 91 (N.D. Tex. 1988), which expressly held that the *Leff* court “erred when it extended the reach of § 541(a)(1)”). One overruled case is not a basis for Debtors to sweep equity interests worth billions of dollars, in over a dozen companies, held for the benefit of LPs, into the jurisdiction of this court. These assets did not belong to the Fund before the filing, and they are not in the estate now.

46. *As to the GP*, the fact that the GP holds the Fund Assets on trust for the benefit of the LPs does not make those assets part of the GP’s estate either. Here, section 541(d) governs—and yet again, the law is crystal clear. 11 U.S.C. § 541(d).

47. A prepetition debtor’s interest in property is excluded from the estate if it “meets one of the narrow statutory exceptions” of the Bankruptcy Code. *In re Continental Airlines, Inc.*, 134 B.R. 536, 541 (Bankr. D. Del. 1991). Section 541(d) is the exception that applies here, and it “stands for the unremarkable proposition that property rights the debtor does not have do not become part of the bankruptcy estate.” *In re ABC Learning Centres Ltd.*, 728 F.3d 301, 313 (3d Cir. 2013) (citing with approval *Continental Airlines*, 134 B.R. at 541). Section 541(d) provides that:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d). The Third Circuit has explained that the legislative history of section 541(d) “reiterates the general principle that where the debtor holds bare legal title without any equitable interest, . . . the estate acquires bare legal title without any equitable interest in the property.” *ABC Learning Centres*, 728 F.3d at 313 (citation modified).³⁵ Like Section 541(a), Section 541(d)—as adopted and interpreted—hews to the principle that a debtor does not hold a greater interest in property in bankruptcy court than it did before it filed; the chapter 11 petition protects rights, but does not enlarge them.

48. In applying Section 541(d), over many decades, courts have recognized it as the exception that protects trust beneficiaries from having their assets, held on trust, from being swept into the estate if and when their trustees file for chapter 11. The Third Circuit put it bluntly: “assets the debtor holds in trust for a non-debtor” do not constitute estate property.³⁶ *See ABC Learning Centres*, 728 F.3d at 313. So has the Supreme Court: “Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition.” *Whiting Pools*, 462 U.S. at 205 n.10; *see also Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not ‘property of the

³⁵ *See* 124 Cong. Rec. H11096 (daily ed. Sept. 28, 1978) (bound edition at 32399) (floor statement of U.S. Congressman D. Edwards) (“To the extent that such a [legal or equitable] interest is limited in the hands of the debtor, it is equally limited in the hands of the estate....”); 124 Cong. Rec. S33999 (daily ed. Oct. 5, 1978) (floor remarks of U.S. Senator D. DeConcini) (clarifying that the mortgage-related language in section 541(d) is an example of the general principle “as applied to the secondary mortgage market”); S. REP. NO. 95-989, at 82 (1978) (Senate Judiciary Report on the Bankruptcy Reform Act of 1978) (“Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another.”); *see also In re Sacred Heart Hosp. of Norristown*, 175 B.R. 543, 549 (Bankr. E.D. Pa. 1994) (stating in reference to the mortgage-related language in section 541(d): “the section applies equally well to a situation where a debtor holds property in trust for another generally.”)

³⁶ Cayman insolvency law similarly views assets held on trust for a third party as excluded from property of the insolvency estate, whether the trust is “express, implied, constructive or resulting or is imposed by statute.” *See* Docket No. 126-46, *Goode on Principles of Corporate Insolvency Law*, 5th Ed. at 6-41; *see, e.g.*, Docket No. 126-13, *In Re Lehman Brothers International (Europe) (in administration) (No 2)* [2009] EWCA Civ 1161; [2010] Bus. L.R. 489 (English court did not sanction reorganization insofar as it sought to distribute property held on trust); *see also* Docket No. 126, Phillips Decl. ¶ 73 (citing *Goode* at 6-41 and *Lehman Brothers International*).

estate”); *cf. In re Dameron*, 155 F.3d 718, 722 (4th Cir. 1998) (“[E]quitable interest[s] [are] subject to exclusion from the bankruptcy estate under § 541(d)[.]”). Moreover, the courts apply section 541(d) to express and constructive trusts, recognizing that “Congress clearly intended the exclusion created by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust.” *See, e.g., In re Columbia Gas Sys. Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993); *see also In re City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (explaining that it is a “well-settled principle that debtors do not own an equitable interest in property they hold in trust for another, and that therefore funds held in trust are not property of the estate” (citation modified)); *In re SemCrude, L.P.*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) (“[F]unds in the [debtors’] possession held for third parties, such as funds held in resulting trust . . . are not part of the bankruptcy estates.”); *accord In re Flanagan*, 503 F.3d 171, 180 (2d Cir. 2006) (“While the bankrupt estate is defined very broadly under § 541(a)(1) of the Bankruptcy Code to include all legal or equitable interests of the debtor, any property that the debtor holds in constructive trust for another is excluded from the estate pursuant to § 541(d)(1)”); *Dameron*, 155 F.3d at 720–21 (“When a debtor does not own an equitable interest in property he holds in trust for another, that interest is not property of the estate for purposes of the Bankruptcy Code.” (citation modified)).

49. As with determining underlying property rights for purposes of section 541(a), courts deciding whether a trust relationship exists for purposes of section 541(d) look to applicable non-bankruptcy law to determine whether the trust relationship and its legal source exist. *See Sharon Steel*, 41 F.3d at 95. To determine how section 541(d) applies to interests in property, courts routinely follow a well-trod analytical path: apply the relevant facts and circumstances to applicable non-bankruptcy law, including a review of statutes, case law, and agreements. *See, e.g.,*

Universal Bonding Ins. Co. v. Gittens & Sprinkle Enters., Inc., 960 F.2d 366, 371 (3d Cir. 1992) (analyzing New Jersey statute creating constructive trusts in favor of laborers and materialmen in the context of government agencies making payments to a general contractor to conclude that a constructive trust was created under New Jersey law); *see also In re Dameron*, 155 F.3d at 722–23 (considering the parties’ intent and the plain language of an agreement in the context of principles from case law and treatise to conclude that an express trust was created under Virginia law); *In re Catholic Bishop of Spokane*, 329 B.R. 304, 325 (Bankr. E.D. Wash. 2005) (reviewing organizational documents and attendant facts in the context of Washington trust-creation statute and its legislative history to conclude that an express trust was created), *aff’d in part, Committee of Tort Litigants v. Catholic Diocese of Spokane*, No. CV-05-0274-JLQ, 2006 WL 211792 (E.D. Wash. Jan. 24, 2006), *rev’d in part on other grounds*, 364 B.R. 81 (E.D. Wash. 2006); *see Despins v. Guo*, Adv. P. No. 23-05008 (JAM) (Bankr. D. Conn. Apr. 3, 2024), ECF No. 126, Memo. of Decision and Order (granting declaratory judgment that beneficial interests constituted estate property upon analysis and application of British Virgin Islands law and English common law).

50. That same path applies here, and points in just one direction: under Cayman law, the ELP is a statutory trust, and its assets—held by the GP on trust for the benefit of the limited partners of the ELP—are outside the estate and beyond this court’s jurisdiction. *See* Docket No. 126, Phillips Decl. ¶ 24. As demonstrated above and throughout these cases, the Fund is a Cayman Islands ELP. The GP, itself a Cayman Islands entity, is the Fund’s general partner. The LPs are the Fund’s primary limited partners, having contributed about 98% of its over \$2.4 billion in capital contributions. Under Cayman law, which constituted and governs the Fund, the Fund lacks legal personality; rather, the GP holds the property of the Fund on statutory trust for the benefit of the Fund’s limited partners. The GP’s principal role is to manage the LPs’ investments as their

fiduciary. It holds no assets for itself or the Fund; instead, it holds them for the LPs, on trust, and cannot sweep them into this court or its own estate. *See generally* ¶¶ 6, 9, 26-30 *supra*; Docket No. 126, Phillips Decl. ¶¶ 24(b), 26–27, 57–81; Docket No. 205, Amended Motion to Dismiss, ¶ 82.

51. No other bankruptcy court has been asked to exercise jurisdiction over billions of dollars of assets held through a solvent and valuable Cayman ELP structure, by the GP for the benefit of the LPs, over their objection. But the bankruptcy principles are familiar and readily applicable to what are uncontested principles of Cayman law. The Fund cannot and does not hold assets as a matter of Cayman law; under section 541(a), it has no prepetition assets to include in an estate. The GP holds assets in the Fund’s name on trust for the benefit of the LPs as a matter of Cayman law; under section 541(d), assets of a trust are an exception to the creation of the estate and excluded therefrom.

52. That this analysis leaves two debtors with no assets and no viable bankruptcy purpose is admittedly unusual—or it would be, if the Fund-Level Debtors’ bankruptcy cases were genuine good-faith filings. The analytical result is completely consistent, however, with this particular situation, where the Fund-Level Debtors filed for chapter 11 to avoid the Cayman winding-up proceeding and to continue their two-party litigation against the LPs in another forum, not because of any real restructuring need.

53. For purposes of the Second Funding Motion, what this means is that the Court lacks *in rem* jurisdiction over the \$74 million in Fund Assets that the Debtors seek permission to use, and lacks statutory authority to grant the relief sought under section 363(b), the statute relied upon in the Second Funding Motion. The Court cannot grant the relief the Debtors seek, because they

are attempting to use property that is not theirs and that is not before this Court. Under section 363(b), the Debtors “may use, sell, or lease, other than in the ordinary course of business, *property of the estate . . .*” 11 U.S.C. § 363(b) (emphasis added). The Court simply cannot authorize the use of the Fund Assets, in any form.

II. Assuming *Arguendo* That Fund Assets Constitute Estate Property, Those Interests Remain Subject To, and Do Not Shed, the Terms of the LPA.

54. The Debtors’ proposed use of funds is not consistent with the LPA and would not be permissible even if this Court were to find, in contravention of Cayman law and section 541, that the \$74 million the Debtors seek to use is property of an estate subject to this Court’s jurisdiction.

55. It is beyond dispute at this point that the LPA requires called capital to be used in accordance with approved budgets and for the purpose for which it was called. Ex. B, LPA, ¶ 5(a)(ii); Ex. D, LPA Amendment No. 3, at 2 (amending LPA ¶ 5(a)(ii)); Docket No. 18, First Day Decl. of Dr. Seth Harrison ¶ 6 n.2 (noting “Subsection 5(a)(ii)(E) of the LPA authorizes the GP to call capital in amounts sufficient to ‘invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units.’ The Rigmora LPs . . . thus have the right to approve budgets for Projects . . . before capital can be called.”). That was the premise behind the capital calls, as the GP argued to the Chancery Court (and is estopped from denying). That is, the GP secured payment of the \$97 million based in part on Dr. Harrison’s representation under oath that the “size of the Capital Calls” was based on each respective Portfolio Company’s “research plans,” that the calls “excluded [Dr. Harrison’s] own Management Fee,” and that the purpose of the calls was to deploy the called capital consistent with the LPA at the Portfolio Company for which the capital was called. Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 58, 60.

56. Now that the capital calls have been paid, and the dispute has moved from Chancery to Bankruptcy Court, the GP has switched direction, and seeks to use the capital for purposes other than those for which it was called and in a manner inconsistent with his representations to the Chancery Court and the LPA. *See* Ex. EE, Second Day Hr’g Tr., at 149:20–150:1 (Patty Tomasco: “[T]hese debtors need to be able to use funds notwithstanding the fact that they’re outside of the budget.”). As detailed below, over \$41 million of the requested \$61 million is to be used in a manner inconsistent with the capital calls, including to pay Dr. Harrison amounts he is not even owed.

57. The capital calls that the GP issued on May 30, 2025 (the “**May 30 Capital Calls**”), for which the GP sought specific enforcement and received \$97 million in cash in December, were: (i) \$7.1 million for Apertor; (ii) \$7 million for Evercrisp; (iii) \$7 million for Initial; (iv) \$6.3M for Marlinspike; (v) \$6.4 million for Red Queen; (vi) \$5 million for Aethon; (vii) \$5,976,168 for Ascidian; (viii) \$9 million for Deep Apple; (ix) \$29,840,999 for Marengo; and (x) \$13,343,759 for ATLS Fees and expenses.³⁷

58. Much of what the Second Funding Motion seeks is outside the scope of the May 30 Capital Calls. The May 30 Capital Calls *expressly excluded* payment of the Management Fee and any capital for Replicate.³⁸ *See* Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 64–65 (holding that the LPs did not need to pay the capital call for Replicate because it was out of budget);

³⁷ *See* Ex. E, Chancery Court Post Trial Op., Dec. 5, 2025 at 36 (as adjusted for LPs’ investment); Ex. FF, Chancery Court Final Judgment, Dec. 11, 2025, at 2; Ex. GG, May 30 Capital Call for Expenses. ATP also called \$4 million for Replicate but the Chancery Court denied that claim as Replicate is out of budget, despite Debtors’ claims to the contrary.

³⁸ As noted above, these are the amounts that the Debtors seek to expend in addition to the amounts that the LPs consented to at the Second Day Hearing. But because any funding of these Portfolio Companies cannot be done consistent with the LPA if drawn from the \$97 million without the LPs’ consent, the LPs again maintain that the already approved expenditures should be drawn from the cash on hand, not from the \$97 million set aside in a segregated account, as the LPs’ consented to at the Second Day Hearing.

id. at 60 (noting that the Management Fee was excluded from the May 30 Capital Calls). The May 30 Capital Calls did not seek funding for Nine Square, Nereid, and Aulos because those Portfolio Companies have exhausted their approved budgets and thus cannot be funded in accordance with the LPA. *See* Ex. HH, Q2 2025 Quarterly Digest, at 4 (showing \$0 in the Remaining Budget Approved column). And, obviously, they did not include \$22.5 million in Chapter 11 Expenses. *See* Docket No. 228, Second Funding Motion ¶ 27.

59. The Second Funding Motion disregards this history, and the LPA, entirely. It appears to be the GP's veiled attempt to achieve through bankruptcy the result it failed to achieve in the Chancery Court: unfettered discretion over how to spend Fund money without regard to the LPs and their rights under the LPA. Dr. Harrison called roughly \$30 million for Marengo on May 30. This proposal allots \$0 to Marengo. Over \$41 million of the requested amount is inconsistent with the uses for which the capital was called and the LPA. Only \$10.4 million of the approximately \$27.6 million earmarked for the Portfolio Companies is consistent with the May 30 Capital Calls and LPA. None of the \$1.4 million on the Management Fee; \$22.5 million in Chapter 11 Expenses; \$3,006,782 for Debtor Nereid, \$2,231,000 for Debtor Nine Square, \$4,501,974 for non-Debtor Aulos; or \$7,479,000 for non-Debtor Replicate is consistent with the May 30 Capital Calls or the LPA.

60. Debtors attempt to justify their complete disregard for the LPA and abandonment of the GP's representations to, and position before, the Chancery Court by relying on the erroneous assertion that section 541(c)(1) of the Bankruptcy Code "abrogate[s]" any "restriction on the use of property of the estate," Ex. EE, Second Day Hr'g Tr., Jan. 20, 2026, at 149:20–150:1, and allows them to use funds regardless of the restrictions in the LPA.³⁹ This Court was skeptical of that

³⁹ To the extent the Debtors seek to rely on section 363(b)(1) of the Bankruptcy Code to end-run foundational bankruptcy law regarding the interests comprising the estate, the Third Circuit has observed that section

argument, *id.* at 150:2–6, and its skepticism was warranted. Because these expenditures are not permitted by the plain terms of the LPA, they are likewise not permitted under the plain terms of the Bankruptcy Code and relevant precedent in this Circuit.

61. Section 541(c)(1) is not a free pass for debtors to disregard the limits of their contractual rights. It is intended to facilitate the transfer of property to the estate upon a bankruptcy filing, by avoiding alienation restrictions and forfeitures that would be triggered by insolvency and could prevent interests from becoming estate property.⁴⁰ Courts have uniformly found that “[t]he plain meaning of [the] language is that section 541(c)(1) is intended to eliminate barriers to the transfer of property to the estate, and nothing more.” *In re Polycorp Assocs., Inc.*, 47 B.R. 671, 672 (Bankr. N.D. Cal. 1985) (emphasis in original); *see also In re Sanders*, 969 F.2d 591, 593 (7th Cir. 1992) (“Filing a bankruptcy petition does not expand or change a debtor’s interest in an asset; it merely changes the party who holds that interest.”); *In re Dean*, 174 B.R. 787, 789–90 (Bankr.

363(b)(1) is a “general enabling provision[] that do[es] not expand or change a debtor’s interest in property merely because it files a bankruptcy petition.” *Integrated Sols., Inc. v. Serv. Support Specialties, Inc.*, 124 F.3d 487, 494 (3d Cir. 1997); *see also In re FCX*, 853 F.2d 1149, 1155 (4th Cir. 1988) (stating that section 363(b)(1) does not “empower” in the sense that “new rights or powers for dealing with the property of the estate are created” and that it “evinces no intent to enlarge the trustee’s rights to take such actions beyond the debtor’s pre-bankruptcy rights.”); *In re Schauer*, 835 F.2d 1222, 1225 (8th Cir. 1987) (stating that section 363(b)(1) “simply” provides the “trustee authority to sell or dispose of property if the debtors would have had the same right under state law” and contract law). The Debtors rely on *In re Am. Home Mortgs. Holdings*, 402 B.R. 87 (Bankr. D. Del 2009) for the proposition that the reasoning from the Third Circuit in *Integrated Sols.* is cabined to statutory restrictions. However, the Debtors overlook that, critical to the reasoning in *Am. Home* was the court’s determination that the clause at issue in a loan servicing agreement “speaks not to the [debtor’s] *power* to assign . . . , but rather to its *right* to assign.” 402 B.R. at 102. On its face, the terms of a service contract are not materially analogous to the facts at hand. Here, there is a corporate organizational agreement, the terms of which are limited to, and consistent with, powers prescribed by clear Cayman statute and case law (and the aggregate of such authority provides that the GP is a trustee in connection with Fund Assets with *limited powers*, and rights to manage the Fund Assets as a fiduciary to the limited partners, which are principally the LPs, and subject to the rights of the LPs).

⁴⁰ Section 541(c)(1) provides that: “an interest of the debtor in property becomes property of the estate . . . notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—(A) that restricts or conditions transfer of such interest by the debtor; or (B) that is conditioned on the insolvency or financial condition of the debtor . . . and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor’s interest in property. 11 U.S.C. § 541(c)(1).

E.D. Ark. 1994) (“It does not follow, however, that restrictions on transfers are avoided merely by inclusion as property of the estate.”); *In re Todd*, 118 B.R. 432, 435–36 (Bankr. D.S.C. 1989) (the intent of section 541(c)(1) was “not to void any restrictions on the transfer of the property from the trustee, as successor to the debtor, to third parties.”). Congress’s vision for section 541(c) is the same: it “invalidates restrictions on the transfer of property of the debtor, in order that all of the interests of the debtor in property will become property of the estate.” *See* H.R. REP. NO. 95-595, at 369 (1977) (House Judiciary Report on Bankruptcy Law Revision).

62. Just as with section 541(a), and section 541(d), Section 541(c)(1) provides for continuity, not expansion, of rights and interests once the petition is filed. It “does not operate to define the bundle of rights that go with property” and it does not allow a trustee to “redefine the nature and extent of the [d]ebtor’s property interest . . . for that interest is defined by state law.” *In re Warner*, 480 B.R. 641, 656 (Bankr. N.D. W.Va. 2012). Instead, it, too, recognizes that “the estate takes its interest subject to the conditions under which the [prepetition] debtor held the interest.” *In re South Side House, LLC*, 474 B.R. 391, 402 (Bankr. E.D.N.Y. 2012) (collecting cases); *see also In re Warner*, 480 at 656 (“Expanding the Trustee’s rights to allow him to choose which provisions of the Operating Agreement control rings a dissonant chord with § 541(c)(1).”)

63. Because Debtors are seeking to avoid provisions of the LPA, not transfer and forfeiture restrictions, section 541(c)(1) is not relevant and does not provide a basis for Debtors to use funds in ways prohibited by the LPA and Cayman law.

III. Even Assuming *Arguendo* that the Proposed Funding is Consistent with the LPA, the Proposed Budget Reflects an Improper Exercise of Business Judgment as it Relates to the Fund.

64. Even if the proposed funding at the Portfolio Companies and payment of the Management Fee were consistent with the LPA, the Debtors still must satisfy the strictures of section 363 of the Bankruptcy Code. The Debtors have not satisfied that burden and have gone to

great lengths to insulate their proposed budget from meaningful review, hoping that this Court will accept their untested say-so.⁴¹ But the word of a conflicted GP at war with his LPs and the word of a conflicted Chief Restructuring Officer who relies on that GP is not enough to deprive a Fund of tens of millions of dollars, especially where there is no analysis that supports concluding that the value of the Fund would increase if its cash on hand were spent, and the proposed spend is on companies that already spent millions of dollars and nearly half a decade and are still stuck in the preclinical stage.

65. The following discussion focuses on the reasons that the Debtors have failed to substantiate that the proposed research and development spend and payment of the Management Fee are in the Fund's best interest. But the focus on these two issues is not a concession that other aspects of the proposed budget, such as increasing headcount at companies that have been in stasis for some time, are in the Fund's interest.

A. Proposed Research and Development Spend at the Portfolio Companies

66. The Debtors concede that their use of Fund Assets to fund research and development at the Portfolio Companies is outside the ordinary course of business. *See* Docket No. 228, Second Funding Motion ¶¶ 38–40. Accordingly, the Debtors bear the burden of showing that the proposed funding is an appropriate exercise of their sound business judgment on behalf of all Debtors, *including* the Fund. 11 U.S.C. § 363(b)(1); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *accord In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983). The Debtors have not made such a showing. The Debtors' principal argument, as before, appears to be that the

⁴¹ The one exception is Aulos. Given that Aulos is a promising investment in ongoing clinical stage trials, the LPs agree that further funding for Aulos is an appropriate exercise of business judgment including because of the ethical obligations owed to patients enrolled in the clinical trial. However, given that Aulos cannot be funded consistent with the LPA since Aulos has exhausted its budget, the LPs maintain that the Debtors must work with the LPs to reach a consensual resolution as to the appropriate funding for Aulos. Despite the filing of this Objection, the LPs remain open to having such a constructive conversation with the Debtors' counsel.

proposed spend on external research and development is in the interest of all the Debtors' estates because any spending by the Fund must necessarily rebound dollar for dollar to the Fund. To that obviously wrong argument, the Debtors now also argue that each dollar the Fund spends at Apertor, Evercrisp, Initial, Marlinspike, Red Queen, Aethon, and Replicate will benefit the Fund because it will discharge the Fund's obligations to those companies under their respective SPAs.⁴² Both of these arguments fail for the reasons set forth below.

67. *First*, the argument that any dollar spent by the Fund at a Portfolio Company benefits the Fund is an argument only a conflicted advisor could make. The existence of these conflicts is the subject of separate motions and will not be repeated in full here.⁴³ However, only a conflicted advisor would argue that it is in the Fund's best interest to invest as *equity* tens of millions of dollars in cash on hand into not one, but several different and distinct bankrupt companies. Only a conflicted advisor would make the demonstrably false assertion that the Fund exists to spend money, not to generate a return on the Fund's investments. *Compare* Ex. EE, Second Day Hr'g Tr., at 109:19–24 (“The mission, the charter . . . of this company is to provide funding to developmental stage companies. . .”), *with* Docket No. 260-1, *Debtors' Opposition to Rigmora's Motion to Dismiss*, at 12 (“The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related

⁴² The Debtors concede that the Fund has no further financial obligations to Nine Square, Nereid, or Aulos under their respective SPAs. *See* Docket No. 228, Second Funding Motion ¶ 29.

⁴³ *See generally* Docket No. 226, *Limited Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Application for an Order Authorizing the Retention and Employment of Quinn Emanuel Urquhart & Sullivan, LLP as Co-Counsel for the Debtors Effective as of the Petition Date*; Docket No. 227, *Limited Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Motion for Entry of an Order (I) Approving the Retention and Employment of B. Riley Restructuring Services, LLC to Provide the Debtors with a Chief Restructuring Officer and Additional Staff Effective as of the Petition Date; (II) Designating Perry M. Mandarino as the Chief Restructuring Officer to the Debtors; and (III) Granting Related Relief*.

companies and business projects.”). And, only a conflicted advisor would assert that it is in the interest of a closed-end Fund that is running up on the end of its contingent subscription to continue to invest capital in underperforming companies instead of companies that have reached the clinical stage and show more promise, even when, prior to these filings, Dr. Harrison stated that “reallocation from preclinical to clinical [companies] . . . is the right business decision for the portfolio in ANY financing context. *See* Ex. V, April 4, 2025 WhatsApp exchange between S. Harrison and A. Batarina, at 2.

68. *Second*, there is no evidence supporting the counterintuitive assertion that what is good for the distressed Portfolio Companies is necessarily good for the Fund. Each of the Debtor Portfolio Companies were founded nearly half-a-decade ago, if not earlier. Each has spent tens of millions of dollars. Not one has reached the clinical stage. Some, like Marlinspike, have spent nearly \$29 million dollars over almost four years and are still searching for a potentially viable development candidate nomination. Ex. K, Opening Report of Dr. Rimm, ¶¶ 93–94. Many of these companies are, by the Debtors’ own admission, nowhere.

69. On October 28, 2025, Paul Jardine of ATP emailed Paul Eisenberg also of ATP remarking: “[I]t is the strangest thing with ATP companies but I see ‘strategies’ around budget and cash out options and raising new money maybe but I don’t see plans to exit and make money.” Ex. T, Email Exchange Between P. Jardine and P. Eisenberg, ATPBK_00041491 (emphasis added). Nothing has changed in the last three and a half months. The chart describing the Debtors progress of the Second Funding Motion discusses science, some of it interesting, some of it not. *See* Docket No. 228, Second Funding Motion ¶ 22. But none of it provides information necessary to understand whether investing more money in these dated companies makes economic sense. There is no discussion of the competition these companies face. There is no discussion of the

efficacy as compared to alternatives currently in the market or far ahead of these companies but still under development. There are no substantiated, concrete estimates of how much more money or time it would take to get to a clinical stage, no estimates of how money or time it would take to get to commercialization, and no reliable estimates as to how much money could be made assuming commercialization ever occurred. Absent this information, it is impossible to conclude that it is in the Fund's interest to sink more money into external research and development at this time. The struggling Portfolio Companies surely are eager to use the Fund's money to restart external research and development, but unless there is some plan for generating a return on investment that someone looking out for the Fund has reviewed and signed off on, there is no basis to conclude that the Fund benefits from the Portfolio Companies spending more of its money.

70. *Third*, it is not just the absence of the any evidence showing that spending the Fund's money on external research and development will return value to the Fund that is concerning, the lengths to which the Debtors have gone to prevent anyone from conducting such an analysis is raises serious questions about the Debtors' good faith. Following the last funding hearing, and cognizant of this Court's admonishment that the parties work cooperatively, the LPs sought informal discovery that would answer basic questions concerning each Debtor Portfolio Company including (1) to specify the next event or development expected to positively impact the value of the company in the eyes of third-party investors, and (2) the amount of additional investment needed to reach that milestone. In response, the Debtors provided high-level sketches of how the money would be spent, but did not address the likelihood of achieving positive results, or the financial consequences associated with scientific success or failure. *See* Ex. II, Portfolio Company Descriptions, January 28, 2026. The LPs then took up the Debtors' request to retain a scientist to discuss these issues with each of the Portfolio Companies. That effort was met with a complete

refusal to provide contemporaneous documents or the requested conversation, necessitating a motion to compel. *See* Docket No. 285, *Letter to the Court by Shannon Rose Selden re: LP's Motion to Compel Discovery*. After the Debtors rebuffed the informal discovery, the LPs noticed 30(b)(6) depositions setting forth the most basic information any debtor should be able to answer. Ex. JJ, Notice of 30(b)(6) Deposition for Red Queen, Schedule A, at 2 (including as topics for examination Red Queen's financial condition and valuation, Red Queen's understanding of the uses for the requested funding, and Red Queen's involvement in the preparation of Debtors' proposed budget). That notice was met with a motion to quash. *See* Docket No. 294, *Letter to the Court by L. Katherine Good re: Debtors Requesting to Quash Subpoenas and Deposition Notices Issued by Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP*. Interrogatories seeking the same information were met with stock and unhelpful answers. Ex. KK, February 9, 2026 Debtors' Supplemental Responses & Objections to LPs' Second Funding Motion RFPs and Interrogatories, at 2–15 (only reproducing Tables 1 and 3 from ATP's Second Funding Motion in response to the LPs' first four interrogatories and claiming an inability to answer LPs' fifth interrogatory).⁴⁴ This stonewalling is not the behavior of good faith Debtors capable of explaining to the Fund's 98% LPs why spending more Fund money would benefit the Fund.

⁴⁴ In any event, these tables provide limited information regarding the Portfolio Companies. Notably, Debtors admit Apertor will not achieve clinical proof of concept before be in position to file an IND application until at least 2027; Initial will not reach a clinical go/no-go decision on its prostate cancer project until 2028 at the earliest; Marlinspike will not reach a clinical go/no-go decision until the end of 2027; Nereid cannot make a clinical go/no go-decision until the end of this year for one of its projects nor reach development candidate status on its other programs until end of this year or the beginning of 2027; Aethon projects development candidate nominations sometime in the next two years with no timetable for an IND application or a clinical go/no-go decision; and Replicate will not generate clinical data until at best end of 2027. Furthermore, for Evercrisp, Nine Square, and Red Queen, the Debtors fail to even identify any value inflection point, let alone when such a point might be reached. Docket No. 228, *Second Funding Motion*, at Table 1.

71. *Fourth*, the documents produced in discovery—at least until Debtors unilaterally stopped producing documents—paint a startlingly different story than the one Debtors seek to tell to this Court. A few examples suffice:

- **Ex. LL, Email Exchange Between S. Harrison and D. Kroin, ATPBK_00005160:** On May 31, 2025, David Kroin of Deep Track Capital responded to an outreach for potential investment in ATP’s portfolio asking: “Redqueen: published covid data are not impressive...what is next step? Why does this deserve capital in this environment?” “Replicate: why do we need another mRNA company in this environment? ARCT has self-replicating and is worthless. mRNA is RFK-enemy number 1.”
- **Ex. MM, WhatsApp Exchange Between J. Yanchik and A. Bayliffe, ATPBK_00001230:** On June 4, 2025, Joseph Yanchik of ATP commented about Marengo and Dr. Harrison more generally: “my concern, that I have discussed with Seth . . . [it] doesn’t even appear that we are in the running for deals . . . After \$250m plus into a company, we should have a line of sight to liquidity.”
- **Ex. NN, Email Exchange Between J. Yanchik and M. Ehlers, ATPBK_00035272:** On September 27, 2025, Joseph Yanchik of ATP emailed Mike Ehlers concerning Replicate noting: “It is the portfolio co refrain. Give us more money and let’s wait a couple more years for data”
- **Ex. T, Email Exchange Between P. Jardine and P. Eisenberg, ATPBK_00041491:** On October 28, 2025, Paul Jardine emailed Paul Eisenberg remarking: “[I]t is the strangest thing with ATP companies but I see ‘strategies’ around budget and cash out options and raising new money maybe but I don’t see plans to exit and make money”

72. These candid admissions from months ago helps explain why these companies could not attract any outside equity investments outside of bankruptcy. These are companies that have consistently missed milestones that were either embedded in the SPAs or reflected in the investment memoranda that the GP prepared.⁴⁵ See Ex. K, Opening Report of Dr. Rimm, ¶¶ 14, 65, 71–101 (showing that Aethon, Apertor, Evercrisp, Initial, Marlinspike, and Red Queen all missed significant milestones). The market recognizes that the early-stage Portfolio Companies

⁴⁵ Although the Chancery Court found that meeting these milestones were not a prerequisite to the LPs being required to meet capital calls to the Fund, the Chancery Court never addressed whether the milestones should inform the Fund’s decision to further invest Fund Assets into the Portfolio Companies.

have little prospect of generating commercial value, and the Debtors offer nothing to show otherwise. *See, e.g.*, Ex. J, Chancery Trial Tr. at 203:24–205:7 (Dr. Strebulaev) (noting that “comparable early-stage biotech companies” that succeeded in raising new capital or having a successful M&A transaction generally did so 1.5 to 2.18 years from initial investment, compared to the more than two to four years in which the early-stage Portfolio Companies have failed to do so).

73. The Debtors seek to explain this lack of interest away by asserting that the Portfolio Companies have generated value for the Fund. But the valuations that they rely on are based on money *invested*, rather than on any current assets or actual prospect of success, and the Chief Restructuring Officer admits he has done no independent assessment of the value of the Portfolio Companies. Ex. EE, Second Day Hr’g Tr., at 137:6–9; Ex. OO, Dr. Rao Dep. Tr, Sept. 02, 2025, at 187:17-25 (agreeing that the valuation the GP provided is “based on the value already determined at the time of the investment.”). As the below table shows, the Debtor Portfolio Companies are all worth *less* than the amount invested, with the exception of Nine Square (worth only 1% more than the amount invested) and Red Queen (approximately 12% more).

PortCo	Amount Invested Prior to Bankruptcy⁴⁶	Value of the PortCo According to Second Funding Motion
Apertor (Debtor)	\$31,591,627.43	\$28,858,000
Evercrisp (Debtor)	\$26,950,000	\$23,370,000
Initial (Debtor)	\$56,150,000	\$42,145,000
Marlinspike (Debtor)	\$29,262,500	\$26,722,000

⁴⁶ This funding figure includes all the payment of all capital calls prior to the Chancery Court’s judgment, as well as all promissory notes granted in 2025 and all investments made using proceeds from the Tendyne and Braeburn earnout and payment.

PortCo	Amount Invested Prior to Bankruptcy⁴⁶	Value of the PortCo According to Second Funding Motion
Nereid (Debtor)	\$50,411,947.6	\$28,389,000
Nine Square (Debtor)	\$51,150,000	\$51,818,000
Red Queen (Debtor)	\$27,600,000	\$31,184,000
Aethon (Non-Debtor)	\$19,000,000	\$17,137,000
Aulos (Non-Debtor)	\$60,000,000	\$65,845,000
Replicate (Non-Debtor)	\$60,750,000	\$89,911,000

74. *Finally*, Debtors insistence that investing Fund money in Aethon, Apertor, Evercrisp, Initial, Marlinspike, Red Queen, and Replicate would benefit the Fund because it would reduce amounts owed pursuant to unspecified provisions in their Series A Stock Purchase Agreements (the “SPAs”) is simply false.⁴⁷ It is telling that the Debtors do not cite any particular contractual obligation, or provide any textual reference to support it. There is none. As to Replicate, the Chancery Court ruled that company is *out of budget* and, accordingly, the Fund has no further obligations to fund Replicate. *See* Ex. E, Chancery Court Post-Trial Op., Dec. 5, 2025, at 64–65. For the remaining Portfolio Companies, the SPAs and the GP’s own admissions in the Chancery Court make clear that the Fund does *not actually have outstanding obligations to fund* Apertor, Evercrisp, Initial, Marlinspike, Red Queen, or Aethon under the SPAs and thus any further equity investment by the Fund would be wholly discretionary.

⁴⁷ As noted earlier, the Debtors have conceded that there are no obligations to Nine Square, Nereid, or Aulos under the SPAs.

75. The SPAs for Aethon and Marlinspike make the Fund’s obligation to make further equity investments contingent on the Portfolio Companies hitting certain milestones and the Board “determin[ing] that the Company has successfully achieved the . . . [defined] Milestone.” Ex. M, Aethon Stock Purchase Agreement ¶¶ 1.2(b)–(e); *see also* Ex. N, Marlinspike Stock Purchase Agreement ¶¶ 1.2(b)–(f). However, both the GP and the GP’s own expert admitted that Aethon and Marlinspike *never hit* the milestones under the SPAs and as a result, the Fund has no further commitments to either of these Portfolio Companies under the SPAs. *See* Ex. J, Chancery Trial Tr. at 195:8–15; Ex. HH, Q2 2025 Quarterly Digest, at 9 (indicating Development Candidate has not yet been nominated for Aethon, placing it behind its fifth tranche milestone), *id.* at 13 (indicating Development Candidate has not yet been selected for Marlinspike, placing it behind its fourth tranche milestone). The SPAs for Apertor, Initial, Evercrisp, and Red Queen, on the other hand, make further funding contingent on milestones, but left the open milestones open to be agreed upon in the future.⁴⁸ No one contends that those milestones were ever agreed—or met. The Fund has no obligation to purchase shares in those companies because the condition precedent of “achievement of . . . milestones” cannot be satisfied. Any further investments pursuant to these SPAs would be purely discretionary.

76. The GP’s newfound insistence that the Fund has obligations to the Portfolio Companies under the SPAs is belied by its admissions in the Chancery Court, where the GP admitted any further funding of the Portfolio Companies was purely discretionary and contingent on milestones. Ex. TT, Chancery Plaintiff ATP III GP, Ltd.’s Post-Trial Br. at 21 (“In many cases, the deployment of capital to the portfolio companies was tied to milestone-based tranches, but the

⁴⁸ *See* Ex. PP, Apertor Stock Purchase Agreement ¶¶ 1.3(a)–(c); Ex. QQ, Evercrisp Stock Purchase Agreement ¶¶ 1.3(a)–(c); Ex. RR, Initial Stock Purchase Agreement ¶¶ 1.3(a)–(c); Ex. SS, Red Queen Stock Purchase Agreement ¶ 1.3(a).

Fund *retained discretion* to disburse capital regardless of milestone progress.” (emphasis added)). The deposition testimony of the GP’s general counsel echoed that sentiment; he, too, confirmed that any further funding of the Portfolio Companies that had not met the milestones in their SPAs was purely voluntary.⁴⁹ The Court of Chancery accepted the GP’s position on this issue. Ex. E, Chancery Post-Trial Op., Dec. 5, 2025, at 62 (“And although the Series A agreements of five companies (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) originally contained milestone conditions, *those conditions applied to the Fund’s obligation to fund the companies*, not the limited partners’ obligation [to] meet capital calls.” (emphasis added)).

77. The GP’s prepetition conduct is fully consistent with its understanding that any further funding to the Portfolio Companies was purely voluntary. For example, in 2025, the Fund lent money to the Portfolio Companies via promissory notes rather than purchasing additional preferred stock—which it presumably would have done if the GP believed it had existing obligations to purchase that stock under the SPAs. *Compare* Docket No. 89, First Funding Motion ¶ 11 (“ATLS made the decision to provide emergency ‘drip’ funding on a secured basis in the form of secured promissory notes”), *with* Ex. O, Finkelman Dep. Tr., Oct. 3, 2025, at 126:4–10 (“Q. But you concluded that for the five companies with specified commitments tied to milestones in their SPAs, if milestones are not achieved, then ATP is not obligated to fund those milestones, right? . . . A. Correct.”). There is thus no support for the Debtors’ altered position in these chapter 11 cases.⁵⁰

⁴⁹ Finkelman (Vol. II) Dep. Tr. at 125:20–126:3 (“Q. You understood that for the fund’s portfolio companies whose stock purchase agreements provided for funding based on the achievement of particular milestones, the fund was not obligated to fund if the milestones weren’t achieved, correct? MS. REESE: Objection. A. Yes. But it had the right to fund.”).

⁵⁰ Although the LPs’ winding-up petition in the Cayman court stated that the GP had obligations to Portfolio Companies, the LPs had not received the SPAs and expressly relied on the GP’s representations, including the allegations of the GP’s Complaint in the Court of Chancery, which later were shown to be false when the LPs received copies of the SPAs for the first time through discovery. Ex. UU, Cayman Winding Up Petition, June 6, 2025, ¶ 63 (citing Ex. VV, Chancery Court Compl. ¶¶ 85, 143) (“The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the

78. As to the Debtor Portfolio Companies, any obligation under the SPAs—and there was none—was terminated by their chapter 11 filings. The SPAs of each Debtor Portfolio Company provides that the Fund may terminate any additional funding obligations if the Portfolio Company “institutes any proceedings under the United States Bankruptcy Code” or any other bankruptcy-like law.⁵¹ These “Series A Stock Purchase Agreements” are unequivocally “securities contracts,” and the Fund’s termination rights are enforceable in bankruptcy clauses remain valid in bankruptcy because under the safe harbor for securities contracts in section 365(e)(2)(B) of the Bankruptcy Code, which provides that *ipso facto* termination clauses remain in effect where the contract calls for the issuance of a security by the debtor—meaning, in the case of the SPAs, by the debtor Portfolio Company. *See* 11 U.S.C. § 365(e)(2) (“Paragraph (1) of this subsection [barring termination under an *ipso facto* clause] *does not apply* to an executory contract or unexpired lease of the debtor . . . if . . . (B) such contract is a contract to . . . issue a security of the debtor.”).

79. The Debtors bear the burden of proving the need for the Fund to provide capital to the Debtor Portfolio Companies, and they have utterly failed to satisfy it.

B. ATVM’s Management Fee

80. The Debtors have utterly failed to show that their proposed Management Fee to ATVM of \$1.4 million payment is in the ordinary course of business or an appropriate exercise of

Delaware Complaint says as follows . . .”); *see also id.* ¶ 64 (“The GP has also failed to provide information to the Petitioners about the Partnership’s purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners’ requests that it do so (see paragraph 57 above). The GP’s apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims . . .”). Once the LPs reviewed the actual SPAs, the LPs amended their Cayman petitions to delete these references that were made in reliance on the GP’s false allegations. *Ex. WW, Cayman Amended Winding Up Petition, Nov. 21, 2025, at 47* (striking paragraphs 63 and 64 of Cayman Winding Up Petition).

⁵¹ *Ex. PP, Apertor Stock Purchase Agreement* ¶ 6.14(b); *Ex. QQ, Evercrisp Stock Purchase Agreement*, ¶ 6.14(b); *Ex. RR, Initial Stock Purchase Agreement*, ¶ 6.14(b); *Ex. XX, Nereid Stock Purchase Agreement*, ¶ 7.13(b); *Ex. YY, Nine Square Stock Purchase Agreement*, ¶ 6.14(b); *Ex. SS, Red Queen Stock Purchase Agreement*, ¶ 6.13(b); *Ex. ZZ, Replicate Stock Purchase Agreement*, ¶ 6.14(b).

business judgment. The very structure of the payment is inconsistent with the Management Agreement. Under the Management Agreement, Dr. Harrison was required to remit the \$1.6 million earned from Akero stock options to the Fund; the failure to remit reduces the amount that Dr. Harrison can receive. The Management Fee is to be paid “at the beginning of each calendar quarter in each year” in an amount that is “not more than 25% of the maximum aggregate amount of the Management Fee for such year.” *See* Ex. AAA, LPA Amendment No. 8 (amending ¶ 4 of the Management Agreement).⁵² If the total Management Fee is \$1.4 million, the most Dr. Harrison can receive in a quarter is 25% of \$1.4 million or \$350,000. It is not an appropriate exercise of the Fund’s business judgment to pay Dr. Harrison multiples of what he is actually owed under the Management Agreement. Again, there is a solution: if Dr. Harrison pays the Fund the \$1.6 million that it is owed under the Management Agreement, the LPs would consent to \$750,000 being used to pay the first quarterly installment that Dr. Harrison would then be due under the Management Agreement, without waiving any claims for disgorgement or damages.

IV. Even if the Debtors Could Use Fund Assets in the Manner Contemplated, the Debtors Should Receive Only Interim Funding for a Six-Week Period.

81. Even ignoring all the deficiencies discussed above, the Debtors’ request for funding through July 31, 2026, is unreasonable and should be rejected. Debtors seek millions of dollars over many months for companies that have been struggling for years, have attracted no interest, have offered no tangible plans for this next phase, and have track records of missing milestones and failing to effectively use the millions they have already received. There is no need to approve

⁵² Although Debtors argue at paragraph 32 of the Second Funding Motion that LPA Amendment No. 14 amended the management agreement to remove quarterly payments and ATVM’s obligation to remit net amounts owed to the Fund, that is false. LPA Amendment No. 14, cited in the Second Funding Motion at paragraph 32, only amends the first sentence of Section 4 of the Management Agreement, but does not amend the language in the sixth sentence (limiting ATVM to quarterly payment of the Management Fee) or the language in the seventh and final sentence (requiring ATVM to remit any new amounts owed to the Fund).

26 weeks of funding at a time when retention objections are pending, a motion to dismiss will be argued on February 25, relevant discovery needed to test the reasonableness of the requested funding has not been provided, and nobody other than the LPs is looking out for the interest of the Fund.

82. Recognizing these challenges, in an effort to create breathing room and preserve any value that may remain, the LPs proposed that the parties work toward a short-term bridge funding arrangements that would allow the Debtors to use some of the \$97 million currently held in a segregated account for purposes other than what it was originally called for. The LPs even provided parameters for such a proposed compromise, indicating an openness to consensual bridge funding for a 6-week period (covering February 21 to April 3).

83. The LP's proposal for a mutually agreed short-term bridge funding has several benefits. *First*, in six weeks, surely the Debtors could produce information to the LPs for the assessment of the Portfolio Companies' scientific programs, which—if the Debtors engage in good faith discussions with the LPs—may pave the way for a consensual resolution of the remaining balance of the funding that the Debtors seek. *Second*, the Debtors recently informed the LPs that they intend to appoint an independent director. That appointment is a belated concession that the current arrangement does not adequately protect the Fund's interest. That independent director needs time to assess whether the proposed relief in the Second Funding Motion is in the best interests of the Debtors. And if truly independent, that director presumably will want to talk to the LPs before signing off on the Debtors' 26-week funding plan. *Finally*, the Court is set to adjudicate the LPs' pending motions to dismiss and lift the stay less than a week after the Second Funding Motion is heard. There is no reason to release tens of millions of dollars from the Fund to the Portfolio Companies now. If released and spent, that money may never be recovered, even though

the transactions could be considered void under Cayman law if Justice Asif orders that the Fund be wound up.

84. Although all of this has been explained to the Debtors, the Debtors have stonewalled. They have not engaged in any discussion over short-term funding. Indeed, they have not even provided the requested information necessary to have a conversation about the proposed short-term bridge funding.

85. Any relief that the Debtors receive under the Second Funding Motion should be limited to a six-week period, with the option for the Debtors to seek further relief from this Court if needed at a later juncture.

CONCLUSION

WHEREFORE, the LPs request that the Court deny the relief sought in the Second Funding Motion in full, or in the alternative, grant relief on an interim basis.

Dated: February 12, 2026
Wilmington, Delaware

**RICHARDS, LAYTON &
FINGER, P.A.**

/s/ Clint M. Carlisle

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EXHIBIT B

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APPLE TREE PARTNERS IV, L.P.

(A Cayman Islands Exempted Limited Partnership)

FIRST AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF APPLE TREE PARTNERS IV, L.P. AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND, IN CERTAIN CASES, WITH THE APPROVAL OF THE GENERAL PARTNER. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

NON-U.S. RESIDENTS ONLY: NO ACTION HAS BEEN OR WILL BE TAKEN TO COMPLY WITH THE SECURITIES LAWS IN ANY JURISDICTION OUTSIDE THE UNITED STATES OF AMERICA THAT WOULD PERMIT AN OFFERING OF THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, IN ANY COUNTRY OR JURISDICTION WHERE ACTION FOR THAT PURPOSE IS REQUIRED. IT IS THE RESPONSIBILITY OF ANY PERSON WISHING TO PURCHASE THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT TO SATISFY HIMSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE THE UNITED STATES OF AMERICA IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

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APPLE TREE PARTNERS IV, L.P.
First Amended and Restated
Limited Partnership Agreement

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THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT (as amended and/or restated from time to time, the “Agreement”), dated this 1st day of November, 2012, by and among ATP III GP, Ltd., a Cayman Islands exempted company, as general partner (in its capacity as a general partner of the Partnership, the “General Partner”); Daniel P. Finkelman, as the withdrawing limited partner (“Finkelman”); and the Persons (as defined in Paragraph 18(j)) whose Subscription Agreements (as defined in Paragraph 1(e)) with the Partnership (as defined below) and the General Partner dated the date hereof for the purchase of limited partner interests in the Partnership have been accepted and who have executed (directly or by power of attorney) a counterpart to this Agreement, as limited partners (the “First Closing Limited Partners”). The First Closing Limited Partners, any additional limited partners admitted to the Partnership after the date of this Agreement, and any substituted limited partners admitted to the Partnership after the date of this Agreement, each in its capacity as a limited partner of the Partnership, are sometimes referred to herein collectively as the “Limited Partners”. The General Partner and the Limited Partners are sometimes referred to herein collectively as the “Partners”.

PRELIMINARY STATEMENT

The General Partner and Finkelman formed Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership (the “Partnership”) by executing the Initial Exempted Limited Partnership Agreement of the Partnership, dated October 29, 2012 (the “Original Agreement”), and by registering the Partnership as an exempted limited partnership with the Registrar of Exempted Limited Partnerships under the laws of the Cayman Islands on October 29, 2012.

The First Closing Limited Partners desire to be admitted to the Partnership as limited partners.

The General Partner and the First Closing Limited Partners desire to amend the Original Agreement as hereinafter provided, and in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, agree as follows:

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A. Immediately following the admission to the Partnership of the First Closing Limited Partners, Finkelman shall hereby withdraw from the Partnership as a limited partner, his contribution to the Partnership's assets (if any) as a limited partner shall be returned and he shall have no further interest in or obligation to the Partnership.

B. On the date first above written, upon execution of a counterpart to this Agreement by or on behalf of such Persons, (i) ATP III GP, Ltd. hereby continues as general partner of the Partnership and (ii) the First Closing Limited Partners are hereby admitted to the Partnership as limited partners of the Partnership.

C. The Original Agreement is hereby amended and restated in its entirety to read as follows:

The Partners agree to carry on an exempted limited partnership subject to the terms of this Agreement in accordance with the provisions of the Exempted Limited Partnership Law (2012 Revision) of the Cayman Islands (as the case may be amended from time to time, the "ELP Law").

1. Firm Name; Registered Office; Purposes; Powers; Specific Authorization; Currency.

(a) Firm Name. The name of the Partnership is Apple Tree Partners IV, L.P.

(b) Registered Office. The initial address of the Partnership's registered office in the Cayman Islands is at the offices of Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. The General Partner may change the Partnership's registered office to any other address in the Cayman Islands from time to time without the consent of any other Person. The General Partner shall provide notice of such change (and of any change in the registered office of the General Partner in the Cayman Islands) to the Limited Partners.

(c) Purposes. The sole purpose of the Partnership is to invest, through one or more entities directly or indirectly owned by the Partnership (each such entity, an "Intermediary"), in equity securities issued by Apple Tree Consolidated, SPRL, a to-be-formed Belgium private limited liability company ("ATC"), whose equity securities shall be owned, directly or indirectly through an Intermediary, by the Partnership. The sole purpose of ATC shall be to invest in pharmaceutical,

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medical device and other medically-related business projects. Subject to the two preceding sentences, the Partnership and ATC shall have such other purposes that are necessary, convenient or related to the foregoing. Each Intermediary and ATC shall be wholly-owned, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(d) Powers. Subject to the terms and provisions hereof, the Partnership shall have all the powers available to it as an exempted limited partnership under the laws of the Cayman Islands.

(e) Specific Authorization. Notwithstanding any other provision of this Agreement, without the consent of any Limited Partner or other Person being required, the Partnership is hereby authorized to execute, deliver and perform, and the General Partner on behalf of the Partnership is hereby authorized to execute and deliver, (i) a subscription agreement with each Limited Partner, or the equivalent thereof in the case of a Limited Partner who will not have a Contingent Subscription (as defined in Paragraph 5(a)), for the purchase of such Limited Partner's interest in the Partnership (each, a "Subscription Agreement") and (ii) any agreement, document or other instrument contemplated thereby or related thereto, and (subject to any approvals expressly required by any such agreement, document or instrument or by this Agreement) any amendments thereto, and any such actions heretofore taken by the General Partner are hereby ratified. The General Partner is hereby authorized to enter into the agreements, documents and instruments described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Partnership.

(f) Functional Currency. The functional currency of the Partnership is the United States dollar. All capital contributions and cash distributions shall be made in United States dollars, and the Partnership's income, gains, losses and expenses will be calculated and reported in United States dollars.

2. General Partner.

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(a) Name; Address. The name and address of the General Partner are set forth in the List of Partners (as defined in Paragraph 16(b)). The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the name or address of the General Partner.

(b) Control. The management, policies and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner. The General Partner and Apple Tree Venture Management, LLC (the "Management Company") shall, at all times prior to any removal of the General Partner as general partner of the Partnership pursuant to Paragraph 4(a), be owned exclusively by Dr. Seth L. Harrison ("Dr. Harrison").

(c) Management Agreement. The General Partner shall cause ATC to enter into a management agreement with the Management Company, in the form attached hereto as Schedule A (as amended from time to time, the "Management Agreement"). The Management Agreement shall not be terminated prior to the time set forth in Paragraph 5 thereof or amended, and none of its provisions shall be waived, in each case without the prior written consent of the holders of a majority of the Preferred Units (as defined in Paragraph 6(c)).

(d) Fees and Commissions. So long as the Management Agreement is in effect, any director's fees, consulting fees and other remuneration paid to the General Partner, the Management Company, Dr. Harrison, the members and employees of the Management Company or any of their respective affiliates in cash, securities or otherwise by an Intermediary, ATC or any direct or indirect subsidiary of ATC, including any Operating Company (as defined in Paragraph 2(1)) (a "Subsidiary"), shall only be received by them on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by Apple Tree Pharmaceuticals, Inc., a Delaware corporation ("ATPharma"), for services rendered to an Operating Company, rather than the gross amount thereof,

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reduced by any ATPharma governance-related costs that are not borne by any such entity, shall be received by ATPharma on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board (as defined in Paragraph 2(n)); and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

(e) Salaries. Without the prior written approval of the holders of a majority of the Preferred Units, while the Management Agreement is in effect, neither the General Partner, the Management Company, Dr. Harrison nor any of their respective affiliates shall receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary and the employees of the Management Company shall not receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary, in each case other than the Management Fee, fees or other remuneration paid to ATPharma as described in Paragraph 2(d) or with the prior written approval of the holders of a majority of the Preferred Units; provided, however, that the General Partner shall be entitled to an annual fee of US \$500 from the Partnership.

(f) Cayman Islands Registration Statement. The General Partner has filed a registration statement pursuant to Section 9 of the ELP Law to register the Partnership as an exempted limited partnership (the "Registration Statement") and shall file any required amendments thereto.

(g) Standard of Care. It is recognized that decisions concerning investments or potential investments involve exercise of judgment and the risk of loss. To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any such

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investment or any other action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner or such affiliate.

(h) Guarantees. The Partnership shall not guarantee or agree in any other manner to become liable with respect to any indebtedness or obligation of any other Person without the prior written consent of the holders of a majority of the Preferred Units.

(i) Borrowing. The Partnership shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units.

(j) U.S. Trade or Business. The General Partner shall use its reasonable best efforts to conduct the affairs of the Partnership and its subsidiaries so that no Foreign Limited Partner realizes income that is "effectively connected with the conduct of a trade or business within the United States" within the meaning of Sections 871, 882 or 897 of the U.S. Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as the "Code"), solely by virtue of being a Limited Partner. Notwithstanding the foregoing, payments (or adjustments thereto) specifically provided for in this Agreement or the Management Agreement shall not be deemed to violate this undertaking. For purposes of this Agreement, the term "Foreign Limited Partner" shall mean any Limited Partner that (A) either (1) is a "nonresident alien" within the meaning of Section 7701(b)(1)(B) of the Code, a foreign corporation or partnership within the meaning of Section 7701(a)(5) of the Code, or a foreign trust or estate within the meaning of Section 7701(a)(31) of the Code, or (2) is treated as a partnership or flow-through entity for United States Federal income tax purposes and that has any partners, members or beneficiaries that would be a Foreign Limited Partner under clause (1) of this sentence if

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they were Limited Partners and (B) has notified the General Partner of such status in the Subscription Agreement or transfer documentation pursuant to which it acquired its interest in the Partnership.

(k) Letter Agreement. Dr. Harrison shall, on the date first written above, execute and deliver to the holders of the Preferred Units a letter agreement in the form attached hereto as Schedule B (as amended from time to time, the “Letter Agreement”).

(l) Co-investments. The General Partner shall not permit any Intermediary, ATC or any Subsidiary to purchase any Operating Company Securities (as defined below), debt, royalty arrangement or other economic interest issued by a prospective Operating Company in which the General Partner, the Management Company or any of their respective affiliates has a preexisting investment or is investing at the same time as ATC unless such purchase has been approved by the holders of a majority of the Preferred Units. Securities intended to achieve ATC’s investment purpose are sometimes referred to herein as “Operating Company Securities”. An entity in which ATC has a direct or indirect investment in Operating Company Securities is sometimes referred to herein as an “Operating Company”. Except with the prior written consent of the holders of a majority of the Preferred Units, each Operating Company shall be wholly-owned, directly or indirectly, by ATC, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors’ qualifying share requirements, and the like.

(m) Tax Classification. Except with the prior written consent of Ezbon International Limited (“Ezbon”), the General Partner shall (i) not cause or permit the Partnership to elect (A) to be excluded from the provisions of Subchapter K of the Code or (B) to be treated as a corporation for United States Federal income tax purposes; (ii) cause the Partnership to make any election reasonably necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for United States Federal income tax purposes; (iii) cause the Partnership to file any required tax returns in a manner consistent with its treatment as a partnership for United States Federal income tax purposes; and (iv) not take any action that would be inconsistent with the treatment of the Partnership as a

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partnership for such purposes. Except with the prior written consent of the holders of a majority of the Preferred Units, the Partnership shall use its best efforts to cause ATC to be treated as a corporation for United States Federal income tax purposes.

(n) ATC Board. The board of directors of ATC (the “Board”) shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in pharmaceutical, medical device and other medically-related projects and related activities (each, a “Project”), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC’s management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the “Operating Agreement”); provided that no compensation shall be paid by ATC to

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the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts (including, without limitation, cash and publicly-traded securities) received by ATC from Subsidiaries (including, without limitation, Operating Companies) which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received from Subsidiaries, including, without limitation, the Operating Companies). The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Intermediaries and Subsidiaries (including, without limitation, the Operating Companies) substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Intermediary or Subsidiary (including, without limitation, any Operating Company), such Intermediary or Subsidiary (including, without limitation, any Operating Company) shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Intermediary or Subsidiary (including, without limitation, any Operating Company) rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board.

3. Limited Partners.

(a) Names; Addresses; Contingent Subscriptions. The names and addresses of the Limited Partners and their respective Contingent Subscriptions (if any) and numbers and classes of Units (as defined in Paragraph 6(c)) are set forth in the List of Partners. Except as otherwise provided in this Agreement, the Contingent Subscription of Dr. Harrison (together with his permitted transferees) shall at all times prior to a Removal Event be equal to 5.26315% of the sum of the

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Contingent Subscriptions of the other holders of the Preferred Units. The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the Contingent Subscription or number or class of Units of any Limited Partner, the withdrawal of any Limited Partner, the admission of any additional or substituted Limited Partner, the transfer of all or any part of the interest of any Limited Partner and any change in the name or address of any Limited Partner, provided such revision is, in each case, in accordance with the terms of this Agreement. The General Partner shall also maintain a Register of Partners, as required by the ELP Law.

(b) Limited Liability. No Limited Partner, in its capacity as such, shall be liable for the debts or obligations of the Partnership; provided that nothing in this sentence shall limit the liability of a Limited Partner (i) to make the capital contributions which it agreed to make to the Partnership pursuant to Paragraph 5, (ii) to return distributions that it is required to return to the Partnership pursuant to this Agreement or the ELP Law, or (iii) to pay any other amount that it is required to pay to the Partnership pursuant to this Agreement or its Subscription Agreement. None of the Limited Partners, in their capacity as such, shall take any part in the conduct of the business of the Partnership or have any power to sign for or to bind the Partnership.

(c) Additional Admissions. Subject to the provisions of this Agreement, including but not limited to Paragraphs 3(a) and 6(d), (e) and (f), the General Partner is authorized, but not obligated, to accept additional subscriptions from the Limited Partners, select and admit additional Limited Partners to the Partnership, and issue Incentive Common Units and Tracking Units (each as defined in Paragraph 6(c)) to the Limited Partners and additional Limited Partners. Each Limited Partner who is to make an additional subscription or receive additional Incentive Common Units or Tracking Units shall execute a Subscription Agreement (or the equivalent thereof) and each Person who is to be admitted as an additional Limited Partner shall execute a counterpart to this Agreement and, if such Person makes a subscription, a Subscription Agreement (or the equivalent thereof).

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4. Removal of General Partner.

(a) Removal. Following the occurrence of a Removal Event (as defined in Paragraph 4(c)), the holders of a majority of the Preferred Units may, upon ten days' prior written notice to the General Partner, remove the General Partner as general partner of the Partnership and select a successor general partner. The successor general partner shall agree in writing to be bound by this Agreement and assume all of the obligations of the General Partner under this Agreement. The exculpation and indemnification of the General Partner pursuant to Paragraphs 2(g) and 15 shall survive for actions or omissions occurring prior to such removal (subject to the conditions described therein); the Management Agreement, the Letter Agreement and the Operating Agreement shall terminate (except that the Management Company shall continue to be entitled to receive the Management Fee for an additional 45 days and shall reimburse the Partnership to the extent (if any) that it was paid Management Fee for more than 45 days in advance); and the successor general partner shall file an amendment to the Registration Statement reflecting the change in the general partner of the Partnership.

(b) Substitution of Successor General Partner. The successor general partner shall be deemed admitted to the Partnership as general partner immediately upon the filing of the section 10 notice pursuant to the ELP Law in respect of such change of general partner.

(c) Removal Event. For purposes of this Paragraph 4, "Removal Event" means the occurrence of any of the following:

- (i) The criminal conviction for a felony entered by a court of competent jurisdiction against Dr. Harrison in respect of, or in relation to, the Partnership's affairs;
- (ii) Any act of willful fraud, willful misconduct or Gross Negligence by Dr. Harrison in respect of, or in relation to, the Partnership's affairs; or
- (iii) Any violation by Dr. Harrison of his obligations under Section 4 of the Letter Agreement including, without limitation, upon his death or disability.

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(d) Consequences of General Partner's Removal. If the General Partner is removed as general partner of the Partnership pursuant to Paragraph 4(a):

(i) The number of Founder Common Units (as defined in Paragraph 6(c)) held by Dr. Harrison (taken together with his permitted transferees) shall be reduced as follows:

(A) If such removal was the result of Dr. Harrison's death or disability, then such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 60 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 60, or

(B) In all other instances, such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 120 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 120;

Furthermore, if the General Partner is removed pursuant to Paragraph 4(a) as a result of (1) a Removal Event described in Paragraph 4(c)(i) or (2) willful and material fraud by Dr. Harrison within the context of Paragraph 4(c)(ii), as determined by a court of competent jurisdiction, then Ezbon shall have the option to purchase the remaining Founder Common Units held by Dr. Harrison (taken together with his heirs or legal representatives) at an aggregate price equal to \$1. Such option may be exercised by Ezbon within 30 days following the removal date by written notice thereof by Ezbon to Dr. Harrison (or his heirs or legal representatives, as applicable), accompanied by payment in full of the purchase price therefor. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Founder Common Units to Ezbon.

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(ii) At Dr. Harrison's election, his Contingent Subscription in respect of Preferred Units shall be reduced to the aggregate amount of capital contributions theretofore made by him to the Partnership in respect of such Preferred Units, in which case the number of his Preferred Units and Investment Common Units shall also be reduced by the same percentage by which Dr. Harrison's Contingent Subscription in respect of Preferred Units was reduced and future distributions in respect of Dr. Harrison's Preferred Units and Investment Common Units shall be adjusted to the extent necessary so that, as quickly as possible, aggregate distributions in respect of those Units, net of contributions, are what they would have been if Dr. Harrison had at all times held the reduced number of such Units. Such election right, and the consequences thereof, shall also apply to Dr. Harrison's heirs and legal representatives.

(iii) For the avoidance of doubt, the foregoing adjustments shall be applicable for purposes of determining Dr. Harrison's (and each of his heirs' and legal representatives') share of allocations and distributions only prospectively from the date of removal, and Dr. Harrison (and each of his heirs and legal representatives) shall not, as a result of this Paragraph 4(d), have any obligation (pursuant to Paragraph 15(e), or otherwise) to return to the Partnership or any Partner any distributions that Dr. Harrison (or such heirs and legal representatives) received prior to such date (but, for the further avoidance of doubt, this Paragraph 4(d)(iii) shall not relieve Dr. Harrison (or such heirs and legal representatives) of any obligation he (or they) would otherwise have under Paragraph 15(e) with respect to distributions made prior to the General Partner's removal).

(iv) So long as Dr. Harrison (taken together with his heirs and legal representatives) continues to own in the aggregate the greater of at least (Y) 50,000 Units (appropriately adjusted for any splits or combinations of, or dividends with respect to, Units occurring after the date of this Agreement or (Z) 20% of the Units owned by him (taken together with his heirs and legal representatives) following the Removal Event, after giving effect to all

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adjustments (1) arising from such Removal Event (including, without limitation, adjustments pursuant to Paragraph 4(d)(i), (ii) and (vi)) and (2) pursuant to Paragraph 6(f)(i), neither the Partnership, any Intermediary, ATC nor any Subsidiary (including any Operating Company) shall enter into any transaction or agreement with Ezbon, Blue Horizon Enterprise Ltd. (“Blue Horizon”) or any of their respective affiliates without the prior written consent of Dr. Harrison (or his heirs or legal representatives, if applicable); provided, however, that the Partnership may continue to issue additional Preferred Units and Investment Common Units to Ezbon, Blue Horizon or any of their respective affiliates, (i) at or above the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership’s operations or (ii) below the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership’s operations, provided that in the case of this clause (ii), (A) a third party investor who is not affiliated with either Ezbon or Blue Horizon and who is not a Limited Partner, but who comes within the definition of a “qualified purchaser” for purposes of the U.S. Investment Company Act of 1940, as amended, participates in such financing and purchase at least one-third of the Preferred Units and Investment Common Units sold in such financing and (B) the combined percentage ownership by Ezbon, Blue Horizon and their affiliates of Preferred Units and Investment Common Units immediately following such financing is less than their combined percentage ownership of such Units immediately prior to such financing. So long as Dr. Harrison (or his heirs or legal representatives) continues to own any Units, all such transactions or agreements with Ezbon, Blue Horizon or any of their respective affiliates shall be on “arms-length” terms or as otherwise approved by Dr. Harrison (or his heirs or legal representatives, if applicable).

(v) Dr. Harrison (or his heirs or legal representatives, if applicable) shall have a preemptive right, exercisable for a minimum period of 30 days and a maximum period of

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60 days, to subscribe for his pro rata share of any additional Preferred Units and Investment Common Units offered by the Partnership (based on the percentage of the total number of outstanding Units of such class owned by Dr. Harrison (or his heirs or legal representatives)), on the most favorable terms and conditions offered to any third party (including, without limitation, Ezbon, Blue Horizon or their respective affiliates).

(vi) If the General Partner is removed pursuant to Paragraph 4(a) as a result of a Removal Event described in Paragraph 4(c)(ii) (other than for willful and material fraud as determined by a court of competent jurisdiction) or Paragraph 4(c)(iii), then Dr. Harrison (or his heirs or legal representatives) shall have the option to require Ezbon to purchase a percentage of his (or their) Preferred Units equal to the product of (A) the aggregate capital called in respect of such Preferred Units divided by the aggregate Contingent Subscriptions of his (or their) Preferred Units and (B) the quotient of (1) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by the then balance due under the Loan Arrangement divided by (2) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units. The purchase price for such Preferred Units shall be an amount equal to the sum of the capital contributions made or deemed made (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by (x) amounts then outstanding under the Loan Arrangement and (y) distributions to Dr. Harrison (or his heirs or legal representatives), in each case in respect of such Preferred Units. Such option may be exercised by Dr. Harrison (or his heirs or legal representatives) within 30 days following the removal date by written notice thereof by Dr. Harrison (or his heirs or legal representatives) to Ezbon. If Dr. Harrison (or his heirs or legal representatives) elects to exercise such option, Ezbon shall purchase such Preferred Units by payment of the purchase price therefor in four equal installments, with the first installment due within ten days following the date of

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exercise and each subsequent installment due on the three-month anniversary of the due date for the prior installment; provided, however, that the entire amount shall be payable in full within ten days following the date of exercise if the aggregate purchase price does not exceed US \$10 million. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Preferred Units to Ezbon. In the event of a sale of Preferred Units pursuant to this clause (vi), the provisions of Section 3 of Part A to Schedule D hereto shall no longer apply to any remaining Preferred Units owned by Dr. Harrison (or his heirs or legal representatives). In no event shall a sale of Preferred Units pursuant to this clause (vi) insulate the General Partner from any claim against it for willful misconduct or gross negligence giving rise to such removal.

5. Capital of the Partnership.

(a) Capital Contributions; General.

(i) Subject to the terms of this Agreement, each of the Partners shall contribute to the capital of the Partnership, in such installments as the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription" in the List of Partners (the "Contingent Subscription"). A Partner may not make less than the full amount of any required capital contribution.

(ii) Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, the Intermediaries and ATC, as applicable, to (A) pay Partnership and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership and Intermediary non-discretionary items (such as taxes and tax distributions by the Partnership) and satisfy other Partnership and Intermediary expenses and obligations incurred in the ordinary course of business and (C) make capital contributions (directly or indirectly through one or more Intermediaries) to ATC to allow ATC to (I) pay the

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Management Fee for the next 12-month period and other ATC expenses then existing or reasonably anticipated to be incurred within the next six-month period, (II) invest in Projects approved by the Board in accordance with a Board-approved budget therefor and (III) pay ATC non-discretionary items (such as taxes) and satisfy other ATC expenses and obligations incurred in the ordinary course of business. Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (X) capital calls in respect of Partnership, Intermediary and ATC expenses and obligations incurred in the ordinary course of business for legal, audit, accounting and tax services, insurance, business development (including the identification, investigation and evaluation of prospective Projects), and other general and administrative matters (other than the Management Fee) shall be limited to the amount therefor set forth in a budget presented by the General Partner and approved by the holders of a majority of the Preferred Units in writing or the Board, whose approval shall not be unreasonably withheld or delayed, (Y) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (1) 20% of the Partnership's contributed capital or (2) \$50 million, and (Z) in the case of a capital call pursuant to clause (C) of the preceding sentence that is made on a basis accelerated from that set forth in a Board-approved budget, the General Partner (1) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (2) provided the Board with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the holders of Preferred Units or the Board shall be required with respect to organizational expenses of the Partnership and its related entities.

(iii) Not less than ten business days' prior written notice shall be given to each Partner by the General Partner as to the date for each capital contribution. The amount of capital required to be contributed by each Partner on each occasion of a capital contribution shall

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be computed by the General Partner so that each Partner contributes that portion of the aggregate capital contribution to be made by all Partners at such time which such Partner's Contingent Subscription bears to the total Contingent Subscriptions of all Partners, or in such other proportions as may be determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. All capital contributions shall be made in cash.

(iv) The General Partner may at any time, with the prior written consent of Ezbon, reduce on a pro rata basis or terminate, in their entirety, the outstanding commitments of the Partners to make further capital contributions to the Partnership, in which instance the obligation of the Partners to contribute additional capital to the Partnership shall be so reduced or terminated, as applicable, the number of Units held by each Partner shall be adjusted on an equitable basis and the List of Partners shall be revised to reflect such occurrence. A portion of the capital contributions to be made by Dr. Harrison shall be financed by Ezbon, and repaid to Ezbon by Dr. Harrison, as described in Schedule D attached hereto.

(b) Anti-Money Laundering. Each capital contribution made by a Limited Partner shall constitute a representation and warranty by such Limited Partner that, to such Limited Partner's knowledge:

(i) None of the cash that such Limited Partner has contributed or is contributing to the Partnership has been derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law; and

(ii) No contribution by such Limited Partner to the Partnership shall cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the Proceeds of Crime Law 2008, the Terrorism Law (2009 Revision) or the Money Laundering Regulations (2011 Revision), in each case, such statute

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as amended to date and any successor statute thereto and including all regulations promulgated thereunder (the “Anti-Money Laundering Laws”).

Each Limited Partner shall promptly notify the General Partner if it becomes aware that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws. Each Limited Partner shall use commercially reasonable efforts to provide promptly to the General Partner any additional information regarding such Limited Partner or its beneficial owners that the General Partner reasonably deems necessary or advisable to determine or ensure compliance with all applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges that if at any time it is discovered that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws, any of such Limited Partner’s foregoing representations and warranties is incorrect, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the General Partner may undertake appropriate actions to ensure compliance with such applicable law or regulation. Actions that may be taken by the General Partner in the circumstances described in the previous sentence include, but are not limited to, the following:

- (x) The General Partner, upon delivery of notice to that effect to the affected Limited Partner, may “freeze” such Limited Partner’s interest in the Partnership and, in that event: (A) shall not permit the Partnership to accept any additional capital contributions from such Limited Partner so long as the interest is frozen; (B) shall not request any additional capital contributions from such Limited Partner so long as the interest is frozen; (C) shall not permit the Partnership to

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allocate any items of Partnership income or gain to such Limited Partner's Capital Account with respect to any fiscal period commencing on or after the date of delivery of such notice and for so long as the interest is frozen (although the General Partner may cause the Partnership to continue to allocate items of loss or expense to such Limited Partner's Capital Account to the same extent as if, with respect to such Limited Partner and through the date of the Partnership's final liquidating distribution, such Limited Partner had timely made all required capital contributions with respect to its Contingent Subscription); and/or (D) shall not permit the Partnership to make any distributions to such Limited Partner in respect of its frozen interest after the delivery of such notice and for so long as the interest is frozen, other than liquidating distributions pursuant to Paragraph 11 in an amount equal to the positive balance in its Capital Account, after payment to each other Partner of its final liquidating distribution in accordance with Paragraph 11 and subject in all events to compliance with applicable law.

- (y) In the alternative, the General Partner may cause the Partnership to redeem such Limited Partner's interest using Partnership funds at a price equal to the lesser of (A) the aggregate amount of capital contributions theretofore made by such Limited Partner, net of amounts previously distributed to such Limited Partner, (B) the positive balance in the Capital Account of such Limited Partner, or (C) the fair market value of such interest (as determined by the General Partner); provided, however, that the General Partner shall cause the Partnership to redeem such Limited Partner's interest at such price if required by law, regulation or government order.

Each Limited Partner further understands that the Partnership or General Partner may release

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confidential information about such Limited Partner and, if applicable, any of its underlying beneficial owners, to proper authorities if the General Partner, in its reasonable discretion, determines that it is required or otherwise in the best interests of the Partnership in light of the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges and agrees that the General Partner, without the consent of any Limited Partner and notwithstanding any other provision of this Agreement, may amend any provision of this Agreement in order to effectuate the intent of this Paragraph 5(b) and ensure compliance with the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities.

(c) Defaults on Contributions. If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due (or within five business days thereafter), interest will accrue on the outstanding balance of such unpaid capital contribution at a rate per annum equal to the lesser of (i) the prime rate (as published in The Wall Street Journal) plus 6% or (ii) the maximum rate permitted by law (the "Default Rate"), from and including the date the capital contribution was due until the earlier of the date of payment of such capital contribution by such Limited Partner (or a transferee) or such time, if any, as the General Partner imposes a Default Charge (as defined below).

If such Limited Partner fails to pay any such amount when due but pays such amount (together with any accrued interest thereon) prior to the time it becomes a Defaulting Partner (as defined below), the General Partner shall reflect in the records of the Partnership the amount paid by such Partner, with such amount treated as payment first of accrued interest to the extent thereof; provided, however, that no such payment of interest shall reduce the amount to be contributed to the Partnership by such Partner with respect to its Contingent Subscription.

A Limited Partner that has failed to make a payment in satisfaction of its Contingent Subscription (together with any accrued interest thereon) pursuant to this Paragraph 5 by the close of business on the date that is five business days after the relevant due date and has also failed to make such payment on or before the date that is 30 days after the General Partner has delivered, by certified or

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registered mail or by nationally or internationally recognized “overnight” courier service, a notice (a “Default Notice”) informing such Limited Partner of its failure to make such payment and notifying such Limited Partner that such Limited Partner will be considered a Defaulting Partner if payment is not received within such 30-day period, shall be deemed to be a “Defaulting Partner.” The General Partner, in its sole discretion, may determine whether or not, or when, to deliver a Default Notice with respect to any Limited Partner that has failed to timely make a required payment pursuant to this Paragraph 5.

If a Limited Partner becomes a Defaulting Partner, the General Partner may, in its sole discretion, pursue one or more of the following alternatives:

- (i) impose a Default Charge upon the Defaulting Partner;
- (ii) assist the Defaulting Partner in selling its Preferred Units and Investment Common Units, with the full assumption by the buyer of the Defaulting Partner’s Contingent Subscription, including any portion then due and unpaid;
- (iii) accept a late contribution from the Defaulting Partner, with interest, in satisfaction of its then-outstanding obligation to contribute hereunder, if the General Partner determines in its sole discretion that such a late contribution will not jeopardize the activities and operations of the Partnership; or
- (iv) pursue and enforce all of the Partnership’s other rights and remedies against the Defaulting Partner under this Agreement, the relevant Subscription Agreement and Cayman Islands law, including, but not limited to, the commencement of a lawsuit to collect the unpaid capital contribution, interest and costs, and reimbursement of any other damages suffered by the Partnership (with interest on any such costs or other damages that are reimbursed).

If a Defaulting Partner’s Preferred Units and Investment Common Units are sold in their entirety pursuant to (ii) above, or if the General Partner exercises its sole discretion to accept a late contribution pursuant to (iii) above, the General Partner shall not impose a Default Charge pursuant to (i) above. Otherwise, all such remedies, including the aforesaid damages provisions, shall be cumulative, and the

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use by the General Partner of one or more of them against a Defaulting Partner shall not preclude the use of any other such remedy.

The Partners agree that the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy. To the maximum extent permitted by law, in connection with such failure (which remedy each Partner agrees is reasonable) and subject to the preceding paragraph of this Paragraph 5(c), the General Partner may cause such Defaulting Partner's number of Preferred Units and Investment Common Units to be reduced by up to 50% of such Defaulting Partner's corresponding number of Units of such class immediately prior to becoming a Defaulting Partner, which Units shall be allocated to the non-defaulting holders of Preferred Units in proportion to their respective number of Preferred Units (the "Default Charge"); provided, however, that if a Defaulting Partner (or any transferee(s) then holding the Defaulting Partner's interest) subsequently contributes the amount in arrears during such period, then in the sole discretion of the General Partner, the number of Preferred Units and Investment Common Units of the Partners (and the sharing of distributions among such Partners) shall be adjusted so that the Partners hold the same number of Units and receive the same of distributions as if such Defaulting Partner (together with such transferee(s), if any) had made all contributions with respect to such Defaulting Partner's interest on a timely basis.

The application of the aforesaid remedies and other damages provisions with respect to any Defaulting Partner shall not relieve such Defaulting Partner of his obligation to make (i) the capital contribution which resulted in the application of the aforesaid remedies and other damages provisions because of the failure of the Defaulting Partner to pay such capital contribution and (ii) all subsequent required capital contributions when due, or relieve such Defaulting Partner from designation as a Defaulting Partner and application of the aforesaid remedies and other damages provisions as to any such subsequent required capital contribution if he defaults with respect thereto. However, for the avoidance of doubt, the General Partner may not impose multiple Default Charges upon a Defaulting Partner with

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respect to a single required capital contribution.

In connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made to the Defaulting Partner and the Partners to which the portions of the Defaulting Partner's Units are reallocated in accordance with this Paragraph 5(c) as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge. Without limiting the generality of the foregoing, the General Partner, in its sole discretion, may elect to retain any distributions that any Defaulting Partner would otherwise be entitled to receive pursuant to this Agreement (taking into account the effect of the imposition of any remedies and other damages provisions that have been applied) for use for any Partnership purpose, including for the purpose of applying such withheld amounts, first to any costs of collection incurred by the Partnership with respect to such Defaulting Partner's unpaid capital contributions and second, as payment of such Defaulting Partner's capital contributions that are due but unpaid (and interest thereon) in chronological order starting with the capital contribution that has been unpaid for the longest period. In the case of a distribution in kind, if the General Partner elects to withhold such distribution for application against such Defaulting Partner's unpaid capital contribution, the Partnership shall withhold securities otherwise distributable to the applicable Defaulting Partner and cause such securities to be sold for and on behalf of such Defaulting Partner (and such Defaulting Partner hereby irrevocably appoints the General Partner (with full power of substitution) as his agent and attorney in fact for purposes of effecting such sale) and remit the net proceeds of such sale to the Partnership for application as provided in this paragraph. Each Defaulting Partner with respect to which distributions are authorized to be withheld in accordance with this Paragraph 5(c) agrees to execute such other documents as the General Partner may reasonably request in order to effect the purposes of such withholding and the sale of any withheld securities on behalf and in the name of such Defaulting Partner. For purposes of maintaining such Defaulting Partner's Capital Account and all other purposes under this Agreement, such Defaulting Partner shall be deemed to have

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received, at the time the distribution would otherwise have been made to such Defaulting Partner, any distribution that was withheld by the Partnership for application against such Defaulting Partner's unpaid capital contribution obligations and, in the case of a distribution in kind that was withheld, to have sold the withheld securities outside of the Partnership so that the Capital Accounts of, and economic arrangements among, the other Partners are not affected by the withholding of any such distribution. The value of any remaining withheld distributions that have not been applied to the Defaulting Partner's unpaid capital contribution obligations may be retained by the Partnership in cash or in kind, until the winding up of the Partnership, provided that the Partnership shall not be liable to such Defaulting Partner for any reduction in the value of any securities retained in kind and the Defaulting Partner shall not be entitled to the benefit of any appreciation in such retained securities.

6. Accounts; Units.

(a) Capital Accounts. There shall be established on the books of the Partnership a capital account ("Capital Account") for each Partner which shall consist of such Partner's initial capital contribution (if any) to the Partnership made pursuant to Paragraph 5, (i) increased by (A) any additional capital contributions by such Partner to the Partnership made pursuant to Paragraph 5 and (B) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 7, (ii) decreased by (A) any distributions to such Partner and (B) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 7, and (iii) adjusted pursuant to Paragraph 5(c).

(b) Distributions in Kind. For purposes of maintaining and determining Capital Accounts, all property distributed in kind by the Partnership to a Partner shall be charged to that Partner's Capital Account at the fair market value of such property on the date of distribution.

(c) Authorized Units. The Partnership is authorized to issue five classes of Limited Partner units (collectively, the "Units"), consisting of the following:

- (i) up to 900,000 preferred units (the "Preferred Units"),

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- (ii) up to 900,000 investment common units (the “Investment Common Units”),
- (iii) up to 225,000 founder units (the “Founder Common Units”),
- (iv) up to 158,823 incentive common units (the “Incentive Common Units”),
and
- (v) tracking units with respect to any Project (“Tracking Units”), which shall not represent in the aggregate more than 5% of the Partnership’s cumulative direct and indirect profits in such Project since its inception, and which “track” the profits (determined in accordance with GAAP, as defined in Paragraph 16(f)) of a particular Project.

(d) Purchase Price for Units. The purchase price for each Preferred Unit shall be US \$1,666.66, to be contributed from time to time as described in Paragraph 5(a). The purchase price for each Investment Common Unit, Founder Common Unit, Incentive Common Unit and Tracking Unit (which may be US \$0.00 in each case) shall be determined by the General Partner. Each Partner’s Contingent Subscription shall be equal to the sum of the original issue purchase prices for its Units.

(e) Issuance of Units. On the date of this Agreement, (i) 436,050 Preferred Units and 436,050 Investment Common Units are being issued to Ezbon (ii) 418,950 Preferred Units and 418,950 Investment Common Units are being issued to Blue Horizon, and (iii) 45,000 Preferred Units, 45,000 Investment Common Units and 225,000 Founder Common Units are being issued to Dr. Harrison. Incentive Common Units and Tracking Units shall be issued from time to time as determined by the General Partner, in each case, subject to a vesting schedule as determined by the General Partner. Incentive Common Units shall only be issued to Persons providing bona fide services to ATPharma and Tracking Units in respect of a Project shall only be issued to Persons providing bona fide services directly related to the corresponding Project. No Incentive Common Units or Tracking

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Units shall be issued to the General Partner, the Management Company, Dr. Harrison or their respective affiliates without the prior written approval of the holders of a majority of the Preferred Units. If any outstanding Preferred Units or Investment Common Units are redeemed by the Partnership or otherwise cancelled, they may only be reissued by action of the General Partner with the prior written consent of the holders of a majority of the Preferred Units.

(f) Reduction of Authorized and Issued Founder Common Units and Incentive Common Units. The number of authorized Founder Common Units and Incentive Common Units shall be automatically reduced (and each Partner's number of Founder Common Units and Incentive Common Units outstanding as of any date on which the number of authorized Founder Common Units or Incentive Common Units are reduced shall be reduced by the same percentage by which the authorized number of Units of the corresponding class were reduced as of such date), based on the amount of capital contributed to the Partnership in respect of the Preferred Units, as follows:

(i) Founder Common Units: reduced to 100,000 at such time as US \$300 million has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US \$100 million has been so contributed and calculated so that the quotient of the number of authorized Founder Common Units divided by the sum of the number of authorized Founder Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in \$10 million increments), from 20% to 10%, and

(ii) Incentive Common Units: reduced to 47,368 at such time as US \$1 billion has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US \$100 million has been so contributed and calculated so that the quotient of the number of authorized Incentive Common Units divided by the sum of the number of authorized Incentive Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in \$10 million increments), from 15% to 5%.

An example of how such authorized (and, similarly, issued and outstanding) Founder Common Units and

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Incentive Common Units shall be reduced, and the manner in which distributions are apportioned pursuant to Paragraph 8(d)(ii), is attached hereto as Schedule E.

7. Allocations.

(a) Allocations Generally. Except as otherwise provided in this Agreement, the Profit or Loss (as defined in Paragraph 7(b)) for each fiscal quarter shall be allocated among the Partners in a manner that as closely as possible gives economic effect to the provisions of Paragraphs 5 and 8 and the other provisions of this Agreement, as determined in the reasonable discretion of the General Partner.

(b) Definitions. For purposes of this Agreement:

(i) “Carrying Value” shall mean, with respect to each Partnership asset, the asset’s adjusted basis for United States Federal income tax purposes, adjusted to equal its fair market value, as determined by the General Partner, in accordance with the rules set forth in U.S. Treasury Regulations Section 1.704-1(b)(2)(iv)(f), except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional Partnership interest by any new or existing Partner in exchange for more than a de minimis capital contribution; (b) the date of the distribution of more than a de minimis amount of Partnership property (other than a pro rata distribution) to a Partner; or (c) such other dates as specified in U.S. Treasury Regulations under Section 704 of the Code; provided that adjustments pursuant to clauses (a), (b) or (c) above shall be made only if the General Partner determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners. The Carrying Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its fair market value. In the case of any asset that has a Carrying Value that differs from its adjusted basis, Carrying Value shall be adjusted by the amount of depreciation calculated for purposes of the definition of “Profit” or “Loss” rather than the amount of depreciation determined for United States Federal income tax purposes.

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(ii) “Profit” or “Loss” for each fiscal quarter means the sum of the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for United States Federal income tax purposes, with the following adjustments: (a) all items of income, gain, loss or deduction allocated pursuant to Paragraph 7(c) shall not be taken into account in computing such taxable income or loss; (b) any income of the Partnership that is exempt from United States Federal income taxation and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (c) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value; (d) upon an adjustment to the Carrying Value of any asset (other than an adjustment in respect of depreciation), pursuant to the definition of Carrying Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (e) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset shall for purposes of determining Profit or Loss be an amount which bears the same ratio to such Carrying Value as the United States Federal income tax depreciation, amortization or other cost recovery deduction bears to such adjusted tax basis (provided, that if the United States Federal income tax depreciation, amortization or other cost recovery deduction is zero, the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deduction in calculating Profit or Loss); and (f) except for items in (a) above, any expenditures of the Partnership not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Profit or Loss pursuant to this definition shall be treated as deductible items.

(c) Regulatory Provisions. The following provisions of this Paragraph 7(c) are included in order to comply with United States Federal income tax laws and regulations. For purposes

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of making allocations of Profit or Loss, if the Capital Account of any Limited Partner would be reduced below zero (or if an existing deficit in such Limited Partner's Capital Account would be increased) as a result of the allocation to it of any Loss, then such Loss shall first be allocated to such Limited Partner until such Limited Partner's Capital Account is reduced to zero; the remaining portion of such Loss shall be allocated to the remaining Partners in accordance with Paragraph 7(a) until the Capital Account of each remaining Limited Partner is reduced to zero; and any remaining portion of such Loss shall be allocated to the General Partner. In determining whether an allocation for a fiscal quarter would cause any Limited Partner's Capital Account to become negative or would add to an existing deficit in such Limited Partner's Capital Account for purposes of the preceding limitation, the following allocations and distributions shall be taken into account in determining such Limited Partner's Capital Account balance:

(i) allocations of loss and deduction that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner pursuant to Section 704(e)(2) of the Code (relating to allocations to a donee of a partnership interest), Section 706(d) of the Code (relating to allocations required in the case of a shift in a partner's interest in a partnership during a taxable year) and Treasury Regulation §1.751-1(b)(2)(ii) (relating to shifts in partners' interests in the inventory and unrealized receivables of a partnership, as those terms are defined in Section 751 of the Code, attributable to distributions from a partnership); and

(ii) distributions that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner to the extent they exceed offsetting increases to such Limited Partner's Capital Account that reasonably are expected to occur during (or prior to) the Partnership fiscal quarters in which such distributions reasonably are expected to be made.

If any Limited Partner receives an allocation or distribution described in the preceding sentence which is not reasonably expected to occur, but which causes or increases a negative balance in such Limited Partner's Capital Account, such Limited Partner shall be allocated items of Partnership

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income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. If any special allocation is made pursuant to the preceding sentence, subsequent allocations of loss, expenses or deductions shall be made to such Limited Partner so as to reverse the effect of such special allocation; provided, however, that no allocation of loss, expenses or deductions shall be made pursuant to this sentence which would cause such Limited Partner's Capital Account to become negative. The General Partner shall determine, in consultation with the Partnership's independent public accountants or auditors, whether any allocations or distributions described in this Paragraph 7(c) reasonably are expected to be made and the amount of any such allocations or distributions, and its determination shall be binding on all Partners. The provisions of this Paragraph 7(c) are intended to constitute a "qualified income offset" as defined in Treasury Regulation §1.704-1(b)(2)(ii)(d), and shall be so interpreted. All allocations with respect to any fiscal quarter pursuant to Paragraph 7(a) and any offsetting allocations pursuant to this Paragraph 7(c) shall be made on an interim basis, subject to adjustment when tax allocations are made pursuant to Paragraph 7(e) at the end of the fiscal year including such quarter.

(d) Changes in Partners' Interests. Notwithstanding the foregoing, with respect to any fiscal quarter during which any Partner's interest in the Partnership changes by reason of the admission of a Partner, the withdrawal of a Partner, non-pro rata contributions of capital to the Partnership, or any other event described in Section 706(d)(1) of the Code and any regulations issued thereunder, allocations of Profit or Loss made pursuant to this Paragraph 7 shall be adjusted appropriately to take into account the varying interests of the Partners in the Partnership during such quarter. The General Partner shall consult with the Partnership's accountants, auditors or other advisers and shall select the method of making such adjustments, which method shall be used consistently thereafter.

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(e) Tax Allocations.

(i) For United States Federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocation of Profit and Loss pursuant to the other provisions of this Agreement, taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code. However, in the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.

(ii) If any Partners are treated for United States Federal income tax purposes as realizing ordinary income as the result of receiving interests in the Partnership (whether under Section 83 of the Code or under any similar provision of any law, rule or regulation) and the Partnership is entitled to any offsetting deduction (net of any income realized by the Partnership as a result of such receipt), the Partnership's net deduction will be allocated to and among the Capital Accounts of such Partners in such manner as to offset, as nearly as possible, the ordinary income realized by such Partners to the extent consistent with applicable law.

(f) Tax Withholding.

(i) If the Partnership incurs a tax withholding obligation with respect to the share of Partnership income or gains allocated or distributed to any Partner: (A) any amount that is (1) actually withheld from a distribution that otherwise would have been made to such Partner and (2) paid over to any taxing authority in satisfaction of such withholding obligation shall be treated under this Agreement for all purposes as if such amount had been distributed to such

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Partner; and (B) to the extent that any amount paid over to any taxing authority by the Partnership in satisfaction of such withholding obligation exceeds the amount, if any, actually withheld from a distribution that otherwise would have been made to such Partner, such excess shall be treated as an interest-free advance to such Partner. Amounts treated as advanced to any Partner pursuant to this Paragraph 7(f) shall be repaid by such Partner to the Partnership within 30 days after the General Partner gives notice to such Partner making demand therefor, which notice shall be given promptly after such advance is made. The Partnership shall collect any unpaid amounts from any Partnership distributions to such Partner that otherwise would be made to such Partner and any unpaid amounts that exceed anticipated distributions to such Partner shall be subtracted from such Partner's Capital Account.

(ii) If the Partnership receives securities disposition proceeds or other investment returns with respect to which non-United States taxes have been withheld at the source, or the Partnership is otherwise required to pay any non-United States taxes, the aggregate amount of such taxes so withheld, paid or required to be paid shall be deemed for all purposes of this Agreement to have been received by the Partnership and then distributed by the Partnership to and among the Partners based on the amount of such withholding or other taxes attributable to each Partner, as determined by the General Partner after consulting with the Partnership's accountants, auditors or other advisers, taking into account any differences in the amount of such taxes attributable to each Partner because of such Partner's status, nationality or other characteristics. The intent of the preceding sentence is to ensure to the extent feasible that the burden of non-United States taxes withheld at the source, as required to be paid by the Partnership, are borne by those Partners to which such taxes are attributable. If the amounts deemed distributed to the Partners in accordance with such sentence do not comport with the provisions of this Agreement relating to the apportionment of distributions among the Partners,

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then, notwithstanding such distribution provisions, subsequent distributions to the Partners shall be adjusted in an equitable manner by the General Partner to reflect the intent of such sentence.

(iii) Notwithstanding Paragraph 7(f)(i), such Paragraph shall not apply with respect to any withholding taxes in respect of a Net Tax Obligation of Ezbon or Blue Horizon in respect of its Preferred Units or Investment Common Units. Accordingly, the amounts distributed to the holders of Incentive Common Units and Founder Common Units shall be determined as if Net Tax Obligations were an expense of the Partnership, and the allocations, distributions, and related provisions of this Agreement shall be adjusted and applied in a manner consistent with such intention. For this purpose, a “Net Tax Obligation” with respect to the Preferred Units and Investment Common Units held by Ezbon or Blue Horizon shall mean the excess of (A) all United States Federal, state or local taxes imposed on Ezbon or Blue Horizon in respect of such Units, whether imposed by withholding or otherwise (taking into account any reduced tax rates to which Ezbon or Blue Horizon is entitled pursuant to any tax treaty, without regard to whether Ezbon or Blue Horizon avails itself of such reduced rates), over (B) the value of all refunds, tax credits and tax deductions to which Ezbon, Blue Horizon or their respective beneficial holders are entitled in respect of any amount described in clause (A) (without regard to whether Ezbon, Blue Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions). Ezbon and Blue Horizon shall each provide to the Partnership a properly completed Form W-8(BEN), and shall provide to the Partnership all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of United States Federal, state and local taxes imposed on Ezbon or Blue Horizon, as the case may be, in respect of its income from the Partnership. For the avoidance of doubt, the Net Tax Obligation of Ezbon or Blue Horizon shall not include any additional tax liability resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon, Blue

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Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon, Blue Horizon or their respective affiliates (including any such activities that cause Ezbon or Blue Horizon to have a permanent establishment in the United States) apart from Ezbon's or Blue Horizon's investment in the Partnership, (y) Ezbon's or Blue Horizon's failure to comply with the requirements of the previous sentence, and (z) Ezbon or Blue Horizon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of United States Federal, state or local taxes. Ezbon or Blue Horizon, as applicable, shall, as soon as reasonably practicable, provide the Partnership with such information as is reasonably necessary for the Partnership to determine the Net Tax Obligation with respect to Ezbon or Blue Horizon.

(g) Profits Interests. Except as specifically determined by the General Partner upon prior consultation with the holders of a majority of the Preferred Units, Units issued after the date hereof ("Additional Units") are intended to be a "profits interest" for United States Federal income tax purposes. In furtherance of such intent, notwithstanding any provision in this Agreement to the contrary: (i) no items of income, gain, loss, deduction or credit shall be allocated to any Partner in respect of such Partner's Additional Units to the extent such items relate to any unrealized income, gain, loss, deduction or credit of the Partnership as of the issuance date of such Additional Units; (ii) distributions by the Partnership to any Partner in respect of such Partner's Additional Units shall be limited to the minimum extent necessary to be consistent with the treatment of such Additional Units as a "profits interest" for United States Federal income tax purposes (and if any distributions are not made to any Partner pursuant to the provisions of this clause (ii), then to the extent there is sufficient subsequent appreciation in value of the assets of the Partnership, distributions shall be adjusted so that,

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to the maximum extent possible, each Partner receives, on a cumulative basis, the same amount of distributions such Partner would have received as if no distributions in respect of any Units had been limited by reason of any Units constituting profits interests); and (iii) the General Partner shall consult with the Partnership's legal and tax advisors to determine the manner in which allocations and distributions should be made by the Partnership in respect of Additional Units. Following the promulgation, if any, of final regulations and associated guidance by the United States Treasury Department and Internal Revenue Service regarding the tax consequences associated with the issuance or transfer of partnership interests in exchange for the performance of services, the Partnership is authorized and directed to elect (on behalf of the Partnership and each of its Partners) to have the liquidation value safe harbor contemplated by proposed Section 1.83-3(l) of the Treasury Regulations and by the revenue procedure contemplated by IRS Notice 2005-43 (or the corresponding provisions of any such final Treasury Regulations or associated guidance) apply irrevocably with respect to all Units transferred in connection with the performance of services. The Partnership and each Partner (including any Partner obtaining an interest in exchange for the performance of services and any person to whom an interest in the Partnership is transferred) shall comply with all requirements associated with any such election.

8. Distributions.

(a) Tax Distributions. During each fiscal year, the General Partner shall cause the Partnership to distribute in cash to each Partner an amount equal to the aggregate United States Federal and state tax liability and non-United States tax liability attributable to items of income, gain, loss or deduction allocated to such Partner by the Partnership with respect to such year ("Hypothetical Tax Liability"), as determined in accordance with this Paragraph 8(a). Hypothetical Tax Liability shall be determined as if each Partner were a natural person resident in the State of New York, as follows:

(i) The Hypothetical Tax Liability of a Partner shall be computed based upon the items of income, gain, loss, deduction or credit allocated to such Partner by the

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Partnership with respect to the fiscal year, without taking into account any other items of income, gain, loss, deduction or credit, and without taking into account the standard deduction or any loss carryovers or exemptions; provided that, if the General Partner determines, after consulting with the Partnership's accountants, auditors or counsel, that the actual tax liability of a Partner resulting from participation in the Partnership is reasonably likely to exceed the Hypothetical Tax Liability as so computed as a result of (A) the phaseout of, or limitation on, the deductibility of expenses allocated to such Partner, whether under Section 67 or Section 68 of the Code or otherwise, (B) the application of the alternative minimum tax or similar taxes, or (C) for any other reason, then, at the election of the General Partner, appropriate adjustments shall be made in computing the Hypothetical Tax Liability of each Partner on an equivalent basis so as to insure that each Partner will receive distributions sufficient to satisfy the actual tax liability attributable to its participation in the Partnership;

(ii) Hypothetical Tax Liability generally shall be determined using the highest marginal rates of Federal and state tax applicable to individuals for such fiscal year; provided, however, that (A) the determination of such marginal tax rates shall take into account the character of income, gain, loss or deduction (including net capital gain or loss) that is allocated and (B) if all or any portion of the Hypothetical Tax Liability is attributable to the alternative minimum tax, such marginal tax rates shall be determined using the highest rates applicable under the alternative minimum tax; and

(iii) Hypothetical Tax Liability for a Partner holding more than one class of Units shall be determined separately for each such class of Units, and without regard to tax items allocated to such Partner in respect of the other classes of Units held by such Partner.

To assist the Partners in paying estimated tax, amounts may be distributed during a fiscal year with respect to such year by using estimates of Hypothetical Tax Liability based upon results of the Partnership's operations for the fiscal year to date; to the extent that such estimates result in distributions

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pursuant to this Paragraph 8(a) in excess of the Hypothetical Tax Liability determined after the close of the fiscal year, such excess distributions shall be deemed made pursuant to the other provisions of this Paragraph 8, and subsequent distributions shall be adjusted accordingly. Amounts distributed within 90 days after the end of a fiscal year may, at the option of the General Partner, be deemed to have been made during such fiscal year rather than during the fiscal year in which the distribution is actually made, solely to the extent necessary to satisfy the requirements of this Paragraph 8(a) and solely for such purpose. Distributions previously made to a Partner pursuant to the provisions of this Paragraph 8 during a fiscal year (but not including any tax distribution with respect to a prior fiscal year) in respect of any class of Units shall reduce dollar-for-dollar the amount of any tax distribution to which a Partner is entitled with respect to such fiscal year pursuant to this Paragraph 8(a) in respect of allocations to such Partner corresponding to such class of Units. Tax distributions to any Partner in respect of a class of Units shall be treated as an advance against amounts otherwise distributable to such Partner (or its successors in interest) in respect of such class of Units pursuant to the other provisions of this Agreement.

(b) Tracking Unit Distributions. In connection with any “liquidity event” (including the receipt of interest, dividends, redemption or sale proceeds, royalties and other distributions, an initial public offering, or as otherwise determined in the reasonable discretion of the General Partner and the holders of a majority of the Preferred Units) with respect to a Project for which Tracking Units are then outstanding, the Partnership shall distribute, out of available assets, to the holders of such Tracking Units an amount (on a cumulative basis together with any prior distributions in respect of such Tracking Units) equal to 5% of the Partnership’s direct and indirect profits (determined in accordance with GAAP) in such Project; provided that an amount equal to the sum of the Partnership’s aggregate cost with respect to such Project and the balance of such profits has been or is simultaneously received by ATC from such Project; provided, further that, in accordance with the granting documents relating to Tracking Units with respect to a Project, the cumulative profits actually distributed to holders of Tracking Units with respect to a Project as of any time shall be less than the

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5% profit amount referred to above if and to the extent that Tracking Units for such full 5% profit amount have not been granted and remain outstanding. Such distribution shall be made in cash, or in the discretion of the General Partner and with the prior written approval of the holders of a majority of the Preferred Units, in securities of ATC or other property identified by the General Partner. If Tracking Units are outstanding with respect to more than one Project that has undergone a liquidity event, distributions pursuant to this Paragraph 8(b) shall be apportioned among such holders of Tracking Units in proportion to the fair market values thereof.

(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary (including, without limitation, each Operating Company), shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary (including, without limitation, each Operating Company) to distribute promptly to

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ATC any amounts (including, without limitation, cash and publicly-traded securities) which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets).

(d) Apportionment of Other Distributions. Distributions pursuant to Paragraph 8(c) shall be made as follows:

(i) First, to the holders of Preferred Units, in proportion to their respective number of such Units, until the cumulative amount distributed pursuant to this Paragraph 8(d)(i) equals the sum of (A) the aggregate amount previously contributed in respect of the Preferred Units and (B) \$10,006,000.

(ii) Second, among the holders of Investment Common Units, Founder Common Units and Incentive Common Units, as follows:

(A) To the holders of Incentive Common Units, in proportion to their respective number of such Units, the Incentive Percentage of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time. The "Incentive Percentage" at any time shall mean the number of Incentive Common Units outstanding at such time divided by the sum of the number of authorized Incentive Common Units at such time and the number of authorized Investment Common Units at such time.

(B) To the holders of Investment Common Units and Founder Common Units, in proportion to their respective number of such Units, the balance of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time.

(e) Limitations on Distributions. Anything in this Agreement to the contrary notwithstanding, (i) no distribution shall be made to any Partner if and to the extent that such distribution

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would not be permitted under the ELP Law or other applicable law and (ii) with respect to any distribution in respect of an interest intended to be a “profits interest”, such distribution shall be limited as provided in Paragraph 7(g). For the avoidance of doubt, no Units issued to Ezbon or Blue Horizon as of the date hereof are intended to be treated as profits interests with respect to which distributions would be limited by reason of clause (ii) of the preceding sentence or Paragraph 7(g).

9. Valuation.

(a) Valuation by General Partner. Subject to Paragraph 9(d), the General Partner shall determine in good faith the fair market value of the assets owned directly and indirectly by the Partnership (including, without limitation, the assets held by ATC), in accordance with the Partnership’s valuation methodology adopted by the General Partner and approved by the holders of a majority of the Preferred Units in writing. The General Partner shall submit all such valuations to the holders of a majority of the Preferred Units in writing.

(b) Fair Market Value. In general, but subject to the requirements of Paragraph 9(a), the fair market value of any security owned directly or indirectly by the Partnership which is freely tradeable shall be determined as of the close of trading on the date as of which the value is being determined by taking the last reported sale price of such security on such date on the exchange where it is primarily traded, or, if such security is not traded on an exchange, such security shall be valued at the last reported sale price on such date on the Nasdaq Stock Market, or, if such security is not reported on the Nasdaq Stock Market, such security shall be valued at the closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities. The determination of the fair market value of all other assets owned directly or indirectly by the Partnership shall be made in accordance with GAAP (as defined in Paragraph 16(e)). In making any such determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for goodwill or the name of the Partnership, the Partnership’s office records, files and statistical data, or any other intangible assets of the Partnership.

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(c) Freely Tradeable Securities. For purposes of this Agreement a security shall be deemed to be “freely tradeable” if (i) the Partnership’s entire direct and indirect ownership of such security can be immediately sold by the Partnership to the general public and (ii) such security is either listed on a securities exchange or carried on the Nasdaq Stock Market and market quotations are readily available therefor. Notwithstanding the foregoing, in the case of a distribution of securities to the Partners, a security shall be deemed to be “freely tradeable” if the entire portion of such distribution made to the Limited Partners can be immediately sold by them and the condition provided for in clause (ii) of the preceding sentence is satisfied, assuming for purposes of this sentence that no Limited Partner is an affiliate of the issuer of such security. If only a portion of the Partnership’s entire holding of such security satisfies the requirements of this Paragraph 9(c), that portion of the Partnership’s entire holding of such security shall be deemed to be “freely tradeable.”

(d) Disputed Valuations. If the General Partner determines a valuation for assets owned directly or indirectly by the Partnership which is objected to in writing by the holders of a majority of the Preferred Units within 15 days following the submission thereof in writing to the holders of a majority of the Preferred Units by the General Partner, and if the holders of a majority of the Preferred Units do not, within 45 days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted in writing by the General Partner, such valuation shall be determined by an independent chartered financial analyst selected by the General Partner and approved by the holders of a majority of the Preferred Units, whose determination shall be binding upon all Partners.

10. Term.

(a) Term of Partnership. The Partnership shall continue in perpetuity, unless it is sooner dissolved as provided in Paragraph 10(b) or by operation of law.

(b) Termination. The Partnership shall be wound up and dissolved (i) upon any event in respect of the General Partner specified in Section 15(5) of the ELP Law (subject to the

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proviso thereto), (ii) at any time there are no limited partners of the Partnership, or (iii) upon the entry of a decree of judicial dissolution of the Partnership pursuant to the ELP Law.

11. Winding Up.

(a) General Provisions. Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner. The General Partner shall carry out the winding up of the affairs of the Partnership pursuant to this Agreement, provided that if the General Partner is no longer owned solely by Dr. Harrison, the holders of a majority of the Preferred Units shall appoint one or more liquidators to act as the liquidators in carrying out such winding up, subject to any contrary order of the court upon an application for a Partner or creditor pursuant to Section 15(4) of the ELP Law.

(b) Winding Up Distributions. The General Partner or the liquidators, as applicable, shall cause the Partnership to satisfy the Partnership's liabilities and obligations to creditors including Partners who are creditors (whether by payment or the making of reasonable provision for payment thereof). Any gain or loss incurred in connection with the winding up of the Partnership shall be allocated to and among the Partners in the manner provided in Paragraph 7 and the assets remaining after satisfaction of liabilities shall then be distributed among the Partners in cash or in kind in accordance with Paragraph 8. In performing their duties, the General Partner or the liquidators, as applicable, are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the General Partner or the liquidators, as applicable, shall determine to be in the best interest of the Partners.

(c) Expenses of Winding Up. The expenses incurred by the General Partner or the liquidators, as applicable, in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement and reasonable compensation for the services of the General Partner or the liquidators, as applicable, shall be borne by the Partnership, provided that if the General Partner is carrying out the winding up, no such

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compensation shall be paid while the Management Agreement remains in effect. The General Partner or the liquidators, as applicable, shall use reasonable efforts to make final distributions following winding up of the Partnership before the later of (i) the end of the Partnership's taxable year in which the date of the completion of the winding up of the Partnership occurs, or (ii) 90 days after the date of the completion of the winding up of the Partnership; provided that at such point in time ATC has sold, distributed or otherwise disposed of all of its Operating Company Securities.

(d) Standard of Care. Neither the General Partner nor any liquidator, as applicable, nor any of their respective affiliates shall incur liability to the Partnership or to any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or inaction on the part of such Person or any of its affiliates, provided that in any such case (i) such Person's or such affiliate's course of conduct was in good faith and reasonably believed by such Person or such affiliate to be in or not opposed to the best interests of the Partnership and (ii) such course of conduct did not constitute willful fraud, willful misconduct, Gross Negligence or an intentional and material breach of this Agreement on the part of such Person or affiliate.

(e) Return Obligation. Subject to the ELP Law, no Partner shall be obligated to restore to the Partnership the amount of any negative Capital Account.

(f) Dissolution. Upon completion of the winding up of the Partnership pursuant to this Paragraph 11, a notice of final dissolution shall be filed with the Cayman Islands Registrar of Exempted Limited Partnerships pursuant to the ELP Law and the Partnership shall dissolve thereon.

12. Transfer of Interests of Limited Partners.

(a) Conditions to Transfer. The prior written consent of the General Partner, in its sole and absolute discretion, shall be required for the assignment, pledge, mortgage, hypothecation, sale or other disposition or encumbrance (a "Transfer") by any Limited Partner of all or any part of its interest in the Partnership; provided, however, that such consent shall not be required for a transfer by Ezbon or Blue Horizon (or any subsequent transfer by a direct or indirect transferee of Ezbon or Blue

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Horizon) of all or any part of its Limited Partner interest. The General Partner may require that any proposed Transfer be effective only as of the beginning or end of a fiscal quarter. Additionally, any Transfer shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership or of other counsel reasonably satisfactory to the Partnership (which opinion shall be obtained at the expense of the transferor) that such Transfer will not result in (A) the Partnership, the General Partner or the Management Company being required to register as an investment company under the U.S. Investment Company Act of 1940, as amended, (B) a violation by the Partnership of the ELP Law, (C) the Partnership being deemed terminated pursuant to Section 708 of the Code, or (D) the Partnership becoming subject to U.S. Federal income taxation at the entity level within the meaning of Section 7704 of the Code or otherwise being treated as a corporation for U.S. Federal income tax purposes; provided, however, that the condition of obtaining a written opinion of counsel may be waived (completely or as to particular matters) by the General Partner in its sole discretion with the prior written consent of the holders of a majority of the Preferred Units. Furthermore, any Transfer otherwise permitted hereunder shall, except in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon), be made only upon a determination by the General Partner that such Transfer will not result in a material adverse effect (including the cost of compliance) on the Partnership or any Partner as a result of the Partnership's obligations to make tax basis adjustments under Sections 734 or 743 of the Code; provided, however, that the General Partner may, in its sole discretion, waive the requirement to make such a determination. Each Limited Partner shall provide the General Partner with any information necessary to allow the Partnership to comply with its obligations to make tax basis adjustments under Section 734 or 743 of the Code. Except in accordance with the provisions of this Paragraph 12, each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership. To the fullest extent permitted by law, any attempted Transfer of a Limited Partner's interest without compliance with this Agreement shall be void. Every Transfer shall be

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subject to all of the terms, conditions, restrictions and obligations of this Agreement.

(b) Substituted Limited Partners. Without the consent of the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon)), the aforesaid written opinion of counsel (unless waived by the General Partner with the prior written consent of the holders of a majority of the Preferred Units) and the aforesaid determination by the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon) or unless waived by the General Partner), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 12 shall be admitted as a substituted Limited Partner (to the extent of the interest transferred) upon the date specified therefor in a document providing for such admission, which document shall be executed by the General Partner (including, without limitation, in its capacity as attorney-in-fact for and on behalf of existing Limited Partners), the transferor of the Partnership interest transferred in accordance with the provisions of this Paragraph 12 and the transferee of such interest (and shall include the transferee's written agreement to be bound by this Agreement), and which admission shall not require the consent of any other Partner. Any transferee of a Partnership interest shall execute such other documents as the General Partner may request to effectuate such Transfer and shall, by its admission as a substituted Limited Partner, be subject to all of the terms of this Agreement and be deemed to have executed a power-of-attorney as provided in Paragraph 18(b). Each Partner, by its execution of this Agreement, agrees and consents to the admission of any substituted Limited Partner pursuant to the terms of this Paragraph 12.

(c) Disclosure of Information. No Limited Partner (other than Ezbon, Blue Horizon or a direct or indirect transferee of either Ezbon or Blue Horizon) shall disclose any Partnership Information (as defined in Paragraph 16(d)) to any prospective transferee (or otherwise violate the provisions of Paragraph 16(d)) in connection with a Transfer or proposed Transfer without the written

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consent of the General Partner. The Limited Partners acknowledge that as a condition to granting such a consent, the General Partner may require that any prospective transferee execute a confidentiality agreement with the Partnership which is satisfactory to the General Partner.

(d) Transfer Expenses. The Limited Partner requesting a Transfer shall, at the request of the General Partner, reimburse the Partnership for any expenses reasonably incurred by the Partnership, the General Partner or any of their affiliates in connection with such Transfer or proposed Transfer, including any legal, accounting and other expenses related thereto (“Transfer Expenses”), whether or not such Transfer is consummated. At its election, and in any event if the requesting Limited Partner has not reimbursed the Partnership for any Transfer Expenses incurred by the Partnership in preparing for or consummating a proposed or completed Transfer within 30 days after the General Partner has given to such Limited Partner written demand for payment, the Partnership shall be entitled to reimbursement from the transferee of such interest. If neither such requesting Limited Partner nor the transferee reimburses the Partnership for such Transfer Expenses within a reasonable time, the General Partner may charge the transferee’s or the transferor’s Capital Account in an amount equal to the Transfer Expenses. For avoidance of doubt, such Transfer Expenses shall include, without limitation, the additional accounting, tax preparation and other administrative expenses reasonably incurred (or to be incurred) by the Partnership in the case of a Transfer that results in tax basis adjustments to be made by the Partnership under Section 743 of the Code or related provisions. Each Limited Partner also agrees to reimburse the Partnership, at the request of the General Partner, for any cost or other expense reasonably incurred by the Partnership, the General Partner or any of their respective affiliates (and if such expenses are not so reimbursed, the General Partner may charge such Limited Partner’s Capital Account for such expenses) in connection with any tax basis adjustments that the Partnership is required to make under Section 743 of the Code or related provisions as a result of the transfer of interests of such Limited Partner by its beneficial owners. In the case of a Transfer (or the transfer of interests of a Limited Partner by its beneficial owners) that is

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expected to result in future expenses of the type described in the two preceding sentences, the General Partner may estimate the amount of such expenses in good faith, and such estimate shall be final.

(e) No Entity Level Taxation. The General Partner (i) shall not cause or permit any offering of Partnership interests to be registered under the U.S. Securities Act of 1933, as amended (the “Securities Act”), (ii) shall not cause or permit interests in the Partnership to become “traded on an established securities market,” and (iii) shall withhold its consent to, and shall not “recognize”, any Transfer of a “partnership interest” (or portion thereof) in the Partnership (Y) that, to the General Partner’s knowledge after reasonable inquiry, would otherwise be accomplished by a trade on a “secondary market or the substantial equivalent thereof,” in each case within the meaning of Section 469(k) or 7704 of the Code and any regulations promulgated thereunder that are in effect at the time of the proposed Transfer, or (Z) if and to the extent that such Transfer, if made, would cause the Partnership to fail to satisfy a “safe harbor” which it satisfied immediately prior to such Transfer, unless the General Partner determines that such Transfer would not otherwise cause the Partnership to be subject to U.S. Federal income tax at the entity level within the meaning of Section 7704 of the Code; for the purpose of the preceding clause, a “safe harbor” shall mean (1) the safe harbor for “transfers not involving trading” pursuant to Treasury Regulation §1.7704-1(e); (2) the safe harbor for “private placements” set forth in Treasury Regulation §1.7704-1(h); or (3) the “lack of actual trading” safe harbor set forth in Treasury Regulation §1.7704-1(j). The foregoing provisions of this Paragraph 12(e) shall not apply to the extent that the General Partner has determined with the consent of the holders of a majority of the Preferred Units that the Partnership shall be taxed as a corporation for U.S. Federal tax purposes.

(f) Representations and Warranties. The transferor and transferee shall provide the General Partner, in connection with any proposed Transfer, (x) with such written representations and warranties as it reasonably may request, including such representations and warranties as the General Partner may determine necessary in order to ensure that the Partnership will not be subject to U.S.

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Federal income tax at the entity level within the meaning of Section 7704 of the Code and (y) with such other information as the General Partner reasonably may request, including tax basis information and the amount of gain or loss to be recognized upon such Transfer.

(g) Tag-Along Rights.

(i) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Preferred Units to any Person other than an affiliate (a "Buyer"), Dr. Harrison (taken together with his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same prices per Preferred Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the Preferred Units owned by Dr. Harrison (taken together with his heirs and legal representatives) as the Preferred Units to be sold by Ezbon or Blue Horizon represent with respect to the Preferred Units owned by Ezbon or Blue Horizon (as applicable) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If Dr. Harrison (or his heirs or legal representatives) wishes to participate in any sale under this Paragraph 12(g)(i), he (or they) shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him (or them) the opportunity to sell such Preferred Units to the Buyer, which written offer shall be made by Ezbon or Blue Horizon promptly after it decides to sell any or all of its Preferred Units to the Buyer. Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives, as applicable) shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Preferred Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to Dr. Harrison (and his heirs and legal representatives); provided, however, that any purchase of less than all of such Preferred Units by the Buyer shall be made from Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives)

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pro rata based upon the relative number of Preferred Units that Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives) are otherwise entitled to sell pursuant to this Paragraph 12(g)(i). Any sale by Dr. Harrison (and his heirs and legal representatives) pursuant to this Paragraph 12(g)(i) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(i) shall survive any transfer by Ezbon or Blue Horizon of Preferred Units to an affiliate.

(ii) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Investment Common Units to a Buyer, each other Limited Partner (including, for the avoidance of doubt, Dr. Harrison and his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same price per Investment Common Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by such Limited Partner as the Investment Common Units to be sold by Ezbon or Blue Horizon represent with respect to the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by all Limited Partners (including, for the avoidance of doubt, Ezbon or Blue Horizon) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If any such other Limited Partner wishes to participate in any sale under this Paragraph 12(g)(ii), he shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him the opportunity to sell such Investment Common Units, Founder Common Units and/or Incentive Common Units to the Buyer, which written offer shall be made by Ezbon

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or Blue Horizon promptly after it decides to sell any or all of its Investment Common Units to the Buyer. Ezbon or Blue Horizon and each such other Limited Partner shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Investment Common Units, Founder Common Units and/or Incentive Common Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to the other Limited Partners; provided, however, that any purchase of less than all of such Investment Common Units, Founder Common Units and/or Incentive Common Units by the Buyer shall be made from Ezbon or Blue Horizon and the other Limited Partners pro rata based upon the relative number of Investment Common Units, Founder Common Units and/or Incentive Common Units that Ezbon or Blue Horizon and each other Limited Partner are otherwise entitled to sell pursuant to this Paragraph 12(g)(ii). Any sale by each other Limited Partner pursuant to this Paragraph 12(g)(ii) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(ii) shall survive any transfer by Ezbon or Blue Horizon of Investment Common Units to an affiliate.

(h) Drag-Along Rights. Each Partner other than Ezbon and Blue Horizon (collectively, the “Holders”) covenants and agrees that it shall, at the written request of Ezbon and Blue Horizon, consent to an Ezbon/Blue Horizon Sale (as defined below) and sell all of its Units pursuant to such Ezbon/Blue Horizon Sale and in accordance with this Paragraph 12(h). For purposes of this Paragraph 12(h), an “Ezbon/Blue Horizon Sale” shall mean the bona fide sale by Ezbon and Blue Horizon to an unaffiliated Person, for cash, of all of their Preferred Units and Investment Common Units (i) at an aggregate price equal to three times the price paid by Ezbon and Blue Horizon

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for such Units, (ii) in a transaction which places an enterprise value on the Partnership of at least \$3 billion or (iii) with the prior written consent of Dr. Harrison (or his heirs or legal representatives). Dr. Harrison (and his heirs or legal representatives, as applicable) shall sell all of his (or their) Preferred Units and Investment Common Units for the same consideration per Unit and, except as otherwise provided herein, on the same terms and conditions as Ezbon and Blue Horizon in the Ezbon/Blue Horizon Sale. Each Holder (including, without limitation, Dr. Harrison (and his heirs or legal representatives, as applicable)) shall sell, in connection with the Ezbon/Blue Horizon Sale, all other Units held by such Holder, at the then fair market value therefor established by the pricing for the Preferred Units and Investment Common Units in the Ezbon/Blue Horizon Sale, i.e., the then inherent value of the “profits interests” represented by the Founder Common Units and the Incentive Common Units after the then fair market values of the Tracking Units (if any) have been determined in the reasonable discretion of the General Partner. Notwithstanding anything herein to the contrary, in connection with an Ezbon/Blue Horizon Sale, any indemnification a Holder shall be required to provide will be made on a several, and not joint and several, basis, and pro rata to its share of the sale proceeds, no Holder shall be required to agree to any non-solicitation, non-competition or similar restrictive covenant or agreement, and no Holder’s obligations for indemnification and similar obligations shall exceed the aggregate of the cash proceeds actually received by, and any amount deposited into escrow on behalf of, such Holder in connection with such Ezbon/Blue Horizon Sale. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with an Ezbon/Blue Horizon Sale other than as the General Partner deems necessary to ensure that the purchaser of the Units in respect of any such Ezbon/Blue Horizon Sale is bound with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the drag-along rights established by this Paragraph 12(h) shall survive any transfer by Ezbon or Blue Horizon of its Units to an affiliate.

(i) Further Restriction on Sales by Dr. Harrison. Dr. Harrison (and his heirs and

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legal representatives) shall not sell any of his (or their) Units until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least \$7.5 billion, without the prior written consent of the holders of a majority of the Preferred Units, except as otherwise expressly provided for in this Agreement and subject to the right of first negotiation provided in Paragraph 12(j) and the obligation of good faith negotiation provided in Paragraph 18(n). In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(i), the net after-tax sales proceeds to Dr. Harrison (and his heirs or legal representatives, as applicable) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto.

(j) Right of First Offer. If at any time Dr. Harrison (or his heirs or legal representatives) desires to sell all or any part of his (or their) Units to any Person (other than pursuant to Paragraphs 4(d), 12(g) or 12(h)), and is not prohibited from doing so under Paragraph 12(i), he (or they) shall submit a written offer (the "Offer") to sell such Units (the "Offered Units") to Ezbon and Blue Horizon on terms and conditions, including price, not less favorable to Ezbon and Blue Horizon than those on which Dr. Harrison (or his heirs or legal representatives) proposes to sell such Units to a third party. Each of Ezbon and Blue Horizon shall have the right to purchase its pro rata share of the Offered Units (based on their relative ownership of the type of Units to be sold), together with a right of oversubscription if either fails to exercise the Offer in full. If Ezbon or Blue Horizon desires to purchase all or any part of the Offered Units, it shall communicate in writing its election to purchase to Dr. Harrison (or his heirs or legal representatives) within 30 days of the date the Offer was made. Sales of the Offered Units shall be made at the principal office of the Partnership on the 45th day following the date the Offer was made (or if such 45th day is not a business day, then on the next succeeding business day.) If Ezbon and Blue Horizon do not purchase all of the Offered Units, the Offered Units not so purchased may be sold by Dr. Harrison (or his heirs or legal representatives) at any time within 120 days after the date the Offer was made, at not less than the price and upon other

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terms and conditions, if any, not more favorable to the buyer than those specified in the Offer. In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(j), the net after-tax sales proceeds to Dr. Harrison (or his heirs or legal representatives) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Offered Units to either Ezbon and/or Blue Horizon.

13. Transfer of Interest of General Partner. The General Partner shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber all or any part of its general partner interest in the Partnership, except in connection with an Ezbon/Blue Horizon Sale. To the fullest extent permitted by law, any attempted transfer of the General Partner's interest, except in connection with an Ezbon/Blue Horizon Sale, shall be void.

14. Withdrawal. Other than in respect of the withdrawal of Finkelman as contemplated by this Agreement, no Partner shall have the right to withdraw from the Partnership.

15. Indemnification.

(a) Indemnified Parties. To the fullest extent permitted by law, the General Partner, the Management Company, ATPharma, the Tax Matters Partner (as defined in Paragraph 18(i)), each member of the Board, each liquidator for the Partnership, and each member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma or the liquidator (herein referred to collectively as "Indemnified Parties" and singly as an "Indemnified Party") shall be indemnified by the Partnership (to the extent such party has not been indemnified by any other organization) against any loss, judgment, liability, expense and/or amount paid in settlement of any claim incurred by or imposed upon him in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which he may be made a party or otherwise involved or with which he shall be threatened, by reason of his being the General Partner, the Management Company, ATPharma, the Tax

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Matters Partner, a member of the Board, a liquidator for the Partnership, or a member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or any organization in which the Partnership directly or indirectly owns or owned an interest or of which the Partnership is or was a creditor, which organization he serves or has served as a managing director, director, officer, employee or agent directly or indirectly at the request of the Partnership (in any case, whether or not he continues to be the General Partner, the Management Company, ATPharma, the Tax Matters Partner, a member of the Board, a liquidator for the Partnership, or member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or of such organization at the time such action, suit or proceeding is brought or threatened, provided that with respect to any former Operating Company of which the Partnership no longer directly or indirectly owns any Operating Company Securities, such Indemnified Party shall only be entitled to indemnification and advancement of expenses pursuant to this Paragraph 15 for causes of action that arose from facts and circumstances in existence on or prior to the first annual anniversary of the date that the Partnership directly or indirectly disposed of the last of its Operating Company Securities of such Operating Company, regardless of when such action, suit or proceeding was brought or threatened), provided that the Indemnified Party acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership, except to the extent any such loss, judgment, liability, expense and/or amount paid in settlement of any claim was the result of willful fraud, willful misconduct, Gross Negligence or intentional and material breach of this Agreement on the part of the Indemnified Party or a dispute between or among the General Partner and one or more of its owners, the Management Company and one or more of its employees, ATPharma and one or more of its employees, two or more owners of the General Partner, two or more employees of the Management Company or two or more employees of ATPharma, and further provided that in the case of an owner of the General Partner or a member, partner, managing director, director, officer,

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employee, agent or controlling person of the Management Company, ATPharma, a liquidator for the Partnership or such other organization, the action, suit or proceeding related directly or indirectly to the affairs of the Partnership. The General Partner is authorized to enter into such separate agreements or deed poll on behalf of the Partnership with or benefiting the Indemnified Parties on terms consistent with this Paragraph 15(a) as the General Partner in its reasonable discretion considers necessary or desirable to give full and complete effect to the indemnity provisions set forth herein.

Notwithstanding anything to the contrary set forth in this Paragraph 15, holders of Tracking Units may only be indemnified by the Operating Company and/or Project with respect to which their Tracking Units relate, and not by the Partnership, ATP or any Subsidiary (including, without limitation, any Operating Company) or other Project.

(b) Indemnification Not Exclusive. The foregoing rights of indemnification shall be in addition to any rights to which an Indemnified Party may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(c) Expenses. The Partnership may pay the expenses incurred by an Indemnified Party in defending any action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by such Indemnified Party to repay such payment if he shall be determined not to be entitled to indemnification therefor as provided herein; provided that no such advance payment by the Partnership to an Indemnified Party shall be made with respect to expenses incurred as a result of any action, suit or proceeding initiated against such Indemnified Party by the holders of a majority of the Preferred Units.

(d) Ordering of Indemnification Obligations. Solely for purposes of clarification, and without expanding the scope of indemnification pursuant to this Paragraph 15, the Partners intend that, to the maximum extent permitted by law, as between (i) Operating Companies, (ii) the Partnership and (iii) the General Partner, the Management Company, ATPharma or a liquidator for the

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Partnership, this Paragraph 15 shall be interpreted to reflect an ordering of liability for potentially overlapping or duplicative indemnification payments, with any applicable Operating Company having primary liability, the Partnership having only secondary liability, and (if applicable) the General Partner, the Management Company, ATPharma or a liquidator for the Partnership having only tertiary liability. The possibility that an Indemnified Party may receive indemnification payments from an Operating Company shall not restrict the Partnership from making payments under this Paragraph 15 to an Indemnified Party that is otherwise eligible for such payments, but such payments by the Partnership are not intended to relieve any Operating Company from any liability that it would otherwise have to make indemnification payments to such Indemnified Party and, if an Indemnified Party that has received indemnification payments from the Partnership actually receives duplicative indemnification payments from an Operating Company for the same claim, such Indemnified Party shall repay the Partnership to the extent of such duplicative payments. If, notwithstanding the intention of this Paragraph 15, an Operating Company's obligation to make indemnification payments to an Indemnified Party is relieved or reduced under applicable law as a result of payments made by the Partnership pursuant to this Paragraph 15, the Partnership shall have, to the maximum extent permitted by law, a right of subrogation against (or contribution from) such Operating Company for amounts paid by the Partnership to an Indemnified Party that relieved or reduced the obligation of such Operating Company to such Indemnified Party. Indemnification payments (if any) made to an Indemnified Party by the General Partner, the Management Company, ATPharma or a liquidator for the Partnership in respect of any claim for which (and to the extent) such Indemnified Party is otherwise eligible for payments from the Partnership under this Paragraph 15 shall not relieve the Partnership from its obligation to such Indemnified Party and/or the General Partner, the Management Company, ATPharma or a liquidator for the Partnership, as applicable, for such payments. As used in this Paragraph 15, "indemnification" payments made or to be made by an Operating Company shall be deemed to include (i) payments made or to be made by any successor to the indemnification

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obligations of such Operating Company and (ii) equivalent payments made or to be made by or on behalf of such Operating Company (or such successor) pursuant to an insurance policy or similar arrangement.

(e) Partner Clawback. If (i) the Partnership incurs a liability or obligation under this Paragraph 15 and (ii) the Partnership does not have sufficient available cash on hand to satisfy such liability or obligation, then the General Partner, in its sole discretion, may require that each Partner make additional payments to the Partnership, upon no less than ten days' prior written notice from the General Partner, of its pro rata share (according to the amount by which such liability or obligation would have reduced the aggregate distributions received by each Partner (and its predecessors in interest) as of the time of such notice in respect of each class of Units then held by each Partner), after giving effect to any distributions returned by the Partners pursuant to this Paragraph 15(e) and any distribution of such returned amounts to the Partners, had such liability or obligation been incurred and paid by the Partnership prior to the time any distributions were made) of an amount up to the amount necessary to satisfy such liability or obligation; provided that (A) no Partner shall be required to contribute an aggregate amount pursuant to this Paragraph 15(e) that exceeds 20% of its aggregate capital contributions to the Partnership and (B) no Partner shall be required to contribute an amount that exceeds the aggregate amount of distributions made to such Partner (and such Partner's predecessors in interest) in respect of the applicable class of Units during the 24-month period preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period. A Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall survive the winding up and dissolution of the Partnership (and, to the fullest extent permitted by law, the General

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Partner may require any payments made after the Partnership's dissolution to be made to the General Partner or directly to an Indemnified Party). The return obligations of the Partners pursuant to this Paragraph 15(e) shall be in addition to their capital contribution obligations with respect to their Contingent Subscriptions (if any). Amounts returned by a Partner pursuant to this Paragraph 15(e) in respect of a class of Units shall be treated as a reduction in the amount of distributions received by such Partner in respect of such class of Units, and amounts returned by such Partner pursuant to this Paragraph 15(e) shall not reduce such Partner's unfunded Contingent Subscription; provided that failure to make a required payment pursuant to this Paragraph 15(e) by any Partner may, in the General Partner's sole discretion, be treated for purposes of Paragraph 5(c) and the provisions and remedies therein as a failure by such Partner to make a required capital contribution with respect to its Contingent Subscription (if any). Amounts to be returned pursuant to this Paragraph 15(e) shall be payable in cash. For purposes of determining any applicable limit on a Partner's return obligation pursuant to this Paragraph 15(e), amounts distributed to a Partner in kind shall be valued at their fair market value on the date of distribution. The provisions of this Paragraph 15(e) shall not be construed or interpreted as inuring to the benefit of any creditor of (i) the Partnership (other than Indemnified Parties with respect to which the General Partner has elected to invoke the provisions of this paragraph), (ii) a Limited Partner, (iii) the General Partner or (iv) any Indemnified Party.

16. Fiscal Year; Records and Reports; Confidentiality; Organizational Expenses.

(a) Fiscal Year. Except as may be required by the Code, the fiscal year and the taxable year of the Partnership shall each be the calendar year.

(b) Partnership Records. At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership in accordance with the ELP Law. Such books of account, together with an executed copy of this Agreement and the Registration Statement (and any amendments thereto) and a list containing the names, addresses and Subscriptions of the Partners (the "List of Partners"), shall at all

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times be maintained at a principal office of the Partnership, and shall be open to inspection by the Partners or their duly authorized representatives for purposes related to the inspecting Limited Partner's interest in the Partnership. Copies of all information and records referenced in the preceding sentence shall be provided to each holder of at least 25,000 Preferred Units promptly following its written request therefor. A copy of the List of Partners shall also be provided to each holder of at least 25,000 Preferred Units promptly after any change thereto.

(c) Audit. At any time while the Partnership continues and until its affairs have been wound up (but only during reasonable business hours), each Partner may fully examine and audit the Partnership books, records, accounts and assets, including bank balances, may make copies of such books and records (provided such Partner agrees to reimburse the Partnership or the Management Company, as applicable, for the reasonable costs incurred in making such copies), and may make, or cause to be made, any examination or audit at such Partner's expense. Notwithstanding the preceding sentence, the cost of any such audit, examination or copies made by or on behalf of the holders of a majority of the Preferred Units shall, in each case, be borne by the Partnership. Any such examination or audit may be undertaken by (i) such Limited Partner, or (ii) a designee of a Limited Partner (provided that the designee agrees in writing to the confidentiality provisions of Paragraph 16(d) or is otherwise subject (by the nature of its position, pursuant to written agreement, or otherwise) to substantially equivalent restrictions with respect to use and disclosure of Partnership Information as are set forth in Paragraph 16(d)). The Partnership shall ensure that the provisions of this Paragraph 16(c) apply with equal respect to the books and records of ATP and any Subsidiary (including, without limitation, any Operating Company).

(d) Confidentiality.

(i) A Limited Partner's rights to access or to receive any information about the Partnership, an Intermediary, ATC, the Operating Companies and their respective affairs, including, without limitation, (1) information to which a Limited Partner is provided access

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pursuant to Paragraph 16(b) or (c), (2) financial statements, reports and other information provided pursuant to Paragraphs 16(e) and (f), and (3) this Agreement, any amendments hereto or any documents pursuant to which such Limited Partner acquired its interest in the Partnership and any other related agreements or materials (the “Partnership Information”), are conditioned on such Limited Partner’s willingness and ability to assure that the Partnership Information will be used solely by such Limited Partner for purposes reasonably related to such Limited Partner’s interest as a Limited Partner, and that such Partnership Information will not become publicly available as a result of such Limited Partner’s rights to access or to receive such Partnership Information, and each Limited Partner agrees not to use Partnership Information other than for purposes of evaluating, monitoring or protecting its investment in the Partnership. For purposes of this Paragraph 16(d), Partnership Information (including information relating to an Operating Company or another Partner (or its respective partners, stockholders or members)) provided by one Partner to another shall be deemed to have been provided on behalf of the Partnership.

(ii) Each Limited Partner acknowledges the General Partner’s belief that the Partnership Information includes trade secrets of the Partnership and the Operating Companies and that the release of any such Partnership Information would cause competitive harm to the Partnership, the General Partner, the Management Company, and/or the Operating Companies.

(iii) The Limited Partners acknowledge that the General Partner and the Management Company and their respective partners, members, managing directors, officers, and employees are expected to acquire confidential third-party information that, pursuant to fiduciary, contractual, legal or similar obligations, may not be disclosed to the Partnership or the Limited Partners without violating such obligations, and agree that none of such Persons shall be in breach of any duty under this Agreement or the ELP Law as a result of acquiring, holding or failing to disclose such information to the Partnership or the Limited Partners.

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(iv) Each Limited Partner agrees to maintain any Partnership Information provided to it in the strictest confidence and not to disclose the Partnership Information to any Person including, without limitation, a prospective transferee of such Partner's interest in the Partnership, without the prior written consent of the General Partner. Notwithstanding the foregoing, the General Partner hereby consents to the disclosure by each Limited Partner of Partnership Information to such Limited Partner's accountants, attorneys, board members and similar advisors bound by a duty of confidentiality.

(v) With respect to any Limited Partner, the obligation to maintain any Partnership Information in confidence shall not apply to any Partnership Information: (A) that is required to be disclosed pursuant to applicable law or a securities exchange rule (but in each case only to the extent of such requirement and, to the fullest extent permitted by law, only if prompt notice is given to the Partnership so that the General Partner may seek an appropriate remedy with the reasonable cooperation of such Limited Partner; (B) that is required to be disclosed in order to protect such Limited Partner's interest in the Partnership (but only to the extent of such requirement and only after consultation with the General Partner); (C) that is publicly known or available in the absence of any improper or unlawful action on the part of such Limited Partner; (D) that is known or available to such Limited Partner other than through or on behalf of the Partnership, the General Partner or the Management Company; or (E) the disclosure of which has been consented to by the General Partner in writing.

(vi) Each Limited Partner shall promptly inform the General Partner if it becomes aware of any reason, whether under law, regulation, policy, securities exchange rule or otherwise, that it (or any of its equity holders) will, or might become compelled to, use the Partnership Information other than as contemplated by Paragraph 16(d)(i) or disclose Partnership Information in violation of the confidentiality restrictions in Paragraph 16(d)(iv) (disregarding Paragraph 16(d)(v)(A)).

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(vii) Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, with the exception of the financial statements and reports to be provided to certain holders of Preferred Units and Dr. Harrison (or his heirs or legal representatives) pursuant to Paragraphs 16(e) and (f), the General Partner shall have the right not to provide any Limited Partner, for such period of time as the General Partner in good faith determines to be advisable, with any Partnership Information that such Limited Partner would otherwise be entitled to receive or to have access to pursuant to this Agreement or the ELP Law if: (A) the Partnership, the General Partner, an Intermediary, ATC, the Management Company or ATPharma is required by law or by agreement with a third party to keep such Partnership Information confidential; (B) the General Partner in good faith believes that the disclosure of such Partnership Information to such Limited Partner is not in the best interest of the Partnership or could damage the Partnership or the conduct of the affairs of the Partnership or the Operating Companies (which may include a determination by the General Partner that such Limited Partner (or any of its equity holders) is disclosing or may disclose such Partnership Information (or may be compelled to disclose such Partnership Information) or has not indicated a willingness to protect Partnership Information from being disclosed (or compelled to be disclosed) and that the potential of such disclosure by such Limited Partner (or any of its equity holders) is not in the best interest of the Partnership or could damage the Partnership, the Operating Companies or the conduct of the affairs of the Partnership or the Operating Companies) or (C) such Limited Partner has notified the General Partner of its election not to have access to, or to receive, such Partnership Information.

(viii) In addition to any other remedies available at law, the Partners agree that, to the fullest extent permitted by law, the Partnership shall be entitled to equitable relief, including, without limitation, the right to an injunction or restraining order, as a remedy for any

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failure by a Limited Partner to comply with its obligations with respect to the use and disclosure of Partnership Information, as set forth in Paragraph 16(d)(i) and (iv).

(ix) Each Limited Partner agrees to cooperate with such procedures and restrictions as may be developed by the General Partner from time to time in connection with the disclosure of non-public Partnership Information, as determined by the General Partner to be reasonably necessary and advisable to maintain and promote compliance with legal and other regulatory matters applicable to the Partnership, the Limited Partners, the General Partner, an Intermediary, ATC and the Management Company, including securities laws and regulations.

(x) Each Limited Partner acknowledges and agrees that the General Partner may consider the different circumstances of Limited Partners with respect to the restrictions and obligations imposed on Limited Partners in this Paragraph 16(d) and the provision of information under this Agreement, and the General Partner in its reasonable discretion may agree to waive or modify any of such restrictions and/or obligations with respect to a Limited Partner with the consent of such Limited Partner. Each Limited Partner further acknowledges and agrees that any such agreement by the General Partner with a Limited Partner to waive or modify any of the restrictions and/or obligations imposed by this Paragraph 16(d) (or to withhold Partnership Information) shall not constitute a breach of any duty stated or implied in law or in equity to any Limited Partner, regardless of whether different agreements are reached with different Limited Partners.

(xi) Notwithstanding any other provision of this Agreement to the contrary, to comply with Treasury Regulation §1.6011-4(b)(3), each Limited Partner (and any employee, representative or other agent of such Limited Partner) may disclose to any and all Persons, without limitation of any kind, the U. S. Federal tax treatment and tax structure of the Partnership or any transactions contemplated by the Partnership, it being understood and agreed that, for this purpose (A) the name of, or any other identifying information regarding, (1) any existing or

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future Partner (or any affiliate thereof), or (2) any investment or transaction entered into by the Partnership, (B) any performance information relating to the Partnership or its investments or to Operating Companies, and (C) any performance or other information relating to other investments sponsored by the General Partner, ATC or the Management Company do not constitute such tax treatment or tax structure information.

(xii) To the fullest extent permitted by law, the provisions of this Paragraph 16(d) shall survive the withdrawal of any Partner or the transfer or assignment of any Partner's interest in the Partnership and shall be enforceable against such Partner after such withdrawal, transfer or assignment.

(xiii) Notwithstanding anything to the contrary set forth in this Agreement, this Paragraph 16(d) shall not be applied to authorize any information to be withheld from, or any access to any information to be limited in respect of, Ezbon, Blue Horizon or their respective direct or indirect transferees or assignees.

(e) Annual Financial Statements. The General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 90 days after the close of each fiscal year the financial statements of the Partnership for such fiscal year. Such financial statements shall include statements of assets and liabilities, net assets represented by Partners' capital, operations, changes in net assets, cash flows and changes in such Partner's capital, shall be prepared and presented in accordance with generally accepted accounting principles in the U.S. ("GAAP"), except for such deviations as are required to implement the terms of this Agreement, and shall be audited by a firm of independent public accountants or auditors of national or international standing which has been approved by the holders of a majority of the Preferred Units. Notwithstanding anything in this Agreement to the contrary, the Partnership shall not be required to consolidate (or otherwise combine, including, without limitation, via the equity method of accounting) its financial results with those of Operating Companies whether or not U.S. generally accepted

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accounting principles would require such consolidation (or other form of combination). The General Partner shall also use its best efforts to transmit to each Partner within 90 days after the close of each fiscal year a report indicating such Partner's share of all items of income, gain, loss or deduction of the Partnership for such year for U.S. Federal income tax purposes and such additional information with respect to the Partnership as he may reasonably request to enable him to complete any tax return or report he is required to file or otherwise to comply with applicable law. Without limiting the foregoing (i) the General Partner shall use reasonable efforts to determine whether any entity in which the Partnership invests (directly or indirectly) is a "passive foreign investment company" (a "PFIC") as defined in Section 1297 of the Code and will so advise the Partners and (ii) at the request of any Partner, the General Partner shall use reasonable efforts to cause each entity that the General Partner determines is a PFIC based on the advice of the Partnership's U.S. tax advisors to agree to provide on a timely basis to the Partnership or the Partners, as applicable, the financial information that is necessary to permit the Partnership or the Partners, as applicable, to make an election to treat any such PFIC as a "qualified electing fund" under Section 1295 of the Code (a "QEF Election"), and to permit the Partners to comply with their U.S. federal income tax reporting requirements relating to the PFIC. For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison within 90 days after the close of each fiscal year, (i) a list of the Partnership's direct and indirect investments, valued at fair market value as determined in accordance with Paragraph 9, as of the end of such fiscal year, and (ii) a brief narrative report as to status and operations of the Partnership. The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish annual financial statements of the type specified in this Paragraph 16(e) with respect to any Intermediary, ATC and any Subsidiary (including, without limitation, any Operating Company).

(f) Quarterly Financial Statements. Each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) shall be furnished, within 45 days after the end

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of each of the first three quarters of each fiscal year of the Partnership, (i) an unaudited list of the Partnership's direct and indirect investments as of the end of such quarter, (ii) unaudited statements of assets and liabilities of the Partnership and net assets represented by Partners' capital as of the end of such quarter and (iii) unaudited statements of operations and changes in such holder or Dr. Harrison's (or his heirs' or legal representatives') capital (as the case may be) for the period from the beginning of such fiscal year through the quarter then ended. Such financial statements shall be prepared and presented in accordance with GAAP, except for such deviations as are required to implement the terms of this Agreement, the omission of certain information and footnote disclosures normally included in year-end financial statements prepared in accordance with GAAP and as otherwise provided in Paragraph 16(e). For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 45 days after the end of each quarter, (i) a list of the Partnership's direct and indirect investments, valued at fair market value in accordance with Paragraph 9, as of the end of such quarter, and (ii) a narrative report as to status and operations of the Partnership (which shall include a discussion of operations compared to each then currently applicable budget). The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish quarterly financial statements of the type specified in this Paragraph 16(f) with respect to ATC, any Intermediary and any Subsidiary (including, without limitation, any Operating Company).

(g) Monthly Telephone Updates. At the request of the holders of a majority of the Preferred Units, the General Partner will make itself available to such holders by telephone for an update as to status and operations of the Partnership.

(h) Web Site. Notwithstanding Paragraph 18(a), the General Partner shall be deemed to have satisfied its obligations to transmit or furnish financial statements and reports pursuant to this Paragraph 16 if the General Partner posts such financial statements and/or reports on a web site and gives prompt written notice to the requisite Limited Partners, pursuant to Paragraph 18(a), of the

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availability of such financial statements and/or reports, the URL address of the web site and a password for access to such web site, if necessary. Any such financial statements and reports posted to a web site and not delivered in hard copy to the requisite Limited Partners shall be maintained on such web site for a reasonable period of time. Any such web site shall provide for print capability for such financial statements and reports, provided that, with respect to any Limited Partner (except any holder of at least 25,000 Preferred Units or Dr. Harrison (or his heirs or legal representatives)), the General Partner may disable the print capability (or not allow print capability) if the General Partner exercises (or would be permitted to exercise) its right pursuant to Paragraph 16(d)(vii) not to provide such Limited Partner with Partnership Information, but only to the extent provided therein.

(i) Organizational Expenses. The organizational expenses of the Partnership shall be amortized for U.S. Federal income tax purposes to the extent permitted by Section 709 of the Code. The reasonable out-of-pocket legal expenses incurred by Ezbon and Blue Horizon in connection with the organization of the Partnership shall be reimbursed to Ezbon and Blue Horizon by the Partnership and treated as an organizational expense of the Partnership.

17. Amendment. Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived (on behalf of all Partners), modified or amended only with the written consent of the General Partner, the holders of a majority of the Preferred Units and Dr. Harrison (or his heirs or legal representatives) so long as Dr. Harrison (or his heirs or legal representatives) remain as Limited Partners; provided, however, that the consent of Dr. Harrison (or his heirs or legal representatives) shall not be required to (i) authorize additional Preferred Units and Investment Common Units, (ii) modify or delete any provision of this Agreement that becomes contrary to applicable law after the date of this Agreement, provided that such modification or deletion is to the minimum extent required to comply with such law, or (iii) modify any provision of this Agreement for bona fide tax structuring reasons, provided that such modification does not have a disproportionate adverse affect on Dr. Harrison (or his heirs or legal representatives). Upon obtaining all approvals required by this Agreement (if any)

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and without further action or execution by any other Person, including any Limited Partner, (i) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the General Partner, and (ii) the Limited Partners shall be deemed a party to and bound by such amendment of this Agreement. The General Partner shall promptly furnish copies of any amendments to this Agreement to all Partners.

18. General Provisions.

(a) Notices. Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and shall be deemed to have been properly given two days after delivery by courier or being sent by e-mail, addressed in each case, if to the Partnership or the General Partner, at c/o Maples Corporate Services Limited, P.O. Box 309, Uglund House, Grand Cayman, KY1-1104, Cayman Islands, e-mail: seth@appletrerepartners.com, and if to any Limited Partner, at the address set forth in the List of Partners or, in each case, to such other address or addresses as the addressee may have specified by written notice as aforesaid to the other parties. Sections 8 and 19(3) of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply.

(b) Power of Attorney. To the fullest extent permitted by law, (i) each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner as his attorney-in-fact with full power, proxy and authority in his name, place and stead to make, execute, sign, acknowledge and, if necessary, file (A) any required amendment to the Registration Statement; (B) any amendment to this Agreement that does not require, under the terms of this Agreement, the approval of all the Partners, including any amendment pursuant to Paragraph 5(b); provided that Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment have signed or otherwise approved such amendment and all other required signatures and approvals have been obtained; (C) any other instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the

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Partner's assignee as a Partner; and (D) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the Cayman Islands, the U.S. or any state or governmental entity in any jurisdiction in which the Partnership is conducting or intends to conduct its affairs, provided all such instruments, certificates and other documents referred to in clauses (A), (B), (C) and (D) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents executed pursuant to such power of attorney shall be sent to all Partners, except any instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the Partner's assignee as a Partner.

(i) Each of the Partners is aware that the terms of this Agreement permit certain amendments to the Registration Statement and this Agreement to be effected and certain other actions to be taken by or with respect to the Partnership, in each case with the approval or by the vote of less than all the Partners. If, as and when (A) an amendment of the Registration Statement or this Agreement is proposed or an action is proposed to be taken by or with respect to the Partnership which does not require, under the terms of this Agreement, the approval of all of the Partners, (B) Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment or action have approved such amendment or action in the manner contemplated by this Agreement, and (C) a Partner has failed or refused to approve such amendment or action (hereinafter referred to as a non-consenting Partner), each Partner agrees that (1) it is bound thereby, (2) any such amendment or action may be executed solely by the General Partner without any further action or execution by any other Person (including, without limitation, the non-consenting Partners), and (3) to the fullest extent permitted by law, the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such non-consenting Partner, and in his name, place and stead, any and all instruments

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and documents which may be necessary or appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Partner is fully aware that he and each other Partner have executed this special power of attorney, and that each Partner will rely on the effectiveness of such powers with a view to the orderly administration of the Partnership's affairs.

(ii) To the fullest extent permitted by law, the foregoing grant of authority and that granted pursuant to Paragraph 5(c), (A) is each a special power of attorney coupled with an interest in favor of the General Partner, deemed to secure the proprietary interest of the General Partner and/or the performance of obligations owed to the General Partner, and as such shall be irrevocable and shall survive the death, disability or incapacity (or, in the case of a Partner that is a corporation, association, limited liability company, partnership, trust or other entity, shall survive the merger, dissolution or other termination of the existence) of the Partner and (B) shall survive the assignment by the Partner of the whole or any portion of his interest, except that in the case of an assignment of the Partner's whole interest, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect the substitution of his transferee.

(c) Additional Documents and Acts. Each Partner hereby agrees to execute and deliver all certificates, instruments or documents required by laws of the various states or other jurisdictions in which the Partnership conducts its affairs, to conform with the laws of such states or other jurisdictions governing limited partnerships.

(d) Binding on Successors. This Agreement shall be binding upon and it shall inure to the benefit of the respective heirs, successors, permitted assigns and legal representatives of the parties hereto. Without limitation as to the foregoing, the rights of Dr. Harrison specified in this Agreement and the Schedules hereto shall inure to the benefit of his heirs and legal representatives.

(e) Counterparts. This Agreement or any amendment hereto may be signed in any number of counterparts, each of which shall be an original, but all of which taken together shall con-

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stitute one Agreement (or amendment, as the case may be).

(f) Voting. Any vote or other action required or permitted to be taken by this Agreement may be taken by written consent signed by not less than the requisite percentage in interest of parties required or permitted to take such vote or other action. Notwithstanding anything to the contrary set forth in this Agreement, a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as may otherwise be required by law, and any Units it may hold shall not be deemed outstanding for purposes of determining the parties required or permitted to take any vote or other action. The voting, consent, approval, appointment and other such rights granted to Ezbon and Blue Horizon pursuant to this Agreement (i) are personal to them and may not be assigned, transferred or otherwise disposed of without the consent of the General Partner, in its sole and absolute discretion, except in connection with a transfer by Ezbon and Blue Horizon of their entire interests as limited partners, and (ii) shall cease and be of no further force or effect if Ezbon or Blue Horizon becomes a Defaulting Partner, except as may otherwise be required by law or this Agreement.

(g) Applicable Law, Remedies for Breach and Jurisdiction.

(i) Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the Cayman Islands without regard to principles of conflicts of laws and, without limitation thereof, that the ELP Law as now adopted or as may be hereafter amended shall govern this Agreement.

(ii) EACH LIMITED PARTNER AND THE GENERAL PARTNER, ON BEHALF OF ITSELF AND THE PARTNERSHIP, IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST THE GENERAL PARTNER, THE MANAGEMENT COMPANY (OR THEIR RESPECTIVE

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PARTNERS, MEMBERS, STOCKHOLDERS, MANAGERS, DIRECTORS, OFFICERS, CONSULTANTS OR EMPLOYEES, IN THEIR CAPACITY AS SUCH OR IN ANY RELATED CAPACITY) OR THE PARTNERSHIP, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY SCHEDULE HERETO.

(iii) Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a party may be lawfully entitled.

(iv) In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion) for the Partnership and the other Partners, and the General Partner, in its sole discretion, may take different actions with respect to multiple Limited Partners that breach the same provisions. To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.

(v) It is the intent of the parties that this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties.

(vi) To the extent not prohibited by applicable law, each Partner (A) agrees that any action, suit or other proceeding arising out of or based upon this Agreement or any Schedule hereto, the subject matter hereof or thereof or the dealings of any Partner or the Partnership in connection therewith shall be brought only in a court of applicable jurisdiction located in the Cayman Islands or a state or Federal court in the State of Delaware in the U.S., (B)

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irrevocably submits to the jurisdiction of the courts of the Cayman Islands and the state and Federal courts in the State of Delaware in the U.S. and (C) waives and agrees not to assert in any such action, suit or proceeding brought in any of the above named courts, any claim that such Partner is not subject personally to the jurisdiction of such court or that such action, suit or proceeding is brought in an inconvenient forum or that the venue is improper.

(h) Securities Act Matters. Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, he must bear the economic risks of his investment for an indefinite period because the Partnership interests have not been registered under the Securities Act and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act or an exemption from such registration is available.

(i) Tax Matters Partner. The “tax matters partner” (as defined in Section 6231 of the Code) of the Partnership shall be the General Partner (the “Tax Matters Partner”). The Tax Matters Partner shall not take any action in its capacity as such that is adverse to the holders of the Preferred Units or Investment Common Units without the prior written consent of the holders of a majority of the Units of such class.

(j) Contract Construction. Where the context of this Agreement so permits, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa, and use of the word “Person” shall be deemed to mean or include natural persons, entities, trusts, limited partnerships, exempted limited partnerships, limited liability companies, corporations, general partnerships, joint ventures, associations and governmental bodies and agencies. The invalidity or unenforceability of any one or more provisions of this Agreement shall not impair the enforceability of the other provisions. If one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, whether due to public policy, equitable considerations, because such provisions are excessively broad as to scope, activity or subject, or otherwise, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as

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to be enforceable to maximum extent compatible with the applicable law as it shall then appear.

References in this Agreement to sections of the Code or the ELP Law shall be deemed to refer to such sections as they may be amended after the date of this Agreement. Definitions in this Agreement apply equally to both the singular and the plural forms of the defined terms.

(k) Fiduciary Duty of Indemnified Parties. Notwithstanding anything to the contrary in this Agreement, to the extent that at law or in equity an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or any Partner, such Indemnified Party acting under this Agreement shall, to the fullest extent permitted by law, not be liable to the Partnership or any Partner for breach of fiduciary duty for its good faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities relating thereto of an Indemnified Party to the Partnership or any Partner otherwise existing at law or in equity, are agreed by each Partner to so replace such other duties and liabilities of such Indemnified Party.

(l) Entire Agreement. This Agreement, the Schedules hereto, the related Subscription Agreements and any other written agreement between the General Partner, on its own behalf or on behalf of the Partnership, and any Limited Partner, shall constitute the entire agreement and understanding among the respective parties to such agreements with respect to the subject matter hereof and thereof. The Partners acknowledge that, notwithstanding any provision of this Agreement (including Paragraph 17) or of any Subscription Agreement, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner or other Person, may enter into side letters or other writings to or with Ezbon, Blue Horizon or their respective direct or indirect transferees which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or any Subscription Agreement (“Side Letters”). The Partners agree that any rights established, or any terms of this Agreement or any Subscription Agreement altered or supplemented, in a Side Letter to or with Ezbon, Blue Horizon or their direct or indirect transferees

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shall for the purposes of this Agreement or any Subscription Agreement be valid, binding and enforceable in accordance with their terms as between Ezbon, Blue Horizon or any such transferee, the General Partner and the Partnership.

(m) Partnership Counsel. The General Partner has retained Proskauer Rose LLP and Maples and Calder in connection with the formation of the Partnership and the offering of the limited partner interests and may retain Proskauer Rose LLP and Maples and Calder as legal counsel in connection with the management and operation of the Partnership, including, without limitation, making, holding and disposing of investments. Neither Proskauer Rose LLP nor Maples and Calder will represent any Limited Partner or prospective limited partner of the Partnership, unless, subject to applicable laws, the General Partner and such Limited Partner or prospective limited partner otherwise agree and such Limited Partner or prospective Limited Partner separately engages Proskauer Rose LLP or Maples and Calder, as applicable, in connection with the formation of the Partnership, the offering of limited partner interests, the management and operation of the Partnership or any dispute that may arise between any Limited Partner, on the one hand, and the General Partner and/or the Partnership on the other hand (the "Partnership Legal Matters"). Each Limited Partner, if it wishes to obtain counsel on any Partnership Legal Matter, may retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel.

(n) Good Faith Negotiation. Ezbon and Blue Horizon, on the one hand, and the General Partner and Dr. Harrison, on the other hand, each agree that if the other party desires to terminate the Partnership or such party's participation therein, it shall negotiate in good faith with respect thereto.

(o) No Duty to Account. Other than as expressly provided for, or prohibited otherwise, in this Agreement, each Partner may engage in any other business (including being a partner of other partnerships, whether general or limited) and shall not be restrained from engaging in any other activity nor forego or be required to account for any profits from any such business,

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notwithstanding that such business may compete with the Partnership's business.

19. Definitions. The respective Paragraphs or other locations in which capitalized terms used in this Agreement are defined are set forth below opposite such terms:

Additional Units	7(g)
Agreement	Preamble
Anti-Money Laundering Laws	5(b)
ATC	1(c)
ATPharma	2(d)
Blue Horizon	4(d)(iv)
Board	2(n)
Buyer	12(g)(i)
Capital Account	6(b)
Carrying Value	7(b)(i)
Code	2(j)
Contingent Subscription	5(a)
Default Charge	5(c)
Default Notice	5(c)
Default Rate	5(c)
Defaulting Partner	5(c)
Dr. Harrison	2(b)
ELP Law	Preliminary Statement
Ezbon	2(m)
Ezbon/Blue Horizon Sale	12(h)
Finkelman	Preamble
First Closing Limited Partners	Preamble
Foreign Limited Partner	2(j)

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Founder Common Units	6(c)
GAAP	16(e)
General Partner	Preamble
Gross Negligence	2(g)
Holder	12(h)
Hypothetical Tax Liability	8(a)
Incentive Common Units	6(c)
Incentive Percentage	8(d)(ii)(A)
Indemnified Party	15
Intermediary	1(c)
Investment Common Units	6(c)
Letter Agreement	2(k)
Limited Partner	Preamble
List of Partners	16(b)
Loss	7(b)(ii)
Management Agreement	2(c)
Management Company	2(b)
Management Fee	Management Agreement
Net Tax Obligation	7(f)(iii)
Offer	12(j)
Offered Units	12(j)
Operating Agreement	2(n)
Operating Company	2(l)
Operating Company Security	2(l)
Original Agreement	Preliminary Statement
Partner	Preamble

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Partnership	Preliminary Statement
Partnership Information	16(d)(i)
Partnership Legal Matters	18(m)
Person	18(j)
PFIC	16(e)
Preferred Units	6(c)
Profit	7(b)(ii)
Project	2(n)
QEF Election	16(e)
Registration Statement	2(f)
Removal Event	4(c)
Securities Act	12(e)
Side Letters	18(l)
Subscription Agreement	1(e)
Subsidiary	2(d)
Tax Matters Partner	18(i)
Tracking Units	6(c)
Transfer	12(a)
Transfer Expenses	12(d)
Units	6(c)

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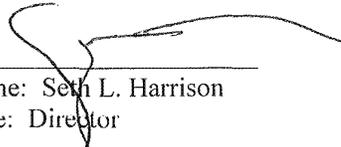
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IN WITNESS WHEREOF, the undersigned have executed this Agreement as a deed on the day and year first above written.

GENERAL PARTNER

Executed as a deed by:

ATP III GP, Ltd.

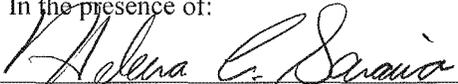
By: 
Name: Seth L. Harrison
Title: Director

WITHDRAWING LIMITED PARTNER

Executed as a deed by:


Daniel P. Finkelman

In the presence of:


Witness

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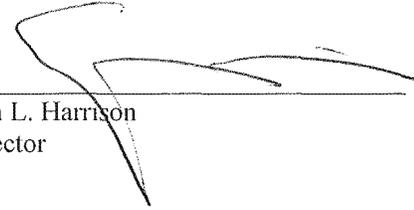
APPLE TREE PARTNERS IV, L.P.

Limited Partner Signature Page

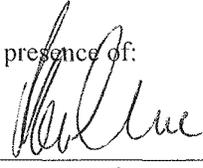
IN WITNESS WHEREOF, the undersigned has executed this First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. as a deed.

Executed as a deed by:

Ezbon International Limited
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of
attorney set forth in the Subscription Agreement
with the Limited Partner dated November 1, 2012

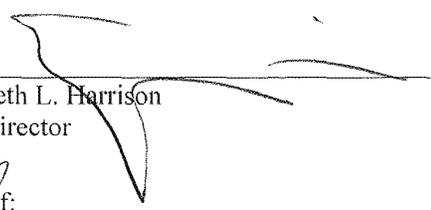
By: 
Seth L. Harrison
Director

In the presence of:

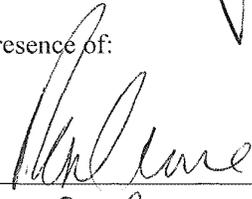

Witness *Rose Crane*

Executed as a deed by:

Blue Horizon Enterprise Ltd.
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of
attorney set forth in the Subscription Agreement
with the Limited Partner dated November 1, 2012

By: 
Seth L. Harrison
Director

In the presence of:


Witness *Rose Crane*

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SCHEDULE A

MANAGEMENT AGREEMENT

AGREEMENT dated November ____, 2012 (as amended from time to time, this “Agreement”), and effective as of November 1, 2012, between Apple Tree Venture Management, LLC, a Delaware limited liability company (the “Management Company”), and Apple Tree Consolidated, SPRL, a Belgium private limited liability company (“ATC”).

In consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership, of even date herewith (as the same may be amended from time to time, the “Partnership Agreement”).
2. Management Company Duties. The Management Company shall (i) identify prospective Operating Companies for ATC to invest in and (ii) provide assistance to ATC in evaluating investment opportunities in prospective and existing Operating Companies, it being the expectation that such Operating Companies will primarily consist of the ownership by ATC (either directly as a division, or indirectly through one or more entities wholly owned by ATC but disregarded for U.S. federal income tax purposes) of pharmaceutical, medical device and other medically-related operating assets. Notwithstanding the services provided by the Management Company, the Management Company shall not be authorized to manage the affairs of, act in the name of, or bind ATC.
3. Payment of Expenses. The Management Company agrees to pay (a) all compensation of Dr. Harrison and his administrative assistant in their capacities as employees of the Management Company; and (b) a pro rata share of ATC’s facilities and other overhead expenses, based on the portion of such facilities used by the Management Company. ATC shall pay all other expenses properly chargeable to its affairs which are not reimbursed by Operating Companies.
4. Management Fee. ATC shall pay the Management Company a management fee (the “Management Fee”) each year for the services to be provided hereunder, in the amount of US \$2 million or such greater amount as may be approved by the Board; provided, however that the Management Fee for the first year shall be US \$1,694,000 or such greater amount as may be approved by the Board. The Management Fee for each year shall be reduced (but not below zero) by (i) any director’s fees, consulting fees or other remuneration paid to the Management Company, the members and employees of the Management Company, the General Partner, Dr.

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Harrison or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise for services rendered to Operating Companies; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by any such Operating Company, shall reduce the Management Fee; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities. Any securities or other property received in kind (with the prior written consent of the holders of a majority of the Preferred Units) shall be valued at the time they are reduced to cash or cash equivalents for purposes of the foregoing reduction to the Management Fee. The Management Fee for each year shall also be reduced (but not below zero) for “deemed contributions” as provided in Part B of Schedule D of the Partnership Agreement. Payments of the Management Fee shall be made in advance at the beginning of each calendar quarter in each year in an amount determined by the Management Company but not more than 25% of the maximum aggregate amount of the Management Fee for such year. Notwithstanding the preceding sentence, the first payment shall be due upon the date of this Agreement and shall be for the pro rata amount due until the beginning of the next succeeding calendar quarter. In no event shall fees or other remuneration referred to in the second sentence of this Paragraph 4 be paid in any calendar quarter in an aggregate amount that would exceed the amount of the next succeeding quarterly installment of the Management Fee. The amount of the fees and other remuneration paid or remitted to the Management Company, the General Partner, Dr. Harrison or any of their affiliates from Operating Companies shall be computed for each year, and any net amount due ATC from the Management Company or the Management Company from ATC shall be remitted within 30 days after such computation. If in any year any reductions described above would exceed, individually or collectively, the Management Fee otherwise payable, the excess amount of such reductions shall be carried forward on a year-by-year basis.

5. Term of Agreement. This Agreement shall terminate upon the earlier of (i) the completion of liquidation of ATC and (ii) the removal of the General Partner pursuant to Paragraph 4 of the Partnership Agreement; provided, however, that the Management Fee shall continue to be paid for an additional 45 days following any such removal of the General Partner.

6. Termination and Amendment. This Agreement shall not be terminated prior to the time set forth in Paragraph 5 or amended, and none of its provisions shall be waived, in each case without the written consent of the parties hereto and the holders of a majority of the Preferred Units.

7. Independent Contractor. The relationship of the Management Company to ATC is that of an independent contractor and neither this Agreement nor the services to be rendered

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hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship between the parties.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original instrument, but all of which together shall constitute a single agreement.

10. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal.

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IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

APPLE TREE CONSOLIDATED, SPRL

APPLE TREE VENTURE MANAGEMENT, LLC

By: _____
Seth L. Harrison

Title: _____

By: _____
Seth L. Harrison
Managing Member

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SCHEDULE B

LETTER AGREEMENT

Apple Tree Partners IV, L.P.
c/o Maples Corporate Services Limited
P.O. Box 309, Ugland House
Grand Cayman, KY1-1104
Cayman Islands

November 1, 2012

To the holders of Preferred Units:

Reference is made to the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. (the "Partnership"), of even date herewith (as amended from time to time, the "Partnership Agreement"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Partnership Agreement. When the context of this letter agreement so requires, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa.

In consideration of your subscription for an interest in the Partnership as a Limited Partner, the undersigned hereby represents, warrants and agrees that, so long as ATP III GP, Ltd. is the general partner of the Partnership and you are not a Defaulting Partner:

1. So long as the Management Agreement is in effect, any director's fees, consulting fees or other remuneration paid to the General Partner, the Management Company, the members and employees of the Management Company, the undersigned or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise by an Operating Company for services rendered to it shall be remitted to the Management Company; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by such Operating Company, shall be remitted to the Management Company; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

2. So long as ATC continues to make investments, all investment opportunities in privately-held companies which come to his attention (including but not limited to follow-on investment opportunities), except for such opportunities which he believes in good faith are not within the purpose of or otherwise appropriate for ATC, shall be made available to ATC. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account (other than ATC) which he controls or in which he has a beneficial interest (unless he has no control) may (a) purchase a security of an Operating Company, (b) invest in or manage a private life science venture capital fund (except for preexisting investments in and management obligations to such funds on the date hereof), or (c) invest in any opportunity which has been presented to and rejected by ATC.

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3. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account which he controls or in which he has a beneficial interest (unless he has no control) may borrow money from the Partnership or ATC.

4. He shall devote substantially all of his business time to the affairs of the Partnership, ATC, the Operating Companies, Apple Tree Partners I, L.P. (“ATP I”), Apple Tree Partners II, L.P. (“ATP II”) and Apple Tree Partners II – Annex, L.P. (“ATP II – Annex”) until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least \$7.5 billion, and thereafter he shall devote such of his business time to the affairs of the Partnership and ATC as is reasonably required to manage the affairs thereof. So long as the terms of the preceding sentence remain applicable, he shall not permit ATP I, ATP II or ATP II-Annex to invest, after the date of this letter agreement, in entities that were not portfolio companies (or their successors or affiliates) of such partnerships on such date.

5. Without the approval of the holders of a majority of the Preferred Units, he shall not voluntarily permit any other Person to control the General Partner.

The terms and provisions of this letter agreement may be waived, modified or amended only by a writing signed by the undersigned and with the written consent of the holders of a majority of the Preferred Units.

This letter agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, without regard to conflict of law principles.

Very truly yours,

Executed as a deed by:

Seth L. Harrison

In the presence of:

Witness

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SCHEDULE C

BUDGETING PROCESS

At the beginning of each fiscal year, the Board will review and approve the overall annual budgets for the Partnership and ATC and the budget for each Project that has been approved by the Board. This approved budget will then become the basis for a quarterly rolling forecast process that will result in the quarterly financial reports referred to below. This rolling forecast process will be driven by Finance with the participation of operating management (Commercial and Research & Development). Revenue and expense budgets, and other items affecting cash flow, will be updated as part of this rolling forecast process. Management will implement a system of spending and other controls designed to ensure that Project budgets are not exceeded without further Board approval. Any new Projects that the General Partner recommends to be added to the ATC portfolio, and any discretionary extraordinary expense, will both require approval by the Board and a budget established (and approved by the Board) before spending can commence.

The General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter, on or before the tenth working day of the month following each quarter (or other period) end, in a format to be agreed upon between the General Partner and the holders of a majority of the Preferred Units. This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs, along with at least the following:

- Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter (or other period) then ended and including explanations of major variances to budget. The report will also include a reconciliation of total expenditures and cash flows from inception through the reporting date.
- Detailed budget by major Project by quarter (or other period) for the next twelve months, including operating income and expenses by major category, and other items affecting cash flow (capital expenditures, upfront / milestone payments, deposits / advances).
- Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets.

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In addition to providing the quarterly (or other period) financial report, the General Partner will present in person the Partnership's financial results and budget to the holders of the Preferred Units twice per year, generally in January and July. The presentation will be made at a time and place to be decided by the holders of a majority of the Preferred Units and agreed with the General Partner. In addition to presenting the most recent quarterly (or other period) financial report, the General Partner will present additional material to provide the holders of the Preferred Units with a more complete understanding of the state of the Partnership's current operations and planned achievement of its goals. Members of the General Partner's core management team will be made available to assist in the presentation as required.

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SCHEDULE D

FINANCING OF DR. HARRISON'S CAPITAL CONTRIBUTIONS

For the first \$15 million of capital calls to Dr. Harrison in respect of his Preferred Units, 80% shall be funded from capital provided by Ezbon to him pursuant to an interest-free, limited-recourse loan (the "Loan Arrangement"), as described in Part A below, and 20% shall be funded by him as provided in Part B below. Any additional capital calls to Dr. Harrison in respect of his Preferred Units in excess of \$15 million shall be funded from capital provided by Ezbon pursuant to the Loan Arrangement. Notwithstanding the foregoing, no additional capital shall be funded under the Loan Agreement if the General Partner has been removed pursuant to Paragraph 4(a) of the Agreement. Dr. Harrison's obligations under this Schedule D shall be binding upon his heirs and legal representatives.

Part A: Loan Arrangement.

Each portion of any capital call to Dr. Harrison to be funded through the Loan Arrangement shall be satisfied through a loan from Ezbon. Amounts shall be repaid under the Loan Arrangement as follows:

1. A pro rata portion of distributions to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions and distributions pursuant to Paragraph 4(d)(iv) of the Agreement), based on the then outstanding principal balance under the Loan Arrangement and the amount of capital for such Preferred Units funded by him in cash or by reductions in the Management Fee, shall be applied against the loans. By way of example only, if \$15 million had been called from Dr. Harrison in total in respect of his Preferred Units, of which Dr. Harrison had funded \$3 million as provided in Part B below and \$12 million had been funded under the Loan Arrangement and remained outstanding, then 80% of amounts distributable to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions) would be applied against the loans.
2. 100% of all other distributions, other than Tax Distributions and net of any other tax liabilities arising from such distributions, to Dr. Harrison from the Partnership, shall be applied against the loans.
3. 20% of the first \$20 million of "after-tax" distributions to Dr. Harrison from Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("Annex") after the date of the Agreement, and thereafter 80% of any additional "after-tax" distributions to Dr. Harrison from ATP I, ATP II and Annex after the date of the Agreement, but only to the extent necessary to cause cumulative repayments of amounts borrowed under the Loan Arrangement to equal

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\$12 million, shall be applied against the loans. For purposes of this Section 3, “after-tax” distributions shall mean the gross amount of any such distributions received by Dr. Harrison, reduced by his tax liability in respect thereof (or the allocations giving rise to such distributions), calculated in a manner consistent with the determination of Hypothetical Tax Liability pursuant to Paragraph 8(a) of the Agreement and after any in-kind distributions have been reduced to cash.

4. If any distribution (whether from ATP I, ATP II, Annex or the Partnership) is made to Dr. Harrison in kind rather than in cash, repayment of the Loan Arrangement shall be due after such distribution has been reduced to cash, based on the after-tax amount so realized (calculated based on the product of the taxable gain, if any, so realized and the highest applicable marginal federal and state tax rates applicable to the character of such gain). In the case of any in-kind distributions of publicly-traded securities to Dr. Harrison from ATP I, ATP II, Annex and the Partnership, Dr. Harrison shall, as soon as practicable and legally permissible, put up to 20%, 80% or 100%, as required and as applicable based on Section A.1-3 above, of the shares received from such distribution into a Rule 10b5-1 Distribution Plan (the “Plan”) that is designed to effectuate in a market-reasonable legal manner the sale of such shares at a price that is at or above the distribution price of such shares. Dr. Harrison shall cause his attorneys to deliver promptly to Ezbon a copy of the relevant portions of the Plan. If there are no sales of shares pursuant to the Plan, Dr. Harrison and Ezbon shall confer reasonably about the next steps to cause such shares to be liquidated.

Any failure or refusal by Ezbon to fund the Loan Arrangement may, at the sole discretion of the General Partner, subject Ezbon to the imposition of a Default Charge under the Agreement. The failure by Dr. Harrison to satisfy a capital call in respect of his Preferred Units due to the failure by Ezbon to fund the Loan Arrangement shall not result in Dr. Harrison being deemed to be a Defaulting Partner or otherwise subject to Dr. Harrison to a Default Charge.

Part B: Deemed Contributions.

With respect to the portion of any capital call to Dr. Harrison in respect of his Preferred Units that are not funded through the Loan Arrangement, 20% shall be made in cash and the balance shall be deemed to have been contributed by Dr. Harrison. All such deemed contributions shall reduce Dr. Harrison’s unfunded Subscription and shall otherwise be treated as a capital contribution, except that such amounts shall not increase Dr. Harrison’s Capital Account balance. Payments of the Management Fee shall be reduced as necessary until cumulative reductions in the Management Fee equal the cumulative deemed contributions by Dr. Harrison pursuant to this Part B. Dr. Harrison shall be entitled to receive distributions in respect of his Preferred Units as if all capital calls in respect of such Preferred Units had been contributed by Dr. Harrison in cash, except such distributions shall be limited, pursuant to the principles set forth in Paragraph 7(g), to the extent necessary to ensure that Dr. Harrison’s interest in the Partnership by reason of such deemed contributions is respected as a “profits

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interest” for United States Federal income tax purposes. If the General Partner is removed as the general partner of the Partnership pursuant to Paragraph 4(a) of the Agreement, then to the extent the cumulative deemed contributions exceed the cumulative reductions in the Management Fee (including any such reductions occurring within 45 days after the removal date), 95% of such excess amount shall be deemed to be a loan under the Loan Arrangement.

Part C: Tax Gross Up Provisions

If any payment to Ezbon under the Loan Arrangement is subject to a U.S. federal, state or local tax (whether imposed by withholding or otherwise), the amount of such payment shall be increased by the Gross Up Amount with respect to such payment. For these purposes, the “Gross Up Amount” with respect to any payment shall equal the amount of increase necessary so that after any such deduction or withholding in respect of taxes has been made (including such deductions and withholdings applicable to additional sums payable under this paragraph), Ezbon receives an amount equal to the amount it would have received had no such deduction or withholding in respect of taxes been made. Ezbon shall each provide to Dr. Harrison (or his heirs or legal representatives) a properly completed Form W-8(BEN), and shall provide all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of U.S. federal, state and local taxes imposed on amounts due in respect of the Loan Arrangement.

Notwithstanding the foregoing, Gross Up Amounts shall not include any additional tax liability, deductions or withholdings resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon or its affiliates (including any such activities that cause Ezbon to have a permanent establishment in the United States) apart from Ezbon’s investment in the Partnership and participation in the Loan Arrangement, (y) Ezbon’s failure to comply with the requirements of the previous sentence, and (z) Ezbon becoming a “United States person” within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of U.S. federal, state or local taxes. Ezbon shall, as soon as reasonably practicable, provide Dr. Harrison with such information as is reasonably necessary for Dr. Harrison to determine the Gross Up Amount with respect to Ezbon. In addition, with respect to a tax imposed on net income, the Gross Up Amount shall only be equal to the excess (if any) of (i) the amount of such tax over (ii) the value of all refunds, tax credits and tax deductions to which Ezbon or its respective beneficial holders are entitled in respect of any amount to be repaid under the Loan Arrangement (without regard to whether Ezbon or its beneficial holders claim such refunds, tax credits or tax deductions), in each case, including such taxes on, and refunds, tax credits or tax deductions arising from, the Gross Up Amount.

Without limiting the foregoing, at Dr. Harrison’s request, the parties shall use commercially reasonable efforts to structure the Loan Arrangement in a tax efficient manner, including in a manner that minimizes any Gross Up Amount due pursuant to this Part C.

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SCHEDULE EUNIT REDUCTION SCHEDULE

The table below sets forth the number of authorized Incentive Common Units and Founder Common Units at various Preferred Unit capital contribution levels. Reductions will be made on a pro rata basis for each incremental \$10 million of Preferred Unit capital contributions; provided, however, that no reductions shall be made until the aggregate Preferred Unit capital contributions reach \$100 million; and provided further, that no further reductions to the authorized Incentive Common Units or authorized Founder Common Units shall be made after the aggregate Preferred Unit capital contributions reach \$1 billion and \$300 million, respectively.

<u>Preferred Unit Capital Contributions</u>	<u>Authorized Incentive Common Units</u>	<u>Authorized Founder Common Units</u>
\$ 100,000,000	158,823	225,000
140,000,000	146,512	197,561
180,000,000	134,483	171,429
220,000,000	122,727	146,512
260,000,000	111,236	122,727
300,000,000	100,000	100,000
440,000,000	89,011	100,000
580,000,000	78,261	100,000
720,000,000	67,742	100,000
860,000,000	57,447	100,000
1,000,000,000	47,368	100,000
1,100,000,000	47,368	100,000
1,200,000,000	47,368	100,000
1,300,000,000	47,368	100,000
1,400,000,000	47,368	100,000
1,500,000,000	47,368	100,000

Distributions pursuant to Paragraph 8(d)(ii) are apportioned among the holders of Units based, in part, on the number of authorized Incentive Common Units and Investment Common Units, which are determined in part based on the amount of capital contributions in respect of Preferred Units at the time of distribution. The following tables set forth two examples of distributions pursuant to Paragraph 8(d)(ii). The assumptions for both examples are the same, except that in example 1, 100% of the authorized number of Incentive Common Units are outstanding at all relevant times, and in example 2, 40% of the authorized number of Incentive Common Units are outstanding at all relevant times. These examples are for illustrative purposes only, and the actual apportionment of distributions as of any time will be governed by the terms of the Agreement.

Example 1: All authorized Incentive Common Units are outstanding at all relevant times:

Preferred Unit Capital	Authorized Number of Common Units			Outstanding Incentive Common Units	8(d)(ii)(A) Incentive Common Units	8(d)(ii)(B) Class of Common Units		Total Sharing of 8(d)(ii) Distributions Class of Common Units		
	Contributions	Investment	Incentive			Founder	Investment	Founder	Incentive	Investment
\$100,000,000	900,000	158,824	225,000	158,824	15.00%	80.00%	20.00%	15.00%	68.00%	17.00%
140,000,000	900,000	146,512	197,561	146,512	14.00%	82.00%	18.00%	14.00%	70.52%	15.48%
180,000,000	900,000	134,483	171,429	134,483	13.00%	84.00%	16.00%	13.00%	73.08%	13.92%
220,000,000	900,000	122,727	146,512	122,727	12.00%	86.00%	14.00%	12.00%	75.68%	12.32%
260,000,000	900,000	111,236	122,727	111,236	11.00%	88.00%	12.00%	11.00%	78.32%	10.68%
300,000,000	900,000	100,000	100,000	100,000	10.00%	90.00%	10.00%	10.00%	81.00%	9.00%
440,000,000	900,000	89,011	100,000	89,011	9.00%	90.00%	10.00%	9.00%	81.90%	9.10%
580,000,000	900,000	78,261	100,000	78,261	8.00%	90.00%	10.00%	8.00%	82.80%	9.20%
720,000,000	900,000	67,742	100,000	67,742	7.00%	90.00%	10.00%	7.00%	83.70%	9.30%
860,000,000	900,000	57,447	100,000	57,447	6.00%	90.00%	10.00%	6.00%	84.60%	9.40%
1,000,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,100,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,200,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,300,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%
1,400,000,000	900,000	47,368	100,000	47,368	5.00%	90.00%	10.00%	5.00%	85.50%	9.50%

1,500,000,000 900,000 47,368 100,000 47,368 5.00% 90.00% 10.00% 5.00% 85.50% 9.50%

Example 2: 40% of authorized Incentive Common Units are outstanding at all relevant times.

Preferred Unit Capital	Authorized Number of Common Units			Oustanding Incentive Common Units	<u>8(d)(ii)(A)</u> Incentive Common Units	<u>8(d)(ii)(B)</u> Class of Common Units		<u>Total Sharing of 8(d)(ii) Distributions</u> Class of Common Units		
	<u>Contributions</u>	<u>Investment</u>	<u>Incentive</u>	<u>Founder</u>		<u>Investment</u>	<u>Founder</u>	<u>Incentive</u>	<u>Investment</u>	<u>Founder</u>
\$100,000,000	900,000	158,824	225,000	63,530	6.00%	80.00%	20.00%	6.00%	75.20%	18.80%
140,000,000	900,000	146,512	197,561	58,605	5.60%	82.00%	18.00%	5.60%	77.41%	16.99%
180,000,000	900,000	134,483	171,429	53,793	5.20%	84.00%	16.00%	5.20%	79.63%	15.17%
220,000,000	900,000	122,727	146,512	49,091	4.80%	86.00%	14.00%	4.80%	81.87%	13.33%
260,000,000	900,000	111,236	122,727	44,494	4.40%	88.00%	12.00%	4.40%	84.13%	11.47%
300,000,000	900,000	100,000	100,000	40,000	4.00%	90.00%	10.00%	4.00%	86.40%	9.60%
440,000,000	900,000	89,011	100,000	35,604	3.60%	90.00%	10.00%	3.60%	86.76%	9.64%
580,000,000	900,000	78,261	100,000	31,304	3.20%	90.00%	10.00%	3.20%	87.12%	9.68%
720,000,000	900,000	67,742	100,000	27,097	2.80%	90.00%	10.00%	2.80%	87.48%	9.72%
860,000,000	900,000	57,447	100,000	22,979	2.40%	90.00%	10.00%	2.40%	87.84%	9.76%
1,000,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,100,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,200,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,300,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,400,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%
1,500,000,000	900,000	47,368	100,000	18,947	2.00%	90.00%	10.00%	2.00%	88.20%	9.80%

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