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Counsel for Highland Capital Management, L.P.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff/Counter-Defendant,	§	Adv. Proc. No. 25-03055-bwo
v.	§	
PATRICK HAGAMAN DAUGHERTY,	§	
Defendant/Counter-Plaintiff.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The service address for Highland is 6333 Mockingbird Ln., Ste 147 #5045, Dallas, Texas 75214.

HIGHLAND CAPITAL MANAGEMENT, L.P.'S SECOND AMENDED WITNESS AND EXHIBIT LIST WITH RESPECT TO TRIAL TO BE HELD ON APRIL 17, 2026

Highland Capital Management, L.P. ("Highland"), the reorganized debtor in the above-captioned chapter 11 case (the "Bankruptcy Case") and plaintiff/counter-defendant in the above-captioned adversary proceeding (the "Adversary Proceeding"), by and through its undersigned counsel, submits the following second amended witness and exhibit list (the "Second Amended Witness and Exhibit List")[2] with respect to (a) its *Complaint for (1) Disallowance of Claim No. 205 in Its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty* [Docket No. 1], and (b) *Patrick Daugherty's Answer to Plaintiff Highland Capital Management, L.P.'s Complaint for (1) Disallowance of Claim No. 205 in Its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty [Docket No. 1] and Original Counterclaim* [Docket No. 39], which the Court has set for trial at 9:00 a.m. (Central Time) on April 17, 2026 (the "Trial") in the Adversary Proceeding.

A. Witnesses:

1. James P. Seery, Jr.;
2. David Klos;
3. Patrick Daugherty;
4. Trevor Jason Liles-Tims;
5. Any witness identified by or called by any other party; and

[2] This Second Amended Witness and Exhibit List is being filed to attach copies of Highland's exhibits, excepting only Highland's exhibits that are the subject of *Plaintiff Highland Capital Management, L.P. and Defendant Patrick Hagaman Daugherty's Joint Motion for Leave to File Certain Exhibits Under Seal* [Docket No. 106] filed April 15, 2026. The Second Amended Witness and Exhibit List is substantively the same as *Highland Capital Management, L.P.'s Amended Witness and Exhibit List with Respect to Trial to Be Held on April 17, 2026* [Docket No. 104] filed April 14, 2026.

6. Any witness necessary for rebuttal.

B. <u>Amended Exhibits</u>:

Number	Exhibit	Offered	Admitted
1.	*Patrick Daugherty's Answer to Plaintiff Highland Capital Management, L.P.'s Complaint for (1) Disallowance of Claim No. 205 in Its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty [Doc. No. 1] and Original Counterclaim* [Daugherty Deposition Exhibit H-1]		
2.	Email from John A. Morris dated May 5, 2022 [Daugherty Deposition Exhibit H-2]		
3.	Email from James Seery dated October 19, 2022 [Daugherty Deposition Exhibit H-3]		
4.	Email from John A. Morris dated May 24, 2024 [Daugherty Deposition Exhibit H-4]		
5.	Settlement Agreement dated November 22, 2021 [Daugherty Deposition Exhibit H-5]		
6.	*Patrick Daugherty's Amended Answers to Highland Capital Management, L.P.'s Requests for Admission* dated December 12, 2025 [Daugherty Deposition Exhibit H-6]		
7.	*Patrick Daugherty's Amended Answers to Highland Capital Management, L.P.'s Interrogatories* dated December 12, 2025 [Daugherty Deposition Exhibit H-7]		
8.	Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated February 24, 2004 [Daugherty Deposition Exhibit H-8]		
9.	First Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated April 15, 2006 [Daugherty Deposition Exhibit H-9]		
10.	Second Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. dated April 15, 2007 [Daugherty Deposition Exhibit H-10]		

Number	Exhibit	Offered	Admitted
11.	Amended Employment Agreement (Patrick Daugherty) dated December 31, 2004 [Daugherty Deposition Exhibit H-11]		
12.	Daugherty resignation letter dated September 28, 2011 [Daugherty Deposition Exhibit H-12]		
13.	Patrick Daugherty Comprehensive Compensation and Benefits Statement dated February 27, 2009 [Daugherty Deposition Exhibit H-13]		
14.	Schedule K-1 Form 1065 for Calendar year 2008 for Patrick Daugherty [Daugherty Deposition Exhibit H-14]		
15.	Highland Capital Management Form 4605-A for Period Ending December 31, 2008 [Daugherty Deposition Exhibit H-15]		
16.	Letter from Brian Collins to Patrick Daugherty dated February 3, 2018 [Daugherty Deposition Exhibit H-16]		
17.	Form 886-Z for Patrick Daugherty for Taxable Year Ended December 31, 2008 [Daugherty Deposition Exhibit H-17]		
18.	Form 870-PT (Patrick Daugherty) for Tax Years Ended December 31, 2008 [Daugherty Deposition Exhibit H-18]		
19.	Email From Brian Collins dated July 3, 2018 [Daugherty Deposition Exhibit H-19]		
20.	Email From Brian Collins dated December 9, 2019 [Daugherty Deposition Exhibit H-20]		
21.	May 31, 2024 letter from Hunton to IRS Appeals [HUNTON_000079]		
22.	February 28, 2025 letter from Hunton to IRS Appeals [HUNTON_001105]		
23.	Form 886-A (Explanation of Items) Exhibit FP-01 [HUNTON_001131]		
24.	Form 886-A (Explanation of Items) Exhibit FP-02 [HUNTON_001163]		

Number	Exhibit	Offered	Admitted
25.	Form 886-A (Explanation of Items) Exhibit FP-03 [HUNTON_001170]		
26.	May 2024 email from IRS to Hunton [HUNTON_001120]		
27.	June 2024 email from IRS to Hunton [HUNTON_000076]		
28.	TMP 60-day letter [HUNTON_001124]		
29.	Statutory Internal Revenue Code Guidance Rev. Ruling 2020-28		
30.	Statutory Internal Revenue Code Guidance IRC section 6662 – Imposition of penalties		
31.	Statutory Internal Revenue Code Guidance IRC section 6601 – Interest on underpayment		
32.	Statutory Internal Revenue Code Guidance IRC section 6621 – Determination of interest rate		
33.	Statutory Internal Revenue Code Guidance IRC section 6622 – Interest compounded daily		
34.	Statutory Internal Revenue Code Guidance IRC section 6651 – Failure to pay tax		
35.	2008 Form 1040 (US Individual Income Tax Return) Pat and Kimberly Daugherty [PDADV_010268]		
36.	2008 Form 1045 (Application for Tentative Refund) Pat and Kimberly Daugherty [PDADV_010262]		
37.	Various, including Draft 2008 HCMLP Schedule K-1 to Pat Daugherty [PDADV_010244]		
38.	Email chain from September 2011 between Daugherty and Dondero [PDADV_004224]		
39.	Powerpoint slides to partners [PDADV_000002]		

Number	Exhibit	Offered	Admitted
40.	Dondero to Daugherty email Oct 2011 with separation agreement attached [PDADV_018494]		
41.	Separation agreement attached to Dondero to Daugherty email – Oct 2011 [PDADV_018476]		
42.	Email from Daugherty to Collins February 13, 2018 [PDADV_004796]		
43.	July 14, 2014 Final Judgment		
44.	Copy of Jury Verdict (Feb 2014)		
45.	Daugherty's Original Answer, Counterclaim and Third-Party Petition (May 2012)		
46.	Order on motion to partially vacate final judgment		
47.	Draft TL QA email [DAUGHERTY ROGS01403110]		
48.	Letter Agreement re Partnership Interest dated December 31, 2004 [DAUGHERTY ROGS01404488]		
49.	Claimant Trust Agreement dated August 11, 2021		
50.	Email Highland: Daugherty Settlement (RCP Track Record) [DAUGHERTY ROGS00016698]		
51.	10/24/22 email from Romey (Fwd. Daugherty Settlement Agreement Follow-Up)		
52.	4/1/22 email from JAM (Fwd. HERA and ERA Transfer Documents (execution versions))		
53.	Gray Reed letter Jan 2024 [PDADV_008361]		
54.	Morris email to York Mar 2024 [PDADV_008363]		

Number	Exhibit	Offered	Admitted
55.	Emails between Daugherty and Seery Oct 2022 [PDADV_010229]		
56.	IRS notice April 2018 [PDADV_010999] - CONFIDENTIAL		
57.	Deposition Transcript T.J. Liles-Tims March 23, 2026		
58.	Weaver.com – T.J. Liles-Tims Profile		
59.	Expert Report of T.J. Liles-Tims dated February 13, 2026		
60.	Email from J. Dondero to P. Daugherty dated September 27, 2011 [PDADV_004224]		
61.	Protest letter July 2018 [HUNTON_001182]		
62.	HR spreadsheet [DAUGHERTY ROGS01403106]		
63.	Email from J. Seery dated October 24, 2022 [PDADV_018426]		
64.	Internal Revenue Service Letter dated March 3, 2010 [DAUGHERTY ROGS00640534]		
65.	Highland Demonstrative Exhibit: Estimate of Daugherty's Reserve Claim [Highland D-1]		
66.	Any document entered or filed in Highland Capital Management, L.P.'s chapter 11 Bankruptcy Case or any associated adversary proceeding, including any exhibits thereto		
67.	All exhibits necessary for impeachment and/or rebuttal purposes		
68.	All exhibits identified by or offered by any other party at the Trial		

Dated: April 15, 2026

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Counsel for Highland Capital Management, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on April 15, 2026, a true and correct copy of the foregoing *Second Amended Witness and Exhibit List* was served electronically via the Court's CM/ECF system upon all parties receiving electronic notice in this Adversary Proceeding.

/s/ Zachery Z. Annable
Zachery Z. Annable

EXHIBIT 1

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Counsel to Patrick Daugherty

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054 (SGJ)
Reorganized Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	
v.	§	
PATRICK HAGAMAN DAUGHERTY,	§	Adversary No. 25-03055
Defendant.	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

PATRICK DAUGHERTY'S ANSWER TO PLAINTIFF HIGHLAND CAPITAL MANAGEMENT, L.P.'S COMPLAINT FOR (1) DISALLOWANCE OF CLAIM NO. 205 IN ITS ENTIRETY, (2) ESTIMATION OF CLAIM NO. 205 FOR ALLOWANCE PURPOSES, OR (3) SUBORDINATION OF ANY ALLOWED PORTION OF CLAIM NO. 205 OF PATRICK HAGAMAN DAUGHERTY [DOC. NO. 1] AND ORIGINAL COUNTERCLAIM[2]

Defendant Patrick Daugherty files this Answer to Plaintiff Highland Capital Management, L.P.'s Complaint for (1) Disallowance of Claim No. 205 in its Entirety, (2) Estimation of Claim No. 205 for Allowance Purposes, or (3) Subordination of Any Allowed Portion of Claim No. 205 of Patrick Hagaman Daugherty [Doc. No. 1] and Original Counterclaim and would respectfully show the Court as follows:

I. ANSWER TO PRELIMINARY STATEMENT

1. Daugherty admits that he is a former employee of, and former limited partner as a profits interest holder in, Highland. Daugherty admits that he asserted a creditor's claim (Claim No. 205) against Highland and that he and Highland entered into a binding settlement agreement. Daugherty denies the remaining allegations in Paragraph 1.

2. Daugherty denies the allegations in Paragraph 2 based on Highland's characterization of the funds Daugherty received from Highland and the effect of those funds on his claims.

3. Daugherty denies the allegations in Paragraph 3.

[2] Daugherty files this Answer and Counterclaim without waiving the rights and arguments he asserts in his September 26, 2025 Motion to Stay Pending Appeal [Doc. No. 33] currently pending before the Court, as well as his Motion to Dismiss [Doc. No. 5] which the Court denied on September 5, 2025 [Doc. No. 23].

4. Daugherty admits that his remaining claim against Highland depends, at least in part, on the result of the IRS' "final determination" of Highland's 2008 tax return. Daugherty denies the remaining allegations in Paragraph 4.

II. ANSWER TO JURISDICTION AND VENUE

5. Daugherty admits the allegations in Paragraph 5.

6. Daugherty admits the allegations in Paragraph 6.

7. Daugherty admits the allegations in Paragraph 7.

8. Daugherty admits the allegations in Paragraph 8.

III. ANSWER TO PARTIES

9. Daugherty admits the allegations in Paragraph 9.

10. Daugherty admits the allegations in Paragraph 10.

IV. ANSWER TO STATEMENT OF FACTS

11. Daugherty admits the allegations in Paragraph 11.

12. Daugherty admits the allegations in Paragraph 12.

13. Daugherty admits the allegations in Paragraph 13.

14. Daugherty admits the allegations in Paragraph 14.

15. Daugherty admits the allegations in Paragraph 15.

16. Daugherty admits that he was hired by Highland in 1998 and that he later became eligible to participate in various Highland incentive plans including Highland's long-term incentive plan. Daugherty denies the remaining allegations in Paragraph 16.

17. Daugherty admits the Highland was a limited partnership and a pass-through entity as alleged in Paragraph 17 but denies any actual or implied characterization that Daugherty's 2008

pre-tax refund was based on taxable losses or that he or any partner other that Dondero, Okada, and their affiliates were ever allowed to participate in pass-through distributions from Highland.

18. Daugherty admits that Highland provided him with the Comprehensive Compensation and Benefits Statement, but Daugherty denies the allegation that such statement was entirely accurate and reserves the right to dispute same.

19. Daugherty admits that the Comprehensive Compensation and Benefits Statement included a characterized estimated tax refund, but Daugherty denies the allegation that such statement was entirely accurate and reserves the right to dispute the same. Daugherty otherwise denies any remaining allegations in Paragraph 19.

20. In response to the allegations in Paragraph 20, Daugherty admits that Highland provided him with the Comprehensive Compensation and Benefits Statement, but Daugherty denies the allegation that such statement was entirely accurate and reserves the right to dispute same.

21. Daugherty denies the characterization of the allegations in Paragraph 21 to the extent that the quotes cited therein refer to non-binding statements or assertions made by or to Daugherty.

22. Daugherty admits that the allegations in Paragraph 22 reflect some of what was included on the 2008 K-1, but Daugherty denies the reference to him receiving what "he was promised . . . if not more" to the extent it refers to something that alters the relevant, binding contractual language.

23. Daugherty admits that the IRS began an audit of Highland's 2008 tax return but denies that all "obligations" to Daugherty have been satisfied. To the best of Daugherty's belief, the IRS audit is not yet fully resolved.

24. Daugherty admits that he terminated his employment with Highland on October 31, 2011, because of improprieties regarding treatment of investor accounts, among other things, but Daugherty denies the allegations to the extent Highland interprets them to constitute a waiver on Daugherty's behalf.

25. Daugherty admits that Claim No. 205 originally estimated Highland was liable to him for $2,650,353 among other costs. Daugherty otherwise denies the allegations in Paragraph 25.

26. Daugherty denies the allegations in Paragraph 26.

27. Daugherty denies the allegations in Paragraph 27.

V. ANSWER TO CLAIMS FOR RELIEF

28. Daugherty denies the allegations in Paragraph 28 to the extent they seek to present prior opinions and legal conclusions as statements of verifiable fact.

29. Paragraph 29 contains statements that are legal conclusions for which no response is required. To the extent a response is required Daugherty denies the allegations.

30. Paragraph 30 contains statements that are legal conclusions for which no response is required. To the extent a response is required Daugherty denies the allegations.

31. Daugherty admits that he earned bonus compensation from Highland in 2008 that was allocatable to him pursuant to Highland's decision to fund the bonus with the tax refund scheme, but Daugherty denies Highland's characterization of same in the allegations in Paragraph 31.

32. Daugherty denies the allegations in Paragraph 32.

33. Daugherty denies the allegations in Paragraph 33.

34. Daugherty denies the allegations in Paragraph 34 to the extent they seek to present prior opinions and legal conclusions as statements of verifiable fact.

35. Daugherty denies the allegations in Paragraph 35.

36. Paragraph 36 contains statements that are legal conclusions for which no response is required. To the extent a response is required Daugherty denies the allegations and further denies the statute governs given the express language of the settlement agreement between Daugherty and Highland.

37. Daugherty admits the allegations in the first sentence of Paragraph 37. Daugherty lacks information to admit or deny the second sentence of Paragraph 37 and therefore denies it.

38. Daugherty admits the allegations in Paragraph 38.

39. Daugherty denies the allegations (and requests for relief) in Paragraph 39.

40. Daugherty denies the allegations in Paragraph 40 to the extent they seek to present prior opinions and legal conclusions as statements of verifiable fact.

41. Paragraph 41 contains legal conclusions for which a response is not required. To the extent a response is required Daugherty denies the allegations.

42. Paragraph 42 contains legal conclusions for which a response is not required. To the extent a response is required, Daugherty denies the allegations.

43. Daugherty admits he owned the Partnership Interests in the form of a profits interest in Highland but denies the remaining allegations in Paragraph 43.

44. Daugherty denies the allegations in Paragraph 44.

45. Daugherty denies the allegations (and request for relief) in Paragraph 45.

VI. PRAYER

Daugherty denies that Highland is entitled to any of the relief requested in its Complaint, or to any relief whatsoever, and requests that Highland's claims be dismissed with prejudice. Daugherty further requests that the Court award it costs and any other relief the Court deems proper.

VII. AFFIRMATIVE DEFENSES

1. Further answering Highland's claims, Daugherty asserts the following defenses without assuming any burden that he would not otherwise have, including without admitting or acknowledging that he bears the burden of proof as to any of the defenses denoted herein.

Prior Material Breach

2. Highland's claims are barred in whole or in part by its prior material breach of the governing employment agreement as well as the settlement agreement previously approved by this Court.

Failure to State a Claim

3. Highland's claims are barred in whole or in part by their failure to state a claim upon which relief can be granted.

Equitable Estoppel

4. Highland's claims are barred in whole or in part by the doctrine of equitable estoppel. Highland and Daugherty entered into a binding settlement agreement wherein Daugherty gave up various rights and claims in exchange for a bargained-for agreement that Highland would not commence litigation under the IRS has concluded audit of Highland's 2008 tax return. Highland's decision to seek judicial modification of a binding contract prevents it from having the

equitable right to relief. Highland should be estopped from bringing the immediate litigation against Daugherty.

Failure of Consideration

5. Highland's claims fail because they are based upon a settlement agreement that was modified without consideration. Daugherty and Highland engaged in robust and detailed negotiations that ultimately culminated in the binding settlement agreement between the parties. Highland's decision to seek judicial modification of the settlement agreement—without providing substitute consideration to Daugherty—renders the Settlement Agreement unenforceable due to failure of consideration.

COUNTERCLAIM AGAINST PLAINTIFF/COUNTER DEFENDANT HIGHLAND CAPITAL MANAGEMENT, L.P.

Defendant/Counter-Plaintiff Patrick Hagaman Daugherty files this Original Counterclaim Against Plaintiff/Counter-Defendant Highland Capital Management, L.P. and would show the Court as follows:

PRELIMINARY STATEMENT

1. On November 22, 2021, Daugherty and Highland signed a Settlement Agreement wherein Daugherty acquired the "interests in HERA and ERA." The Settlement Agreement also mandated that Highland transfer the books and records of HERA (Highland Employee Retention Assets LLC) and ERA (Highland ERA Management LLC) that are "maintained on HCMLP's system." Despite demand, however, Highland refused and failed to turn over all books and records in its possession related to HERA and ERA – entities that Daugherty and his affiliates now own in their entirety. Highland's failure in this regard is a breach of the Settlement Agreement.

2. Daugherty's demand is even more urgent given Highland's latest filing in the main bankruptcy through which Highland seeks to destroy a significant amount of the records in its possession (under the guise of saving $7,500/month). As the Court is aware, there is extensive litigation between HERA and Dondero and his enablers in other forums. Daugherty bargained for and obtained the interests in HERA and acquired the rights to the HERA books and records in Highland's possession. HERA needs those books and records to continue litigating its claims against James Dondero and other former Highland employees and representatives. The Court should enforce the Settlement Agreement as written and require Highland to turn over to Daugherty what is rightfully his.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court for the reasons alleged and authorities cited in Highland's Complaint [Doc. No. 1] and pursuant to Federal Rule of Civil Procedure 13, as incorporated by Federal Rule of Bankruptcy Procedure 7013.

PARTIES

4. Defendant/Counter-Plaintiff Patrick Hagaman Daugherty is an individual residing in the State of Texas.

5. Plaintiff/Counter-Defendant Highland Capital Management, L.P. is a Delaware limited partnership with its principal place of business located at 100 Crescent Court, Suite 1850, Dallas, Texas 75201. Highland has appeared in this adversary proceeding through its attorneys of record.

FACTUAL BACKGROUND

6. Daugherty and Highland executed a Settlement Agreement on November 22, 2021, that provided clarity for both parties as the main bankruptcy case proceeded towards confirmation.

Main Case Docket No. 3088, 3089.[3] The Court approved the Settlement Agreement on March 8, 2022. *Id*.

7. Through the Settlement Agreement, Highland agreed to transfer to Daugherty Highland's interests in Highland Employee Retention Assets LLC ("HERA") and ERA Management, LLC ("ERA"). Specifically, the Settlement Agreement provided that, "[Highland] will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on [Highland's] system." *Id*.

8. The Settlement Agreement was not permissive or discretionary in this regard. The Settlement Agreement required that Highland "will" do these things. Since March 2022, however, Daugherty has made several requests to Highland that it comply with the Settlement Agreement by turning over all of the HERA and ERA books and records. To date, Highland has not complied – and in fact has refused to do so. Daugherty, therefore, brings this counterclaim against Highland.

CAUSES OF ACTION

Count I – Breach of Contract

9. Daugherty incorporates by reference the above paragraphs.

10. On November 22, 2021, after extensive negotiations, Daugherty and Highland executed a binding contract – the Settlement Agreement. The Court approved the Settlement Agreement on March 8, 2022.

11. Daugherty performed and satisfied all obligations that the Settlement Agreement imposed upon him.

[3] All capitalized terms used but not defined in this motion shall have the same definitions as they have in the Settlement Agreement at Main Case Doc. No. 3089. The Settlement Agreement is also attached as Exhibit A.

12. Highland breached the Settlement Agreement by refusing to turn over all the HERA and ERA books and records in Highland's possession. Settlement Agreement at ¶ 8 (Highland agreed to turn over to Daugherty all "interests in HERA and ERA to Daugherty…Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system.").

13. HERA is currently engaged in litigation with Dondero and others in the case styled *Highland Employee Retention Assets LLC v. James Donero, et al*., Civil Action No. 3:24-cv-00498-K, pending in the United States District Court for the Northern District of Texas. That litigation centers on Dondero's mismanagement of the monetary contributions that numerous Highland employees made into retirement vehicles managed by HERA. But because of Dondero's and others' underhanded efforts to fraudulently transfer assets to benefit themselves and others, those contributions were funneled out of HERA and into various entities and accounts controlled by Dondero, Okada, Ellington and their affiliates.

14. Daugherty bargained for and obtained Highland's interests in HERA as well as Highland's books and records related to HERA. There is no question that Highland breached the Settlement Agreement by refusing to turn over all of those books and records. And as evidenced by Highland's Motion for Order Authorizing Destruction of Documents filed in the main bankruptcy, Highland clearly has no intention of honoring its commitment to turn over documents. *See* Main Bankruptcy Doc. No. 4416. In fact, Highland wants to destroy the very records it contractually promised to turn over to Daugherty.

15. Daugherty asks this Court to find that Highland breached the Settlement Agreement.

Count II – Specific Performance

16. Daugherty incorporates by reference the above paragraphs.

17. The Settlement Agreement is a binding contract that Daugherty has not repudiated or breached.

18. Daugherty performed and satisfied all obligations that the Settlement Agreement imposed upon him.

19. Highland breached the Settlement Agreement by refusing to turn over all the HERA and ERA books and records in Highland's possession. Settlement Agreement at ¶ 8 (Highland agreed to turn over to Daugherty all "interests in HERA and ERA to Daugherty…Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system.").

20. At all relevant times, Daugherty has been ready, willing, and able to work with Highland to effectuate the transfer of the HERA and ERA books and records.

21. Because of Highland's unique position as the sole custodian of the HERA and ERA books and records that Highland agreed to turn over to Daugherty, the circumstances are such that Daugherty cannot recover absent the Court ordering specific performance. The Court's specific performance order against Highland would be the just result, as the balance of equities tips in favor of Daugherty. *See generally Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010).

22. If the Court does not order Highland to comply with the terms of the Settlement Agreement and turn over the relevant books and records, Daugherty will be irreparably harmed. HERA will be unable to adequately pursue its litigation against Dondero, Okada, Ellington and the others.

Count III – Attorneys' Fees

23. Daugherty incorporates by reference the above paragraphs.

24. As a result of Highland's bad faith conduct and breach of the Settlement Agreement, Daugherty has been forced to retain the services of the undersigned counsel to pursue his claims in this case. Because Delaware law governs the Settlement Agreement, Daugherty asks the Court to award him his reasonable and necessary attorneys' fees due to Highland's bad faith conduct. *See generally Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989); *see also Slawik v. State*, 480 A.2d 636, 639 n. 5 (Del. 1984). The requirements of the Settlement Agreement are clear – Highland "will" turn over the HERA and ERA books and records to Daugherty. In bad faith, Highland has refused to do so, and the Court should award Daugherty his attorneys' fees accordingly.

CONCLUSION AND PRAYER

Defendant Patrick Hagaman Daugherty prays that the Court render final judgment that Highland takes nothing by its suit and award Daugherty a judgment against Highland for:

a. Specific performance against Highland that it be required to turn over the books and records in its possession related to HERA and ERA;

b. Daugherty's actual and compensable damages, if any;

c. Daugherty's reasonable and necessary attorneys' fees;

d. All costs of court;

e. Post-judgment interest accruing on the foregoing amounts at the maximum rate allowed by law; and

f. Any such further relief, both general and specific, legal or equitable, to which Daugherty may be justly entitled.

Dated: October 3, 2025.

Respectfully submitted,

GRAY REED

By: */s/ Andrew K. York*

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Counsel to Patrick Daugherty

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing instrument was served on all Parties or counsel of record herein on this 3rd day of October 2025, via the CM/ECF system and/or email.

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/s/ Andrew K. York
ANDREW K. YORK

EXHIBIT A

Final Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is made and entered into by and between (i) Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), and (ii) Patrick Hagaman Daugherty ("Daugherty" and together with HCMLP, the "Parties," and individually as a "Party"). This Settlement provides for the treatment of certain claims asserted by Daugherty against the Debtor, and for the Parties to take certain other specified actions in settlement thereof.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, the Debtor's chapter 11 case (the "Bankruptcy") is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, on February 2 and 3, 2021, the Court conducted a confirmation hearing with respect to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the "Plan");

WHEREAS, on February 8, 2021, the Court rendered an opinion from the bench in which it confirmed the Plan [Docket No. 1924];

WHEREAS, on February 22, 2021, the Court issued an order confirming the Plan [Docket No. 1943];

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Docket No. 2700];

WHEREAS, Daugherty is a former employee and limited partner of the Debtor and has

served in other positions with affiliates and former affiliates of the Debtor;

WHEREAS, at the time of his resignation, Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA") and contends that he owned or had the right to own all of the preferred units of HERA;

WHEREAS, prior to his resignation from HCMLP, Daugherty was awarded units of HERA, which vehicle owned interests in Restoration Capital Partners, LP ("RCP"), an HCMLP managed private equity fund, and other investments;

WHEREAS, in April 2012, the Debtor commenced an action against Daugherty in Texas state court (the "Texas Action"), and Daugherty subsequently asserted counterclaims for breach of contract and defamation, and third-party claims against HERA and others;

WHEREAS, after a three-week trial, the jury returned a verdict partially in favor of the Debtor, but Daugherty prevailed on his claims against the Debtor and James Dondero ("Dondero") for defamation with malice and a third-party claim against HERA and was awarded damages of $2.6 million against HERA, plus prejudgment and post-judgment interest at 5% (the "HERA Judgment");[1]

WHEREAS, in July 2017, after being unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor, Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Delaware Court"), in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and fees on fees (the "Highland Delaware Case");

[1] The Debtor prevailed on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty for non-monetary damages and obtained an award of $2.8 million in attorney's fees. The HERA Judgment was affirmed on appeal on December 1, 2016.

WHEREAS, the Delaware Court in the Highland Delaware Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Delaware Court applied the "crime-fraud exception" to the attorney-client privilege assertion, and such rulings have not been overturned;

WHEREAS, Daugherty asserts that such withholding of documents and the failure to search defendants' and their employees personal electronic devices for stored documents and texts as well as other emails and domain names such as sasmgt.com and gmail.com which were in their possession and control and to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Delaware Case;

WHEREAS, on October 14, 2019, the Highland Delaware Case proceeded to trial and two days later, on October 16, 2019, before the completion of the trial and before the Delaware Court ruled on Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy;

WHEREAS, on December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Court, captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Dondero, HERA, ERA, Hunton Andrews Kurth LLP ("Andrews Kurth"), Marc Katz ("Katz"), Michael Hurst ("Hurst"), the Debtor's Chief Compliance Officer, the Debtor's then in-house counsel (Isaac Leventon ("Leventon")), and the Debtor's then general counsel (Scott Ellington ("Ellington")), for conspiracy to commit fraud, among other claims (the "HERA Delaware Case" and together with the Highland Delaware Case, the "Delaware Cases");

WHEREAS, on April 1, 2020, Daugherty filed a general, unsecured, non-priority claim

against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67");

WHEREAS, on April 6, 2020, Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,482,876.62" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77");

WHEREAS, on August 31, 2020, the Debtor commenced an adversary proceeding against Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Daugherty's claim pursuant to section 510(b) of the Bankruptcy Code. Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding");

WHEREAS, on September 29, 2020, Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer");

WHEREAS, on September 24, 2020, Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Stay Motion") pursuant to which he sought to sever the Debtor from the Highland Delaware Case and then consolidate the remaining claims in the Highland Delaware Case into the HERA Delaware Case and proceed with one case against the non-Debtor parties;[2]

WHEREAS, on October 23, 2020, Daugherty filed a motion seeking leave to amend his Proof of Claim No. 77 [Docket No. 1280] (the "POC Amendment Motion"). The amended proof

[2] On October 8, 2020, the Debtor commenced a second adversary proceeding against Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Delaware Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

of claim attached to the POC Amendment Motion increased Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,410,819.42" and sought to supersede Proof of Claim No. 67 and Proof of Claim No. 77;

WHEREAS, on October 23, 2020, Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion*, seeking for his Claim to be temporarily allowed for voting purposes in this amount of $40,410,819.42 [Docket No. 1281] (the "3018 Motion");

WHEREAS, on November 3, 2020, the Court granted the Stay Motion [Docket No. 1327];

WHEREAS, the Debtor opposed the 3018 Motion, and after conducting an evidentiary hearing for the limited purpose of determining the 3018 Motion, the Court entered an order temporarily allowing Daugherty's Claim only for voting purposes in the amount of $9,134,019 [Docket No. 1474];

WHEREAS, on December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion, and Daugherty was permitted to file an amendment to his proof of claim. On December 23, 2020, Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 superseded Proof of Claim No. 77 and increased the amount of the Daugherty's Claim to $40,710,819.42;

WHEREAS, on November 30, 2020, Daugherty filed his Motion to Lift the Automatic Stay (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Delaware Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612];

WHEREAS, except with respect to the Reserved Claim (as defined below), the Parties have agreed to settle and resolve all claims and disputes between them and their respective current affiliates, managed entities, and employees, including the Daugherty Claim, on the terms set forth in this Settlement:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Allowed Claims: In full satisfaction of the entirety of the Daugherty Claim against the Debtor and HCMLP Released Parties (defined below), excluding the Reserved Claim, Daugherty shall receive (a) an allowed general unsecured Class 8 claim in the amount of $8,250,000; (b) an allowed subordinated general unsecured Class 9 claim in the amount of $3,750,000; and (c) a one-time lump sum cash payment in the amount of $750,000 to be paid within 5 business days of Bankruptcy Court approval of this Settlement Agreement.

2. Recovery: The Debtor makes no representation or warranty as to the recovery on Class 8 or Class 9 claims under the Plan.

3. Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this Settlement, HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board[3] to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest. Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the

[3] The Claimant Trust Oversight Board refers to the Oversight Board as defined in the August 11, 2021 Highland Claimant Trust Agreement establishing the Claimant Trust, as defined therein.

Claimant Trust Oversight Board.

4. RCP Track Record: HCMLP shall use reasonable efforts to provide Daugherty with data constituting the investment performance track record of RCP during Daugherty's tenure at HCMLP. Daugherty shall not be entitled to any compensation with respect to the performance of RCP. HCMLP makes no representations or warranties regarding such data and takes no responsibility with respect to the use of such data for any purposes.

5. Daugherty Releases: Except as specifically provided in this paragraph 5, and to the maximum extent permitted by applicable law, the Debtor, on behalf of itself and each of the HCMLP Entities and HCMLP Parties (as those terms are defined in paragraph 6 below), hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue Daugherty, his successors, affiliates, and assigns, (and in each such category to include their respective advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, and designees) (collectively, the "Daugherty Additional Release Parties" and together with Daugherty, the "Daugherty Released Parties"), in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, or the Delaware Cases, all existing as of the date hereof (collectively, the "HCMLP Released Claims"); provided, however, that such release shall not

apply with respect to any and all defenses that HCMLP or the HCMLP Entities may have to the Reserved Claim or the Reserve Motion (as those terms are defined herein) or Daugherty's obligations under this Settlement. For the avoidance of doubt, the HCMLP Released Claims include all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

6. HCMLP Releases: Except as specifically provided in this paragraph 6, and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Released Parties, hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (a)(i) HCMLP; (ii) Strand Advisors Inc.; (iii) the Claimant Trust; (iv) the Claimant Trust Oversight Board; (v) the Highland Litigation Sub-Trust; (vi) the Highland Indemnity Trust; (vii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP as of the date hereof and any entity otherwise directly or indirectly controlled by HCMLP as of the date hereof,; and (viii) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Master, L.P. (and all of their respective general partners, feeder funds, managers, and affiliates) (the foregoing (a)(i) through (a)(viii) the "HCMLP Entities"), and (b) with respect to each such HCMLP Entity, such HCMLP Entity's respective current (meaning employed in their respective roles as of the date hereof) advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders (but not the shareholders of Strand Advisors Inc.), agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the

HCMLP Entities, the "HCMLP Released Parties"),[4] in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, or the Highland Delaware Case (collectively, the "Daugherty Released Claims"); provided, however, that such release shall not apply with respect to the Reserved Claim or the Reserve Motion (as those terms are defined in paragraph 9 below) or HCMLP's obligations under this Settlement. This release expressly applies to all current employees of HCMLP as the Reorganized Debtor (as defined in the Plan), in their capacities as such. For the avoidance of doubt, the Daugherty Released Claims includes all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

7. Reservation of Daugherty Rights: Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties shall not include (a) NexPoint Advisors, L.P. (or any of its subsidiaries and employees, advisors, or agents), (b) the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and any of their respective employees, advisors, or agents), (c) NexBank, SSB (or any of its subsidiaries, employees, advisors, or agents), (d) James Dondero or any trust in which Dondero or any of his family members are a trustee or beneficiary (or any trustee acting for such trust), including but not limited to Hunter

[4] The Daugherty Additional Released Parties and the HCMLP Released Parties are collectively referred to as the "Additional Released Parties."

Mountain Investment Trust, The Get Good Trust, Dugaboy Investment Trust, SLHC Investment Trust, (e) HERA (subject to paragraph 8 below), (f) ERA (subject to paragraph 8 below), (g) Grant Scott, (h) Mark Okada and any trust in which Mark Okada or any of his family members are a beneficiary (or any trustee acting for such trust in their respective capacities), (i) Ellington, (j) Leventon, (k) Katz, (l) Hurst, (m) Andrews Kurth, or (m) any other former employee (as of the date hereof) of the HCMLP Released Parties.

8. HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. The allowed claims provided in paragraph 1 hereof are expressly agreed to in order to satisfy any liability the Debtor may have in connection with the HERA Judgment. To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties -- HCMLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system. Such transfer will be without representation or warranty of any type; including, for the avoidance of doubt, without any representation or warranty as to the merits of the potential claims or the efficacy of the transfer of the potential claims. Such transfer will be without any liability or material cost to HCMLP or its affiliates or the other HCMLP Released Parties, including any liability in respect of any assets that HERA or ERA ever actually or allegedly owned, possessed, or controlled and that were actually or allegedly transferred, conveyed, sold, written off or otherwise disposed of (in any such case, a "Disposition"). In connection with the transfer, HERA and ERA have expressly released the HCMLP Released Parties from any and all claims, including any claims actions or remedies related

to any Disposition, either of them may have against any HCMLP Released Party now or in the future (the "HERA and ERA Release"). Daugherty on behalf of himself and each of the Daugherty Released Parties acknowledges, accepts, and agrees not to challenge the HERA and ERA Release or support any challenge thereto. A copy of the HERA and ERA Release is annexed hereto as **Exhibit A**. Daugherty acknowledges and agrees that even though HERA and ERA are not HCMLP Released Parties under this Agreement, Daugherty and all Daugherty Released Parties shall (a) not seek to hold any HCMLP Released Party liable for any action or inaction taken by or on behalf of HERA or ERA, including through any derivative, veil-piercing or similar cause of action or remedy; and (b) not seek to recover damages or obtain any form of relief against any HCMLP Released Party on account of any action or inaction taken by or on behalf of HERA or ERA, including through any veil piercing or similar cause of action or remedy. If, for any reason, HERA or ERA, or any person or entity acting on their behalf, recovers anything from any HCMLP Released Party, Daugherty shall promptly turnover to HCMLP or its successors and assigns any amounts actually recovered by Daugherty or any Daugherty Released Party, from HERA or ERA arising from, related to, or derived from any claim that HERA or ERA or any person or entity acting on their behalf has or may have against any HCMLP Released Party. HCMLP will provide reasonable assistance to Daugherty to assist with the preparation of any required HERA K-1s for 2021, but any requirement to provide such K-1s will be the obligation, if any, of HERA.

9. IRS Compensation Claim: In section 4(ii) of the Addendum to Proof of Claim No. 205, Daugherty contends that he has a contingent, unliquidated claim against the Debtor arising out of a 2008/2009 compensation letter (the "Reserved Claim"), which claim is also related to an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") (the dispute between the Debtor and IRS being referred to herein as the "IRS Audit Dispute"). The Debtor

disputes the validity and amount of the Reserved Claim. Daugherty shall retain the Reserved Claim solely against the Debtor and not against any other HCMLP Released Party, and the Debtor reserves the right to assert any and all defenses thereto. Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute; provided, however, that Daugherty may file a motion with the Bankruptcy Court to have the Reserved Claim estimated for purposes of establishing a reserve as a "Disputed Claim" under the Debtor's Plan (the "Reserve Motion"), and the Debtor (and any successor) reserves the right to assert any and all defenses thereto. Notwithstanding the foregoing, Daugherty may address any personal claim or personal liability to the IRS as a result of the IRS Audit Dispute, including settlement of any such claims; provided, however, Daugherty agrees to forego settling or addressing any claims with the IRS without the written consent of the Debtor until March 31, 2022.

10. Current HCMLP Employees: The HCMLP Parties set forth on **Appendix A** hereto are currently employed by the Debtor are HCMLP Released Parties. By executing a copy of this Settlement and delivering it to Daugherty, each of the persons on Appendix A agrees not to sue, attempt to sue, or threaten or work with or assist any entity or person to sue, attempt to sue, or threaten any Daugherty Released Party on or in connection with any claim or cause of action arising prior to the date of this Settlement.

11. Dismissal and Motions in Other Actions. Within ten business days after approval of this Settlement by the Bankruptcy Court, the Parties shall take all steps necessary (a) to dismiss with prejudice (i) the Highland Delaware Case, as against the Debtor and any HCMLP Released Party, and (ii) the HERA Delaware Case, as against every HCMLP Released Party, (b) to file an agreed motion and proposed order to partially vacate the final judgment entered against Daugherty

in the Texas Action, (c) withdraw HCMLP's objection to the Daugherty motion to recuse in the Texas Action, and (d) to dismiss the Adversary Proceeding with prejudice. The parties shall file the foregoing motions and withdrawals substantially in the form of the documents annexed hereto as **Exhibit B**.

12. Additional Third Party Claims Discovery: The Debtor (a) shall accept service of any subpoenas via email served by Daugherty in connection with the Delaware Cases on behalf of itself, the HCMLP Entities, the HCMLP Parties (but only in their capacity as employees of HCMLP); and (b) acknowledge and consent to the jurisdiction of the Delaware Chancery Court for purposes of enforcing any such subpoenas, subject in all respects to the rights that the HCMLP Entities and HCMLP Parties to defend the requested production, if any.

13. Settlement of Third Party Claims: Daugherty shall not settle any claims or causes of action against any current or former director, officer, employee, agent or representative of HCMLP or Strand Advisors Inc. (collectively, the "Potentially Indemnified Parties") to the extent such claims have been brought or could have been brought against any Potentially Indemnified Parties, if any such settlement designates, defines or describes the settled claims as arising out of or relating to simple negligence or as having otherwise been within the scope of employment of the Potentially Indemnified Party.

14. Claims Register: As soon as practicable after the Settlement Effective Date, HCMLP shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Settlement.

15. Daugherty Representations: Daugherty represents and warrants to each of the HCMLP Released Parties that (a) he has full authority to release the Daugherty Released Claims and has not sold, transferred, or assigned any Daugherty Released Claim to any other person or

entity and that (b) no person or entity other than Daugherty has been, is, or will be authorized to bring, pursue, or enforce any Daugherty Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Daugherty.

16. HCMLP Representations: Each of HCMLP and each HCMLP Released Party who has signed this Settlement represents and warrants to Daugherty that (a) he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity and (b) he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Released Party personally has against Daugherty.

17. Additional HCMLP Representations: HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support Daugherty's position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist Daugherty under this paragraph if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Settlement shall in any way affect the enforceability of this Settlement vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

18. HCMLP Covenant: HCMLP and the HCMLP Entities covenant and agree that they will not pursue or seek to enforce any injunctions entered in the Texas Action against

Daugherty.

19. Entire Agreement; Modification: This Settlement contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties. This Settlement may not be modified other than by a signed writing executed by the Parties.

20. Bankruptcy Court Approval: Notwithstanding anything to the contrary contained herein, the effectiveness of HCMLP and the Claimant Trust's execution of this Settlement shall be subject to entry of an order of the Bankruptcy Court approving this Settlement. HCMLP shall take all steps necessary to file with the Bankruptcy Court a motion for an order approving this Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code (the "Motion"). The parties agree to cooperate in the preparation and prosecution of the Motion which shall be filed no later than 5 business day after execution of this Settlement, unless such time is extended by mutual agreement.

21. Counterparts: This Settlement may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument and shall be effective against a Party or Additional Released Party upon approval of the Settlement by the Bankruptcy Court.

22. Governing Law; Jurisdiction: This Settlement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Settlement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Settlement.

23. Headings: Paragraph headings included herein are for convenience and shall have no impact whatsoever on the meaning or interpretation of any part of this Settlement.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Settlement as of the day and year set forth below:

Dated: 11-21-21

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____

Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND CLAIMANT TRUST

By: _____

Name: James P. Seery, Jr.
Title: Claimant Trustee

Dated: 11/22/21

PATRICK HAGAMAN DAUGHERTY

By: _____

Name: Patrick Hagaman Daugherty

EXHIBIT A

HERA RELEASE AGREEMENT

This HERA Release Agreement ("HERA Release Agreement") is entered into as of November 21, 2021 by and among Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), Patrick Hagaman Daugherty ("Daugherty"), Highland Employee Retention Assets, LLC ("HERA") and Highland ERA Management, LLC ("ERA" and together with HCMLP, and HERA, the "Parties," and individually as a "Party").

WHEREAS, reference is hereby made to the Settlement Agreement (the "Settlement") of even date herewith and attached hereto made and entered into by and between the Debtor, the Highland Claimant Trust, and Daugherty.

WHEREAS, the Settlement settles all of Daugherty's claims against the HCMLP Released Parties, including all claims against the HCMLP Released Parties relating to transfers of assets from HERA.

WHEREAS, the Settlement includes, among other things, the transfer by HCMLP to Daugherty of HCMLP's interests in HERA and ERA.

WHEREAS, under the Settlement such transfer is being made without any liability to any of the HCMLP Released Parties of any type and is conditional on the full release of, and covenant not to sue, each of the HCMLP Released Parties, by and from HERA, ERA, Daugherty and the Daugherty Released Parties.

WHEREAS, neither HERA nor ERA filed proofs of claim in the Bankrupty and have no claims against HCMLP.

WHEREAS, out of an abundance of caution to confirm that HERA, ERA, Daugherty, and the Daugherty Released Parties have no claims against the HCMLP Released Parties, this HERA Release Agreement is being entered into contemporaneously with the Settlement and constitutes an

essential part thereof.

WHEREAS, capitalized terms used herein but not otherwise defined herein have the respective meanings set forth in the Settlement.

NOW, THEREFORE, in consideration of the entry into of the Settlement, the transfer of the equity interests in HERA and ERA to Daugherty in accordance with the Settlement, and for other good and valuable consideration, including the provisions set forth herein, the parties hereto further agree as follows:

1. Upon entry of an order of the Bankruptcy Court approving this Settlement and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Additional Release Parties, together with each of HERA and ERA (Daugherty, the Daugherty Additional Release Parties, HERA and ERA shall be collectively referred to herein as the "HERA Releasing Parties"), each hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, any of the HCMLP Released Parties for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, Highland Delaware Case, or the HERA Delaware Case (collectively, "Claims"), in each case that in any way arise from or otherwise in any way relate to HERA or ERA, including, without limitation, any actual or potential claims, whether known or unknown, in any way related to or

arising out of the formation, management, operation or assets of HERA, ERA or any of their respective predecessors or successors, including the transfer of any assets to or from HERA or ERA, it being understood that all remaining assets of HERA have been transferred to HCMLP prior to the date hereof, and in addition to the releases set forth above, each of the HERA Releasing Parties irrevocably waives and releases and covenants not to sue with respect to any Claims against any of the HCMLP Released Parties in any way related to any such transfers or assets, whether *in personam* with respect to the HCMLP Released Parties or *in rem* with respect to any of their assets (collectively, the "HERA Released Claims") or any other Disposition.

2. This Release constitutes a part of, and is supplemental to, the provisions of the Settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto, intending to be legally bound, have executed this HERA Release Agreement as of the date set forth above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

PATRICK HAGAMAN DAUGHERTY

By: _____
Name: Patrick Hagaman Daugherty

HIGHLAND EMPLOYEE RETENTION ASSETS, LLC

By: Highland ERA Management, LLC, its manager

By: Highland Capital Management, LP

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND ERA MANAGEMENT, LLC

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT B

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
v.	§	
PATRICK DAUGHERTY,	§	
Defendant and Counter-Plaintiff,	§	**DALLAS COUNTY, TEXAS**
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
Third-Party Defendants.	§	
	§	**68th JUDICIAL DISTRICT**

AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED JULY 14, 2014

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Highland Capital Management, LP ("Highland") and Defendant Patrick Daugherty ("Daugherty" and together with Highland, the "Parties") file this *Agreed Motion to Partially Vacate the Final Judgment dated July 14, 2014* (the "Motion"), and respectfully show the following:

1. On July 14, 2014, this Court entered a *Final Judgment* (the "Judgment") that, among other things, granted Highland's motion for injunctive relief against Daugherty.

2. The Judgment was amended on March 23, and June 23, 2017.

3. On October 16, 2019, filed a petition under chapter 11 in the United States Bankruptcy Court for the District of Delaware ("Highland's Bankruptcy Case"). On October 24,

2019, as a result of the commencement of Highland's Bankruptcy Case, the Supreme Court of Texas issued an order abating a related case that Daugherty had brought in that court, Case No. 19-0758. Highland's Bankruptcy Case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas.

4. Daugherty asserted certain claims against Highland in Highland's Bankruptcy Case. The Parties have fully and finally resolved their disputes pursuant to a settlement agreement (the "Settlement Agreement") reached in the Highland Bankruptcy Case pursuant to which, among other things, (a) all of Daugherty's known and unknown claims against each of the Highland Released Parties (as those terms are defined in the Settlement Agreement) are resolved, and (b) this Motion seeking the *vacatur* of certain provisions of the Judgment specifically set forth below is being filed.

5. Highland and Daugherty hereby agree and stipulate that the Court has plenary power to issue an order granting this Motion because the Court retained authority to enforce the permanent injunction rendered in the Judgment, and that changed circumstances have now arisen such that the Court should dissolve the permanent injunction. Highland and Daugherty further agree and stipulate that this Motion shall be treated as an agreement of the Parties pursuant to Texas Rule of Civil Procedure 11, and is fully enforceable. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction.").

6. Highland and Daugherty agree that the following portions of the Judgment shall be vacated pursuant to their settlement in the Highland Bankruptcy:

a. The second full paragraph on Page 2 of the Judgment, which begins "The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty . . .";

b. The permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins "It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .";

c. The fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney's fees, as well as post-judgment interest on that award[1]; and

d. The jury's answers to Questions 1, 2, 5, 6, 9 and 12 in the Verdict, which was attached as Exhibit 1 to the Judgment.

7. Highland and Daugherty further agree that, as a result of the vacation of the permanent injunction in the Judgment, Highland hereby withdraws any pending motions to show cause or motions for contempt against Daugherty that allege Daugherty violated or is violating the permanent injunction. Highland also agrees not to seek to enforce the permanent injunction in any manner in the future.

[1] Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty have agreed to vacate the monetary judgment awarded to Highland, Daugherty waives and relinquishes any right or claim to recover any amount previously paid in satisfaction of the Judgment and Highland shall not be required to reimburse Daugherty for his prior satisfaction of the monetary judgment. To the extent Daugherty is entitled to indemnification for any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland's business, including the liabilities Daugherty allegedly incurred in connection with this action and the Judgment, such indemnification claims have been fully and finally satisfied and resolved under the Settlement Agreement.

8. Concurrent with the filing of this Motion, Daugherty will file a motion to dismiss his as-yet unfiled petition for review pending before the Supreme Court of Texas under Case No. 19-0758.

9. Highland and Daugherty further agree that any portions of the Judgment that are not specifically vacated pursuant to this Motion shall remain in full force and effect.

WHEREFORE, Highland and Daugherty pray that the Court grant this Motion in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED & McGRAW LLP

By: */s/ Sonya D. Reddy*
ANDREW K. YORK
State Bar No. 24051554
E-mail: dyork@grayreed.com
SONYA D. REDDY
State Bar No. 24079188
E-mail: sreddy@grayreed.com

1601 Elm Street, Suite 4600
Dallas, Texas 75201
(214) 954-4135
(214) 953-1332 (Fax)

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic transmission to all counsel of record on February ___, 2021, as follows:

Marc D. Katz
Crystal J. Woods
DLA PIPER LLP (US)
1717 Main St., Suite 3700
Dallas, Texas 75201
214-743-4545 (Fax)
marc.katz@dlapiper.com
crystal.woods@dlapiper.com

Attorneys for Highland Capital Management, L.P.

Michael K. Hurst
A. Shonn Brown
Jonathan Childers
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(214) 981-3839 (Fax)
mhurst@lynnllp.com
sbrown@ lynnllp.com
jchilders@ lynnllp.com

Attorneys for Third-Party Defendants HERA, Patrick Boyce, and William Britain

/s/ Sonya D. Reddy
SONYA D. REDDY

APPENDIX A (signatures to follow)

1. James P. Seery, Jr.
2. Cameron Baynard
3. Nathan Burns
4. Timothy Cournoyer
5. Naomi Chisum
6. Stetson Clark
7. Sean Fox
8. Matthew Gray
9. Kristin Hendrix
10. David Klos
11. Vishal Patel
12. Thomas Surgent
13. Michael Throckmorton

EXHIBIT 2

From: "John A. Morris" <jmorris@pszjlaw.com>
Date: May 5, 2022 at 8:29:08 PM GMT+1
To: Thomas Surgent <TSurgent@highlandcapital.com>
Cc: jpseeryjr@gmail.com, "Gregory V. Demo" <GDemo@pszjlaw.com>
Subject: FW: Highland: HERA and ERA Books and Records

See below.

I won't re-send the other two zip files, but they have also been produced.

Please let me know if you identify anything else.

Thanks so much, Thomas.

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

---

From: John A. Morris
Sent: Thursday, May 5, 2022 3:26 PM
To: 'Thomas Uebler' <tuebler@mdsulaw.com>
Cc: Gregory V. Demo <GDemo@pszjlaw.com>
Subject: Highland: HERA and ERA Books and Records

Exhibit
H-2
Daugherty 1/29/2026 L.M.

Tom,

Following up on your email of earlier this week, below is a link to certain of the HERA/ERA books and records.

I will send you two (2) further e-mails with zip files that contain additional tax-related documents and other business records.

We believe this production completes HCMLP's obligations under paragraph 8 of the Settlement Agreement, although Highland is making a final review to be certain and will produce any additional records it may identify.

Please let me know if you have any questions or if you have any difficulty accessing any of the books and records.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

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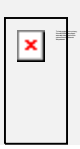
Link expires May 31, 2022



You have shared 1 file.

1 file
•
38.9 MB total
•
Shared on 05/04/2022 UTC

Your files have been delivered to the following recipient:

lsc@pszjlaw.com

[redacted]HERA and ERA Books and Records.zip
ZIP 38.9 MB

VIEW ALL FILES

Terms | Privacy

Powered By Hightail

EXHIBIT 3

From: James Seery <jpseeryjr@gmail.com>
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
CC: David Klos <dklos@highlandcapital.com>, Thomas Surgent <tsurgent@highlandcapital.com>
Bcc: jmorris@pszjlaw.com
Subject: Daugherty Settlement Agreement Follow-Up
Date: Wed, 19 Oct 2022 17:23:06 +0000

Pat,

To follow-up on your recent request for additional information pertaining to the HERA/ERA entities, members of the Highland team have worked to gather further documentation for you. We previously provided corporate documents to you as well as the Quickbooks accounting file to your accountants using their file sharing system.

If acceptable to you, we propose to deliver this new large document delivery (400+ files) via DSI's Sharefile system. Use is straight forward and allows you to download all of the files in an orderly manner. Otherwise, please let me know if there is a different way you would prefer to receive these additional electronic files.

Under our settlement agreement, HCMLP agreed to "transfer its interests in HERA and ERA" to you, and that transfer "include[s] the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system." The transfers are without any liability or material cost to HCMLP. HCMLP also agreed to provide reasonable assistance to you in the preparation of HERA K-1s for 2021.

HCMLP previously made these entity and record transfers and provided books and records information through summarized financial statements and general ledger detail in excel spreadsheets, historical tax returns, governing documents, the raw Quickbooks file containing the historical accounting data, and a spreadsheet detailing the amounts charged by HCMLP to HERA down to the invoice level. HCMLP also prepared and signed the 2021 HERA tax returns with your (and your accountants) input and approval.

While we believe the information already provided satisfied HCMLP's undertakings under the settlement agreement, we nevertheless understand your request for additional HERA and ERA information and have been able to gather the further documentation broken down as follows (some of which may be duplicative to certain documents you've already received, but we are re-including regardless):

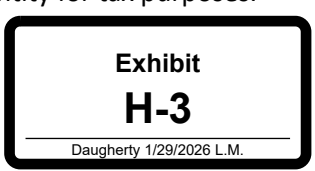
HERA

- Governing documents
- Amendments
- Assignments
- Correspondence
- Director resignations
- Expense allocations (resolutions + allocation agreement)
    - Actual copies of invoices (330+ individual invoices across 36 different vendors or law firms tracked down and will be transmitted; <10% couldn't be located and are therefore not included)
- Other resolutions
- Transfer agreements

ERA

- Governing documents

There is less documentation regarding ERA because it was solely a management entity. It did not have any economic activity, did not generate financials, and was a disregarded entity for tax purposes.



At your request, we also included excel tracking spreadsheets summarizing the assets of HERA from 2009 to May 2012 as well as the individual unit holder's respective interests in HERA. This file was maintained by HCMLP and appears to be an HCMLP business record tracking "The Vessel" (as HERA was sometimes known) and the interests of HCMLP employees in The Vessel.

We have also included certain additional HERA records that we have found relating to HERA assets and distributions to vested HERA participants. These records include: (i) miscellaneous spreadsheets reflecting various items, including actual cash distributions to vested participants; (ii) Smith Barney statements reflecting cash of HERA and ownership of NHF; and (iii) RCP Statements reflecting HERA interests.

Upon transmission of the information described above, HCMLP will have satisfied all of its obligations under the settlement agreement, and our involvement in HERA/ERA (your entities) will be complete. Of course, to the extent one-off questions come up, you're always welcome to contact me. Best of luck with these entities.

And again, as requested above please let us know how you would like us to deliver these files.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

EXHIBIT 4

Exhibit
H-4
Daugherty 1/29/2026 L.M.

From: John A. Morris
Sent: Friday, May 24, 2024 1:50 PM
To: mbobo@mwblawyer.com
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>
Subject: HERA

Bo:

Thank you for you e-mail and supporting documentation. Please copy my partner, Jeff Pomerantz (copied here), on all written communications going forward.

Initially, we note that—intentionally or mistakenly—you misquoted the operative provision of the settlement agreement. Section 8, provides, in pertinent part, that the transfer would "include HERA and ERA books and records (spreadsheet) maintained on HMCLP's system." As Mr. Daugherty knows, the highlighted language you omitted is material and tracks the discussions between Mr. Seery and Mr. Daugherty concerning the limited nature of the books and records.

On the merits, your assertions concerning the emails are wrong. Again, HERA had no employees or URL nor did it have a repository of e-mails that it owned or controlled. Your contention that HERA had a "shared services" agreement with

Highland is also wrong; if your clients want to rely on the supposed veracity of Ellington and Leventon's ambiguous (but false) statements, so be it (you refer to testimony from Dondero, but I did not see that among the documents included in your e-mail). Based on our experience, we suspect Judge Jernigan is already familiar with these issues.

Finally, there is nothing "ironic" or "enlightening" about an e-mail subject line referring to HERA's "books and records" in reaction to an apparent demand letter sent by Mr. Daugherty for HERA documents over eleven years ago. Highland doesn't dispute that HERA had "books and records." Highland provided them—and more—to your client long ago. Nothing in the e-mails you provided states, suggests, or even implies that anyone ever believed that HERA owned or possessed emails and that such emails were part of its "books and records."

Highland has taken all reasonable steps to fulfill its obligations to provide HERA's books and records to Pat. While it would be an unfortunate turn, if your clients honestly believe otherwise, a judicial order bringing finality to these matters would—ironically—be helpful.

Highland reserves all rights and claims at law and in equity.

Regards,

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | New York | Wilmington, DE | Houston | San Francisco

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From: mbobo@mwblawyer.com <mbobo@mwblawyer.com>
Sent: Friday, May 10, 2024 9:44 AM
To: John A. Morris <jmorris@pszjlaw.com>
Cc: mbobo@mwblawyer.com
Subject: HERA

Dear John,

Please be advised I represent Highland Employee Retention Assets, LLC ("HERA"). I have reviewed the correspondence between you and Drew York at Grey Reed earlier this year regarding obtaining HERA's books and records from Highland Capital Management, L.P. ("Highland") and I find your response severely lacking. The November 22, 2021 Settlement Agreement between HERA and Highland is explicitly clear "HMCLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include HERA and ERA books and records maintained on HMCLP's system." See attached November 21, 2021 Settlement Agreement, page 10 Paragraph 8. This language is neither ambiguous nor confusing and includes all books and records that Highland has related to HERA without caveats or exclusions.

First, your position that emails do not constitute books and records is simply wrong. The Delaware Supreme Court (and almost ever other supreme court in the country) has held that emails constitute books and records of a corporation. *KT4 Partners LLC v. Palantir Techs., Inc.*, 203 A.3d 738 (Del. 2019). The KT4 court went on to hold "[R]ather, it follows from one earlier recognized at common law, before email became a dominant mode of written communication, when stockholders were granted the right to inspect a variety of corporate "papers," often including letters and memoranda among officers and directors. Today, emails and other electronic communications do much of the work of the paper correspondence of yore." *Id*. Even more to the point at hand, this was a stockholders rights case to inspect corporate books and records, with certainty a court would hold that emails related to a corporation's operations are included in the "variety of corporate 'papers'". We are especially confident the Bankruptcy Court will find the emails previously requested, and requested again below, are part of HERA's books and records as required by the Settlement Agreement to be turned over.

Second, your position that "(a) HERA and ERA had no employees; (b) no person used an e-mail address with HERA or ERA URL; (c) neither HERA or ERA ever had a shared services agreement with HCMLP and (d) HCMLP's emails are not now and never were, HERA and ERA's property" is here again not only wrong but disingenuous at best.

Whether or not HERA had employees has no bearing on any analysis as to what constitutes HERA's books and records. Further, the URL address is irrelevant if persons were acting on behalf of HERA, which the evidence shows Highland clearly was. Abrams & Bayliss was outside counsel selected solely to represent HERA and yet took direction from Highland and its affiliates. Highland in house legal team members, including but not limited to, Thomas Surgent, Ted Demaris and Scott Ellington, along with Highland's outside counsel, including but not limited to, Mark Katz, Paul Lackey and Michael Hurst worked directly with Abrams & Bayliss (Steven Hough, Kevin Abrams) to create legal documents, coordinate strategy, and transfer assets on behalf of HERA. Please see the attached pdf labeled HERA legal team emails. It is enlightening, if not ironic, that the subject line of those emails is Books and Records [HERA].

Your assertion that Highland and its affiliates never had a shared services agreement with HERA is shocking in light of the record evidence. I appreciate the fact that you and your firm were not retained as bankruptcy counsel until late September 2019; however, I am hopeful the attached will clarify this issue. Please see attached sworn deposition testimony of Ellington whereby he verifies that he, while also serving as Highland's General Counsel and others including Leventon, while also serving as Highland Chief Legal Counsel, were performing legal services on behalf of HERA. Throughout his deposition Ellington testifies there was a "shared services" agreement with Highland as the manager (and Advisor under the 1940 Securities Act- aka the Registered Investment Advisor Act or RIA). Further, see attached sworn deposition testimony of Leventon where he testifies that Andrews Kurth provided legal services to HERA under a "Joint Defense Agreement". Moreover, see attached sworn trial testimony of Dondero where he testifies he performed work on behalf of HERA pursuant to a shared services agreement. I do not think I need to belabor this point further.

Your assertion that Highland's emails are not now and never were, HERA and ERA's property, while I will not quibble the details, as shown above and pursuant to the Settlement Agreement, they are clearly books and records "maintained on Highlands systems" and thus clearly need to be produced.

In light of the foregoing I am asking that Highland and its affiliates turn over the following within fourteen days:

- All original Word, Excel and PowerPoint documents concerning HERA. This request includes originally created documents and drafts, as well as modified or amended versions of the same.
- All email correspondence concerning HERA.
- All documents related to the transfer of HERA assets.
- All documents related to expenses of HERA assets.
- All email and documents concerning HERA assets, legal communications, tax issues, or unit holder communications.
- All email and documents by Highland in house legal team members, Highland outside counsel and HERA's outside legal counsel related to HERA
- All email and documents by and between HERA board members and with either in house or outside counsel or other service providers at Highland.

As previously requested, all of these requested documents, files and communications should include the corresponding metadata. I am happy to discuss with you what metadata should be included with the load file for the production. Finally, I recommend Highland utilize an outside vendor to collect and produce these requested documents, files and communications due to the sensitive nature of the information, as well as any potential for a conflict of interest among any existing Highland employees that are asked to participate in the collection and production efforts.

HERA has an absolute right to its books and records pursuant to the explicit terms of the Settlement Agreement and you (Highland) are in possession of those books and records. I am hopeful that you will agree to produce those books and records to us. Rest assured your continued refusal to comply with the Settlement Agreement will result in our seeking enforcement of same with the Bankruptcy Court. I look forward to your response.

Best regards,
Bo

Best regards,
Bo

Matthew W. Bobo
Law Office of Matthew Bobo, PLLC
4916 Camp Bowie Blvd.
Fort Worth, Texas 76107
Telephone: (817) 529-0774
Facsimile: (817) 698-9401
E-Mail: mbobo@mwblawyer.com

Note: Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such case, you should destroy this message, and notify us immediately. If you or your employer does not consent to Internet email messages of this kind, please advise us immediately. Opinions, conclusions and other information expressed in this message are not given or endorsed by this firm unless otherwise indicated by an authorized representative independent of this message. ***This correspondence is covered by the Electronic Communications Privacy Act, 18 U.S.C. § 2510-2521 and is legally privileged.***

EXHIBIT 5

Final Execution Copy

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is made and entered into by and between (i) Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), and (ii) Patrick Hagaman Daugherty ("Daugherty" and together with HCMLP, the "Parties," and individually as a "Party"). This Settlement provides for the treatment of certain claims asserted by Daugherty against the Debtor, and for the Parties to take certain other specified actions in settlement thereof.

RECITALS

WHEREAS, on October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, the Debtor's chapter 11 case (the "Bankruptcy") is pending in the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court");

WHEREAS, on February 2 and 3, 2021, the Court conducted a confirmation hearing with respect to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) [Docket No. 1808] (the "Plan");

WHEREAS, on February 8, 2021, the Court rendered an opinion from the bench in which it confirmed the Plan [Docket No. 1924];

WHEREAS, on February 22, 2021, the Court issued an order confirming the Plan [Docket No. 1943];

WHEREAS, on August 11, 2021, the Effective Date (as defined in the Plan) occurred [Docket No. 2700];

WHEREAS, Daugherty is a former employee and limited partner of the Debtor and has

Exhibit
H-5
Daugherty 1/29/2026 L.M.

served in other positions with affiliates and former affiliates of the Debtor;

WHEREAS, at the time of his resignation, Daugherty owned 19.1% of the preferred units of Highland Employee Retention Assets LLC ("HERA"), an employee deferred compensation vehicle managed by the Debtor and Highland ERA Management, LLC ("ERA") and contends that he owned or had the right to own all of the preferred units of HERA;

WHEREAS, prior to his resignation from HCMLP, Daugherty was awarded units of HERA, which vehicle owned interests in Restoration Capital Partners, LP ("RCP"), an HCMLP managed private equity fund, and other investments;

WHEREAS, in April 2012, the Debtor commenced an action against Daugherty in Texas state court (the "Texas Action"), and Daugherty subsequently asserted counterclaims for breach of contract and defamation, and third-party claims against HERA and others;

WHEREAS, after a three-week trial, the jury returned a verdict partially in favor of the Debtor, but Daugherty prevailed on his claims against the Debtor and James Dondero ("Dondero") for defamation with malice and a third-party claim against HERA and was awarded damages of $2.6 million against HERA, plus prejudgment and post-judgment interest at 5% (the "HERA Judgment");[1]

WHEREAS, in July 2017, after being unable to collect on the HERA Judgment, Daugherty commenced an action against the Debtor, Dondero, HERA, and ERA Management in the Delaware Chancery Court (the "Delaware Court"), in a case captioned *Daugherty v. Highland Capital Management, L.P., et al.*, C.A. No. 2017-0488-MTZ, for fraudulent transfer, promissory estoppel, unjust enrichment, indemnification, and fees on fees (the "Highland Delaware Case");

[1] The Debtor prevailed on its claims against Mr. Daugherty for breach of contract and breach of fiduciary duty for non-monetary damages and obtained an award of $2.8 million in attorney's fees. The HERA Judgment was affirmed on appeal on December 1, 2016.

WHEREAS, the Delaware Court in the Highland Delaware Case (i) found that the Dondero-related defendants improperly withheld dozens of documents in discovery on privilege grounds, and (ii) ruled that there was "a reasonable basis to believe that a fraud has been perpetrated" such that the Delaware Court applied the "crime-fraud exception" to the attorney-client privilege assertion, and such rulings have not been overturned;

WHEREAS, Daugherty asserts that such withholding of documents and the failure to search defendants' and their employees personal electronic devices for stored documents and texts as well as other emails and domain names such as sasmgt.com and gmail.com which were in their possession and control and to provide required discovery injured him by undermining his attempts to build an evidentiary record to support his claims against the Debtor and the other defendants in the Highland Delaware Case;

WHEREAS, on October 14, 2019, the Highland Delaware Case proceeded to trial and two days later, on October 16, 2019, before the completion of the trial and before the Delaware Court ruled on Daugherty's and the Debtor's cross-motions for summary judgment regarding indemnification and fees on fees, the Debtor filed for bankruptcy;

WHEREAS, on December 1, 2019, Daugherty filed a separate lawsuit in the Delaware Court, captioned *Daugherty v. Dondero, et al.*, C.A. No. 2019-0956-MTZ, against Dondero, HERA, ERA, Hunton Andrews Kurth LLP ("Andrews Kurth"), Marc Katz ("Katz"), Michael Hurst ("Hurst"), the Debtor's Chief Compliance Officer, the Debtor's then in-house counsel (Isaac Leventon ("Leventon")), and the Debtor's then general counsel (Scott Ellington ("Ellington")), for conspiracy to commit fraud, among other claims (the "HERA Delaware Case" and together with the Highland Delaware Case, the "Delaware Cases");

WHEREAS, on April 1, 2020, Daugherty filed a general, unsecured, non-priority claim

against the Debtor in the amount of at "least $37,483,876.59," and such claim was denoted by the Debtor's claims agent as Proof of Claim No. 67 ("Proof of Claim No. 67");

WHEREAS, on April 6, 2020, Daugherty filed a general, unsecured, non-priority claim against the Debtor in the amount of at "least $37,482,876.62" that superseded Proof of Claim No. 67 and that was denoted by the Debtor's claims agent as Proof of Claim No. 77 ("Proof of Claim No. 77");

WHEREAS, on August 31, 2020, the Debtor commenced an adversary proceeding against Daugherty by filing a complaint (the "Complaint") in which the Debtor: (1) objected to Proof of Claim No. 77 on various grounds (the "Claim Objection"), and (2) asserted a cause of action for the subordination of part of Daugherty's claim pursuant to section 510(b) of the Bankruptcy Code. Adv. Proc. No. 20-03107 (the "Adv. Proc.") [Adv. Docket No. 1] (the "Adversary Proceeding");

WHEREAS, on September 29, 2020, Daugherty filed his answer to the Complaint [Adv. Docket No. 8] (the "Answer");

WHEREAS, on September 24, 2020, Daugherty filed his *Motion to Confirm Status of Automatic Stay, or Alternatively to Modify Automatic Stay* [Docket No. 1099] (the "Stay Motion") pursuant to which he sought to sever the Debtor from the Highland Delaware Case and then consolidate the remaining claims in the Highland Delaware Case into the HERA Delaware Case and proceed with one case against the non-Debtor parties;[2]

WHEREAS, on October 23, 2020, Daugherty filed a motion seeking leave to amend his Proof of Claim No. 77 [Docket No. 1280] (the "POC Amendment Motion"). The amended proof

[2] On October 8, 2020, the Debtor commenced a second adversary proceeding against Daugherty (the "Second Adversary Proceeding"), seeking to enjoin him from prosecuting the Delaware Cases. Adv. Proc. 20-03128 ("2d Adv. Proc.") [2d Adv. Proc. Docket No. 1]. On January 29, 2021, the parties filed a Settlement that resolved the Second Adversary Proceeding, and the Second Adversary Proceeding was subsequently dismissed with prejudice. [2d Adv. Proc. Docket No. 12].

of claim attached to the POC Amendment Motion increased Daugherty's general, unsecured, non-priority claim against the Debtor to the amount of at "least $40,410,819.42" and sought to supersede Proof of Claim No. 67 and Proof of Claim No. 77;

WHEREAS, on October 23, 2020, Daugherty filed his *Motion for Temporary Allowance of Claim for Voting Purposes Pursuant to Bankruptcy Rule 3018 Motion*, seeking for his Claim to be temporarily allowed for voting purposes in this amount of $40,410,819.42 [Docket No. 1281] (the "3018 Motion");

WHEREAS, on November 3, 2020, the Court granted the Stay Motion [Docket No. 1327];

WHEREAS, the Debtor opposed the 3018 Motion, and after conducting an evidentiary hearing for the limited purpose of determining the 3018 Motion, the Court entered an order temporarily allowing Daugherty's Claim only for voting purposes in the amount of $9,134,019 [Docket No. 1474];

WHEREAS, on December 10, 2020, the Court entered an order [Docket No. 1533] granting the POC Amendment Motion, and Daugherty was permitted to file an amendment to his proof of claim. On December 23, 2020, Daugherty filed an amended proof of claim, designated by the Debtor's claim agent as Proof of Claim No. 205 ("Proof of Claim No. 205" or the "Daugherty Claim"). Proof of Claim No. 205 superseded Proof of Claim No. 77 and increased the amount of the Daugherty's Claim to $40,710,819.42;

WHEREAS, on November 30, 2020, Daugherty filed his Motion to Lift the Automatic Stay (the "Lift Stay Motion") [Docket No. 1491] seeking to lift the automatic stay to allow him to finish his trial in the Delaware Court and liquidate his claims. The Debtor opposed the Lift Stay Motion, and after a hearing was held on December 17, 2020, the Court denied the relief requested in the Lift Stay Motion [Docket No. 1612];

WHEREAS, except with respect to the Reserved Claim (as defined below), the Parties have agreed to settle and resolve all claims and disputes between them and their respective current affiliates, managed entities, and employees, including the Daugherty Claim, on the terms set forth in this Settlement:

AGREEMENT

NOW, THEREFORE, after good-faith, arms-length negotiations, and in consideration of the foregoing, it is hereby stipulated and agreed that:

1. Allowed Claims: In full satisfaction of the entirety of the Daugherty Claim against the Debtor and HCMLP Released Parties (defined below), excluding the Reserved Claim, Daugherty shall receive (a) an allowed general unsecured Class 8 claim in the amount of $8,250,000; (b) an allowed subordinated general unsecured Class 9 claim in the amount of $3,750,000; and (c) a one-time lump sum cash payment in the amount of $750,000 to be paid within 5 business days of Bankruptcy Court approval of this Settlement Agreement.

2. Recovery: The Debtor makes no representation or warranty as to the recovery on Class 8 or Class 9 claims under the Plan.

3. Observation Access: As soon as practicable following entry of an order of the Bankruptcy Court approving this Settlement, HCMLP shall use reasonable efforts to petition the Claimant Trust Oversight Board[3] to permit Daugherty to have access as an observer to meetings of the Claimant Trust Oversight Board, subject to policies, procedures, and agreements applicable to other observers of the Claimant Trust Oversight Board, including policies, procedures, and agreements related to confidentiality and common interest. Whether Daugherty will be granted observer access and any continuing observer access is and will remain at the sole discretion of the

[3] The Claimant Trust Oversight Board refers to the Oversight Board as defined in the August 11, 2021 Highland Claimant Trust Agreement establishing the Claimant Trust, as defined therein.

Claimant Trust Oversight Board.

4. RCP Track Record: HCMLP shall use reasonable efforts to provide Daugherty with data constituting the investment performance track record of RCP during Daugherty's tenure at HCMLP. Daugherty shall not be entitled to any compensation with respect to the performance of RCP. HCMLP makes no representations or warranties regarding such data and takes no responsibility with respect to the use of such data for any purposes.

5. Daugherty Releases: Except as specifically provided in this paragraph 5, and to the maximum extent permitted by applicable law, the Debtor, on behalf of itself and each of the HCMLP Entities and HCMLP Parties (as those terms are defined in paragraph 6 below), hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue Daugherty, his successors, affiliates, and assigns, (and in each such category to include their respective advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, and designees) (collectively, the "Daugherty Additional Release Parties" and together with Daugherty, the "Daugherty Released Parties"), in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, or the Delaware Cases, all existing as of the date hereof (collectively, the "HCMLP Released Claims"); provided, however, that such release shall not

apply with respect to any and all defenses that HCMLP or the HCMLP Entities may have to the Reserved Claim or the Reserve Motion (as those terms are defined herein) or Daugherty's obligations under this Settlement. For the avoidance of doubt, the HCMLP Released Claims include all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

6. HCMLP Releases: Except as specifically provided in this paragraph 6, and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Released Parties, hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, (a)(i) HCMLP; (ii) Strand Advisors Inc.; (iii) the Claimant Trust; (iv) the Claimant Trust Oversight Board; (v) the Highland Litigation Sub-Trust; (vi) the Highland Indemnity Trust; (vii) any entity of which greater than fifty percent of the voting ownership is held directly or indirectly by HCMLP as of the date hereof and any entity otherwise directly or indirectly controlled by HCMLP as of the date hereof,; and (viii) any entity managed by either HCMLP or a direct or indirect subsidiary of HCMLP, including Highland Restoration Capital Partners, L.P., Highland Restoration Capital Partners Offshore, L.P., Highland Restoration Capital Master, L.P. (and all of their respective general partners, feeder funds, managers, and affiliates) (the foregoing (a)(i) through (a)(viii) the "HCMLP Entities"), and (b) with respect to each such HCMLP Entity, such HCMLP Entity's respective current (meaning employed in their respective roles as of the date hereof) advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders (but not the shareholders of Strand Advisors Inc.), agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "HCMLP Parties," and together with the

HCMLP Entities, the "HCMLP Released Parties"),[4] in each case acting in such capacity, for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, or the Highland Delaware Case (collectively, the "Daugherty Released Claims"); provided, however, that such release shall not apply with respect to the Reserved Claim or the Reserve Motion (as those terms are defined in paragraph 9 below) or HCMLP's obligations under this Settlement. This release expressly applies to all current employees of HCMLP as the Reorganized Debtor (as defined in the Plan), in their capacities as such. For the avoidance of doubt, the Daugherty Released Claims includes all claims or causes of action and facts, known or unknown, that exist as of the date hereof but do not include or apply to claims or causes of action based on facts occurring after the date hereof.

7. Reservation of Daugherty Rights: Notwithstanding anything contained herein to the contrary, the term HCMLP Released Parties shall not include (a) NexPoint Advisors, L.P. (or any of its subsidiaries and employees, advisors, or agents), (b) the Charitable Donor Advised Fund, L.P. (and any of its subsidiaries, including CLO Holdco, Ltd., and any of their respective employees, advisors, or agents), (c) NexBank, SSB (or any of its subsidiaries, employees, advisors, or agents), (d) James Dondero or any trust in which Dondero or any of his family members are a trustee or beneficiary (or any trustee acting for such trust), including but not limited to Hunter

[4] The Daugherty Additional Released Parties and the HCMLP Released Parties are collectively referred to as the "Additional Released Parties."

Mountain Investment Trust, The Get Good Trust, Dugaboy Investment Trust, SLHC Investment Trust, (e) HERA (subject to paragraph 8 below), (f) ERA (subject to paragraph 8 below), (g) Grant Scott, (h) Mark Okada and any trust in which Mark Okada or any of his family members are a beneficiary (or any trustee acting for such trust in their respective capacities), (i) Ellington, (j) Leventon, (k) Katz, (l) Hurst, (m) Andrews Kurth, or (m) any other former employee (as of the date hereof) of the HCMLP Released Parties.

8. HERA and ERA: The Parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims that may exist against persons or entities not released at or prior to the date hereof, and no claims against the HCMLP Released Parties. The allowed claims provided in paragraph 1 hereof are expressly agreed to in order to satisfy any liability the Debtor may have in connection with the HERA Judgment. To facilitate recovery of such potential claims – which expressly excludes any and all claims by or in the name of HERA and ERA against any of the HCMLP Released Parties -- HCMLP will transfer its interests in HERA and ERA to Daugherty. Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system. Such transfer will be without representation or warranty of any type; including, for the avoidance of doubt, without any representation or warranty as to the merits of the potential claims or the efficacy of the transfer of the potential claims. Such transfer will be without any liability or material cost to HCMLP or its affiliates or the other HCMLP Released Parties, including any liability in respect of any assets that HERA or ERA ever actually or allegedly owned, possessed, or controlled and that were actually or allegedly transferred, conveyed, sold, written off or otherwise disposed of (in any such case, a "Disposition"). In connection with the transfer, HERA and ERA have expressly released the HCMLP Released Parties from any and all claims, including any claims actions or remedies related

to any Disposition, either of them may have against any HCMLP Released Party now or in the future (the "HERA and ERA Release"). Daugherty on behalf of himself and each of the Daugherty Released Parties acknowledges, accepts, and agrees not to challenge the HERA and ERA Release or support any challenge thereto. A copy of the HERA and ERA Release is annexed hereto as **Exhibit A**. Daugherty acknowledges and agrees that even though HERA and ERA are not HCMLP Released Parties under this Agreement, Daugherty and all Daugherty Released Parties shall (a) not seek to hold any HCMLP Released Party liable for any action or inaction taken by or on behalf of HERA or ERA, including through any derivative, veil-piercing or similar cause of action or remedy; and (b) not seek to recover damages or obtain any form of relief against any HCMLP Released Party on account of any action or inaction taken by or on behalf of HERA or ERA, including through any veil piercing or similar cause of action or remedy. If, for any reason, HERA or ERA, or any person or entity acting on their behalf, recovers anything from any HCMLP Released Party, Daugherty shall promptly turnover to HCMLP or its successors and assigns any amounts actually recovered by Daugherty or any Daugherty Released Party, from HERA or ERA arising from, related to, or derived from any claim that HERA or ERA or any person or entity acting on their behalf has or may have against any HCMLP Released Party. HCMLP will provide reasonable assistance to Daugherty to assist with the preparation of any required HERA K-1s for 2021, but any requirement to provide such K-1s will be the obligation, if any, of HERA.

9. IRS Compensation Claim: In section 4(ii) of the Addendum to Proof of Claim No. 205, Daugherty contends that he has a contingent, unliquidated claim against the Debtor arising out of a 2008/2009 compensation letter (the "Reserved Claim"), which claim is also related to an audit/dispute between the Debtor and the Internal Revenue Service (the "IRS") (the dispute between the Debtor and IRS being referred to herein as the "IRS Audit Dispute"). The Debtor

disputes the validity and amount of the Reserved Claim. Daugherty shall retain the Reserved Claim solely against the Debtor and not against any other HCMLP Released Party, and the Debtor reserves the right to assert any and all defenses thereto. Any litigation by and between the Debtor and Daugherty concerning the validity and amount of the Reserved Claim shall be stayed until the IRS makes a final determination with respect to the IRS Audit Dispute; provided, however, that Daugherty may file a motion with the Bankruptcy Court to have the Reserved Claim estimated for purposes of establishing a reserve as a "Disputed Claim" under the Debtor's Plan (the "Reserve Motion"), and the Debtor (and any successor) reserves the right to assert any and all defenses thereto. Notwithstanding the foregoing, Daugherty may address any personal claim or personal liability to the IRS as a result of the IRS Audit Dispute, including settlement of any such claims; provided, however, Daugherty agrees to forego settling or addressing any claims with the IRS without the written consent of the Debtor until March 31, 2022.

10. Current HCMLP Employees: The HCMLP Parties set forth on **Appendix A** hereto are currently employed by the Debtor are HCMLP Released Parties. By executing a copy of this Settlement and delivering it to Daugherty, each of the persons on Appendix A agrees not to sue, attempt to sue, or threaten or work with or assist any entity or person to sue, attempt to sue, or threaten any Daugherty Released Party on or in connection with any claim or cause of action arising prior to the date of this Settlement.

11. Dismissal and Motions in Other Actions. Within ten business days after approval of this Settlement by the Bankruptcy Court, the Parties shall take all steps necessary (a) to dismiss with prejudice (i) the Highland Delaware Case, as against the Debtor and any HCMLP Released Party, and (ii) the HERA Delaware Case, as against every HCMLP Released Party, (b) to file an agreed motion and proposed order to partially vacate the final judgment entered against Daugherty

in the Texas Action, (c) withdraw HCMLP's objection to the Daugherty motion to recuse in the Texas Action, and (d) to dismiss the Adversary Proceeding with prejudice. The parties shall file the foregoing motions and withdrawals substantially in the form of the documents annexed hereto as **Exhibit B**.

12. Additional Third Party Claims Discovery: The Debtor (a) shall accept service of any subpoenas via email served by Daugherty in connection with the Delaware Cases on behalf of itself, the HCMLP Entities, the HCMLP Parties (but only in their capacity as employees of HCMLP); and (b) acknowledge and consent to the jurisdiction of the Delaware Chancery Court for purposes of enforcing any such subpoenas, subject in all respects to the rights that the HCMLP Entities and HCMLP Parties to defend the requested production, if any.

13. Settlement of Third Party Claims: Daugherty shall not settle any claims or causes of action against any current or former director, officer, employee, agent or representative of HCMLP or Strand Advisors Inc. (collectively, the "Potentially Indemnified Parties") to the extent such claims have been brought or could have been brought against any Potentially Indemnified Parties, if any such settlement designates, defines or describes the settled claims as arising out of or relating to simple negligence or as having otherwise been within the scope of employment of the Potentially Indemnified Party.

14. Claims Register: As soon as practicable after the Settlement Effective Date, HCMLP shall instruct the claims agent in the Debtor's chapter 11 case to adjust the claims register in accordance with this Settlement.

15. Daugherty Representations: Daugherty represents and warrants to each of the HCMLP Released Parties that (a) he has full authority to release the Daugherty Released Claims and has not sold, transferred, or assigned any Daugherty Released Claim to any other person or

entity and that (b) no person or entity other than Daugherty has been, is, or will be authorized to bring, pursue, or enforce any Daugherty Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) Daugherty.

16. HCMLP Representations: Each of HCMLP and each HCMLP Released Party who has signed this Settlement represents and warrants to Daugherty that (a) he, she or it has not sold, transferred, pledged, assigned or hypothecated any HCMLP Released Claim to any other person or entity and (b) he, she, or it has full authority to release any HCMLP Released Claims that such HCMLP Released Party personally has against Daugherty.

17. Additional HCMLP Representations: HCMLP represents and warrants that it is releasing the HCMLP Released Claims on behalf of the HCMLP Entities to the maximum extent permitted by any contractual or other legal rights HCMLP possesses. To the extent any of the HCMLP Entities dispute HCMLP's right to release the HCMLP Released Claims on behalf of any of the HCMLP Entities, HCMLP shall use commercially reasonable efforts to support Daugherty's position, if any, that such claims were released herein. For the avoidance of doubt, HCMLP will have no obligations to assist Daugherty under this paragraph if HCMLP has been advised by external counsel that such assistance could subject HCMLP to liability to any third party or if such assistance would require HCMLP to expend material amounts of time or money. HCMLP shall not argue in any forum that the non-signatory status of any of the HCMLP Entities to this Settlement shall in any way affect the enforceability of this Settlement vis-à-vis any of the HCMLP Entities. The Parties agree that all of the HCMLP Entities are intended third-party beneficiaries of this Release.

18. HCMLP Covenant: HCMLP and the HCMLP Entities covenant and agree that they will not pursue or seek to enforce any injunctions entered in the Texas Action against

Daugherty.

19. Entire Agreement; Modification: This Settlement contains the entire agreement between the Parties as to its subject matter and supersedes and replaces any and all prior agreements and undertakings between the Parties. This Settlement may not be modified other than by a signed writing executed by the Parties.

20. Bankruptcy Court Approval: Notwithstanding anything to the contrary contained herein, the effectiveness of HCMLP and the Claimant Trust's execution of this Settlement shall be subject to entry of an order of the Bankruptcy Court approving this Settlement. HCMLP shall take all steps necessary to file with the Bankruptcy Court a motion for an order approving this Settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 and section 363 of the Bankruptcy Code (the "Motion"). The parties agree to cooperate in the preparation and prosecution of the Motion which shall be filed no later than 5 business day after execution of this Settlement, unless such time is extended by mutual agreement.

21. Counterparts: This Settlement may be executed in counterparts (including facsimile and electronic transmission counterparts), each of which will be deemed an original but all of which together constitute one and the same instrument and shall be effective against a Party or Additional Released Party upon approval of the Settlement by the Bankruptcy Court.

22. Governing Law; Jurisdiction: This Settlement will be exclusively governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles, and all claims relating to or arising out of this Settlement, or the breach thereof, whether sounding in contract, tort, or otherwise, will likewise be governed by the laws of the State of Delaware, excluding Delaware's conflicts of law principles. The Bankruptcy Court will retain exclusive jurisdiction over all disputes relating to this Settlement.

23. Headings: Paragraph headings included herein are for convenience and shall have no impact whatsoever on the meaning or interpretation of any part of this Settlement.

[Remainder of page intentionally left blank]

In witness whereof, the parties hereto, intending to be legally bound, have executed this Settlement as of the day and year set forth below:

Dated: 11-21-21

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND CLAIMANT TRUST

By: _____
Name: James P. Seery, Jr.
Title: Claimant Trustee

Dated: 11/22/21

PATRICK HAGAMAN DAUGHERTY

By: _____
Name: Patrick Hagaman Daugherty

EXHIBIT A

HERA RELEASE AGREEMENT

This HERA Release Agreement ("HERA Release Agreement") is entered into as of November 21, 2021 by and among Highland Capital Management, L.P., as reorganized debtor ("HCMLP" or the "Debtor"), Patrick Hagaman Daugherty ("Daugherty"), Highland Employee Retention Assets, LLC ("HERA") and Highland ERA Management, LLC ("ERA" and together with HCMLP, and HERA, the "Parties," and individually as a "Party").

WHEREAS, reference is hereby made to the Settlement Agreement (the "Settlement") of even date herewith and attached hereto made and entered into by and between the Debtor, the Highland Claimant Trust, and Daugherty.

WHEREAS, the Settlement settles all of Daugherty's claims against the HCMLP Released Parties, including all claims against the HCMLP Released Parties relating to transfers of assets from HERA.

WHEREAS, the Settlement includes, among other things, the transfer by HCMLP to Daugherty of HCMLP's interests in HERA and ERA.

WHEREAS, under the Settlement such transfer is being made without any liability to any of the HCMLP Released Parties of any type and is conditional on the full release of, and covenant not to sue, each of the HCMLP Released Parties, by and from HERA, ERA, Daugherty and the Daugherty Released Parties.

WHEREAS, neither HERA nor ERA filed proofs of claim in the Bankrupty and have no claims against HCMLP.

WHEREAS, out of an abundance of caution to confirm that HERA, ERA, Daugherty, and the Daugherty Released Parties have no claims against the HCMLP Released Parties, this HERA Release Agreement is being entered into contemporaneously with the Settlement and constitutes an

essential part thereof.

WHEREAS, capitalized terms used herein but not otherwise defined herein have the respective meanings set forth in the Settlement.

NOW, THEREFORE, in consideration of the entry into of the Settlement, the transfer of the equity interests in HERA and ERA to Daugherty in accordance with the Settlement, and for other good and valuable consideration, including the provisions set forth herein, the parties hereto further agree as follows:

1. Upon entry of an order of the Bankruptcy Court approving this Settlement and to the maximum extent permitted by law, Daugherty, on behalf of himself and each of the Daugherty Additional Release Parties, together with each of HERA and ERA (Daugherty, the Daugherty Additional Release Parties, HERA and ERA shall be collectively referred to herein as the "HERA Releasing Parties"), each hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, any of the HCMLP Released Parties for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including without limitation those which were or could have been asserted in the Bankruptcy, including the Adversary Proceeding, the Texas Action, the Daugherty Claim, Highland Delaware Case, or the HERA Delaware Case (collectively, "Claims"), in each case that in any way arise from or otherwise in any way relate to HERA or ERA, including, without limitation, any actual or potential claims, whether known or unknown, in any way related to or

arising out of the formation, management, operation or assets of HERA, ERA or any of their respective predecessors or successors, including the transfer of any assets to or from HERA or ERA, it being understood that all remaining assets of HERA have been transferred to HCMLP prior to the date hereof, and in addition to the releases set forth above, each of the HERA Releasing Parties irrevocably waives and releases and covenants not to sue with respect to any Claims against any of the HCMLP Released Parties in any way related to any such transfers or assets, whether *in personam* with respect to the HCMLP Released Parties or *in rem* with respect to any of their assets (collectively, the "HERA Released Claims") or any other Disposition.

2. This Release constitutes a part of, and is supplemental to, the provisions of the Settlement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In witness whereof, the parties hereto, intending to be legally bound, have executed this HERA Release Agreement as of the date set forth above.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

PATRICK HAGAMAN DAUGHERTY

By: _____
Name: Patrick Hagaman Daugherty

HIGHLAND EMPLOYEE RETENTION ASSETS, LLC

By: Highland ERA Management, LLC, its manager

By: Highland Capital Management, LP

By: _____
Name: James P. Seery, Jr.
Title: Chief Executive Officer

HIGHLAND ERA MANAGEMENT, LLC

By: _____
Name: James P. Seery, Jr.
Title: Authorized Signatory

EXHIBIT B

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
v.	§	
PATRICK DAUGHERTY,	§	
Defendant and Counter-Plaintiff,	§	**DALLAS COUNTY, TEXAS**
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
Third-Party Defendants.	§	
	§	**68th JUDICIAL DISTRICT**

AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED JULY 14, 2014

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Highland Capital Management, LP ("Highland") and Defendant Patrick Daugherty ("Daugherty" and together with Highland, the "Parties") file this *Agreed Motion to Partially Vacate the Final Judgment dated July 14, 2014* (the "Motion"), and respectfully show the following:

1. On July 14, 2014, this Court entered a *Final Judgment* (the "Judgment") that, among other things, granted Highland's motion for injunctive relief against Daugherty.

2. The Judgment was amended on March 23, and June 23, 2017.

3. On October 16, 2019, filed a petition under chapter 11 in the United States Bankruptcy Court for the District of Delaware ("Highland's Bankruptcy Case"). On October 24,

2019, as a result of the commencement of Highland's Bankruptcy Case, the Supreme Court of Texas issued an order abating a related case that Daugherty had brought in that court, Case No. 19-0758. Highland's Bankruptcy Case was subsequently transferred to the United States Bankruptcy Court for the Northern District of Texas.

4. Daugherty asserted certain claims against Highland in Highland's Bankruptcy Case. The Parties have fully and finally resolved their disputes pursuant to a settlement agreement (the "Settlement Agreement") reached in the Highland Bankruptcy Case pursuant to which, among other things, (a) all of Daugherty's known and unknown claims against each of the Highland Released Parties (as those terms are defined in the Settlement Agreement) are resolved, and (b) this Motion seeking the *vacatur* of certain provisions of the Judgment specifically set forth below is being filed.

5. Highland and Daugherty hereby agree and stipulate that the Court has plenary power to issue an order granting this Motion because the Court retained authority to enforce the permanent injunction rendered in the Judgment, and that changed circumstances have now arisen such that the Court should dissolve the permanent injunction. Highland and Daugherty further agree and stipulate that this Motion shall be treated as an agreement of the Parties pursuant to Texas Rule of Civil Procedure 11, and is fully enforceable. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction.").

6. Highland and Daugherty agree that the following portions of the Judgment shall be vacated pursuant to their settlement in the Highland Bankruptcy:

a. The second full paragraph on Page 2 of the Judgment, which begins "The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty . . .";

b. The permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins "It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .";

c. The fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney's fees, as well as post-judgment interest on that award[1]; and

d. The jury's answers to Questions 1, 2, 5, 6, 9 and 12 in the Verdict, which was attached as Exhibit 1 to the Judgment.

7. Highland and Daugherty further agree that, as a result of the vacation of the permanent injunction in the Judgment, Highland hereby withdraws any pending motions to show cause or motions for contempt against Daugherty that allege Daugherty violated or is violating the permanent injunction. Highland also agrees not to seek to enforce the permanent injunction in any manner in the future.

[1] Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty have agreed to vacate the monetary judgment awarded to Highland, Daugherty waives and relinquishes any right or claim to recover any amount previously paid in satisfaction of the Judgment and Highland shall not be required to reimburse Daugherty for his prior satisfaction of the monetary judgment. To the extent Daugherty is entitled to indemnification for any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland's business, including the liabilities Daugherty allegedly incurred in connection with this action and the Judgment, such indemnification claims have been fully and finally satisfied and resolved under the Settlement Agreement.

8. Concurrent with the filing of this Motion, Daugherty will file a motion to dismiss his as-yet unfiled petition for review pending before the Supreme Court of Texas under Case No. 19-0758.

9. Highland and Daugherty further agree that any portions of the Judgment that are not specifically vacated pursuant to this Motion shall remain in full force and effect.

WHEREFORE, Highland and Daugherty pray that the Court grant this Motion in its entirety, and for all further relief, at law or in equity, the Court deems necessary.

Respectfully submitted,

GRAY REED & McGRAW LLP

By: */s/ Sonya D. Reddy*

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ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted by electronic transmission to all counsel of record on February ___, 2021, as follows:

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Attorneys for Third-Party Defendants HERA, Patrick Boyce, and William Britain

/s/ Sonya D. Reddy
SONYA D. REDDY

APPENDIX A (signatures to follow)

1. James P. Seery, Jr.
2. Cameron Baynard
3. Nathan Burns
4. Timothy Cournoyer
5. Naomi Chisum
6. Stetson Clark
7. Sean Fox
8. Matthew Gray
9. Kristin Hendrix
10. David Klos
11. Vishal Patel
12. Thomas Surgent
13. Michael Throckmorton

EXHIBIT 6

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Counsel to Patrick Daugherty

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. Proc. No. 25-03055-sgj
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	
	§	

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Exhibit
H-6
Daugherty 1/29/2026 L.M.

PATRICK DAUGHERTY'S AMENDED ANSWERS TO HIGHLAND CAPITAL MANAGEMENT, L.P.'S REQUESTS FOR ADMISSION

TO: Plaintiff/Counter-Defendant, Highland Capital Management, L.P., by and through its attorneys of record, Jeffrey N. Pomerantz, John A. Morris, Gregory V. Demo, and Hayley R. Winograd, PACHULSKI STANG ZIEHL & JONES LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067; and Melissa S. Hayward and Zachery Z. Annable, HAYWARD PLLC, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231.

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and Rule 7034 of the Federal Bankruptcy Rules of Procedure, and based on the parties' meet and confer process concerning discovery disputes, Patrick Daugherty ("Daugherty") hereby makes and serves his Amended Answers to certain of Highland Capital Management, L.P.'s Requests for Admission ("Amended Answers"). Specifically, Daugherty hereby provides an Amended Answer to Request for Admission No. 5.

ANSWERS TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that You have not communicated with the IRS for the purpose of resolving the dispute Concerning the 2008 Refund or Your 2008 K-1.

ANSWER: Deny.

REQUEST FOR ADMISSION NO. 2:

Admit that before October 10, 2022, Highland informed You, in substance, of its contention that it had fulfilled its obligations under the Settlement Agreement, including its obligation to provide Books and Records.

ANSWER: Daugherty lacks sufficient information to admit or deny this request, therefore, deny. Daugherty has made a reasonable inquiry and has been unable to locate any documents or communications that are dated before October 10, 2022, in which Highland informed Daugherty, in substance, of its contention that it had fulfilled its obligations under the Settlement Agreement, including its obligation to provide Books and Records. Further, Daugherty does not recall any verbal communication from anyone on behalf of Highland before October 10, 2022, that made such a contention. If Plaintiff has a communication in its possession dated before October 10,

2022, wherein Plaintiff contends it fulfilled its obligations, Daugherty can review and will amend his answer accordingly.

REQUEST FOR ADMISSION NO. 3:

Admit that before October 10, 2022, Highland informed You, in substance, that it would not produce any additional Books and Records.

ANSWER: Deny.

REQUEST FOR ADMISSION NO. 4:

Admit that in 2025, You authorized your counsel to offer Highland a general release in exchange for $20 million.

ANSWER: Daugherty objects to this request as seeking information not relevant to the claims or defenses in this adversary proceeding. Fed. R. Civ. P. 26(b)(1). Plaintiff's lawsuit is focused solely on Daugherty's claim in the underlying bankruptcy case, which is premised entirely on the 2008 Refund and related tax issues. Daugherty's counterclaim is based on Plaintiff's breach of the Settlement Agreement for failing to produce HERA and ERA's books and records. Daugherty further objects because the request as written seeks an answer implicating attorney-client privilege.

REQUEST FOR ADMISSION NO. 5:

Admit that in 2025, Your counsel offered Highland a general release in exchange for $20 million.

ANSWER: Daugherty objects that this request seeks information that is not relevant to the claims or defenses asserted in this adversary proceeding. Plaintiff's lawsuit is focused solely on Daugherty's claim in the underlying bankruptcy case, which is premised entirely on the 2008 Refund and related tax issues. Daugherty's counterclaim is based on Plaintiff's breach of the Settlement Agreement for failing to produce HERA and ERA's books and records. Daugherty further objects that this request seeks information concerning to settlement communications or offers made pursuant to Federal Rule of Evidence 408, Daugherty objects to the production or use of same in this proceeding.

AMENDED ANSWER: Daugherty objects that this request seeks information that is not relevant to the claims or defenses asserted in this adversary proceeding. Plaintiff's lawsuit is focused solely on Daugherty's claim in the underlying bankruptcy case, which is premised entirely on the 2008 Refund and related tax issues. Daugherty's counterclaim is based on Plaintiff's breach of the Settlement Agreement for failing to produce HERA and ERA's books and records. Daugherty further objects that this request seeks information concerning to

settlement communications or offers made pursuant to Federal Rule of Evidence 408, Daugherty objects to the production or use of same in this proceeding. Daugherty admits that in response to an invitation from Highland's counsel for a demand from Daugherty, Daugherty opened negotiations by demanding $20 million in exchange for providing Highland and its representatives with a general release of all claims that Daugherty had or might have.

REQUEST FOR ADMISSION NO. 6:

Admit that since January 1, 2021, you recorded at least one conversation with a Highland employee, officer, agent, or representative without his or her knowledge or consent.

ANSWER: Daughety objects that this request seeks information that is not relevant to this adversary proceeding. Fed. R. Civ. P. 26(b)(1). Plaintiff's lawsuit is focused solely on Daugherty's claim in the underlying bankruptcy case, which is premised entirely on the 2008 Refund and related tax issues. Daugherty's counterclaim is based on Plaintiff's breach of the Settlement Agreement for failing to produce HERA and ERA's books and records. This request has no bearing on either of those claims, and Plaintiff cannot use discovery for the sole purpose of developing new claims. *See* Fed. R. Civ. P. 26(b)(1), Advisory Committee Note (2000) ("The court…has the authority to confine discovery to the claims and defenses asserted in the pleadings, and…the parties…have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings.").

REQUEST FOR ADMISSION NO. 7:

Admit that You resigned from all positions at Highland prior to December 31, 2011.

ANSWER: Admit.

REQUEST FOR ADMISSION NO. 8:

Admit that You never executed a separation agreement and release substantially in the form of Exhibit A to the Amended Employment Agreement.

ANSWER: Daugherty objects to this request as misleading and assuming facts not in evidence, namely that Highland presented Daugherty with a separation and release agreement in the form of Exhibit A to execute. Daugherty admits he did not execute a separation agreement and release substantially in the form of Exhibit A to the Amended Employment Agreement since Highland never presented it to him.

GRAY REED

By: */s/ Andrew K. York*
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drayshell@grayreed.com

Counsel to Patrick Daugherty

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answers was served, via email, on counsel for Highland Capital Management, L.P., on this 12th day of December, 2025.

/s/ Andrew K. York
ANDREW K. YORK

EXHIBIT 7

Jason S. Brookner (Texas Bar No. 24033684)
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Counsel to Patrick Daugherty

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,[1]	§	Case No. 19-34054-sgj11
	§	
Reorganized Debtor.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. Proc. No. 25-03055-sgj
	§	
PATRICK HAGAMAN DAUGHERTY,	§	
	§	
Defendant.	§	
	§	

PATRICK DAUGHERTY'S AMENDED ANSWERS TO

[1] Highland's last four digits of its taxpayer identification number are (8357). The headquarters and service address for Highland is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

Exhibit
H-7
Daugherty 1/29/2026 L.M.

HIGHLAND CAPITAL MANAGEMENT, L.P.'S INTERROGATORIES

TO: Plaintiff/Counter-Defendant, Highland Capital Management, L.P., by and through its attorneys of record, Jeffrey N. Pomerantz, John A. Morris, Gregory V. Demo, and Hayley R. Winograd, PACHULSKI STANG ZIEHL & JONES LLP, 10100 Santa Monica Blvd., 13th Floor, Los Angeles, CA 90067; and Melissa S. Hayward and Zachery Z. Annable, HAYWARD PLLC, 10501 N. Central Expressway, Suite 106, Dallas, Texas 75231.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Rule 7034 of the Federal Bankruptcy Rules of Procedure, and following the parties' meet and confer process, Patrick Daugherty ("Daugherty") hereby makes and serves his Amended Answers to certain of Highland Capital Management, L.P.'s Interrogatories ("Amended Answers"). Specifically, Daugherty is providing Amended Answers to Interrogatory Nos. 1-3 and 5.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1:

If You deny RFA No. 1, identify the date(s) you communicated with the IRS concerning the 2008 Refund or the 2008 K-1 or the 2008 Audit.

ANSWER: Daugherty does not recall the specific dates that he affirmatively communicated directly with the IRS. Daugherty is investigating the dates his accounting firm affirmatively communicated with the IRS and will supplement his answer to this Interrogatory with that information if he is able to obtain it.

AMENDED ANSWER: After further investigation, Daugherty is not able to recall or determine the specific dates upon which he and his accounting firm communicated with the IRS. Daugherty's accounting firm filed the Form 1045 Refund request on or about April 2009. Daugherty recalls two instances on or about November 2024 and on or about April 2018 where the IRS requested and he and/or his accounting firm provided information with regard to matters concerning the 2008 Tax Refund audit.

INTERROGATORY NO. 2:

Identify (a) the amount of the 2008 Refund You received pursuant to the Compensation Statement and (b) the date you received it.

ANSWER: Daugherty answers that he received the refund sometime in 2009 but does not recall the exact date. Plaintiff should be in possession of an email from Patrick Boyce to Daugherty in 2009 in which Mr. Boyce, on behalf of Plaintiff, congratulated Daugherty on his "bonus." That

email will provide the closest approximate date to when Daugherty received the refund. Daugherty no longer has access to this email. As to the amount, Daugherty will supplement upon review of his relevant tax return.

AMENDED ANSWER: [redacted]

INTERROGATORY NO. 3:

If You elected to use the 2008 Refund to satisfy any other then-current or then-future obligations to the IRS, identify (a) the amount of the 2008 Refund that was used to offset such obligations and (b) the date(s) that such offsets occurred.

ANSWER: Daugherty objects that the term "obligations" is vague. Daugherty did not have any pre-existing payment obligations to the IRS from previous years' tax returns at the time he filed his 2008 tax year return. Daugherty also did not use the 2008 Refund to satisfy any payment obligations to the IRS that arose in any subsequent tax year.

AMENDED ANSWER: Daugherty objects that the term "obligations" is vague. Daugherty's 2008 Refund amount was net of [redacted] that Daugherty already paid the IRS in in 2008 for the 2007 tax year.

INTERROGATORY NO. 4:

Identify any Books and Records that You contend Highland has failed to provide in accordance with the Settlement Agreement.

ANSWER: Daugherty objects that this Interrogatory is overbroad, not proportionate to the needs of this adversary proceeding, and requires Daugherty to marshal his evidence. This Interrogatory literally requires Daugherty to identify thousands and thousands of documents and communications that constitute HERA and ERA books and records that have not been provided by Plaintiff to Daugherty. Daugherty answers that Plaintiff has significant information of HERA and ERA that Plaintiff was obligated to produce pursuant to the Settlement Agreement. Plaintiff has extensive email communications regarding HERA and ERA that it previously failed to provide, as well as invoices from law firms (such as Hunton Andrews Kurth LLP, Gruber Hurst Elrod Johansen Hail Shank LLP, Lynn Pinker Hurst Schwegmann LLP, DLA Piper, Abrams and Bailess LLP, and others) and other service providers for work that was expensed to HERA and ERA. Lastly, there are a myriad of documents related to HERA that Plaintiff provided in discovery in its litigation with Daugherty through 2013, but that Plaintiff failed to provide on an updated basis through 2022. All of these documents and communications, as well as similar documents and communications, are in the sole possession of Plaintiff and must be produced. Pursuant to Federal Rule of Civil Procedure 33(d), Daugherty will separately produce to Plaintiff examples of such records that Daugherty has been able to obtain from other sources.

INTERROGATORY NO. 5:

Identify each category of damages claimed by You, including the amount of damages and the methodology utilized for calculating such damages. *See* FED. R. CIV. P. 26 (a)(1)(A)(ii).

ANSWER: Daugherty answers that any actual damages related to Plaintiff's breach of the books and records provision of the Settlement Agreement are contingent upon future events. As such,

those damages are not yet quantifiable. Daugherty also seeks relief in the form of specific performance and recovery of his attorneys' fees for Plaintiff's breach of the Settlement Agreement. The amount of methodology of the attorneys' fees in this case will be provided through expert testimony. Pursuant to the Order Approving Stipulated Scheduling Order [Doc. No. 37], Daugherty will disclose information concerning his testifying experts on or before February 13, 2026.

AMENDED ANSWER: Pursuant to Fed. R. Civ. P. 33(d), Daugherty refers Highland to Documents produced concurrently herewith at Bates PDADV_006886-PDADV_006905 that are redacted attorney's fee invoices from Daugherty's counsel relating to his counterclaim for attorney's fees through the end of October 2025. Daugherty will supplement any additional redacted invoices that also contain time entries that Daugherty will seek in connection with his counterclaim. With respect to Daugherty's other damage claim, any actual damages related to Highland's breach of the books and records provision of the Settlement Agreement are contingent on the outcome of the *HERA v. Dondero et al.* lawsuit. In the event that the HERA v. Dondero et al. lawsuit were dismissed or was otherwise lost due to books and records that Highland failed to produce to Daugherty under the Settlement Agreement, Daugherty would seek as damages based on his applicable ownership interest in HERA, of the damages sought by HERA in that lawsuit. Daugherty also seeks relief in the form of specific performance on his counterclaim.

INTERROGATORY NO. 6:

For each conversation with a current or former Highland employee, officer, agent, or representative that You recorded without his or her knowledge or consent, identify (a) the name of the person whose voice was recorded, (b) the date of the recording, (c) the method of recordation, and (d) the length of each conversation.

ANSWER: Daugherty objects to this interrogatory because it seeks information not relevant to the immediate lawsuit. Fed. R. Civ. P. 26(b)(1). Plaintiff's lawsuit is focused solely on Daugherty's claim in the underlying bankruptcy case, which is premised entirely on the 2008 Refund and related tax issues. Daugherty's counterclaim is based on Plaintiff's breach of the Settlement Agreement for failing to produce HERA and ERA's books and records. This interrogatory has no bearing on either of those claims, and Plaintiff cannot use discovery for the sole purpose of developing new claims. *See* Fed. R. Civ. P. 26(b)(1), Advisory Committee Note (2000) ("The court…has the authority to confine discovery to the claims and defenses asserted in the pleadings, and…the parties…have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings.")

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By: */s/ Andrew K. York*

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Counsel to Patrick Daugherty

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answers was served, via email, on counsel for Highland Capital Management, L.P., on this 12th day of December, 2025.

/s/ Andrew K. York
ANDREW K. YORK

EXHIBIT 8

SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF HIGHLAND CAPITAL MANAGEMENT, L.P.

TABLE OF CONTENTS

		Page
ARTICLE 1	GENERAL	2
1.1	Continuation	2
1.2	Name	2
1.3	Purpose	2
1.4	Term	2
1.5	Partnership Offices; Addresses of Partners	2
ARTICLE 2	DEFINITIONS	3
2.1	Definitions	3
2.2.	Other Definitions	6
ARTICLE 3	FINANCIAL MATTERS	6
3.1	Capital Contributions	6
3.2	Allocations of Profits and Losses	8
3.3.	Allocations on Transfers	8
3.4.	Special Allocations	8
3.5.	Curative Allocations	8
3.6.	Allocations of Built-in Items	8
3.7	Capital Accounts	8
3.8	Distributive Share for Tax Purposes	8
3.9	Distributions	8
3.10	Compensation and Reimbursement of General Partner	8
3.11	Books, Records, Accounting, and Reports	8
3.12	Tax Matters	8
ARTICLE 4	RIGHTS AND OBLIGATIONS OF PARTNERS	8
4.1	Rights and Obligations of the General Partner	8
4.2	Rights and Obligations of Limited Partners	8
4.3	Transfer of Partnership Interests	8
4.4	Issuances of Partnership Interests to New and Existing Partners	8
4.5	Withdrawal of General Partner	8
4.6	Admission of Substitute Limited Partners and Successor General Partner	8
4.7	Business Opportunities	8
ARTICLE 5	DISSOLUTION AND WINDING UP	8
5.1	Dissolution	8
5.2	Continuation of the Partnership	8
5.3	Liquidation	8
5.4	Distribution in Kind	8
5.5	Cancellation of Certificate of Limited Partnership	8
5.6	Return of Capital	8
5.7	Waiver of Partition	8

Exhibit
H-8
Daugherty 1/29/2026 L.M.

PDADV_004267

ARTICLE 6 GENERAL PROVISIONS 8
6.1 Amendments to Agreement 8
6.2 Addresses and Notices 8
6.3 Titles and Captions 8
6.4 Pronouns and Plurals 8
6.5 Further Action 8
6.6 Binding Effect 8
6.7 Integration 8
6.8 Creditors 8
6.9 Waiver 8
6.10 Counterparts 8
6.11 Applicable Law 8
6.12 Invalidity of Provisions 8

Attachments:

Exhibit A
Exhibit B

SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP is entered into on this 31st day of December, 2004, to be effective as of February 29, 2004, by and among Strand Advisors, Inc., a Delaware corporation ("*Strand*"), as General Partner, and any Person hereinafter admitted as a Limited Partner.

Certain terms used in this Agreement are defined in Article 2.

WITNESSETH:

WHEREAS, on July 7, 1997, Strand and Protective Asset Management, L.L.C. ("*PAM*") formed Ranger Asset Management, L.P. (the "*Partnership*"), pursuant to the Agreement of Limited Partnership of Ranger Asset Management, L.P. (the "*Original Agreement*");

WHEREAS, subsequent to the date of the formation of the Partnership, PAM and the Partnership merged, with the Partnership being the surviving entity;

WHEREAS, the Partners amended and restated the Original Agreement to reflect the transactions described above and to make certain other changes to the Original Agreement (the "*Amended Agreement*");

WHEREAS, on July 7, 1998, the Partnership filed a Certificate of Amendment of Certificate of Limited Partnership of Ranger Asset Management, L.P., changing its name from Ranger Asset Management, L.P. to Highland Capital Management, L.P.;

WHEREAS, James D. Dondero Transferred: (i) a 7% interest as a Limited Partner to The Get Good Trust on June 29, 2001; (ii) a 5% interest as a Limited Partner to The Get Good Trust on January 31, 2002; (iii) a 52% interest as a Limited Partner to The Get Better Trust on June 10, 2002; and (iv) a 10% interest as a Limited Partner to Canis Minor Trust on November 29, 2002;

WHEREAS, The Get Better Trust Transferred a 5% interest as a Limited Partner to James D. Dondero on September 25, 2003;

WHEREAS, Mark K. Okada Transferred: (i) a 7% interest as a Limited Partner to The Mark and Pamela Okada Family Trust—Exempt Trust #1 on June 30, 2000, and (ii) a 3% interest as a Limited Partner to The Mark and Pamela Okada Family Trust—Exempt Trust #2 on June 30, 2000;

WHEREAS, on February 29, 2004, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.303% interest as a Limited Partner to Bradford Borud; (ii) a 0.608% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.544% interest as a Limited Partner to David Deadman; (iv) a 0.549% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.390% interest as a Limited Partner to Paul Kauffman; (vi) a 0.281% interest as a Limited Partner to John Morgan; (vii) a 0.426% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.624% interest as a Limited Partner to Todd A. Travers; (ix) a 0.203% interest as a Limited Partner to David Walls; and (x) a 0.407% interest as a Limited Partner to John Yang; (collectively, the "*Profits Interest Partners*");

WHEREAS, on May 27, 2004, the Partnership, James D. Dondero, Mark K. Okada and their Affiliates entered into the Buy-Sell and Redemption Agreement to promote their mutual best interests by providing for certain obligations concerning the purchase of Partnership Interests by and among James D. Dondero, Mark K. Okada and their Affiliates upon the occurrence of certain events (the "*Original Buy-Sell and Redemption Agreement*");

WHEREAS, on December 31, 2004, the Partnership, James D. Dondero, Mark K. Okada and their Affiliates amended and restated the Original Buy-Sell and Redemption Agreement to include the Profits Interest Partners as parties to that agreement and to make certain other changes, all of which shall be effective as of February 29, 2004 (the "*Amended Buy-Sell and Redemption Agreement*");

WHEREAS, the Partners desire to amend and restate the Amended Agreement to (i) incorporate the February 29, 2004, admission of the Profits Interest Partners to the Partnership; (ii) incorporate the Amended Buy-Sell and Redemption Agreement; and (iii) to make certain other changes to the Amended Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

ARTICLE 1

GENERAL

1.1 Continuation. Subject to the provisions of this Agreement, the Partners hereby continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act.

1.2 Name. The name of the Partnership shall be, and the business of the Partnership shall be conducted under the name of Highland Capital Management, L.P. The General Partner, in its sole and unfettered discretion, may change the name of the Partnership at any time and from time to time and shall provide Limited Partners with written notice of such name change within twenty (20) days after such name change.

1.3 Purpose. The purpose and business of the Partnership shall be the conduct of any business or activity that may lawfully be conducted by a limited partnership organized pursuant to the Delaware Act. Any or all of the foregoing activities may be conducted directly by the Partnership or indirectly through another partnership, joint venture, or other arrangement.

1.4 Term. The Partnership was formed as a limited partnership on July 7, 1997, and shall continue until terminated pursuant to this Agreement.

1.5 Partnership Offices; Addresses of Partners.

(a) Partnership Offices. The registered office of the Partnership in the State of Delaware shall be 1013 Centre Road, Wilmington, Delaware 19805-1297, and its registered agent for service of process on the Partnership at that registered office shall be Corporation Service Company, or such other registered office or registered agent as the General Partner may from time to time designate. The principal office of the Partnership shall be Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240, or such other place as the General Partner may from time to time designate. The Partnership may maintain offices at such other place or places as the General Partner deems advisable.

(b) Addresses of Partners. The address of the General Partner is Two Galleria Tower, 13455 Noel Road, Suite 1300, Dallas, Texas 75240. The address of each Limited Partner shall be the address of that Limited Partner appearing on the books and records of the Partnership. Each Limited Partner agrees to provide the General Partner with prompt written notice of any change in his/her/its address.

ARTICLE 2

DEFINITIONS

2.1 Definitions. The following definitions shall apply to the terms used in this Agreement, unless otherwise clearly indicated to the contrary in this Agreement:

"*Additional Capital Contribution*" has the meaning set forth in Section 3.1(b) of this Agreement.

"*Adjusted Capital Account Deficit*" means, with respect to any Partner, the deficit balance, if any, in the Capital Account of that Partner as of the end of the relevant Fiscal Year, or other relevant period, giving effect to all adjustments previously made thereto pursuant to Section 3.7 and further adjusted as follows: (i) credit to that Capital Account, any amounts which that Partner is obligated or deemed obligated to restore pursuant to any provision of this Agreement or pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c); (ii) debit to that Capital Account, the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6); and (iii) to the extent required under the Treasury Regulations, credit to that Capital Account (A) that Partner's share of "minimum gain" and (B) that Partner's share of "partner nonrecourse debt minimum gain." (Each Partner's share of the minimum gain and partner nonrecourse debt minimum gain shall be determined under Treasury Regulations Sections 1.704-2(g) and 1.704-2(i)(5), respectively.)

"*Affiliate*" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting Securities, by contract or otherwise.

"*Agreement*" means this Second Amended and Restated Agreement of Limited Partnership, as it may be amended, supplemented, or restated from time to time.

"*Amended Buy-Sell and Redemption Agreement*" means that certain Amended and Restated Buy-Sell and Redemption Agreement, dated December 31, 2004, to be effective as of February 29, 2004, by and between the Partnership and its Partners, as may be amended, supplemented, or restated from time to time.

"*Business Day*" means Monday through Friday of each week, except that a legal holiday recognized as such by the government of the United States or the State of Texas shall not be regarded as a Business Day.

"*Capital Account*" means the capital account maintained for a Partner pursuant to Section 3.7(a).

"*Capital Contribution*" means, with respect to any Partner, the amount of money or property contributed to the Partnership with respect to the interest in the Partnership held by that Person.

"*Certificate of Limited Partnership*" means the Certificate of Limited Partnership filed with the Secretary of State of Delaware by the General Partner, as that Certificate may be amended, supplemented or restated from time to time.

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

"*Default Loan*" has the meaning set forth in Section 3.1(c)(i).

"*Defaulting Partner*" has the meaning set forth in Section 3.1(c).

"*Delaware Act*" means the Delaware Revised Uniform Limited Partnership Act, Part IV, Title C, Chapter 17 of the Delaware Corporation Law Annotated, as it may be amended, supplemented or restated from time to time, and any successor to that Act.

"*Fiscal Year*" has the meaning set forth in Section 3.11(b).

"*Founding Partner Group*" means, collectively, Strand Advisors, Inc., Canis Minor Trust, James D. Dondero, The Get Good Trust, The Get Better Trust, Mark K. Okada, The Mark and Pamela Okada Family Trust-Exempt #1, and The Mark and Pamela Okada Family Trust-Exempt #2.

"*General Partner*" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a General Partner pursuant to the terms of this Agreement; and (ii) has not ceased to be a General Partner pursuant to the terms of this Agreement.

"*HCM Plan*" means the Second Amended and Restated HCM Services Long-Term Incentive Plan, established by Highland Capital Management Services, Inc., a Delaware corporation, as it may be amended, supplemented, or restated from time to time.

"*Limited Partner*" means any Person who (i) is referred to as such in the first paragraph of this Agreement, or has become a Limited Partner pursuant to the terms of this Agreement, and (ii) has not ceased to be a Limited Partner pursuant to the terms of this Agreement.

"*Liquidator*" has the meaning set forth in Section 5.3.

"*Losses*" means, for each Fiscal Year, the losses and deductions of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any expenditures described in Code Section 705(a)(2)(B).

"*Majority Interest*" means the owners of more than fifty percent (50%) of the Percentage Interests of Limited Partners.

"*New Issues*" means Securities that are considered to be "new issues," as defined in the Conduct Rules of the National Association of Securities Dealers, Inc.

"*Nonrecourse Deduction*" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(1), as computed under Treasury Regulations Section 1.704-2(c).

"*Nonrecourse Liability*" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"*Partner*" means a General Partner or a Limited Partner.

"*Partner Nonrecourse Debt*" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(4).

"*Partner Nonrecourse Deductions*" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(2).

"*Partner Nonrecourse Debt Minimum Gain*" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(5).

"*Partnership*" means Highland Capital Management, L.P., the Delaware limited partnership established pursuant to this Agreement.

"*Partnership Capital*" means, as of any relevant date, the net book value of the Partnership's assets, as determined by the General Partner in its sole and unfettered discretion.

"*Partnership Interest*" means the interest acquired by a Partner in the Partnership including, without limitation, that Partner's right: (a) to an allocable share of the Profits, Losses, deductions, and credits of the Partnership; (b) to a distributive share of the assets of the Partnership; (c) if a Limited Partner, to vote on those matters described in this Agreement; and (d) if the General Partner, to manage and operate the Partnership.

"*Partnership Minimum Gain*" has the meaning set forth in Treasury Regulations Section 1.704-2(d).

"*Percentage Interest*" means the percentage set forth opposite each Partner's name on Exhibit A, as such Exhibit may be amended from time to time in accordance with this Agreement.

"*Person*" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"*Profits*" means, for each Fiscal Year, the income and gains of the Partnership determined in accordance with accounting principles consistently applied from year to year employed under the Partnership's method of accounting and as reported, separately or in the aggregate, as appropriate, on the Partnership's information tax return filed for federal income tax purposes, plus any income described in Code Section 705(a)(1)(B).

"*Profits Interest Partner*" means, (i) Bradford Borud, Patrick Daugherty, David Deadman, R. Joseph Dougherty, Paul Kauffman, John Morgan, Kurtis Plumer, Todd A. Travers, David Walls, and John Yang; and (ii) any other Person who is issued a Partnership Interest that is treated as a "profits interest" for federal income tax purposes.

"*Record Date*" means the date established by the General Partner for determining the identity of Limited Partners entitled to vote or give consent to Partnership action or entitled to exercise rights in respect of any other lawful action of Limited Partners.

"*Securities*" means the following: (i) securities of any kind (including, without limitation, "securities" as that term is defined in Section 2(a)(1) of the Securities Act; (ii) commodities of any kind (as that term is defined by the U.S. Securities Laws and the rules and regulations promulgated thereunder); (iii) any contracts for future or forward delivery of any security, commodity or currency; (iv) any contracts based on any securities or group of securities, commodities or currencies; (v) any

options on any contracts referred to in clauses (iii) or (iv); or (vi) any evidences of indebtedness (including participations in or assignments of bank loans or trade credit claims). The items set forth in clauses (i) through (vi) herein include, but are not limited to, capital stock, common stock, preferred stock, convertible securities, reorganization certificates, subscriptions, warrants, rights, options, puts, calls, bonds, mutual fund interests, debentures, notes, certificates of deposit, letters of credit, bankers acceptances, trust receipts and other securities of any corporation or other entity, whether readily marketable or not, rights and options, whether granted or written by the Partnership or by others, treasury bills, bonds and notes, any securities or obligations issued or guaranteed by the United States or any foreign country or any state or possession of the United States or any foreign country or any political subdivision or agency or instrumentality of any of the foregoing, and derivatives of any of the foregoing.

"*Securities Act*" means the Securities Act of 1933, as amended, and any successor to such statute.

"*Substitute Limited Partner*" has the meaning set forth in Section 4.6(a).

"*Transfer*" or derivations thereof, of a Partnership Interest means, as a noun, the transfer, sale, assignment, exchange, pledge, hypothecation or other disposition of a Partnership Interest, or any part thereof, directly or indirectly, and as a verb, voluntarily or involuntarily to transfer, sell, assign, exchange, pledge, hypothecate or otherwise dispose of.

"*Treasury Regulations*" means the Department of Treasury Regulations promulgated under the Code, as amended and in effect (including corresponding provisions of succeeding regulations).

2.2 **Other Definitions.** All terms used in this Agreement that are not defined in this Article 2 have the meanings contained elsewhere in this Agreement.

ARTICLE 3

FINANCIAL MATTERS

3.1 Capital Contributions.

(a) Initial Capital Contributions. The initial Capital Contribution of each Partner shall be set forth in the books and records of the Partnership.

(b) Additional Capital Contributions.

(i) The General Partner, in its reasonable discretion and for a *bona fide* business purpose, may request in writing that the Partners make additional Capital Contributions in proportion to their Percentage Interests (each, an "*Additional Capital Contribution*").

(ii) Any failure by a Partner to make an Additional Capital Contribution requested under Section 3.1(b)(i) on or before the date on which that Additional Capital Contribution was due shall result in the Partner being in default.

(iii) Any Additional Capital Contribution (of more than a *de minimis* amount) shall cause a revaluation of the Partnership as set forth in Section 3.7(f).

(c) Consequences to Defaulting Partners. In the event a Partner is in default under Section 3.1(b) (a "*Defaulting Partner*"), the Defaulting Partner, in its sole and unfettered discretion, may elect to take either one of the option set forth below.

(i) Default Loans. If the Defaulting Partner so elects, the General Partner shall make a loan to the Defaulting Partner in an amount equal to that Defaulting Partner's additional capital contribution (a "*Default Loan*"). A Default Loan shall be deemed advanced on the date actually advanced. Default Loans shall earn interest on the outstanding principal amount thereof at a rate equal to the Applicable Federal Mid-Term Rate (determined by the Internal Revenue Service for the month in which the loan is deemed made) from the date actually advanced until the same is repaid in full. The term of any Default Loan shall be six (6) months, unless otherwise extended by the General Partner in its sole and unfettered discretion. If the General Partner makes a Default Loan, the Defaulting Partner shall not receive any distributions pursuant to Section 3.9(a) or Section 5.3 or any proceeds from the Transfer of all or any part of its Partnership Interest while the Default Loan remains unpaid. Instead, the Defaulting Partner's share of distributions or such other proceeds shall (until all Default Loans and interest thereon shall have been repaid in full) first be paid to the General Partner. Such payments shall be applied first to the payment of interest on such Default Loans and then to the repayment of the principal amounts thereof, but shall be considered, for all other purposes of this Agreement, to have been distributed to the Defaulting Partner. The Defaulting Partner shall be liable for the reasonable fees and expenses incurred by the General Partner (including, without limitation, reasonable attorneys' fees and disbursements) in connection with any enforcement or foreclosure upon any Default Loan and such costs shall, to the extent enforceable under applicable law, be added to the principal amount of the applicable Default Loan. In addition, at any time during the term of such Default Loan, the Defaulting Partner shall have the right to repay, in full, the Default Loan (including interest and any other charges). If the General Partner makes a Default Loan, the Defaulting Partner shall be deemed to have pledged to the General Partner and granted to the General Partner a continuing first priority security interest in, all of the Defaulting Partner's Partnership Interest to secure the payment of the principal of, and interest on, such Default Loan in accordance with the provisions hereof, and for such purpose this Agreement shall constitute a security agreement. The Defaulting Partner shall promptly execute, acknowledge and deliver such financing statements, continuation statements or other documents and take such other actions as the General Partner shall request in writing in order to perfect or continue the perfection of such security interest; and, if the Defaulting Partner shall fail to do so within seven (7) days after the Defaulting Partner's receipt of a notice making demand therefor, the General Partner is hereby appointed the attorney-in-fact of, and is hereby authorized on behalf of, the Defaulting Partner, to execute, acknowledge and deliver all such documents and take all such other actions as may be required to perfect such security interest. Such appointment and authorization are coupled with an interest and shall be irrevocable. The General Partner shall, prior to exercising any right or remedy (whether at law, in equity or pursuant to the terms hereof) available to it in connection with such security interest, provide to the Defaulting Partner a notice, in reasonable detail, of the right or remedy to be exercised and the intended timing of such exercise which shall not be less than five (5) days following the date of such notice.

(ii) Reduction of Percentage Interest. If the Defaulting Partner does not elect to obtain a Default Loan pursuant to Section 3.1(c)(i), the General Partner shall reduce the Defaulting Partner's Percentage Interest in accordance with the following formula:

> The Defaulting Partner's new Percentage Interest shall equal the product of (1) the Defaulting Partner's current Percentage Interest, multiplied by (2) the quotient of (a) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), divided by (b) the sum of (i) the current Capital Account of the Defaulting Partner (with such Capital Account determined after taking into account a revaluation of the Capital Accounts immediately prior to such determination), plus (ii) the amount of the additional capital contribution that such Defaulting Partner failed to make when due.

To the extent any downward adjustment is made to the Percentage Interest of a Partner pursuant to this Section 3.1(c)(ii), any resulting benefit shall accrue to the Partners (other than the Defaulting Partner) in proportion to their respective Percentage Interests.

3.2 Allocations of Profits and Losses.

(a) Allocations of Profits. Except as provided in Sections 3.4, 3.5, and 3.6, Profits for any Fiscal Year will be allocated to the Partners as follows:

(i) First, to the Partners until cumulative Profits allocated under this Section 3.2(a)(i) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(iii) for all prior periods in the inverse order in which such Losses were allocated; and

(ii) Next, to the Partners until cumulative Profits allocated under this Section 3.2(a)(ii) for all prior periods equal the cumulative Losses allocated to the Partners under Section 3.2(b)(ii) for all prior periods in the inverse order in which such Losses were allocated; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

Notwithstanding the foregoing, the General Partner, in its sole and unfettered discretion, may allocate up to ten percent (10%) of the Profits for each Fiscal Year among the Profits Interest Partners in any manner it deems appropriate (the "*Reallocation Amount*"). The General Partner shall make such allocation by April 1 of the succeeding Fiscal Year. The General Partner shall have the authority to allocate taxable items under this Article 3 in any manner it deems appropriate to account for these allocations of the Reallocation Amount.

(b) Allocations of Losses. Except as provided in Sections 3.4, 3.5, and 3.6, Losses for any Fiscal Year will be will be allocated as follows:

(i) First, to the Partners until cumulative Losses allocated under this Section 3.2(b)(i) for all prior periods equal the cumulative Profits allocated to the Partners under Section 3.2(a)(iii) for all prior periods in the inverse order in which such Profits were allocated; and

(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; and

(iii) Then, to all Partners in proportion to their respective Percentage Interests.

(c) Limitation on Loss Allocations. If any allocation of Losses would cause a Partner to have an Adjusted Capital Account Deficit, those Losses instead shall be allocated to the General Partner.

3.3. **Allocations on Transfers.** Taxable items of the Partnership attributable to a Partnership Interest that has been Transferred (including the simultaneous decrease in the Partnership Interest of existing Partners resulting from the admission of a new Partner) shall be allocated between the transferor and the transferee as follows: (i) for the months before the Transfer, to the transferor; (ii) for the months after the Transfer, to the transferee; and (iii) for the month of the Transfer, to the transferee if the Transfer occurs on or before the fifteenth (15th) day of the month and to the transferor if the Transfer occurs thereafter. For purposes of the above allocation, taxable items of the Partnership shall be allocated

equally among the months of the Fiscal Year without regard to the operations of the Partnership during those months. Distributions of assets of the Partnership with respect to a Partnership Interest shall be made only to the Persons who, according to the records of the Partnership, are the owners, on the actual date of distribution, of the Partnership Interests with respect to which the distributions are made. No liability shall result from making distributions in accordance with the provisions of the preceding sentence, whether or not the General Partner or the Partnership has knowledge or notice of a Transfer or purported Transfer of ownership of a Partnership Interest.

3.4. Special Allocations. If the requisite stated conditions or facts are present, the following special allocations shall be made in the following order:

(a) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3, if there is a net decrease in Partnership Minimum Gain during any taxable year or other period for which allocations are made, prior to any other allocation under this Agreement, each Partner shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in proportion to, and to the extent of, an amount equal to that Partner's share of the net decrease in Partnership Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(a) is intended to comply with the partnership minimum gain chargeback requirements of the Treasury Regulations and shall be subject to all exceptions provided therein.

(b) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Article 3 (other than Section 3.4(a)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain with respect to a Partner Nonrecourse Debt during any taxable year or other period for which allocations are made, any Partner with a share of such Partner Nonrecourse Debt Minimum Gain as of the beginning of the year shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods in an amount equal to that Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain during that year determined in accordance with Treasury Regulations Section 1.704-2(g)(2). The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(g). This Section 3.4(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirements of the Treasury Regulations, shall be interpreted consistently with the Treasury Regulations and shall be subject to all exceptions provided therein.

(c) Qualified Income Offset. If a Partner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (d)(5) or (d)(6), then items of Partnership income and gain shall be specially allocated to each such Partner in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(c) shall be made if and only to the extent that the Partner would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article 3 have been tentatively made without considering this Section 3.4(c).

(d) Gross Income Allocation. If a Partner has a deficit Capital Account at the end of any Fiscal Year of the Partnership that exceeds the sum of (i) the amount the Partner is obligated to restore, and (ii) the amount the Partner is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), then each such Partner shall be specially allocated items of income and gain of the Partnership in the amount of the excess as quickly as possible; *provided, however*, an allocation pursuant to this Section 3.4(d) shall be made if and only to the extent that the Partner would have a deficit Capital Account in excess of that sum after all other

allocations provided for in this Article 3 have been tentatively made without considering Section 3.4(c) or 3.4(d).

(e) Nonrecourse Deductions. Nonrecourse Deductions for any taxable year or other period for which allocations are made shall be allocated among the Partners in accordance with their Percentage Interests.

(f) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any asset of the Partnership under Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Treasury Regulations.

3.5. **Curative Allocations.** The "*Basic Regulatory Allocations*" consist of (i) the allocations pursuant to Section 3.2(c), and (ii) the allocations pursuant to Sections 3.4. Notwithstanding any other provision of this Agreement, the Basic Regulatory Allocations shall be taken into account in allocating items of income, gain, loss and deduction among the Partners so that, to the extent possible, the net amount of the allocations of other items and the Basic Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner if the Basic Regulatory Allocations had not occurred. For purposes of applying the foregoing sentence, allocations pursuant to this Section 3.5 shall be made only with respect to allocations pursuant to Section 3.4(g) to the extent that it can reasonably be determined that those allocations will otherwise be inconsistent with the economic agreement among the parties to this Agreement.

3.6. **Allocations of Built-in Items.** In accordance with Code Sections 704(b) and 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to property actually or constructively contributed to the capital of the Partnership (for example, as set forth in Section 3.7(f)) shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation at the time of the contribution between the tax basis of the property to the Partnership and the fair market value of that property. Except as otherwise provided herein, any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intent of this Agreement. Allocations of income, gain, loss and deduction pursuant to this Section 3.6 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, the Capital Account of any Partner or the share of Profits, Losses, other tax items or distributions of any Partner pursuant to any provision of this Agreement.

3.7 **Capital Accounts.**

(a) Maintenance of Capital Accounts. The Partnership shall establish and maintain a separate capital account ("*Capital Account*") for each Partner in accordance with the rules of Treasury Regulations Section 1.704-1(b)(2)(iv) and in accordance with the provisions set forth in this Section 3.7; *provided, however*, the General Partner shall "book-up" or "book-down" the Capital Accounts of the Partners in accordance with Section 3.7(f).

(i) The Capital Account balance of each Partner shall be credited (increased) by (A) the amount of cash contributed by that Partner to the capital of the Partnership, (B) the fair market value of property contributed by that Partner to the capital of the Partnership (net of liabilities secured by that contributed property that the Partnership assumes or takes subject to under Code Section 752), and (C) that Partner's allocable share of Profits and any items in the nature of income or gain which are specially allocated pursuant to Sections 3.4 and 3.5; and

(ii) The Capital Account balance of each Partner shall be debited (decreased) by (A) the amount of cash distributed to that Partner by the Partnership, (B) the fair market value of property distributed to that Partner by the Partnership (net of liabilities secured by that distributed property that such Partner assumes or takes subject to under Code Section 752), (C) that Partner's allocable share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (D) that Partner's allocable share of Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Sections 3.2, 3.4 and 3.5.

The provisions of this Section 3.7 and the other provisions of this Agreement relating to the maintenance of Capital Accounts have been included in this Agreement to comply with Code Section 704(b) and the Treasury Regulations promulgated thereunder and will be interpreted and applied in a manner consistent with those provisions. The General Partner may modify the manner in which the Capital Accounts are maintained under this Section 3.7 in order to comply with those provisions, as well as upon the occurrence of events that might otherwise cause this Agreement not to comply with those provisions.

(b) Negative Capital Accounts. If any Partner has a deficit balance in its Capital Account, that Partner shall have no obligation to restore that negative balance or to make any Capital Contribution by reason thereof, and that negative balance shall not be considered an asset of the Partnership or of any Partner.

(c) Interest. No interest shall be paid by the Partnership on Capital Contributions or on balances in Capital Accounts.

(d) No Withdrawal. No Partner shall be entitled to withdraw any part of his/her/its Capital Contribution or his/her/its Capital Account or to receive any distribution from the Partnership, except as provided in Section 3.9 and Article 5.

(e) Loans From Partners. Loans by a Partner to the Partnership shall not be considered Capital Contributions.

(f) Revaluations. The General Partner shall "book-up" or "book-down" the Capital Accounts of the Partners to their fair market values, regardless of the rules set forth in Treasury Regulations Section 1.704(c)-1(b)(2)(iv)(f), at the following times: (i) immediately prior to (A) a Capital Contribution (of more than a *de minimis* amount) to the Partnership by a new or existing Partner as consideration for a Partnership Interest, (B) the liquidation of the Partnership or a distribution of property (of more than a *de minimis* amount) by the Partnership to a retiring or continuing Partner as consideration for a Partnership Interest, or (C) the issuance of a new Partnership Interest (other than a *de minimis* amount) as consideration of the provision of services to or for the benefit of the Partnership by an existing Partner acting in a Partner capacity or by a new Partner acting in a partner capacity or in anticipation of being a Partner, and (ii) on January 1 of each Fiscal Year. The resulting increase or decrease in the Capital Accounts of each Partner shall be treated as a Code Section 704(c) item.

(g) Capital Accounts as of February 29, 2004. The Partners hereby acknowledge that, on February 29, 2004, after the Partnership's issuance of Partnership Interests to Profits Interest Partners:

(i) The Partnership "booked-up" the Capital Account of each Partner that is a member of the Founding Partner Group to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner that is a member of the Founding Partner Group was treated as a Code Section 704(c) item. On February 29, 2004, the "book" Capital Account for each Partner that is a member of the Founding Partner Group is set forth below:

Strand Advisors, Inc.	$1,250,000
Canis Minor Trust	$12,500,000
James D. Dondero	$6,250,000
The Get Good Trust	$15,000,000
The Get Better Trust	$58,750,000
The Mark and Pamela Okada Family Trust-Exempt #1	$8,750,000
The Mark and Pamela Okada Family Trust-Exempt #2	$3,750,000
Mark K. Okada	$18,750,000
TOTAL	$125,000,000

(ii) On February 29, 2004, each Profits Interest Partner had a Capital Account balance of zero (0).

3.8 **Distributive Share for Tax Purposes.** Items of Partnership gain or loss recognized for federal income tax purposes and arising from Securities will be allocated among the Partners in accordance with the methods set forth in Treasury Regulations Section 1.704-3(e)(3) promulgated under Code Section 704(c). All other items of income, deduction, gain, loss or credit that are recognized for federal income tax purposes will be allocated amount the Partners in accordance with the allocations of Profits and Losses hereunder as determined by the General Partner in its sole and unfettered discretion. Notwithstanding the foregoing, the General Partner will (i) as to each New Issue, specially allocate to the Partners who were allocated New Issue Profit from that New Issue any short-term capital gains realized during the Fiscal Year upon the disposition of such New Issue during that Fiscal Year, and (ii) specially allocate items of gain (or loss) to Partners who withdraw capital during any Fiscal Year in a manner designed to ensure that each withdrawing Partner is allocated gain (or loss) in an amount equal to the difference between that Partner's Capital Account balance (or portion thereof being withdrawn) at the time of the withdrawal and the tax basis for his/her/ its Partnership Interest at that time (or proportionate amount thereof); *provided, however*, that the General Partner may, without the consent of any other Partner, (a) alter the allocation of any item of taxable income, gain, loss, deduction or credit in any specific instance where the General Partner, in its sole and unfettered discretion, determines such alteration to be necessary or appropriate to avoid a materially inequitable result (*e.g.*, where the allocation would create an inappropriate tax liability); and/or (b) adopt whatever other method of allocating tax items as the General Partner determines is necessary or appropriate in order to be consistent with the spirit and intent of the Treasury Regulations under Code Sections 704(b) and 704(c).

3.9 **Distributions.**

(a) General. The General Partner shall review the Partnership's accounts at the end of each calendar quarter to determine whether distributions are appropriate. The General Partner may make such distributions as it may determine in its sole and unfettered discretion, without being limited to current or accumulated income or gains, but no such distribution shall be made out of funds required to make current payments on Partnership indebtedness. The Partnership has entered into one or more credit facilities with financial institutions that may limit the amount and timing of distributions to the Partners. Thus, the Partners acknowledge that distributions from the Partnership may be limited. Except to the extent Sections 5.3 or 5.4 are applicable, all distributions pursuant to this Section 3.9 shall generally be made in proportion to the Partners' Capital Accounts; *provided, however*, the General Partner may, in its

sole and unfettered discretion, make a disproportionate distribution to a Partner to the extent that Partner has (or is anticipated to have by the end of the current Fiscal Year) a sufficient positive balance in his/her/its Capital Account therefor; *provided, further*, the maximum amount per Fiscal Year that the General Partner may distribute to a member of the Founding Partner Group in a disproportionate distribution is ten percent (10%) of Partnership Capital.

(b) Tax Distributions. The General Partner shall promptly declare and make cash distributions pursuant hereto to the Partners to allow the federal and state income tax attributable to the Partnership's taxable income that is passed through the Partnership to the Partners to be paid by such Partners (a "*Tax Distribution*"). To satisfy this requirement, the Partnership shall pay to each Partner on or before April 14 of each Fiscal Year, an amount at least equal to the product of (i) the sum of the Partnership's positive taxable income attributed to that Partner during the prior Fiscal Year (including without limitation, the taxable income attributable to the special allocation of Profits constituting the Reallocation Amount) multiplied by (ii) the sum of the highest federal and state individual income tax rates imposed on any Partner in effect that prior Fiscal Year. Any Tax Distribution to a Partner shall reduce the amount that Partner is otherwise entitled to receive on its next distribution pursuant to Section 3.9(a).

(c) Payments Not Deemed Distributions. Any amounts paid pursuant to Sections 4.1(e) or 4.1(h) shall not be deemed to be distributions for purposes of this Agreement.

(d) Withheld Amounts. Notwithstanding any other provision of this Section 3.9 to the contrary, each Partner hereby authorizes the Partnership to withhold and to pay over, or otherwise pay, any withholding or other taxes payable by the Partnership with respect to that Partner as a result of that Partner's participation in the Partnership. If and to the extent that the Partnership shall be required to withhold or pay any such taxes, that Partner shall be deemed for all purposes of this Agreement to have received a payment from the Partnership as of the time that withholding or tax is paid, which payment shall be deemed to be a distribution with respect to that Partner's Partnership Interest to the extent that the Partner (or any successor to that Partner's Partnership Interest) is then entitled to receive a distribution. To the extent that the aggregate of such payments to a Partner for any period exceeds the distributions to which that Partner is entitled for that period, the amount of such excess shall be considered a loan from the Partnership to that Partner. Such loan shall bear interest (which interest shall be treated as an item of income to the Partnership) at the "Applicable Federal Rate" (as defined in the Code), as determined hereunder from time to time, until discharged by that Partner by repayment, which may be made in the sole and unfettered discretion of the General Partner out of distributions to which that Partner would otherwise be subsequently entitled. Any withholdings authorized by this Section 3.9(d) shall be made at the maximum applicable statutory rate under the applicable tax law unless the General Partner shall have received an opinion of counsel or other evidence satisfactory to the General Partner to the effect that a lower rate is applicable, or that no withholding is applicable.

3.10 Compensation and Reimbursement of General Partner.

(a) Compensation. The General Partner and any Affiliate of the General Partner shall receive no compensation from the Partnership for services rendered pursuant to this Agreement or any other agreements unless approved by a Majority Interest.

(b) Reimbursement for Expenses. In addition to amounts paid under other Sections of this Agreement, the General Partner and its Affiliates shall be reimbursed for all expenses, disbursements, and advances incurred or made, and all fees, deposits, and other sums paid in connection with the organization and operation of the Partnership, the qualification of the Partnership to do business, and all related matters.

3.11 Books, Records, Accounting, and Reports.

(a) Records and Accounting. The General Partner shall keep or cause to be kept appropriate books and records with respect to the Partnership's business, which shall at all times be kept at the principal office of the Partnership or such other office as the General Partner may designate for such purpose. The books of the Partnership shall be maintained for financial reporting purposes on the accrual basis or on a cash basis, as the General Partner shall determine in its sole and unfettered discretion, in accordance with generally accepted accounting principles and applicable law.

(b) Fiscal Year. The fiscal year of the Partnership shall be the calendar year unless otherwise determined by the General Partner in its sole and unfettered discretion.

(c) Reports.

(i) As soon as reasonably practicable after the end of each Fiscal Year, the General Partner shall cause to be mailed to each Partner reports containing financial statements of the Partnership for that Fiscal Year, presented on cash or accrual basis, including a balance sheet and statement of income and, if the General Partner shall so determine, in its sole and unfettered discretion, such statements may be audited by a firm of independent public accountants selected by the General Partner.

(ii) As soon as reasonably practicable after the end of each fiscal quarter of the Partnership, the General Partner shall, if it shall so determine in its sole and unfettered discretion, cause to be mailed to each Partner a report containing such financial information for that calendar quarter as the General Partner deems appropriate.

(d) Other Information. The General Partner may release information concerning the operations of the Partnership to any financial institution or other Person that has loaned or may loan funds to the Partnership or the General Partner or any of its Affiliates, and may release such information to any other Person for reasons reasonably related to the business and operations of the Partnership or as required by law or regulation of any regulatory body.

3.12 Tax Matters.

(a) Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns of Partnership income, gain, loss, deduction, credit and other items necessary for federal, state and local income tax purposes. The General Partner shall deliver to each Partner as copy of his/her/its IRS Form K-1 as soon as practicable after the end of the Fiscal Year, but in no event later than October 1. The classification, realization, and recognition of income, gain, loss, deduction, credit and other items shall be on the cash or accrual method of accounting for federal income tax purposes, as the General Partner shall determine in its sole and unfettered discretion. The General Partner in its sole and unfettered discretion may pay state and local income taxes attributable to operations of the Partnership and treat such taxes as an expense of the Partnership.

(b) Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and unfettered discretion, determine whether to make any available tax election.

(c) Tax Controversies. Subject to the provisions hereof, the General Partner is designated the Tax Matters Partner (as defined in Code Section 6231), and is authorized and required to represent the Partnership, at the Partnership's expense, in connection with all examinations of the Partnership's affairs by tax authorities, including resulting administrative and judicial proceedings, and to

expend Partnership funds for professional services and costs associated therewith. Each Partner agrees to cooperate with the General Partner in connection with such proceedings.

(d) Taxation as a Partnership. No election shall be made by the Partnership or any Partner for the Partnership to be excluded from the application of any of the provisions of Subchapter K, Chapter 1 of Subtitle A of the Code or from any similar provisions of any state tax laws.

ARTICLE 4

RIGHTS AND OBLIGATIONS OF PARTNERS

4.1 Rights and Obligations of the General Partner. In addition to the rights and obligations set forth elsewhere in this Agreement, the General Partner shall have the following rights and obligations:

(a) Management. The General Partner shall conduct, direct, and exercise full control of over all activities of the Partnership. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership shall be exclusively vested in the General Partner, and Limited Partners shall have no right of control over the business and affairs of the Partnership. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any provision of this Agreement, the General Partner shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, including, without limitation: (i) the determination of the activities in which the Partnership will participate; (ii) the performance of any and all acts necessary or appropriate to the operation of any business of the Partnership (including, without limitation, purchasing and selling any asset, any debt instruments, any equity interests, any commercial paper, any note receivables and any other obligations); (iii) the procuring and maintaining of such insurance as may be available in such amounts and covering such risks as are deemed appropriate by the General Partner; (iv) the acquisition, disposition, sale, mortgage, pledge, encumbrance, hyphothecation, of exchange of any or all of the assets of the Partnership; (v) the execution and delivery on behalf of, and in the name of the Partnership, deeds, deeds of trust, notes, leases, subleases, mortgages, bills of sale and any and all other contracts or instruments necessary or incidental to the conduct of the Partnership's business; (vi) the making of any expenditures, the borrowing of money, the guaranteeing of indebtedness and other liabilities, the issuance of evidences of indebtedness, and the incurrence of any obligations it deems necessary or advisable for the conduct of the activities of the Partnership, including, without limitation, the payment of compensation and reimbursement to the General Partner and its Affiliates pursuant to Section 3.10; (vii) the use of the assets of the Partnership (including, without limitation, cash on hand) for any Partnership purpose on any terms it sees fit, including, without limitation, the financing of operations of the Partnership, the lending of funds to other Persons, and the repayment of obligations of the Partnership; (viii) the negotiation, execution, and performance of any contracts that it considers desirable, useful, or necessary to the conduct of the business or operations of the Partnership or the implementation of the General Partner's powers under this Agreement; (ix) the distribution of Partnership cash or other assets; (x) the selection, hiring and dismissal of employees, attorneys, accountants, consultants, contractors, agents and representatives and the determination of their compensation and other teens of employment or hiring; (xi) the formation of any further limited or general partnerships, joint ventures, or other relationships that it deems desirable and the contribution to such partnerships, ventures, or relationships of assets and properties of the Partnership; and (xii) the control of any matters affecting the rights and obligations of the Partnership, including, without limitation, the conduct of any litigation, the incurring of legal expenses, and the settlement of claims and suits.

(b) Certificate of Limited Partnership. The General Partner caused the Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Delaware as required by the Delaware Act and shall cause to be filed such other certificates or documents (including, without limitation, copies, amendments, or restatements of this Agreement) as may be determined by the General Partner to be reasonable and necessary or appropriate for the formation, qualification, or registration and operation of a limited partnership (or a partnership in which Limited Partners have limited liability) in the State of Delaware and in any other state where the Partnership may elect to do business.

(c) Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser or other Person, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to verify any representation by the General Partner as to its authority to encumber, sell, or otherwise use any assess or properties of the Partnership, and any such lender, purchaser, or other Person shall be entitled to rely exclusively on such representations and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against any such lender, purchaser, or other Person to contest, negate, or disaffirm any action of the General Partner in connection with any such sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, and each such Person shall be entitled to rely on the assumptions that the Partnership has been duly formed and is validly in existence. In no event shall any such Person be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative, and every contract, agreement, deed, mortgage, security agreement, promissory note, or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i), at the time of the execution and delivery thereof, this Agreement was in full force and effect; (ii) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership; and (iii) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

(d) Partnership Funds. The funds of the Partnership shall be deposited in such account or accounts as are designated by the General Partner. The General Partner may, in its sole and unfettered discretion, deposit funds of the Partnership in a central disbursing account maintained by or in the name of the General Partner, the Partnership, or any other Person into which funds of the General Partner, the Partnership, on other Persons are also deposited; *provided, however*, at all times books of account are maintained that show the amount of funds of the Partnership on deposit in such account and interest accrued with respect to such funds as credited to the Partnership. The General Partner may use the funds of the Partnership as compensating balances for its benefit; *provided, however*, such funds do not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, employee, agent, representative, or Affiliate thereof. Nothing in this Section 4.1(d) shall be deemed to prohibit or limit in any manner the right of the Partnership to lend funds to the General Partner or any Affiliate thereof pursuant to Section 4.1(e)(i). All withdrawals from or charges against such accounts shall be made by the General Partner or by its representatives. Funds of the Partnership may be invested as determined by the General Partner in accordance with the terms and provisions of this Agreement.

(e) Loans to or from General Partner; Contracts with Affiliates; Joint Ventures.

(i) The General Partner or any Affiliate of the General Partner may lend to the Partnership funds needed by the Partnership for such periods of time as the General Partner may

determine; *provided, however*, the General Partner or its Affiliate may not charge the Partnership interest at a rate greater than the rate (including points or other financing charges or fees) that would be charged the Partnership (without reference to the General Partner's financial abilities or guaranties) by unrelated lenders on comparable loans. The Partnership shall reimburse the General Partner or its Affiliate, as the case may be, for any costs incurred by the General Partner or that Affiliate in connection with the borrowing of funds obtained by the General Partner or that Affiliate and loaned to the Partnership.

(ii) The Partnership may loan funds to the General Partner and any Affiliate thereof; *provided, however*, if the amount of that proposed loan exceeds twenty percent (20%) of the aggregate Capital Account balances of the General Partner and its Affiliates, then any Limited Partner may elect to borrow his/her/its pro rata portion of the sum of (a) the amount of the proposed loan minus (b) twenty percent (20%) of the aggregate Capital Account balances of the General Partner and its Affiliates, on the same terms and conditions as the General Partner and/or its Affiliate, as appropriate, and such loan shall be secured by only that Limited Partner's Partnership Interest.

(iii) The General Partner or any of its Affiliates may enter into an agreement with the Partnership to render services, including management services, for the Partnership. Any service rendered for the Partnership by the General Partner or any Affiliate thereof shall be on terms that are fair and reasonable to the Partnership.

(iv) The Partnership may Transfer any assets to joint ventures or other partnerships in which it is or thereby becomes a participant upon terms and subject to such conditions consistent with applicable law as the General Partner deems appropriate.

(v) If requested by a Profits Interest Partner, the Partnership shall lend funds to that Profits Interest Partner in an amount up to the excess of (a) the aggregate amount that would have been distributed to that Profits Interest Partner pursuant to Section 3.9 since first becoming a Profits Interest Partner, if each such distribution made by the Partnership pursuant to Section 3.9 since first becoming a Profits Interest Partner were made in accordance with Percentage Interests in effect at the time of each such distribution over (ii) the aggregate amount actually distributed to such Profits Interest Partner pursuant to Section 3.9 since first becoming a Profits Interest Partner (for this purpose, not taking into account distributions attributable to the special allocations with respect to the Reallocation Amounts). Each such loan shall be recourse to the Profits Interest Partner and shall be secured by his/her Partnership Interest. Each such loan shall bear interest at the Applicable Federal Mid-Term Rate in effect at the time such loan is made and shall have a term of one (1) year; *provided, however*, the loan must be repaid earlier in the case of that Profits Interest Partner's termination of employment from the Partnership or any Affiliate thereof for any reason, with repayment due in four (4) quarterly payments beginning the July 31st after the termination of his/her employment. Notwithstanding the preceding, the maximum loan amount available to any Profits Interest Partner under this Section 4.1(e)(v) shall be the amount specified on Exhibit C.

(f) Outside Activities; Conflicts of Interest. The General Partner or any Affiliate thereof and any director, officer, employee, agent, or representative of the General Partner or any Affiliate thereof shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including, without limitation, business interests and activities in direct competition with the Partnership. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement or the partnership relationship created hereby in any business ventures of the General Partner, any Affiliate thereof, or any director, officer, employee, agent, or representative of either the General Partner or any Affiliate thereof.

(g) Resolution of Conflicts of Interest. Unless otherwise expressly provided in this Agreement or any other agreement contemplated herein, whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership or any Limited Partner, on the other hand, any action taken by the General Partner, in the absence of bad faith by the General Partner, shall not constitute a breach of this Agreement or any other agreement contemplated herein or a breach of any standard of care or duty imposed herein or therein or under the Delaware Act or any other applicable law, rule, or regulation.

(h) Indemnification. The Partnership shall indemnify and hold harmless the General Partner and any director, officer, employee, agent, or representative of the General Partner (collectively, the *"GP Party"*), against all liabilities, losses, and damages incurred by any of them by reason of any act performed or omitted to be performed in the name of or on behalf of the Partnership, or in connection with the Partnership's business, including, without limitation, attorneys' fees and any amounts expended in the settlement of any claims or liabilities, losses, or damages, to the fullest extent permitted by the Delaware Act; *provided, however*, the Partnership shall have no obligation to indemnify and hold harmless a GP Party for any action or inaction that constitutes gross negligence or willful or wanton misconduct. The Partnership, in the sole and unfettered discretion of the General Partner, may indemnify and hold harmless any Limited Partner, employee, agent, or representative of the Partnership, any Person who is or was serving at the request of the Partnership acting through the General Partner as a director, officer, partner, trustee, employee, agent, or representative of another corporation, partnership, joint venture, trust, or other enterprise, and any other Person to the extent determined by the General Partner in its sole and unfettered discretion, but in no event shall such indemnification exceed the indemnification permitted by the Delaware Act. Notwithstanding anything to the contrary in this Section 4.1(h) or elsewhere in this Agreement, no amendment to the Delaware Act after the date of this Agreement shall reduce or limit in any manner the indemnification provided for or permitted by this Section 4.1(h) unless such reduction or limitation is mandated by such amendment for limited partnerships formed prior to the enactment of such amendment. In no event shall Limited Partners be subject to personal liability by reason of the indemnification provisions of this Agreement.

(i) Liability of General Partner.

(i) Neither the General Partner nor its directors, officers, employees, agents, or representatives shall be liable to the Partnership or any Limited Partner for errors in judgment or for any acts or omissions that do not constitute gross negligence or willful or wanton misconduct.

(ii) The General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its directors, officers, employees, agents, or representatives, and the General Partner shall not be responsible for any misconduct or negligence on the part of any agent or representative appointed by the General Partner.

(j) Reliance by General Partner.

(i) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(ii) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, and other consultants and advisers selected by it, and any opinion of any such Person as to matters which the General Partner believes to be within such Person's professional or expert competence shall be full and complete authorization and protection in

respect of any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(k) Limitation on Authority. The General Partner shall have no authority to undertake any of the following actions without the consent of the Limited Partners holding ninety-six percent (96%) of the Percentage Interests:

(i) Do any act which would make it impossible to carry on the ordinary business of the Partnership (excluding the liquidation of the Partnership);

(ii) Possess Partnership property or assign any rights in specific Partnership property for other than a Partnership purpose; and

(iii) Require any Limited Partner to make any contribution to the capital of the Partnership that is not otherwise provided for in this Agreement.

4.2 Rights and Obligations of Limited Partners. In addition to the rights and obligations of Limited Partners set forth elsewhere in this Agreement, Limited Partners shall have the following rights and obligations:

(a) Limitation of Liability. Limited Partners shall have no liability under this Agreement except as provided herein or under the Delaware Act.

(b) Management of Business. No Limited Partner shall take part in the control (within the meaning of the Delaware Act) of the Partnership's business, transact any business in the Partnership's name, or have the power to sign documents for or otherwise bind the Partnership other than as specifically set forth in this Agreement.

(c) Return of Capital. No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution except to the extent, if any, that distributions made pursuant to this Agreement or upon termination of the Partnership may be considered as such by law and then only to the extent provided for in this Agreement.

(d) Amended Buy-Sell and Redemption Agreement. Each Limited Partner shall comply with the terms and conditions of the Amended Buy-Sell and Redemption Agreement. The admission of the Profits Interest Partners into the Partnership was contingent upon their execution of the Amended Buy-Sell and Redemption Agreement.

4.3 Transfer of Partnership Interests.

(a) Transfer. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Section 4.3 and the Amended Buy-Sell and Redemption Agreement. Any Transfer or purported Transfer of any Partnership Interest not made in accordance with this Section 4.3 and the Amended Buy-Sell and Redemption Agreement shall be null and void. An alleged transferee shall have no right to require any information or account of the Partnership's transactions or to inspect the Partnership's books. The Partnership shall be entitled to treat the alleged transferor of a Partnership Interest as the absolute owner thereof in all respects, and shall incur no liability to any alleged transferee for distributions to the Partner owning that Partnership Interest of record or for allocations of Profits, Losses, deductions or credits or for transmittal of reports and notices required to be given to holders of Partnership Interests.

(b) Transfers by General Partner. The General Partner may Transfer all, but not less than all, of its Partnership Interest to any Person only with the approval of a Majority Interest. Any Transfer by the General Partner of its Partnership Interest under this Section 4.3(b) to an Affiliate of the General Partner or any other Person shall not constitute a withdrawal of the General Partner under Section 4.5(a), Section 5.1(b), or any other provision of this Agreement. If any such Transfer is deemed to constitute a withdrawal under such provisions or otherwise and results in the dissolution of the Partnership under this Agreement or the laws of any jurisdiction to which the Partnership of this Agreement is subject, the Partners hereby unanimously consent to the reconstitution and continuation of the Partnership immediately following such dissolution, pursuant to Section 5.2.

(c) Transfers by Limited Partners. The Partnership Interest of a Limited Partner may not be Transferred without the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), and in accordance with the Amended Buy-Sell and Redemption Agreement.

(d) Distributions and Allocations in Respect of Transferred Partnership Interests. If any Partnership Interest is Transferred during any Fiscal Year in compliance with the provisions of Article 4 and the Amended Buy-Sell and Redemption Agreement, Profits, Losses, and all other items attributable to the Transferred interest for that period shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during the period in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner. All distributions on or before the date of that Transfer shall be made to the transferor. Solely for purposes of making such allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer; *provided, however*, if the Partnership does not receive a notice stating the date that Partnership Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all of such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the Partnership, on the last day of the Fiscal Year during which the Transfer occurs, was the owner of the Partnership Interest. Neither the Partnership nor any Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 4.3(d), whether or not any Partner or the Partnership has knowledge of any Transfer of ownership of any Partnership Interest.

4.4 **Issuances of Partnership Interests to New and Existing Partners.**

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("***Additional Limited Partners***") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the admission of any Additional Limited Partner, the Percentage Interest of the existing Limited Partners shall be diluted proportionately. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Amended Buy-Sell and Redemption Agreement.

(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interest of all existing Limited Partners shall be diluted proportionately; *provided, however*, only the Percentage Interests of the members of the Founding Partner Group shall be diluted when the General Partner issues an additional Partnership Interest to an existing Profits Interest Partner in accordance with the terms of the HCM Plan upon the vesting of that Profits Interest Partner's "Long-Term Incentive Units" (as defined in that Plan) granted to

him/her prior to the date hereof. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Amended Buy-Sell and Redemption Agreement.

4.5 Withdrawal of General Partner.

(a) Option. In the event of the withdrawal of the General Partner from the Partnership, the departing General Partner (the "*Departing Partner*") shall, at the option of its successor (if any) exercisable prior to the effective date of the departure of that Departing Partner, promptly receive from its successor in exchange for its Partnership Interest as the General Partner, an amount in cash equal to its Capital Account balance, determined as of the effective date of its departure.

(b) Conversion. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), the Partnership Interest of the Departing Partner as the General Partner of the Partnership shall be converted into a Partnership Interest as a Limited Partner.

(c) Capital Contribution. If the successor to a Departing Partner does not exercise the option described in Section 4.5(a), its successor shall, at the effective date of its admission to the Partnership, contribute to the capital of the Partnership cash or property or other consideration such that its Capital Account, after giving effect to that contribution, shall be equal to one percent (1%) of the total Capital Account balances at that date.

4.6 **Admission of Substitute Limited Partners and Successor General Partner.**

(a) Admission of Substitute Limited Partners. A transferee (which may be the heir or legatee of a Limited Partner) or assignee of a Limited Partner's Partnership Interest shall be entitled to receive only the distributive share of the Partnership's Profits, Losses, deductions, and credits attributable to that Partnership Interest. To become a substitute Limited Partner (a "***Substitute Limited Partner***"), that transferee or assignee shall (i) obtain the consent of the General Partner (which consent may be withheld in the sole and unfettered discretion of the General Partner), (ii) comply with all the requirements of this Agreement and the Amended Buy-Sell and Redemption Agreement with respect to the Transfer of the Partnership Interest at issue, and (iii) execute an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Amended Buy-Sell and Redemption Agreement. Upon admission of a Substitute Limited Partner, that Limited Partner shall be subject to all of the restrictions applicable to, shall assume all of the obligations of, and shall attain the status of a Limited Partner under and pursuant to this Agreement with respect to the Partnership Interest held by that Limited Partner.

(b) Admission of Successor General Partner. A successor General Partner selected pursuant to Section 5.2 or the transferee of or successor to all of the Partnership Interest of the General Partner pursuant to Section 4.3(b) shall be admitted to the Partnership as the General Partner, effective as of the date of the withdrawal or removal of the predecessor General Partner or the date of Transfer of that predecessor's Partnership Interest.

(c) Action by General Partner. In connection with the admission of any substitute Limited Partner or successor General Partner or any additional Limited Partner, the General Partner shall have the authority to take all such actions as it deems necessary or advisable in connection therewith, including the amendment of Exhibit A and the execution and filing with appropriate authorities of any necessary documentation.

4.7 **Business Opportunities.**

(a) In the event that the Partnership recapitalizes, distributes or otherwise transfers any of its business units, business interests or assets to a new entity that will be primarily owned by one or more members of the Founding Partner Group, each of the Limited Partners shall receive a proportionate share of that entity, subject to identical terms and conditions as are provided to the members of the Founding Partner Group, unless that Limited Partner agrees to receive a different percentage interest in that entity; *provided, however*, this Section 4.7(a) shall not apply to any disproportionate distribution made to a member of the Founding Partner Group as long as such disproportionate distribution does not exceed ten percent (10%) of Partnership Capital.

(b) In the event that one or more members of the Founding Partner Group establishes a new business venture (i) whose business operations will be substantially related to, or otherwise operated substantially in connection with, the Partnership, or (ii) that James D. Dondero and/or Mark K. Okada directly or indirectly control and that is an entity whose business operations are substantially related to, or otherwise operated substantially in connection with, the Partnership, the members of the Founding Partner Group agree to use their reasonable best efforts to ensure that (a) the total ownership interest of the members of the Founding Partner Group in that entity shall not exceed their total percentage ownership interest in the Partnership; and (b) each of the Non-Founding Limited Partners shall be permitted to acquire an ownership interest in that entity, subject to identical terms and conditions as the members of the Founding Partner Group; *provided, however*, the members of the Founding Partner Group may elect to limit the amount of such ownership interest for any particular Non-Founding Limited Partner. With regard to investments referenced in clause (b) of the preceding sentence, if a Limited Partner declines to make an investment in a new business entity, the members of the Founding Partner Group shall allocate the opportunity to make that investment to one or more of the remaining Limited Partners (including James D. Dondero and Mark K. Okada).

ARTICLE 5

DISSOLUTION AND WINDING UP

5.1 **Dissolution.** The Partnership shall be dissolved upon:

(a) The withdrawal, bankruptcy, or dissolution of the General Partner, or any other event that results in its ceasing to be the General Partner (other than by reason of a Transfer pursuant to Section 4.3(b));

(b) An election to dissolve the Partnership by the General Partner that is approved by the affirmative vote of a Majority Interest; *provided, however*, the General Partner may dissolve the Partnership without the approval of the Limited Partners in order to comply with Section 14 of the Amended Buy-Sell and Redemption Agreement;

(c) Any other event that, under the Delaware Act, would cause its dissolution; or

(d) A sale of all or substantially all of the assets of the Partnership that results in the liquidation of operating assets, the material shrinking of operations and personnel and the failure to redeploy the proceeds within twelve (12) months into other activities and investments.

For purposes of this Section 5.1, the bankruptcy of the General Partner shall be deemed to have occurred when the General Partner: (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding: (iv) files a petition or answer seeking a reorganization,

arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition fled against the General Partner in a proceeding of the type described in clauses (i) through (iv) of this paragraph; (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties; or (vii) one hundred twenty (120) days expire after the date of the commencement of a proceeding against the General Partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law if the proceeding has not been previously dismissed, or ninety (90) days expire after the date of the appointment, without the General Partner's consent or acquiescence, of a trustee, receiver, or liquidator of the General Partner or of all or any substantial part of the General Partner's properties if the appointment has not previously been vacated or stayed, or ninety (90) days expire after the date of expiration of a stay, if the appointment has not previously been vacated.

5.2 Continuation of the Partnership. Upon the occurrence of an event described in Section 5.1(a), the Partnership shall be deemed to be dissolved and reconstituted if Limited Partners unanimously elect to continue the Partnership within ninety (90) days of that event. If no election to continue the Partnership is made within ninety (90) days of that event, the Partnership shall conduct only activities necessary to wind up its affairs. If an election to continue the Partnership is made upon the occurrence of an event described in Section 5.1(a), then:

(a) Within that ninety (90)-day period a successor General Partner shall be selected by seventy percent (70%) of the Percentage Interests owned by Limited Partners;

(b) The Partnership shall be deemed to be reconstituted and shall continue until the end of the term for which it is formed unless earlier dissolved in accordance with this Article 5;

(c) The interest of the former General Partner shall be converted to an interest as a Limited Partner; and

(d) All necessary steps shall be taken to amend or restate this Agreement and the Certificate of Limited Partnership, and the successor General Partner may for this purpose amend this Agreement and the Certificate of Limited Partnership, as appropriate, without the consent of any Partner.

5.3 Liquidation. Upon dissolution of the Partnership, unless the Partnership is continued under Section 5.2, the General Partner or, in the event the General Partner has been dissolved, becomes bankrupt (as defined in Section 5.1), or withdraws from the Partnership, a liquidator or liquidating committee selected by a Majority Interest, shall be the Liquidator. The Liquidator (if other than the General Partner) shall be entitled to receive such compensation for its services as may be approved by a Majority Interest. The Liquidator shall agree not to resign at any time without fifteen (15) days' prior written notice and (if other than the General Partner) may be removed at any time, with or without cause, by notice of removal approved by a Majority Interest. Upon dissolution, removal, or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers, and duties of the original Liquidator) shall within thirty (30) days thereafter be selected by a Majority Interest. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator shall be deemed to refer also to any such successor or substitute Liquidator appointed in the manner provided herein. Except as expressly provided in this Article 5, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the

Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Partnership as provided herein. The Liquidator shall liquidate the assets of the Partnership and apply and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) To the payment of the expenses of the terminating transactions including, without limitation, brokerage commission, legal fees, accounting fees and closing costs;

(b) To the payment of creditors of the Partnership, including Partners, in order of priority provided by law;

(c) To the Partners and assignees to the extent of, and in proportion to, the positive balances in their respective Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* the Liquidator may place in escrow a reserve of cash or other assets of the Partnership for contingent liabilities in an amount determined by the Liquidator to be appropriate for such purposes; and

(d) To the Partners in proportion to their respective Percentage Interests.

5.4 **Distribution in Kind.** Notwithstanding the provisions of Section 5.3 that require the liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if on dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners and assignees, the Liquidator may defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (other than those to Partners) and/or may distribute to the Partners and assignees, in lieu of cash, as tenants in common and in accordance with the provisions of Section 5.3, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any joint operating agreements or other agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

5.5 **Cancellation of Certificate of Limited Partnership.** Upon the completion of the distribution of Partnership property as provided in Sections 5.3 and 5.4, the Partnership shall be terminated, and the Liquidator (or the General Partner and Limited Partners if necessary) shall cause the cancellation of the Certificate of Limited Partnership in the State of Delaware and of all qualifications and registrations of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware and shall take such other actions as may be necessary to terminate the Partnership.

5.6 **Return of Capital.** The General Partner shall not be personally liable for the return of the Capital Contributions of Limited Partners, or any portion thereof, it being expressly understood that any such return shall be made solely from Partnership assets.

5.7 **Waiver of Partition.** Each Partner hereby waives any rights to partition of the Partnership property.

ARTICLE 6

GENERAL PROVISIONS

6.1 **Amendments to Agreement.** The General Partner may amend this Agreement without the consent of any Partner if the General Partner reasonably determines that such amendment is necessary and appropriate; *provided, however*, any action taken by the General Partner shall be subject to its fiduciary duties to the Limited Partners under the Delaware Act.

6.2 **Addresses and Notices.** Any notice, demand, request, or report required or permitted to be given or made to a Partner under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by United States registered or certified mail to the Partner at his/her/its address as shown on the records of the Partnership, regardless of any claim of any Person who may have an interest in any Partnership Interest by reason of an assignment or otherwise.

6.3 **Titles and Captions.** All article and section titles and captions in the Agreement are for convenience only, shall not be deemed part of this Agreement, and in no way shall define, limit, extend, or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles," "Sections" and "Exhibits" are to "Articles," "Sections" and "Exhibits" of this Agreement. All Exhibits hereto are incorporated herein by reference.

6.4 **Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs shall include the plural and vice versa.

6.5 **Further Action.** The parties shall execute all documents, provide all information, and take or refrain from taking all actions as may be necessary or appropriate to achieve the purposes of this Agreement.

6.6 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.

6.7 **Integration.** This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

6.8 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership.

6.9 **Waiver.** No failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement, or condition.

6.10 **Counterparts.** This agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

6.11 **Applicable Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

6.12 Invalidity of Provisions. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties shall be relieved of all obligations arising under that provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

Remainder of Page Intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first written above to be effective as of February 29, 2004.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

_____
BRADFORD BORUD

CANIS MINOR TRUST

By: _____
James D. Dondero,
Trustee

_____
PATRICK DAUGHERTY

_____
DAVIS DEADMAN

_____
JAMES D. DONDERO

_____
R. JOSEPH DOUGHERTY

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

TODD A. TRAVERS

DAVID WALLS

JOEN YANG

End of Signatures.

TODD A. TRAVERS

DAVID WALLS

JOHN YANG

End of Signatures.

THE GET GOOD TRUST

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JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

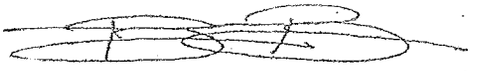
Signatures Continued on Next Page.

SPOUSE'S AGREEMENT

Reference is made to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of the Partnership's allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:



BRADFORD BORUD

SPOUSE OF PARTNER:

ALTHEA BORUD

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PARTNER:

_____

BRADFORD BORUD

SPOUSE OF PARTNER:

Althea Borud

ALTHEA BORUD

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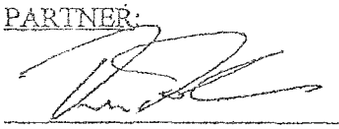

DAVIS DEADMAN

SPOUSE OF PARTNER:

N/A

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PARTNER:

JAMES D. DONDERO

SPOUSE OF PARTNER:

N/A

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PARTNER:

R. JOSEPH DOUGHERTY

SPOUSE OF PARTNER:

N/A

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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PARTNER:

JOHN MORGAN

SPOUSE OF PARTNER:

DEBRA MORGAN

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PARTNER:

MARK K. OKADA

SPOUSE OF PARTNER:

PAMELA OKADA

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PARTNER:

MARK K. OKADA

SPOUSE OF PARTNER:

PAMELA OKADA

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PARTNER:

KURTIS PLUMER

SPOUSE OF PARTNER:

KRISTI PLUMER

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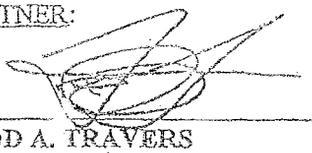
PARTNER:



TODD A. TRAVERS

SPOUSE OF PARTNER:

KIMBERLY TRAVERS

SPOUSE'S AGREEMENT

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PARTNER:

TODD A. TRAVERS

SPOUSE OF PARTNER:

KIMBERLY TRAVERS

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PARTNER:

DAVID WALLS

SPOUSE OF PARTNER:

CARI WALLS

SPOUSE'S AGREEMENT

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SPOUSE OF PARTNER:

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PARTNER:

JOHN YANG

SPOUSE OF PARTNER:

JOYCE YANG

SPOUSE'S AGREEMENT

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PARTNER:

PATRICK DAUGHERTY

SPOUSE OF PARTNER:

KIMBERLY DAUGHERTY

EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.95665%
LIMITED PARTNERS:	
Bradford Borud	0.303%
Canis Minor Trust	9.5665%
Patrick Daugherty	0.608%
Davis Deadman	0.544%
James D. Dondero	4.78325%
R. Joseph Dougherty	0.549%
The Get Good Trust	11.4798%
The Get Better Trust	44.96255%
Paul Kauffman	0.390%
The Mark and Pamela Okada Family Trust-Exempt #1	6.69655%
The Mark and Pamela Okada Family Trust-Exempt #2	2.86995%
John Morgan	0.281%
Mark K. Okada	14.34975%
Kurtis Plumer	0.426%
Todd A. Travers	0.624%
David Walls	0.203%
John Yang	0.407%
TOTAL	100.0%

EXHIBIT B

ADDENDUM
TO THE
SECOND AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS ADDENDUM (this "*Addendum*") to that certain Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated December 31, 2004, to be effective as of February 29, 2004, as amended from time to time (the "*Agreement*"), is made and entered into as of the ____ day of _____, 20___, by and between Strand Advisors, Inc., as the sole General Partner (the "*General Partner*") of Highland Capital Management, L.P. (the "*Partnership*") and _____ ("_____") (except as otherwise provided herein, all capitalized terms used herein shall have the meanings set forth in the Agreement).

RECITALS:

WHEREAS, the General Partner, in its sole and unfettered discretion, and without the consent of any Limited Partner, has the authority under (i) Section 4.4 of the Agreement to admit Additional Limited Partners, (ii) Section 4.6 of the Agreement to admit Substitute Limited Partners and (iii) Section 6.1 of the Agreement to amend the Agreement;

WHEREAS, the General Partner desires to admit _____ as a Limited Partner holding a _____% Percentage Interest in the Partnership as of the date hereof;

WHEREAS, _____ desires to become a Limited Partner and be bound by the terms and conditions of the Agreement; and

WHEREAS, the General Partner desires to amend the Agreement to add _____ as a party thereto.

AGREEMENT:

RESOLVED, as a condition to receiving a Partnership Interest in the Partnership, _____ _____ acknowledges and agrees that he/she/it (i) has received and read a copy of the Agreement, (ii) shall be bound by the terms and conditions of the Agreement; and (iii) shall promptly execute an addendum to the Amended Buy-Sell and Redemption Agreement; and be it

FURTHER RESOLVED, the General Partner hereby amends the Agreement to add _____ as a Limited Partner, and the General Partner shall attached this Addendum to the Agreement and make it a part thereof; and be it

FURTHER RESOLVED, this Addendum may be executed in any number of counterparts, all of which together shall constitute one Addendum binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Addendum as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____

Name: _____

Title: _____

NEW LIMITED PARTNER:

[_____]

AGREED AND ACCEPTED:

In consideration of the terms of this Addendum and the Agreement, in consideration of the Partnership's allowing the above signed Person to become a Limited Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms and conditions of the Agreement as though a party thereto.

SPOUSE OF NEW LIMITED PARTNER:

[_____]

EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
Todd A. Travers	
David Walls	
John Yang	

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

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James D. Dondero,
Trustee

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PAUL KAUFFMAN

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Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

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KURTIS PLUMER

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Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

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Lawrence Tonomura,
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By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

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Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

_____
PAUL KAUFFMAN

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST-EXEMPT #2

By: _____
Lawrence Tonomura,
Trustee

_____
JOHN MORGAN

_____
MARK K. OKADA

_____
KURTIS PLUMER

Signatures Continued on Next Page.

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tondmura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – *EXEMPT TRUST #1*

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

AMENDED AND RESTATED

BUY-SELL AND REDEMPTION AGREEMENT

Among

Highland Capital Management, L.P.

And Its

Limited Partners

December 31, 2004

EXHIBIT 3
Deponent Daugherty
Date 9/18/13 Rptr Ehrenberg

DEFENDANT'S EXHIBIT 3

EXHIBIT 43
Deponent K. Daugherty
Date 7/8/13 Rptr Ehrenberg
WWW.DEPOBOOK.COM

AMENDED AND RESTATED

BUY-SELL AND REDEMPTION AGREEMENT

TABLE OF CONTENTS

		Page
Section 1.	Definitions 1	
Section 2.	Restrictions Against Transfer	5
Section 3.	Joinder of Permitted Transferees	5
Section 4.	Obligations Arising Upon the Death, Disability, or Termination of Employment of a Founding Limited Partner	5
Section 5.	Disposition Upon Bankruptcy of a Member of a Founding Limited Partner Group	5
Section 6.	Disposition Upon a Community Property Event	5
Section 7.	Disposition Upon a Trigger Event with Respect to a Non-Founding Limited Partner	5
Section 8.	Termination of a Non-Founding Limited Partner for Cause	5
Section 9.	Obligation of Spouses of Limited Partners	5
Section 10.	Determination of Agreed Value of the Partnership	5
Section 11.	Purchase Price of Partnership Interests	5
Section 12.	Assignment of Partnership Interests	5
Section 13.	Life Insurance on the Life of a Founding Limited Partner	5
Section 14.	Payment of Purchase Price to the Departing Founding Limited Partner Group Upon the Death of a Founding Limited Partner	5
Section 15.	Confidentiality, Non-Competition, Non-Solicitation, and Non-Recruitment	5
Section 16.	Termination	5
Section 17.	Legend on Certificates	5
Section 18.	Miscellaneous	5

Attachments:
Exhibit A – Limited Partnership Interests In Highland Capital Management, L.P.
Exhibit B – Addendum To Buy-Sell And Redemption Agreement
Exhibit C – Statement Of Agreed Value
Exhibit D – Form Of Dondero Insurance Rabbi Trust Agreement
Exhibit E – Form Of Okada Insurance Rabbi Trust Agreement
Exhibit F – Form Of Promissory Note
Exhibit G – Form Of Promissory Note
Exhibit H – Continuing Guaranty
Exhibit I – Partnership Interest Pledge Agreement
Exhibit J – Notice Information
Exhibit K – Form of Assignment of Interest

AMENDED AND RESTATED

BUY-SELL AND REDEMPTION AGREEMENT

OF

HIGHLAND CAPITAL MANAGEMENT, L.P.

THIS AMENDED AND RESTATED BUY-SELL AND REDEMPTION AGREEMENT (this "*Agreement*"), is made and entered into as of the 31st day of December, 2004, to be effective as of February 29, 2004, by and among Highland Capital Management, L.P., a Delaware limited partnership (the "*Partnership*"), James D. Dondero, an individual ("*Dondero*"), Mark K. Okada, an individual ("*Okada*"), the Persons listed on Exhibit A who are limited partners of the Partnership, and any Person who later becomes a limited partner of the Partnership and who becomes a party to this Agreement by executing and delivering to the Partnership an Addendum to this Agreement in the form attached as Exhibit B (collectively, the "*Limited Partners*"), and joined in by Strand Advisors, Inc., a Delaware corporation and the sole general partner of the Partnership (the "*General Partner*").

RECITALS:

WHEREAS, on May 27, 2004, the Partnership, Dondero, Okada and their Affiliated Limited Partners entered into the original Buy-Sell and Redemption Agreement (the "*Original Buy-Sell and Redemption Agreement*"); and

WHEREAS, the Limited Partners desire to amend the Original Buy-Sell and Redemption Agreement to (i) include new Limited Partners as a party to this Agreement and (ii) to make certain other changes; and

WHEREAS, the Limited Partners and any Person who later becomes a party to this Agreement shall be bound by the terms and conditions of this Agreement; and

WHEREAS, the Partnership and the General Partner join in the execution and delivery of this Agreement for the purpose of acknowledging their rights and obligations hereunder;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants, agreements and conditions contained in this Agreement, the parties hereto agree as follows:

Section 1: **Definitions.** As used in this Agreement, the following terms have the meanings assigned to them in this Section 1:

"*Affiliate*" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "*control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"*Affiliate Employer*" means any Affiliate of the Partnership which is the employer of a Non-Founding Limited Partner.

"*Affiliated Limited Partner*" means: (i) with respect to Dondero: (A) The Get Good Trust, (B) The Get Better Trust, (C) the Canis Minor Trust, (D) any other Person that becomes a Limited Partner in the Partnership and is either (1) a descendant of Dondero or a trust primarily for the benefit of a descendant of Dondero or (2) designated by Dondero as an Affiliated Limited Partner of Dondero in a written notice to the General Partner, and (E) the estate, heirs and beneficiaries of Dondero who acquire a Partnership Interest upon Dondero's death; and (ii) with respect to Okada: (A) The Mark and Pamela Okada Family Trust – Exempt Trust #1, (B) The Mark and Pamela Okada Family Trust – Exempt Trust #2, (C) any other Person that becomes a Limited Partner in the Partnership and is either (1) a descendant of Okada or a trust primarily for the benefit of a descendant of Okada or (2) designated by Okada as an Affiliated Limited Partner of Okada in a written notice to the General Partner, and (D) the estate, heirs and beneficiaries of Okada who acquire a Partnership Interest upon Okada's death.

"*Agreed Value*" means $200,000,000 as of the date hereof, and as determined as of January 1 of each calendar year according to the terms and conditions set forth in Section 10. The parties hereto acknowledge that the Agreed Value of the Partnership on February 29, 2004, was $125,000,000 and on May 27, 2004 and continuing through the date hereof is $200,000,000.

"*Agreement*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Applicable Entities*" means the Partnership and its Affiliates.

"*Available BR Interest*" has the meaning set forth in Section 5(b).

"*Available NFLP Interest*" has the meaning set forth in Section 7(b).

"*Available Spouse's Interest*" has the meaning set forth in Section 6(c).

"*Bankrupt Partner*" has the meaning set forth in Section 5(a).

"*Bankruptcy*" means, for any Partner, that Partner's taking or acquiescing in the taking of an action seeking relief under, or advantage of, any applicable debtor relief, liquidation, receivership, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization, or similar law affecting the rights or remedies of creditors generally, as in effect from time to time.

"*Bankruptcy Notice*" has the meaning set forth in Section 5(a).

"*Bankrupt Partner's Interest*" has the meaning set forth in Section 5(a).

"*Cause*" means conduct by the Partner, in his capacity as a Partner or an employee of an Affiliate Employer amounting to (i) the Partner's conviction or plea of *nolo contendere* for any criminal offense or commission by the Partner of any act that the Partnership or Affiliate Employer considers damaging to or tending to discredit any of the Applicable Entities; (ii) dishonesty, fraud, willful misconduct, unlawful discrimination, breach of contract, bad faith or theft on the part of the Partner that is injurious to any of the Applicable Entities; (iii) the Partner's using for his or her own benefit any confidential or proprietary information of any of the Applicable Entities, or willfully or negligently divulging any such information to third parties without the prior written consent of the Partnership or Affiliate Employer; (iv) a breach or violation of the terms of this Agreement or other agreement to which the Partner and any of the Applicable Entities are party in any manner that adversely affects any of the Applicable Entities; (v) the failure or refusal of the Partner to follow the lawful directives of the Partnership or Affiliate Employer (unless due to sickness, injury, or disabilities, but excluding self-inflicted injuries, drug usage in violation with Affiliate Employer's policy or addiction to alcohol or other substances hazardous to health); (vi) gross inattention to duty or any other willful, reckless or negligent

act (or omission to act) by the Partner, which, in the good faith judgment of the Partnership or Affiliate Employer, injures any of the Applicable Entities; (vii) a breach of fiduciary duties; (viii) the Partner's commission or participation in any illegal act in the course of his/her employment with the Partnership or Affiliate Employer, including violation of any statute or regulation; or (ix) the Partner's second commission of an act, of which Partner is given written notice, that is determined in good faith by (A) James D. Dondero, with regard to any event involving James D. Dondero, or (B) both James D. Dondero and Mark K. Okada for an event involving Mark K. Okada or any other employee of an Applicable Entity, to constitute disrespect or unacceptably irreverent or inappropriate behavior to James D. Dondero, Mark K. Okada or any other employee of an Applicable Entity. Any determination of whether a Partner should be terminated for Cause pursuant to this Agreement shall be made in the reasonable discretion of the Partnership, shall be made in good faith and shall be binding upon all parties affected thereby.

"*Change in Control*" means either (i) a change in the ownership of the Partnership, such that the following Persons (either singularly or collectively) fail to retain, directly or indirectly, majority control of the Partnership: James D. Dondero, Mark K. Okada or their affiliated, family or charitable trusts, employees, former employees, and any long-term incentive plans; or (ii) a sale of all or substantially all of the assets of the Partnership. For clarification, the death or retirement of either or both James D. Dondero or Mark K. Okada shall not, in and of itself, constitute a Change in Control.

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

"*Community Property Event*" means, with respect to any Limited Partner that is an individual, (i) the filing of a divorce or annulment proceeding by or against that Limited Partner if that Limited Partner's spouse has a community property interest in that Limited Partner's Partnership Interest, but only to the extent that spouse's community property interest in that Limited Partner's Partnership Interest does not Transfer to that Limited Partner pursuant to the divorce or annulment proceeding; or (ii) the death of a Limited Partner's spouse (if predeceasing that Limited Partner) if that Limited Partner's spouse has a community property interest in that Limited Partner's Partnership Interest, but only to the extent that the deceased spouse's community property interest in that Limited Partner's Partnership Interest does not Transfer to either (A) that Limited Partner or (B) a trust in which that Limited Partner is a trustee or beneficiary.

"*Company*" means Highland Capital Management Services, Inc., a Delaware corporation, and its successors and assigns.

"*Competing Business*" means any business conducted by any of the Applicable Entities at the time the Non-Founding Limited Partner ceases (for whatever reason) to be a Partner or an employee of any Affiliate Employer.

"*Confidential Information*" includes, but is not limited to:

(i) Information concerning customers, clients, marketing, business and operational methods of any of the Applicable Entities and their customers or clients, contracts, financial or other data, technical data, e-mail and other correspondence or any other confidential or proprietary information possessed, owned or used by any of the Applicable Entities;

(ii) Business, pricing and management methods and information;

(iii) Finances, strategies, systems, research, plans, reports, recommendations and conclusions;

(iv) Tear sheets, industry comparative analysis and Collateralized Loan Obligation (CLO) and other structured products;

(v) Names, arrangements with, or other information relating to, any of the Applicable Entities' customers, clients, suppliers, financiers, owners, representatives and other Persons who have business relationships with any of the Applicable Entities or who are prospects for business relationships with any of the Applicable Entities; and

(vi) Any matter or thing obtained or ascertained by Partner through the Partner's association with any of the Applicable Entities, the use or disclosure of which might reasonably be construed to be contrary to the best interests of any of the Applicable Entities, their owners or employees.

"*CP Event Notice*" has the meaning set forth in Section 6(a).

"*Departing Founding Limited Partner Group*" has the meaning set forth in Section 4.

"*Determination Event*" means (i) the death, Disability or termination of employment from the Partnership or Affiliate Employer of a Founding Limited Partner; (ii) the occurrence of a Community Property Event; (iii) the Bankruptcy of a member of a Founding Limited Partner Group; or (iv) a Trigger Event with respect to a Non-Founding Limited Partner.

"*Determined Value*" mean an amount equal to the lesser of (i) the current Agreed Value of the Partnership in effect as of the date of the Determination Event (the "*Current Agreed Value*") or (ii) the first Agreed Value of the Partnership determined after the Determination Event.

"*Disability*" means disability as defined by the terms of Highland Capital Management Services, Inc.'s ("*Services*") long-term disability plan as in effect at the determination of such Disability but will not include disabilities related to fatigue or stress. If, at any time during the term of this Agreement, the Company does not maintain a long-term disability plan, Disability shall mean a physical or mental condition which, in the judgment of the Company, permanently prevents the Participant from performing the essential functions of his position with the Affiliate or Company, with or without reasonable accommodation, or such other position or job that the Affiliate or Company makes available to him that is of similar status, similar compensation and similar responsibility and for which the Participant is qualified by reason of his education, training and experience. In making its determination, Company may, but is not required to, rely on advice of a physician competent in the area to which such Disability relates. The Company may make the determination in its sole discretion, and any decision of the Company will be binding on all parties.

"*Discount Factor*" has the meaning set forth in Section 11(c).

"*Dondero*" has the meaning set forth in the introductory paragraph of this Agreement.

"*FLPG*" has the meaning set forth in Section 5(a).

"*Founding Limited Partner*" means either Dondero or Okada.

"*Founding Limited Partner Group*" means any Founding Limited Partner together with all the Affiliated Limited Partners of that Founding Limited Partner.

"*Founding Limited Partner Insurance Trust*" means a rabbi trust designated as a beneficiary of the insurance policies on a Founding Limited Partner's life, as further described in Section 13.

"*General Partner*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Limited Partners*" has the meaning set forth in the introductory paragraph of this Agreement.

"*NFLP*" has the meaning set forth in Section 7(a).

"*NFLP's Interest*" has the meaning set forth in Section 7(a).

"*Non-Compete Article*" has the meaning set forth in Section 15(i).

"*Non-Competition Period*" has the meaning set forth in Section 15(d).

"*Non-FLPG Partners*" has the meaning set forth in Section 5(a).

"*Non-Founding Limited Partner*" means any natural person who is a Limited Partner other than a Founding Limited Partner.

"*Objector*" has the meaning set forth in Section 14(f).

"*Okada*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Other Limited Partners*" has the meaning set forth in Section 7(a).

"*Partner*" means any Person who is a Limited Partner or a General Partner.

"*Partnership*" has the meaning set forth in the introductory paragraph of this Agreement.

"*Partnership Agreement*" has the meaning set forth in Section 2.

"*Partnership Interest*" means the interest held by that Limited Partner in the Partnership.

"*Partnership Note*" has the meaning set forth in Section 14(d).

"*Percentage Interest*" means, with respect to any Limited Partner, the percentage set forth opposite that Limited Partner's name on Exhibit A, as that percentages may be amended from time to time in accordance with this Agreement and the Partnership Agreement.

"*Person*" means an individual or a corporation, limited liability company, partnership, trust, estate, unincorporated organization, association, or other entity.

"*Purchase Price*" has the meaning set forth in Section 11.

"*Remaining BR Interest*" has the meaning set forth in Section 5(c).

"*Specialized Training*" includes, but is not limited to:

(i) Training the Partnership provides to its Non-Founding Limited Partners that is unique to its business and enhances the Non-Founding Limited Partner's ability to perform the Non-Founding Limited Partner's job duties effectively, including disclosure and access to Confidential Information; and

(ii) Orientation training, sales methods/techniques training, operation methods training, and computer and systems training.

"*Spouse's Interest*" has the meaning set forth in Section 6(a).

"*Subject Limited Partner*" has the meaning set forth in Section 6(a).

"*Surviving Founding Limited Partner Group*" shall mean, after the death of a Founding Limited Partner, the living Founding Limited Partner and the Affiliated Limited Partners of that living Founding Limited Partner.

"*Trigger Event*" means, with respect to any Non-Founding Limited Partner, (i) the Bankruptcy of that Non-Founding Limited Partner; (ii) the voluntary resignation or retirement of that Non-Founding Limited Partner from the Partnership or employment of any Affiliate Employer; (iii) the death of that Non-Founding Limited Partner; (iv) the Disability of that Non-Founding Limited Partner; (v) the termination of that Non-Founding Limited Partner's employment with the Partnership or from any Affiliate Employer without Cause; (vi) the termination of this Agreement pursuant to Section 16; or (vii) a Change of Control. Each Non-Founding Limited Partner agrees to give the Partnership ten (10) days' written notice of his Bankruptcy. Upon a Trigger Event, the Partnership Interest subject to purchase pursuant to the terms of this Agreement shall include any Partnership Interest held by a trust that was a permitted transferee upon a Community Property Event.

"*Trigger Event Notice*" has the meaning set forth in Section 7(a).

"*Transfer*" means shall mean the sale, transfer, conveyance, assignment, pledge, hypothecation, mortgage or other encumbrance or voluntary or involuntary disposition of all or any part of a Partnership Interest.

"*Unrelated Limited Partners*" has the meaning set forth in Section 6(a).

Section 2. **Restrictions Against Transfer.**

(a) Each Limited Partner agrees that he/she/it will not Transfer any of his/her/its Partnership Interest, or any right or interest therein, except as provided by (i) this Agreement and (ii) that certain Second Amended and Restated Limited Partnership Agreement of the Partnership, dated December 31, 2004, to be effective as of February 29, 2004 (as that may be amended from time to time, the "*Partnership Agreement*").

(b) The General Partner, in its sole and unfettered discretion, will generally only consent to a Transfer if:

(i) Such Transfer, when added to the total of all other Transfers of Partnership Interests within the preceding twelve (12) months, would not result in the Partnership being considered to have terminated within the meaning of Code Section 708;

(ii) Such Transfer would not violate the Securities Act of 1933, as amended, or any state securities or "Blue Sky" laws applicable to the Partnership or the Partnership Interest to be Transferred;

(iii) Such Transfer would not cause the Partnership to lose its status as a partnership for federal income tax purposes or cause the Partnership to become subject to the Investment Company Act of 1940, as amended;

(iv) Such Transfer would not cause the Partnership to be treated as a "publicly traded partnership" within the meaning of Code Section 7704 and the Treasury Regulations promulgated thereunder and would not make the Partnership ineligible for a "safe harbor" exemption from treatment as a publicly traded partnership under Code Section 7704 and the Treasury Regulations promulgated thereunder.

Section 3. Joinder of Permitted Transferees. Any Person who is a permitted transferee of a Partnership Interest pursuant to the terms of the Partnership Agreement and this Agreement that is not, at the time of the Transfer, subject to the terms of this Agreement, shall execute an Addendum to this Agreement in the form attached as Exhibit B and an addendum to the Partnership Agreement as set forth therein. Upon execution of an addendum to this Agreement, that Person's name and Percentage Interest shall be added to the table attached on Exhibit A and that Person shall be thereafter eligible for the benefits of, and bound by the terms and conditions of, this Agreement. The failure of a newly designated Affiliated Limited Partner to execute an addendum to this Agreement shall not affect the rights of that Affiliated Limited Partner under this Agreement or the obligations of the Partnership under this Agreement.

Section 4. Obligations Arising Upon the Death, Disability or Termination of Employment of a Founding Limited Partner.

(a) Mandatory Redemption. Upon the death, Disability or termination of employment with the Partnership or any Affiliate Employer (for any reason whatsoever) of the first Founding Limited Partner to die, become Disabled or whose employment with the Partnership or any Affiliate Employer terminates (that Founding Limited Partner, together with all of his Affiliated Limited Partners, being referred to collectively herein as the "*Departing Founding Limited Partner Group*"), the Partnership shall purchase, and each member of the Departing Founding Limited Partner Group shall sell to the Partnership, all, but not less than all, of each member of the Departing Founding Limited Partner Group's Partnership Interest pursuant to the terms and conditions of this Agreement.

(b) Payment Terms. The Purchase Price for the Partnership Interest to be purchased pursuant to this Section 4 shall be determined in accordance with Section 11(a). The terms and conditions of the purchase of Partnership Interests made pursuant to this Section 4 are as follows:

(i) For Partnership Interests held by the Departing Founding Limited Partner Group upon the death of a Founding Limited Partner, such purchase shall be made in accordance with Section 14.

(ii) For Partnership Interests held by the Departing Founding Limited Partner Group upon the Disability or termination of employment with the Partnership or any Affiliate Employer of a Founding Limited Partner, such purchase shall occur upon the later of (i) thirty (30) days after the Determination Event or (ii) twenty (20) days after the final determination of the Agreed Value of the Partnership as set forth in Section 10. The Partnership may, in its sole and unfettered discretion, pay for the Partnership Interests either (A) in readily available funds, or (B) with a promissory note, the form of which is attached as Exhibit F.

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Section 5. Disposition Upon Bankruptcy of a Member of a Founding Limited Partner Group.

(a) Option. Upon the Bankruptcy of any member of a Founding Limited Partner Group (the "*Bankrupt Partner*"), the Bankrupt Partner or his/her/its legal representative shall give notice within ten (10) days of that event to the Partnership. Within five (5) days after the Partnership has the Determined Value, the Partnership shall send a written notice to the Partners regarding the sale of the Bankrupt Partner's Partnership Interest pursuant to the terms of this Section 5 (the "*Bankruptcy Notice*"). The Bankrupt Partner and the Bankrupt Partner's legal representative shall be deemed to have granted (i) first, to the other members of the Founding Limited Partner Group in which that Bankrupt Partner is a member (the "*FLPG*"); (ii) second, to the Limited Partners other than the FLPG (the "*Non-FLPG Partners*"); and (iii) third, to the Partnership an option to purchase any and all interest with respect to the Bankrupt Partner's Partnership Interest (the "*Bankrupt Partner's Interest*") upon the terms set forth in this Section 5.

(b) Election to Exercise by FLPG. Within fifteen (15) days after the Bankruptcy Notice, each member of the FLPG shall notify the Partnership of its desire to purchase its pro rata portion of the Bankrupt Partner's Interest. If any member of the FLPG elects to purchase none, or less than all, of his/her/its pro rata part of the Bankrupt Partner's Interest (the remaining Bankrupt Partner's Interest which the members of the FLPG elect not to purchase being called the "*Available BR Interest*"), the Partnership shall, within twenty (20) days after receipt of the Bankruptcy Notice, notify the members of the FLPG of that Available BR Interest, and each of the members of the FLPG may elect, by notifying the Partnership in writing within twenty-five (25) days after receipt of the Bankruptcy Notice, to purchase that Available BR Interest in the proportion which the Partnership Interest owned by that member of the FLPG bears to the aggregate Partnership Interest owned by all members of the FLPG who similarly elect to purchase that Available BR Interest.

(c) Election to Exercise by Non-FLPG Partners. The Partnership shall, within thirty (30) days after receipt of the Bankruptcy Notice, notify the Non-FLPG Partners that the members of the FLPG will exercise their option for none, or less than all, of the Bankrupt Partner's Interest. Each Non-FLPG Partner shall have until the thirty-fifth (35th) day following the Bankruptcy Notice within which to notify the Partnership whether that Non-FLPG Partner desires to purchase his/her/its pro rata portion of the remaining Bankrupt Partner's Interest. If any Non-FLPG Partner elects to purchase none, or less than all, of his/her/its pro rata part of the remaining Bankrupt Partner's Interest (the remaining Bankrupt Partner's Interest which that Non-FLPG Partner elects not to purchase being called the "*Remaining BR Interest*"), the Partnership shall, within forty (40) days after receipt of the Bankruptcy Notice, notify the other Non-FLPG Partners of that Remaining BR Interest, and each Non-FLPG Partner may elect, by notifying the Partnership in writing within forty-five (45) days after receipt of the Bankruptcy Notice, to purchase that Remaining BR Interest in the proportion which the Partnership Interest owned by that Non-FLPG Partner bears to the aggregate Partnership Interest owned by all other Non-FLPG Partners who similarly elect to purchase that Remaining BR Interest.

(d) Mandatory Purchase by the Partnership. If the FLPG and the Non-FLPG Partners notify the Partnership that they will exercise their option for none, or less than all, of the Bankrupt Partner's Interest, the Partnership shall be obligated to purchase any remaining portion of the Bankrupt Partner's Interest that is not acquired by the FLPG or the Non-FLPG Partners.

(e) Manner of Exercise. Upon determination of the portion of the Bankrupt Partner's Interest to be purchased by the Limited Partners or the Partnership, the Partnership, on its behalf and/or on behalf of the Limited Partners who are purchasing the Bankrupt Partner's Interest, shall give notice of exercise to the Bankrupt Partner and his/her/its legal representative within fifty (50) days after receipt of the Bankruptcy Notice. Any Limited Partner notifying the Partnership of his intention to

acquire all or any portion of the Bankrupt Partner's Interest shall be required to purchase the same.

(f) Payment Terms. The closing of the purchase of all or any portion of the Bankrupt Partner's Interest pursuant to this Section 8 shall occur on or before the seventieth (70th) day after receipt of the Bankruptcy Notice. The Purchase Price for that Bankrupt Partner's Interest shall be determined in accordance with Section 11(c). The purchasers of the Bankrupt Partner's Interest may, at their sole and unfettered discretion, pay for that Bankrupt Partner's Interest either (i) in readily available funds, or (ii) with a promissory note, the form of which is attached as Exhibit E.

(g) Interest Purchased. The Bankrupt Partner's Interest (or portion thereof) acquired by any existing party to this Agreement shall become subject in all respects to this Agreement.

(h) Right of Assignment. Dondero and Okada shall have the right to assign their right to purchase the Bankrupt Partner's Interest to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of Dondero or Okada.

Section 6. Disposition Upon a Community Property Event.

(a) Option. In the event any individual Limited Partner experiences a Community Property Event (the "*Subject Limited Partner*"), the Subject Limited Partner must give the Partnership written notice within ten (10) days of (i) the death of that Limited Partner's spouse or (ii) an entry of a judicial decree or other order granting the divorce or annulment, as appropriate. Within five (5) days after the Partnership has the Determined Value, the Partnership shall send a written notice to the Partners regarding the sale of the Spouses' Interest (as defined herein) pursuant to this Section 6 (the "*CP Event Notice*"). The CP Event Notice shall state the portion of the Partnership Interest of the Subject Limited Partner that is subject to Transfer to his/her spouse or his/her spouse's estate or heirs, as appropriate (the "*Spouse's Interest*"). The spouse or legal representative of the estate and heirs of the spouse of the Subject Limited Partner shall be deemed to have granted (i) first, to the Subject Limited Partner; (ii) second, to the Unrelated Limited Partners (as defined herein); and (iii) third, to the Partnership, an option to purchase any and all of such Spouse's Interest for the price and upon the terms set forth in this Section 6. For purposes of this Section 6, "*Unrelated Limited Partners*" means all Limited Partners other than the Subject Limited Partner (including that Subject Limited Partner's spouse, and the Spouse's heirs or estate, as appropriate).

(b) Election to Exercise by Subject Limited Partner. Within fifteen (15) days after the CP Event Notice, the Subject Limited Partner shall notify the Partnership and the Limited Partners of the portion of the Spouse's Interest, if any, that the Subject Limited Partner elects to purchase. If the Subject Limited Partner is a Founding Limited Partner, that Subject Limited Partner shall have the right to assign his/her right to purchase the Spouse's Interest to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of that Subject Limited Partner.

(c) Election to Exercise by Unrelated Limited Partners. The Partnership shall, within twenty (20) days after receipt of the CP Event Notice, notify the Unrelated Limited Partners that the Subject Limited Partner will exercise his/her option for none, or less than all, of the Spouse's Interest. The Unrelated Limited Partners shall have the right to purchase their pro rata portion of the Spouse's Interest that is not acquired by the Subject Limited Partner. Within twenty-five (25) days after the CP Event Notice, the Unrelated Limited Partners shall notify the Partnership and the Partners of the portion of the Available Spouse's Interest, if any, that they elect to purchase. If any Unrelated Limited Partner elects to purchase none or less than all of his pro rata portion of the remaining Spouse's Interest (the remaining Spouse's Interest which the Unrelated Limited Partner elects not to purchase being called "*Available Spouse's Interest*"), the Partnership shall, within thirty (30) days after the CP Event Notice, notify the Unrelated Limited Partners of that election and each other Unrelated Limited Partner may elect,

by notifying the Partnership in writing within thirty-five (35) days after the CP Event Notice, to purchase that Available Spouse's Interest in the proportion which the Partnership Interest owned by that other Unrelated Limited Partner bears to the aggregate Partnership Interest owned by all other Unrelated Limited Partners who similarly elect to purchase that Available Spouse's Interest.

(d) Mandatory Purchase by the Partnership. If the Subject Limited Partner and the Unrelated Limited Partners notify the Partnership that they will exercise their option for none, or less than all, of the Spouse's Interest, the Partnership shall be obligated to purchase any remaining portion of the Spouse's Interest that is not acquired by the Subject Limited Partner or the Unrelated Limited Partners.

(e) Manner of Exercise. Upon determination of the portion of the Spouse's Interest to be purchased by the Limited Partners or the Partnership, the Partnership, on its behalf and/or on behalf of the Limited Partners who are purchasing the Spouse's Interest, shall give notice of exercise to the spouse and/or the estate and heirs of the Spouse, as appropriate, of the Subject Limited Partner within forty (40) days after the CP Event Notice. Any Limited Partner notifying the Partnership of his desire to purchase all or any portion of the Spouse's Interest shall be obligated to do so.

(f) Payment Terms. The closing of the purchase of all or any portion of the Spouse's Interest pursuant to this Section 6 shall occur on or before the seventieth (70th) day after receipt of the CP Event Notice. The Purchase Price for that Spouse's Interest shall be determined in accordance with Section 11(c). The purchasers of the Spouse's Interest may, at their sole and unfettered discretion, pay for that Spouse's Interest either (i) in readily available funds; or (ii) with a promissory note, the form of which is attached as Exhibit F; *provided, however*, the minimum and maximum aggregate amount per calendar quarter that the Partnership or any of its Affiliates must pay to the Subject Limited Partner's spouse or that spouse's estate or heirs under this Agreement and the Second Amended and Restated HCM Services Long-Term Incentive Plan, as may be amended from time to time, is $250,000.

(g) Interest Purchased. The Spouse's Interest (or portion thereof) acquired by any existing party to this Agreement shall become subject in all respects to this Agreement. If the Subject Limited Partner is a Founding Limited Partner, that Subject Limited Partner may, but shall not be required to, designate any trust that is permitted to acquire a Partnership Interest hereunder as an Affiliated Limited Partner of that Subject Limited Partner.

(h) Right of Assignment. Dondero and Okada shall have the right to assign their right to purchase the Spouse's Interest to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of Dondero or Okada.

Section 7. Disposition Upon a Trigger Event with Respect to a Non-Founding Limited Partner.

(a) Option. Upon the occurrence of a Trigger Event with respect to a Non-Founding Limited Partner (the "*NFLP*"), the Partnership shall, within five (5) days after its has the Determined Value, send a written notice to the Partners regarding the sale of the NFLP's Interest (as defined herein) pursuant to this Section 7 (the "*Trigger Event Notice*"). The NFLP shall be deemed to have granted (i) first, to the Limited Partners, other than that selling NFLP, for any Trigger Event, other than a Change in Control (the "*Other Limited Partners*"); and (ii) second, to the Partnership, an option to purchase any and all interest with respect to the NFLP's Partnership Interest (the "*NFLP's Interest*") upon the terms set forth in this Section 7.

(b) Election to Exercise by Other Limited Partners. The Other Limited Partners shall have the right to purchase their pro rata portion of the NFLP's Interest upon any Trigger Event other than a Change of Control. Within fifteen (15) days after the Trigger Event Notice, each of the Other Limited

Partners shall notify the Partnership whether that Other Limited Partner desires to purchase that Other Limited Partner's pro rata portion of the NFLP's Interest. If any Other Limited Partner elects to purchase none, or less than all, of his pro rata part of the NFLP's Interest (the remaining NFLP's Interest which that Other Limited Partner elects not to purchase being called the "*Available NFLP Interest*"), the Partnership shall, within twenty (20) days after receipt of the Trigger Event Notice, notify the Other Limited Partners of that Available NFLP Interest, and each of the Other Limited Partners may elect, by notifying the Partnership in writing within twenty-five (25) days after receipt of the Trigger Event Notice, to purchase that Available NFLP Interest in the proportion which the Partnership Interest owned by that Other Limited Partner bears to the aggregate Partnership Interest owned by all Other Limited Partners who similarly elect to purchase that Available NFLP Interest.

(c) Mandatory Purchase by the Partnership. If the Other Limited Partners notify the Partnership that they will exercise their option for none, or less than all, of the NFLP's Interest, the Partnership shall be obligated to purchase any remaining portion of the NFLP's Interest that is not acquired by the Other Limited Partners. If the Trigger Event is a Change in Control, the Partnership shall be obligated to purchase all of the NFLP's Interest.

(d) Manner of Exercise. Upon determination of the portion of the NFLP's Interest to be purchased by the Limited Partners, the Partnership, on its behalf and/or on behalf of the Limited Partners who are purchasing the NFLP's Interest, shall give notice of exercise to the NFLP within thirty (30) days after receipt of the Trigger Event Notice. Any Limited Partner notifying the Partnership of his desire to purchase all or any portion of the NFLP's Interest shall be obligated to do so.

(e) Payment Terms. The closing of the purchase of all or any portion of the NFLP's Interest pursuant to this Section 7 shall occur on or before the fiftieth (50th) day after receipt of the Trigger Event Notice. The Purchase Price for that NFLP's Interest shall be determined in accordance with Sections 11(b) and 11(c), as appropriate. The purchasers of the NFLP's Interest may, at their sole and unfettered discretion, pay for that NFLP's Interest either (i) in readily available funds, or (ii) with a promissory note, the form of which is attached as Exhibit F; *provided, however*, the minimum and maximum aggregate amount per calendar quarter that the Partnership or any of its Affiliates must pay to the NFLP under this Agreement and the Second Amended and Restated HCM Services Long-Term Incentive Plan, as may be amended from time to time, is $250,000. If the Trigger Event is a Change in Control, the NFLP shall receive a payment from the Partnership upon the earlier of (A) one (1) year following the Change of Control, (B) the date the Partnership or an Affiliate Employer terminates the NFLP's employment with the Partnership or the Affiliate Employer without Cause, (C) the date the Partnership or Affiliate Employer reduces the NFLP's Compensation to less than one hundred percent (100%) of his/her prior year's Compensation or (D) the date either James D. Dondero or Mark K. Okada receive his/their first payment for his/their Partnership Interest. For purposes of this Section 7(e), "*Compensation*" means, with respect to any NFLP for any calendar year, the sum of (i) that NFLP's wages as reported by the Partnership or Affiliate Employer on an IRS Form W-2, (ii) all the Partnership's or Affiliate Employer's contributions to that NFLP's 401(k) account, and (iii) any consideration paid to that NFLP under that certain HCM Services Option Plan, dated June 28, 2001, as may be amended from time to time.

(f) Interest Purchased. The NFLP's Interest (or portion thereof) acquired by any existing party to this Agreement shall become subject in all respects to this Agreement.

(g) Mutual Dependence. The rights, obligations, and liabilities of the Non-Founding Limited Partner and the Partnership with respect to a Trigger Event are conditioned, and dependent on, the Non-Founding Limited Partner's consent and agreement to the promises set forth in Section 15, and to the enforceability of such covenants as stated therein with respect to that Non-Founding Limited Partner in the event of a dispute between that Non-Founding Limited Partner and the Partnership or an Affiliate

Employer.

(h) Right of Assignment. Dondero and Okada shall have the right to assign their right to purchase the NFLP's Interest to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of Dondero or Okada.

Section 8. Termination of a Non-Founding Limited Partner for Cause. If any Non-Founding Limited Partner's employment with any Affiliate Employer or participation in the Partnership is terminated for Cause, that Non-Founding Limited Partner's Partnership Interest shall be forfeited to Dondero's Founding Limited Partner Group and Okada's Founding Limited Partner Group and that Non-Founding Limited Partner shall not receive any compensation therefore. In such event, the Non-Founding Limited Partner's Partnership Interest and related Capital Account (as defined in the Partnership Agreement) shall be allocated to Dondero's Founding Limited Partner Group and Okada's Founding Limited Partner Group pro rata. Dondero and Okada shall have the right to assign their right to the forfeited Partnership Interest and related Capital Account to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of Dondero or Okada.

Section 9. Obligation of Spouses of Limited Partners. The spouse of each Limited Partner, if any, shall join in the execution of this Agreement to evidence his/her knowledge of its existence, and his/her acknowledgment that he/she agrees to the provisions of this Agreement, and that he/she desires to bind his/her community interest, if any, in the Partnership Interest of that Limited Partner to the performance of this Agreement. Accordingly, each Limited Partner's spouse agrees that, in the event of the death of his/her spouse, or occurrence of any other event as herein provided, the covenants made in this Agreement shall be, and hereby are, accepted as binding on that spouse individually and upon all Persons ever to claim under that spouse. However, the foregoing is not intended to, and should not be construed as, conferring or creating any community property interest in a Partnership Interest in the spouse of any Limited Partner. A Limited Partner who marries or remarries after the date hereof shall cause his/her spouse to promptly join in the execution of this Agreement in accordance with this Section 9.

Section 10. Determination of Agreed Value of the Partnership.

(a) The parties hereto acknowledge that the Agreed Value of the Partnership on February 29, 2004, was $125,000,000 and on May 27, 2004 and continuing through the date hereof it is $200,000,000. On January 1 of each calendar year, or at such other times as the Founding Limited Partners deem appropriate, the Agreed Value of the Partnership shall be such other amount as may be fixed by the Founding Limited Partners in a written statement signed by each Founding Limited Partner in the form of Exhibit C, a copy of which shall promptly be sent to all Partners and the trustee of each Founding Limited Partner Insurance Trust. The Agreed Value shall be based on one hundred percent (100%) of the Partnership Interests in the Partnership. If more than one such statement is signed by the Founding Limited Partners after the date of the adoption of this Agreement, the statement with the latest date shall control.

(b) The Founding Limited Partners, or an appraiser, as applicable, may consider any one or more factors when determining the Agreed Value, including, but not limited to, the following: (i) profitability of the Partnership; (ii) earning trends; (iii) accumulated and undistributed capitalization; (iv) growth potential; and (v) other economic factors affecting the business of the Partnership, including the likely negative impact caused by the death of a Founding Limited Partner or any key employee, if applicable; however, the existence of insurance on the lives of the Founding Limited Partners shall not be taken into account in determining the Agreed Value.

(c) If the Founding Limited Partners have not fixed the Agreed Value within twelve (12) months prior to a Determination Event, the Agreed Value shall be determined by a written agreement between the Founding Limited Partners, or if a Founding Limited Partner is not living, between the surviving Founding Limited Partner and the Departing Founding Limited Partner Group (acting by majority vote based upon their respective Partnership Interests) of the deceased Founding Limited Partner. If such parties cannot agree upon the Agreed Value within ten (10) days following the Determination Event, the Agreed Value shall be determined by an independent, third-party appraisal performed by an appraiser mutually agreed upon by the parties. The Founding Limited Partners and the Partnership shall promptly provide to the appraiser any information reasonably requested by such appraiser and such appraiser shall notify the Founding Limited Partners, the trustees of the Founding Limited Partner Insurance Trusts and the Departing Founding Limited Partner Group (if applicable) of the Agreed Value no later than twenty (20) days after receiving all such information from the Founding Limited Partners and the Partnership.

(d) If such parties (being the Founding Limited Partners or, if applicable, the surviving Founding Limited Partner and the Departing Founding Limited Partner Group) are unable to agree on a single independent third-party appraiser within twenty (20) days after a Determination Event, then each party shall select a separate appraiser. If either party fails to select an appraiser, then the Agreed Value shall be determined by the appraiser selected by the other party. The parties shall promptly provide to each appraiser any information reasonably requested by each such appraiser. Each appraiser shall determine the fair value of the Partnership and shall notify the Founding Limited Partners, the trustees of the Founding Limited Partner Insurance Trusts and, if applicable, the Departing Founding Limited Partner Group, of their calculation of the Agreed Value no later than twenty (20) days after receiving all such information from the parties. If the lower value so determined is at least ninety percent (90%) of the higher value so determined, the Agreed Value shall be the average of the two values so determined. If the lower value is less than ninety percent (90%) of the higher value so determined, the two appraisers shall, within ten (10) days, select a third appraiser and provide such third appraiser with all information relevant to determining the Agreed Value. Such third appraiser shall thereafter determine the fair value of the Partnership and shall notify all the Partners and the trustees of the Founding Limited Partner Insurance Trusts of such value within twenty (20) days after receiving the information from the first two (2) appraisers. The Agreed Value shall be the average of the three (3) values so determined. Notwithstanding the foregoing, the determination of the Agreed Value must be finalized within seventy-five (75) days following the date of the Determination Event. If the Determination Event was the death of a Founding Limited Partner, and if the Agreed Value has not been finalized within seventy-five (75) days following the date of the Determination Event, the appropriate trustee of a Founding Limited Partner Insurance Trust shall select an independent third-party appraiser who shall determine the Agreed Value in accordance with this Agreement.

(e) If the parties agree on a single appraiser, all costs of the appraisal shall be paid by the Partnership. If the parties are unable to agree on an appraiser and more than one appraiser is required to determine the Agreed Value, then the costs of all the appraisals shall be borne equally by such parties. If a trustee of a Founding Limited Partner Insurance Trust selected an appraiser, all costs of the appraisal shall be paid by the Partnership.

(f) If an appraiser is selected to determine the Agreed Value of Partnership Interests under this Agreement, and if there is a simultaneous dispute as to the value of an equity interest in the General Partner under the Buy-Sell Agreement, by and between Okada, Dondero and the General Partner, then the appraiser selected hereunder shall also serve as the appraiser of the equity interests in the General Partner.

(g) A copy of the statement of Agreed Value determined pursuant to this Section 10 shall promptly be sent to the General Partner and the trustee of each Founding Limited Partner Insurance

Trust. The trustee of each Founding Limited Partner Insurance Trust shall be entitled to rely upon the written agreement on the Agreed Value without further duty of inquiry.

Section 11. **Purchase Price of Partnership Interests.** The purchase price to be paid for any Partnership Interest (the "***Purchase Price***") shall be determined as follows:

(a) The purchase price to be paid for any Partnership Interest to be purchased by the Partnership or the Limited Partners, as applicable, pursuant to the Founding Limited Partner's death, Disability or termination of employment with the Partnership or any Affiliate Employer (for any reason whatsoever), shall be equal to the amount the holder of that Partnership Interest would be entitled to receive upon a hypothetical liquidation of the Partnership, assuming the Partnership were able to distribute liquidating proceeds to the Partners in an amount equal to the Agreed Value of the Partnership in effect as of the date of the Determination Event.

(b) The purchase price to be paid for any Partnership Interest to be purchased by the Partnership or the Limited Partners, as applicable, pursuant to (i) the death or Disability of a Non-Founding Limited Partner; (ii) the termination of a Non-Founding Limited Partner's employment with any Affiliate Employer without Cause; (iii) the retirement of a Non-Founding Limited Partner who has at least ten (10) years of service with any Affiliate Employer; or (iv) the voluntary resignation of a Non-Founding Limited Partner who has at least ten (10) years of service with any Affiliate Employer, shall be equal to the amount the holder of that Partnership Interest would be entitled to receive upon a hypothetical liquidation of the Partnership, assuming the Partnership were able to distribute liquidating proceeds to the Partners in an amount equal to the Determined Value of the Partnership.

(c) The purchase price to be paid for any Partnership Interest to be purchased by the Partnership or the Limited Partners, as applicable, pursuant to (i) a Community Property Event; (ii) the Bankruptcy of a Non-Founding Limited Partner; (iii) the Bankruptcy of a Founding Limited Partner; (iv) the retirement of a Non-Founding Limited Partner who has less than ten (10) years of service with any Affiliate Employer; or (v) the voluntary resignation of a Non-Founding Limited Partner who has less than ten (10) years of service with any Affiliate Employer, shall be equal to the sum of (a) the amount the holder of that Partnership Interest would be entitled to receive upon a hypothetical liquidation of the Partnership, assuming the Partnership were able to distribute liquidating proceeds to the Partners in an amount equal to the Determined Value of the Partnership minus (b) the product of (1) the Discount Factor multiplied by (2) the amount to be received upon a hypothetical liquidation of the Partnership subsection (a) of this paragraph. The "***Discount Factor***" shall be the discount to the purchase price that takes into consideration lack of control and lack of marketability of a Partnership Interest. The Discount Factor shall be twenty percent (20%).

Section 12. **Assignment of Partnership Interests.** Any Transfer of a Partnership Interest pursuant to this Agreement and the Partnership Agreement shall be made pursuant to an Assignment of Interest, in the form attached as Exhibit K. In the event any Limited Partner who is required to sell its Partnership Interest pursuant to this Agreement, fails or refuses to execute a proper Assignment of Interest, the General Partner shall be authorized to execute such Assignment of Interest as attorney-in-fact for that Limited Partner. Each Limited Partner hereby constitutes and appoints the General Partner, with full power of substitution, its true and lawful attorney-in-fact, and empowers and authorizes such attorney, in the name, place and stead of such Limited Partner, to make, execute, sign, swear to, acknowledge and file in all necessary or appropriate places all documents relating to the Assignment of Interest. This power of attorney is coupled with an interest, is irrevocable and shall continue notwithstanding the subsequent incapacity or death of the Limited Partner. Each Limited Partner and/or his assignee, transferee or successor-in-interest shall execute and deliver to the General Partner an executed and appropriately notarized power of attorney in such form consistent with the provisions of this Section 12 as the General Partner may request.

Section 13. Life Insurance on the Life of a Founding Limited Partner.

(a) In order to fund the purchase of Partnership Interests in the event of the death of a Founding Limited Partner pursuant to Section 4, the Partnership shall purchase or obtain insurance policies on the lives of the Founding Limited Partners in such amounts as the Partnership may deem to be desirable to provide for the performance by the Partnership of its rights and obligations under this Agreement giving due regard for the Agreed Value and the relative ownership of the Founding Limited Partners and their respective Affiliated Limited Partners. The Partnership shall take any actions necessary to maintain in force each policy it is required to maintain hereunder, including paying all premiums as they become due, and shall not cancel or allow that policy to lapse. The Partnership shall provide proof of such premium payment within twenty (20) days after the due date of each premium, if requested by any Founding Limited Partner. If any premium is not paid within twenty (20) days after its due date, a Founding Limited Partner may pay that premium and shall be entitled to reimbursement from the Partnership.

(b) The Partnership shall have the right to purchase additional insurance on the life each of the Founding Limited Partners from time to time, whenever, in the opinion of the Partnership, additional insurance may be required for the benefit of the Partnership to enable it to carry out its obligations under this Agreement.

(c) In furtherance of the Partnership's obligations under this Section 13, the Partnership is authorized and directed: (i) to establish two insurance rabbi trusts, one in the name of each of the Founding Limited Partners (each, a "*Founding Limited Partner Insurance Trust*"), to acquire the insurance policies required to be obtained by the Partnership; (ii) to assign to each such Founding Limited Partner Insurance Trust all rights and obligations of the Partnership to acquire and pay for that insurance; (iii) to assign to each Founding Limited Partner Insurance Trust any existing insurance on the life of the respective Founding Limited Partner now or hereafter obtained by the Partnership; (iv) to make payments to that Founding Limited Partner Insurance Trust for the necessary premiums on that insurance; (v) to make payments to that Founding Limited Partner Insurance Trust to acquire additional insurance; and (vi) to assign its obligation to purchase Partnership Interests pursuant to this Agreement to each that Founding Limited Partner Insurance Trust. Each Founding Limited Partner's Insurance Trust, forms of which are attached hereto as Exhibit D and Exhibit E, shall be designated as the beneficiary of the insurance policies on that Founding Limited Partner's life when such policies are obtained by the respective trusts or transferred by the Partnership to the applicable trust, and the trustee of that Founding Limited Partner Insurance Trust shall be responsible for the payment of the designated insurance proceeds to the members of a Departing Founding Limited Partner Group in partial satisfaction of the Partnership Interest purchase obligations under this Agreement.

(d) All benefits owing under this Agreement shall be paid out of the Partnership's general funds, which are subject to the claims of creditors, or out of each Founding Limited Partner Insurance Trust, provided that all assets of any such Founding Limited Partner Insurance Trust shall, at all times before actual payment to a member of the Departing Founding Limited Partner Group, remain subject to the claims of general creditors of the Partnership. Although the obligations set forth herein are to be deemed totally unfunded, the Partnership may, but shall not be obligated to, purchase one or more life insurance or annuity policies or contracts for the purpose of providing for its obligations hereunder. Any such policies or contracts, if so purchased, shall name Founding Limited Partner Insurance Trust as beneficiary and sole owner, with all incidents of ownership therein, including (but not limited to) the right to cash and loan values, dividends (if any), death benefits, and the right of termination. Any such policies or contracts purchased hereunder shall remain a general restricted asset of the Founding Limited Partner Insurance Trust. No member of the Departing Founding Limited Partner Group shall have any right, title or interest whatever in or to, or any claim, preferred or otherwise, in or to, any particular assets of the

Partnership as a result of being a signatory to this Agreement, any policy or contract as provided for herein, or any Founding Limited Partner Insurance Trust. Nothing contained in this Agreement, and no action taken pursuant to its provisions, shall create or be construed to create a trust or a fiduciary relationship of any kind between the Partnership and a member of the Departing Founding Limited Partner Group or any other Person. No member of the Departing Founding Limited Partner Group shall acquire any interest greater than that of an unsecured creditor in any assets of the Partnership or in a Founding Limited Partner Insurance Trust

Section 14. Payment of Purchase Price to the Departing Founding Limited Partner Group Upon the Death of a Founding Limited Partner. The Purchase Price to be paid by the Partnership to the Departing Founding Limited Partner Group upon the death of a Founding Limited Partner shall be paid as follows:

(a) Upon the death of a Founding Limited Partner, the trustee of the Founding Limited Partner's Insurance Trust shall collect the proceeds of the insurance policies carried on the life of the Founding Limited Partner. After the trustee of the Founding Limited Partner's Insurance Trust has received written confirmation of the Agreed Value as determined in accordance with Section 10, the trustee shall promptly, but no later than ten (10) days following the receipt of any insurance proceeds, pay by wire transfer or by certified check, that part of such proceeds which does not exceed the Purchase Price, to the members of the Departing Founding Limited Partner Group, (i) without any right to any set-off against, defense to, counterclaim of, or reduction of such payments to be made hereunder; and (ii) without regard to any dispute as to the Agreed Value. The trustee of the Founding Limited Partner's Insurance Trust will not use the insurance proceeds for any other purpose until that trustee has satisfied all of the obligations under this Agreement. If the amount of insurance proceeds exceeds the Purchase Price under the terms of this Agreement, that trustee shall distribute the excess proceeds to the Partnership.

(b) If there is more than one insurance policy held by a Founding Limited Partner's Insurance Trust upon the date of death and all of the proceeds of such policies are not received at the same time, then in making the above payments to the members of the Departing Founding Limited Partner Group, the trustee shall make payments first to the Founding Limited Partner's estate, up to the full amount of the Purchase Price to which the estate is entitled, and second to the other members of the Departing Founding Limited Partner Group pro rata.

(c) The Partnership shall indemnify the trustee of the Founding Limited Partner's Insurance Trust for any taxes, judgments, losses, or other costs that such trust shall incur as a result of receiving and transferring the insurance proceeds as herein provided. The trustee of the Founding Limited Partner's Insurance Trust shall also have the discretion to retain up to ten percent (10%) of the insurance proceeds for a reasonable period upon immediate payment of ninety percent (90%) of the insurance proceeds. Such reasonable period shall not extend beyond ninety (90) days after the date of the Determination Event. After such reasonable period, that trustee shall pay the remaining ten percent (10%) of the insurance proceeds held in that trust under the terms provided in this Section 14, together with interest on that withheld amount at a rate equal to Internal Revenue Service "Midterm Applicable Federal Rate" at the date of the Founding Limited Partner's death (on the basis of a 365-day or 366-day year, as applicable) and limited only by the maximum rate of interest provided by the laws of the State of Texas, to the Founding Limited Partner's estate and any other Affiliated Limited Partner of that Founding Limited Partner or Person owning Partnership Interests as designated by that Founding Limited Partner, but with that payment of interest not to exceed the balance under that trust.

(d) If the insurance proceeds are not sufficient to pay the entire Purchase Price, the trustee of the Founding Limited Partner's Insurance Trust can elect of the following options:

(i) Elect to have the Partnership pay the balance of the Purchase Price pursuant to a promissory note, in the form attached as Exhibit G (the "*Partnership Note*"). In order to provide collateral security for the payment of the Partnership Note, the Surviving Founding Limited Partner Group shall execute a continuing guaranty in the form attached as Exhibit H and a pledge agreement in the form attached as Exhibit I.

(ii) Elect to have the General Partner cause the Partnership to liquidate, if the Founding Limited Partner who died is James D. Dondero. In the event of such election, the General Partner shall promptly begin to dissolve the Partnership in accordance with Article 5 of the Partnership Agreement.

(e) Any trustee of a Founding Limited Partner's Insurance Trust purchasing a Partnership Interest pursuant to this Agreement, in his sole and unfettered discretion, may require each member of the Departing Founding Limited Partner's Group to provide him with an opinion of counsel (such counsel to be approved by the trustee in his sole and unfettered discretion) stating that there is no prohibition against the transfer of that member's Partnership Interest, that member has the authority to transfer that member's Partnership Interest, and that transfer is made free and clear of all liens, encumbrances, security interests, claims or options. The trustee shall not be obligated to purchase the Partnership Interest of any member until such time as he receives the legal opinion herein requested and that member has fully complied with all the terms of this Agreement.

(f) If any member of the Departing Founding Limited Partner Group or any other intended beneficiary of this Agreement or of the Founding Limited Partner Insurance Trust of the Departing Founding Limited Partner (an "*Objector*"), in any manner whatsoever, directly or indirectly, contests or attacks this Agreement or any of its provisions or the Founding Limited Partner Insurance Trust or any of its provisions, or performs any act that would frustrate the purpose of this Agreement or the Founding Limited Partner Insurance Trust or conspires or cooperates with anyone attempting to contest, attack, or frustrate this Agreement or the Founding Limited Partner Insurance Trust, then that Objector shall be deemed to forfeit all of its interest in the Partnership; *provided, however*, that a petition, made in good faith, seeking an interpretation of this Agreement or the Founding Limited Partner Insurance Trust shall not be considered a contest of, an attack on, or an attempt to frustrate the purpose of this Agreement or the Founding Limited Partner Insurance Trust.

Section 15. Confidentiality, Non-Competition, Non-Solicitation, and Non-Recruitment.

(a) The Partnership's Promise to Provide Confidential Information and Specialized Training. At the inception of this Agreement, and continuing on an ongoing basis during the Non-Founding Limited Partner's participation in the Partnership, the Partnership agrees to provide the Non-Founding Limited Partner with new Confidential Information and Specialized Training to which the Non-Founding Limited Partner has not previously had access.

(b) The Non-Founding Limited Partner's Promise not to Use or Disclose the Confidential Information. In exchange for the Partnership's promise to provide the Non-Founding Limited Partner with Confidential Information and Specialized Training, the Non-Founding Limited Partner shall not, during the period of participation in the Partnership under this Agreement or at any time thereafter, disclose to anyone, including, without limitation, any Person, or publish, or use for any purpose, any Confidential Information, except as: (i) required in the ordinary course of the Partnership's business or the Non-Founding Limited Partner's work for the Partnership or its Affiliate Employer; (ii) required by law; or (iii) directed and authorized in writing by the Partnership. Upon the termination of the Non-Founding Limited Partner's participation in the Partnership and/or any Affiliate Employer, for any reason, the Non-Founding Limited Partner shall immediately return and deliver to the Partnership any and all computers, hard-drives, papers, books, records, documents, memoranda, manuals, e-mail,

electronic or magnetic recordings or data, including all copies thereof, belonging to the Partnership or Affiliate Employer, containing Confidential Information, or relating to the Partnership's or Affiliate Employer's business, which are in the Non-Founding Limited Partner's possession, whether prepared by the Non-Founding Limited Partner or others. If at any time after termination of the Non-Founding Limited Partner's participation in the Partnership, for any reason, the Non-Founding Limited Partner determines that the Non-Founding Limited Partner has any Confidential Information in the Non-Founding Limited Partner's possession or control, the Non-Founding Limited Partner shall immediately return to the Partnership all such Confidential Information in the Non-Founding Limited Partner's possession or control, including all copies and portions thereof.

(c) Mutual Dependence. The rights, obligations, and liabilities of the Non-Founding Limited Partner and the Partnership with respect to a Trigger Event as set forth in Section 7 are conditioned and dependent on, the Non-Founding Limited Partner's consent and agreement to the promises set forth in Section 15 of this Agreement, and to the enforceability of such covenants as stated therein with respect to that Participant in the event of a dispute between that Non-Founding Limited Partner and the Partnership or Affiliate Employer.

(d) The Restrictive Covenants. Each Non-Founding Limited Partner recognizes and agrees that: (i) the Partnership has devoted a considerable amount of time, effort, and expense to develop its Confidential Information and business goodwill; (ii) the Confidential Information and the Partnership's business goodwill are valuable assets to the Partnership; and (iii) any unauthorized use or disclosure of the Partnership's or Affiliate Employer's Confidential Information would cause irreparable harm to the Partnership for which there is no adequate remedy at law, including damage to the Partnership's business goodwill. Accordingly, each Non-Founding Limited Partner agrees that to protect the Partnership's Confidential Information and business goodwill, it is necessary to enter into the following restrictive covenants, which are ancillary to the enforceable promises between the Non-Founding Limited Partner and the Partnership in Sections 7(g), 15(a) and 15(b). The Non-Founding Limited Partner, either individually or as a principal, partner, stockholder, manager, agent, consultant, contractor, employee, lender, investor, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, agrees that during the period in which the Non-Founding Limited Partner is a Partner in the Partnership and for a period of one (1) year following the date on which the Non-Founding Limited Partner ceases (for whatever reason) to be a Partner (the "***Non-Competition Period***"), the Non-Founding Limited Partner shall not, whether directly or indirectly, without the express prior written consent of the General Partner (excluding the activities of the Non-Founding Limited Partner's spouse or other immediate family members independently engaged in such activities):

(i) Non-Solicitation. Solicit business, attempt to solicit business, or accept business in products or services competitive with products or services sold by any of the Applicable Entities, from any of the Applicable Entities' clients, customers, prospective or potential clients or customers, or those individuals or entities that any of the Applicable Entities did business with during the Non-Founding Limited Partner's employment with the Partnership or any Affiliate Employer, with whom the Non-Founding Limited Partner solicited or dealt with, in any capacity, while a Partner in the Partnership or employee of any Affiliate Employer during the twenty-four (24) months immediately preceding the Non-Competition Period.

(ii) Non-Recruitment. Hire, solicit for employment, induce or encourage to leave the employment of the Partnership or otherwise cease their employment with any of the Applicable Entities, any employee or any former employee of any Applicable Entities whose employment with any of the Applicable Entities ceased than less than six (6) months earlier.

(iii) Non-Competition. Within any market in which any of the Applicable Entities provided services or sold products during the twenty-four (24) months immediately preceding the Non-Competition Period, become employed, advise, perform services or otherwise serve in any capacity with a Competing Business in which Partner would (1) perform similar duties to those performed while at the Partnership or Affiliate Employer; (2) engage in or provide services to any client, customer, or prospective or potential clients or customers of any of the Applicable Entities, or competitor of any of the Applicable Entities; or (3) provide services that are competitive with a product, service, process or development on which the Non-Founding Limited Partner worked at the Partnership or Affiliate Employer, or with which the Non-Founding Limited Partner had access to Confidential Information while a Partner with the Partnership or employed with an Affiliate Employer. However, the Non-Founding Limited Partner may own, directly or indirectly, solely as an investment, securities of any business traded on any national securities exchange or NASDAQ, provided that the Non-Founding Limited Partner is not a controlling person of, or member of a group that controls such business, and provided further that the Non-Founding Limited Partner does not, directly or indirectly, own three percent (3%) or more of any class of securities of such business. If the Partnership or Affiliate Employer notifies a Partner in writing that he/she is being terminated as the result of a downsizing or reduction in force by the Partnership or Affiliate Employer, then this Section 15(d)(iii) shall not apply to that Partner after termination of his/her employment with the Company or Affiliate Employer.

(e) Remedies. The Non-Founding Limited Partner acknowledges that the restrictions contained in this Section 15, in view of the nature of the Partnership's business, are reasonable and necessary to protect the Partnership's legitimate business interests and business goodwill and that any violation of this Agreement would result in irreparable injury to the Partnership. In the event of a breach by the Non-Founding Limited Partner of any provision of this Section 15, the Partnership shall, assuming the provisions of Section 15(e)(i) are applied and upheld, only be entitled to take the following actions as its sole remedy against that Non-Founding Limited Partner for such breach:

(i) Forfeiture of the Partnership Interest. From the date of breach by the Non-Founding Limited Partner of this Section 15, the Non-Founding Limited Partner's Partnership Interest shall automatically lapse and be forfeited and shall revert to Dondero's Founding Limited Partner Group and Okada's Founding Limited Partner Group on a pro rata basis; *provided, however*, Dondero and Okada may assign their right to the forfeited Partnership Interest to any Person that is, or becomes pursuant to the terms of this Agreement, an Affiliated Limited Partner of Dondero or Okada. The Partnership shall have no further obligation to the Non-Founding Limited Partner pursuant to Section 7 of this Agreement, nor any further obligation to make any further distributions or allocations of Partnership income to the Non-Founding Limited Partner under the terms of the Partnership Agreement. In addition, the Partnership shall be entitled to (1) a refund from the Non-Founding Limited Partner of any payments the Partnership or any Partner made to that Non-Founding Limited Partner pursuant to this Agreement, plus (2) the sum of the Partnership's attorneys' fees, costs and expenses related to the breach.

(ii) Temporary Restraining Order and Injunctive Relief. A temporary restraining order and injunctive relief restraining the Non-Founding Limited Partner from the commission of any breach of this Section 15 (other than Section 15(d)(iii)), and to recover the Partnership's attorneys' fees, costs and expenses related to the breach.

The existence of any claim or cause of action by the Non-Founding Limited Partner against the Partnership, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Partnership of the restrictive covenants contained in this Section 15.

(f) Reformation. The Non-Founding Limited Partner and the Partnership agree that all of the covenants contained in this Section 15 shall survive the termination or expiration of this Agreement, and agree further that in the event any of the covenants contained in this Section 15 shall be

held by any court to be effective in any particular area or jurisdiction only if said covenant is modified to limit its duration or scope, then, at the sole option of the Partnership, excluding the vote of the Non-Founding Limited Partner in breach of this Agreement, the provisions of Section 15(i) may be deemed to have been triggered, and the rights, liabilities, and obligations set forth therein shall apply. In the event the Partnership does not elect to trigger application of Section 15(i), then the court shall have such authority to so reform the covenant and the parties hereto shall consider such covenant(s) and/or other provisions of this Section 15 to be amended and modified with respect to that particular area or jurisdiction so as to comply with the order of any such court and, as to all other jurisdictions, the covenants contained herein shall remain in full force and effect as originally written. Should any court hold that these covenants are void or otherwise unenforceable in any particular area or jurisdiction, then notwithstanding the foregoing provisions of this Section 15(f), the provisions of Section 15(i) shall be applicable and the rights, liabilities and obligations of the parties set forth therein shall apply. Alternatively, at the sole option of the Partnership, the Partnership may consider such covenant(s) and/or provisions of this Section 15 to be amended and modified so as to eliminate therefrom the particular area or jurisdiction as to which such covenants are so held void or otherwise unenforceable and, as to all other areas and jurisdictions covered hereunder, the covenants contained herein shall remain in full force and effect as originally written.

(g) Tolling. If the Non-Founding Limited Partner violates any of the restrictions contained in this Section 15, the restrictive period will be suspended and will not run in favor of the Non-Founding Limited Partner until such time that the Non-Founding Limited Partner cures the violation to the satisfaction of the Affiliate Employer, or for a period of three (3) years after the Non-Founding Limited Partner's employment with the Affiliate Employer ended, whichever period is shorter.

(h) Notice. If a Non-Founding Limited Partner, in the future, seeks or is offered employment, or any other position or capacity with another company or entity, the Non-Founding Limited Partner agrees to inform each new employer or entity, before accepting employment, of the existence of the restrictions in this Section 15. Further, before taking any employment position with any Person during the Non-Competition Period, the Non-Founding Limited Partner agrees to give prior written notice to the Partnership of the name of such Person. The Partnership shall be entitled to advise such Person of the provisions of Section 15 and to otherwise deal with such Person to ensure that the provisions of Section 15 are enforced and duly discharged.

(i) Pre-conditional Obligation and Restoration. This Section 15 (the "*Non-Compete Article*") is material to this Agreement, and this Agreement is a material and important component of the Partnership Agreement. The enforceability of the Non-Compete Article is a precondition for the Partnership's and/or any Limited Partner's purchase of the Non-Founding Limited Partner's Interest pursuant to this Agreement, as well as receipt of Non-Founding Limited Partner's payments under any promissory note following a Non-Founding Limited Partner's termination from the Partnership, for any reason. Should all or any part or application of the Non-Compete Article be held or found invalid or unenforceable for any reason whatsoever by a court or other constituted legal authority of competent jurisdiction in an action between a Non-Founding Limited Partner and the Partnership, that Non-Founding Limited Partner and Partnership agree as follows:

(i) That Non-Founding Limited Partner's Partnership Interest shall automatically lapse and be forfeited and shall revert to Dondero's Founding Limited Partner Group and Okada's Founding Limited Partner Group on a pro rata basis;

(ii) The Partnership shall have no obligation to make any further allocation of Partnership income or distributions to that Non-Founding Limited Partner under the terms of the Partnership Agreement; and

(iii) The Partnership shall be entitled to discontinue future payments and receive the full value of any payments which were made to that Non-Founding Limited Partner in exchange for its Partnership Interest from the date of that Non-Founding Limited Partner's termination from the Partnership, for any reason, through the date on which a court or other constituted legal authority held or found the Non-Compete Article to be invalid or unenforceable. If that Non-Founding Limited Partner has Transferred his Partnership Interest, Dondero and Okada shall be entitled to recover the full monetary value of the consideration paid to that Non-Founding Limited Partner for its Partnership Interest.

Section 16. Termination. This Agreement shall terminate upon the earliest to occur of the following events:

(a) The voluntary or involuntary termination of the Partnership;

(b) All of the Partnership Interests become owned by one Founding Limited Partner and that Founding Limited Partners' Affiliated Limited Partners; or

(c) The mutual agreement of the Founding Limited Partners to terminate this Agreement.

Section 17. Legend on Certificates. The following statement must appear conspicuously on each certificate (if any) issued by the Partnership related to a Partnership Interest:

THE PARTNERSHIP INTERESTS REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS UPON TRANSFER AND ARE SUBJECT TO A BUY-SELL AND REDEMPTION AGREEMENT AMONG THE LIMITED PARTNERS OF THE PARTNERSHIP. FOR A COPY OF THIS BUY-SELL AND REDEMPTION AGREEMENT, CONTACT THE GENERAL PARTNER OF THE PARTNERSHIP AT THE PRINCIPAL OFFICE OF THE PARTNERSHIP AT 13455 NOEL ROAD, SUITE 1300, DALLAS, TEXAS 75240.

Section 18. Miscellaneous.

(a) Amendments to Agreement. The Partnership may amend this Agreement without the consent of any party hereto if the Partnership reasonably determines that such amendment is necessary and appropriate. An amendment to this Agreement shall not be deemed to be a termination of this Agreement.

(b) Joinder. The spouses, if any, of the Limited Partners join in the execution and delivery of this Agreement for the express purpose of binding their community property or other interests, if any, in the Partnership Interest now owned or hereafter acquired by the Limited Partner who is his/her spouse.

(c) Benefit. This Agreement is binding upon and inures to the benefit of all parties hereto and their respective heirs, legatees, legal representatives, successors and permitted assigns. The executors, administrators or legal representatives of the Limited Partners, upon their deaths, shall execute and deliver any and all instruments and documents and do any and all acts and things necessary and appropriate to carry out the terms and provisions of this Agreement.

(d) Notices. All notices, offers, acceptances, requests and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered with receipt given, personally, by certified or registered mail, or by courier by a nationally recognized overnight mail

service (*e.g.*, Federal Express) to the parties to this Agreement (at the address set forth on Exhibit J, as that Exhibit may be amended from time to time) as applicable, unless any party hereto designates in writing to the other parties that it shall be notified at a different address; or, in the event a party dies, that notice shall also be sent to a duly appointed guardian of the estate of that party or, if no such guardian has been appointed, to such person as the party may have designated in writing to receive notices on his behalf under this Agreement.

(e) Construction. The headings of Sections of this Agreement are provided for convenience only and do not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require.

(f) Entirety. This Agreement contains the entire understanding and agreement between the parties and supersedes any prior written or oral agreements between them respecting the subject matter contained herein. This Agreement may not be changed, modified or amended except by an instrument in writing duly executed by the Partnership and the Limited Partners.

(g) No Waiver. The failure of any party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, is not a waiver of that party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder constitutes a consent or waiver to or of any other breach or default in the performance of the same or any obligation hereunder.

(h) Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement, and any of the parties to this Agreement may execute this Agreement by signing any of the counterparts. Any counterpart of this Agreement may be executed via facsimile transmission or pdf transmission.

(i) Governing Law. This Agreement has been prepared, is being executed and delivered, and is intended to be performed, in the State of Texas, and, at the sole choice of the Partnership, the substantive laws of Texas or the applicable law of the state in which the Non-Founding Limited Partner performed services for the Partnership or Affiliate Employer, and the applicable federal laws of the United States of America shall govern the validity, construction, enforcement, and interpretation of this Agreement.

(j) Venue. This Agreement is performable in Dallas County, Texas, and the venue for any action brought with respect to this Agreement shall, at the choice of the Company, be brought in Dallas County, Texas, or in the federal or state courts in which the Non-Founding Limited Partner worked for the Partnership or the Affiliate Employer.

Remainder of Page Intentionally Left Blank.
Signature Pages and Exhibits to Follow.

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

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its general partner

By: _____
James D. Dondero,
President

GENERAL PARTNER:

STRAND ADVISORS, INC.

By: _____
James D. Dondero,
President

LIMITED PARTNERS:

_____
BRADFORD BORUD

_____
PATRICK DAUGHERTY

_____
DAVIS DEADMAN

_____
JAMES D. DONDERO

_____
R. JOSEPH DOUGHERTY

_____
PAUL KAUFFMAN

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JOHN MORGAN

MARK K. OKADA

KURTIS PLUMER

TODD A. TRAVERS

DAVID WALLS

JOHN YANG

THE GET GOOD TRUST

By: _____
Grant Scott,
Trustee

THE GET BETTER TRUST

By: _____
James D. Dondero,
Trustee

CANIS MINOR TRUST

By: _____
James D. Dondero,
Trustee

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THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1

By: _____
Lawrence Tonomura,
Trustee

THE MARK AND PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2

By: _____
Lawrence Tonomura,
Trustee

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SPOUSE'S AGREEMENT

Reference is made to that certain Amended and Restated Buy-Sell and Redemption Agreement of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of Highland Capital Management, L.P.'s allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

BRADFORD BORUD

SPOUSE OF PARTNER:

ALTHEA BORUD

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PARTNER:

BRADFORD BORUD

SPOUSE OF PARTNER:

Althea Borud

ALTHEA BORUD

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PARTNER:

DAVIS DEADMAN

SPOUSE OF PARTNER:

N/A

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PARTNER:

_____

JAMES D. DONDERO

SPOUSE OF PARTNER:

_____

N/A

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PARTNER:

R. JOSEPH DOUGHERTY

SPOUSE OF PARTNER:

N/A

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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PARTNER:

PAUL KAUFFMAN

SPOUSE OF PARTNER:

AMY KAUFFMAN

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PARTNER:

JOHN MORGAN

SPOUSE OF PARTNER:

DEBRA MORGAN

SPOUSE'S AGREEMENT

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JOHN MORGAN

SPOUSE OF PARTNER:

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PARTNER:

MARK K. OKADA

SPOUSE OF PARTNER:

PAMELA OKADA

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SPOUSE OF PARTNER:

PAMELA OKADA

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PARTNER:

KURTIS PLUMER

SPOUSE OF PARTNER:

KRISTI PLUMER

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PARTNER:

TODD A. TRAVERS

SPOUSE OF PARTNER:

KIMBERLY TRAVERS

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PARTNER:

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SPOUSE OF PARTNER:

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PARTNER:

DAVID WALLS

SPOUSE OF PARTNER:

CARI WALLS

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SPOUSE'S AGREEMENT

Reference is made to that certain Amended and Restated Buy-Sell and Redemption Agreement of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of Highland Capital Management, L.P.'s allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

JOHN YANG

SPOUSE OF PARTNER:

JOYCE YANG

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SPOUSE'S AGREEMENT

Reference is made to that certain Amended and Restated Buy-Sell and Redemption Agreement of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of Highland Capital Management, L.P.'s allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the 31st day of December, 2004, to be effective as of February 29, 2004.

PARTNER:

PATRICK DAUGHERTY

SPOUSE OF PARTNER:

KIMBERLY DAUGHERTY

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EXHIBIT A

LIMITED PARTNERSHIP INTERESTS IN
HIGHLAND CAPITAL MANAGEMENT, L.P.

Limited Partners as of February 29, 2004, and current as of December 31, 2004:	Percentage Interest:
A. Dondero and Dondero Affiliated Limited Partners	
James D. Dondero	4.78325%
The Get Good Trust	11.4798%
The Get Better Trust	44.96255%
Canis Minor Trust	9.5665%
B. Okada and Okada Affiliated Limited Partners	
Mark K. Okada	14.34975%
The Mark and Pamela Okada Family Trust – Exempt Trust #1	6.69655%
The Mark and Pamela Okada Family Trust – Exempt Trust #2	2.86995%
C. Non-Founding Limited Partners	
Bradford Borud	0.303%
Patrick Daugherty	0.608%
Davis Deadman	0.544%
R. Joseph Dougherty	0.549%
Paul Kauffman	0.390%
John Morgan	0.281%
Kurtis Plumer	0.426%
Todd A. Travers	0.624%
David Walls	0.203%
John Yang	0.407%

EXHIBIT B

ADDENDUM TO BUY-SELL AND REDEMPTION AGREEMENT

THIS ADDENDUM (this "*Addendum*") to that certain Amended and Restated Buy-Sell and Redemption Agreement, dated as of December 31, 2004, to be effective February 29, 2004, as amended from time to time, by and among Highland Capital Management, L.P., a Delaware limited partnership (the "*Partnership*"), James D. Dondero, an individual, Mark K. Okada, an individual, and the other Limited Partners specified therein (collectively, the "*Limited Partners*") (the "*Agreement*"), is made and entered into as of the ____ day of _____, 20___, by and between the Partnership, on its behalf and on behalf of the Limited Partners and any other Persons who may hereafter become a party to the Agreement, and _____ (hereinafter referred to as the "*New Limited Partner*") (all capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement).

RECITALS:

WHEREAS, the Limited Partners have entered into the Agreement to promote their mutual best interests by providing for certain obligations concerning (i) the purchase of Partnership Interests by and among the Limited Partners and the Partnership upon the occurrence of certain events; (ii) the forfeiture of Partnership Interests upon the occurrence of certain events; and (iii) the Partnership's purchase of Partnership Interests held by the Departing Founding Limited Partner Group; and

WHEREAS, the Partnership, on its behalf and on behalf of the Limited Partners and any other Person who may become a party to the Agreement, and the New Limited Partner desire that the Agreement be amended to add the New Limited Partner as a party thereto, subject to all the rights and obligations under the Agreement;

NOW, THEREFORE, in consideration of the mutual promises of the parties and as a condition to receiving Partnership Interests in the Partnership, the New Limited Partner acknowledges that it shall be bound by, and shall have the benefit of, all the terms and conditions set out in the Agreement. This Addendum shall be attached to and become a part of the Agreement.

_____
[Insert Legal Name of New Limited Partner]

Identify which, if any, of the Founding Limited Partners is affiliated with the New Limited Partner:

Percentage Interest: _____%

AGREED AND ACCEPTED:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its general partner

By: _____
Name: _____
Title: _____

SPOUSE'S AGREEMENT

Reference is made to that certain Amended and Restated Buy-Sell and Redemption Agreement of Highland Capital Management, L.P. (the "*Agreement*"). In consideration of the terms of the Agreement, in consideration of Highland Capital Management, L.P.'s allowing the undersigned Partner to become a Partner of the Partnership, and for other good and valuable consideration receipt of which is hereby acknowledged, the undersigned shall be bound by the terms of the Agreement as though parties thereto.

Executed as of the ____ day of _____, 20___.

PARTNER:

[_____]

SPOUSE OF PARTNER:

[_____]

EXHIBIT C

STATEMENT OF AGREED VALUE

As of the date specified below of that certain Amended and Restated Buy-Sell and Redemption Agreement dated December 31, 2004, to be effective February 29, 2004, by and among Highland Capital Management, L.P. (the "*Partnership*"), a Delaware limited partnership, James D. Dondero, an individual, Mark K. Okada, an individual (collectively, the "*Founding Limited Partners*"), and the other Limited Partners specified therein (the "*Agreement*"), and pursuant to Section 10 of the Agreement, the Agreed Value of the Partnership is $_____.

If the Agreed Value is determined by one or more appraisers pursuant to Section 10 of the Agreement, the Founding Limited Partners agree that the Agreed Value of the Partnership as of the anniversary date specified below is $_____.

Date: _____

Date of Execution: _____

_____
JAMES D. DONDERO

_____
MARK K. OKADA

EXHIBIT D

FORM OF DONDERO INSURANCE RABBI TRUST AGREEMENT

EXHIBIT E

FORM OF OKADA INSURANCE RABBI TRUST AGREEMENT

EXHIBIT F

FORM OF PROMISSORY NOTE

$_____ Dallas, Texas _____, 20__

FOR VALUE RECEIVED, the undersigned, _____ ("*Maker*"), hereby unconditionally promises to pay to the order of _____ ("*Payee*"), at _____, or such other address given to Maker by Payee, the principal sum of _____ Dollars ($_____), together with interest (calculated on the basis of a 365-day or 366-day year, as appropriate) on the unpaid principal balance from day to day remaining, computed from the date hereof until paid at the rate per annum that shall from day to day be equal to the lesser of (a) the Maximum Rate, or (b) the Applicable Federal Rate applicable to this Promissory Note on the date hereof [*based on maturity date of this Promissory Note*].

1. Definitions. When used in this Promissory Note, the following terms shall have the respective meanings specified herein or in the Section referred to:

"*Applicable Federal Rate*" has the meaning set forth in the United States Internal Revenue Code of 1986, as amended.

"*Business Day*" means a day upon which business is transacted by national banks in Dallas, Texas.

"*Default*" has the meaning ascribed to it in Section 5 hereof.

"*Maximum Rate*" means, with respect to the holder hereof, the highest non-usurious rate of interest, if any, permitted by applicable law on such day.

"*Obligation*" means all indebtedness, liabilities, and obligations, of every kind and character, of Maker, now or hereafter existing in favor of Payee arising under this Promissory Note.

2. Payment. The unpaid principal of and interest upon this Promissory Note shall be fully amortized and shall be due and payable as follows:

(a) _____ equal quarterly payments of principal in the amount of $_____ _____ shall be due each quarter beginning on _____, 20___;

(b) Interest shall be calculated as set forth herein and payable quarterly at the same time as the payments of principal set forth in Section 2(a); and

(c) One final payment of the unpaid principal of, and accrued and unpaid interest on, this Promissory Note shall be due and payable upon _____, 20___.

All payments of principal and interest of this Promissory Note shall be made by Maker to Payee in federal or other immediately available funds. Payments made to Payee by Maker hereunder shall be applied first to accrued interest and then to principal.

Should the principal of, or any installment of the principal of or interest upon, this Promissory Note become due and payable on any day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable with respect to such extension.

All past due principal of and, to the extent permitted by applicable law, interest upon this Promissory Note shall bear interest at the Maximum Rate.

3. Waivers. Maker and each surety, endorser, guarantor, and other party ever liable for payment of any sums of money payable upon this Promissory Note, jointly and severally waive presentment, demand, protest, notice of protest and non-payment or other notice of default, notice of acceleration, and intention to accelerate, or other notice of any kind, and agree that their liability under this Promissory Note shall not be affected by any renewal or extension in the time of payment hereof, or in any indulgences, or by any release or change in any security for the payment of this Promissory Note, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes, regardless of the number of such renewals, extensions, indulgences, releases, or changes.

No waiver by Payee of any of its rights or remedies hereunder or under any other document evidencing or securing this Promissory Note or otherwise, shall be considered a waiver of any other subsequent right or remedy of Payee; no delay or omission in the exercise or enforcement by Payee of any rights or remedies shall ever be construed as a waiver of any right or remedy of Payee; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of Payee.

4. **Default and Remedies.**

(a) A "*Default*" shall exist hereunder if any one or more of the following events shall occur and be continuing: (i) Maker shall fail to pay when due (A) any principal of, or interest upon, this Promissory Note or (B) any other Obligation, and any such failure under this subsection (i) continues for three (3) Business Days; (ii) any representation or warranty made by Maker to Payee herein shall prove to be untrue or inaccurate in any material respect; (iii) default shall occur in the performance of any of the covenants or agreements of Maker contained herein, or in any other document executed or delivered to Payee in connection herewith and such default continues for ten (10) Business Days after notice from Payee to Maker; (iv) Maker shall (A) apply for or consent to the appointment of a receiver, trustee, intervenor, custodian or liquidator of itself or of all or a substantial part of its assets, (B) be adjudicated a bankrupt or insolvent or file a voluntary petition for bankruptcy or admit in writing that it is unable to pay its debts as they become due, (C) make a general assignment for the benefit of creditors, (D) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, or (E) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or take corporate action for the purpose of effecting any of the foregoing; or (v) an order, judgment or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition seeking reorganization of Maker or appointing a receiver, trustee, intervenor or liquidator of any such person, or of all or substantially all of its or their assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days;

(b) If Maker fails or refuses to pay any part of the principal of or interest upon this Promissory Note as the same become due, or upon the occurrence of any Default hereunder or under any other agreement or instrument securing or assuring the payment of this Promissory Note or executed in connection herewith, then in any such event the holder hereof may, at its option, (i) declare the entire unpaid balance of principal and accrued interest of this Promissory Note to be immediately due and payable without presentment or notice of any kind which Maker waives pursuant to Section 3 herein, (ii) reduce any claim to judgment, and/or (iii) pursue and enforce any of Payee's rights and remedies

available pursuant to any applicable law or agreement including, without limitation, foreclosing all liens and security interests securing payment thereof or any part thereof.

5. Voluntary Prepayment. Maker reserves the right to prepay the outstanding principal balance of this Promissory Note, in whole or in part, at any time and from time to time, without premium or penalty. Any such prepayment shall be made together with payment of interest accrued on the amount of principal being prepaid through the date of such prepayment.

6. Usury Laws. Regardless of any provisions contained in this Promissory Note, Payee shall never be deemed to have contracted for or be entitled to receive, collect, or apply as interest on the Promissory Note, any amount in excess of the Maximum Rate, and, in the event Payee ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of this Promissory Note, and, if the principal balance of this Promissory Note is paid in full, then any remaining excess shall forthwith be paid to Maker. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, Maker and Payee shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense, fee, or premium, rather than as interest; (b) exclude voluntary prepayments and the effect thereof; and (c) spread the total amount of interest throughout the entire contemplated term of this Promissory Note so that the interest rate is uniform throughout such term.

7. Costs. If this Promissory Note is placed in the hands of an attorney for collection, or if it is collected through any legal proceeding at law or in equity, or in bankruptcy, receivership or other court proceedings, Maker agrees to pay all reasonable costs of collection, including, but not limited to, court costs and reasonable attorneys' fees, including all costs of appeal.

8. Notices. All notices required under this Promissory Note shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses set forth below, or sent by facsimile to the fax numbers listed below, or to such other addresses as Maker or Payee may specify from time to time in writing. Notices and other communications shall be effective (a) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid; (b) if telecopied, when transmitted; or (c) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

If to Maker: _____
_____
_____

If to Payee: _____
_____
_____

9. Successor and Assigns. This Promissory Note shall be binding upon and inure to the benefit of Maker and Payee and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Maker hereunder can be assigned without prior written consent of Payee, and Payee may not assign any party of this Promissory Note without the without prior written consent of Maker. Any attempted assignments in violation of this *Section 9* shall be null and void.

10. GOVERNING LAW AND VENUE. THIS INSTRUMENT AND ALL ISSUES AND CLAIMS ARISING IN CONNECTION WITH OR RELATING TO THE INDEBTEDNESS EVIDENCED HEREBY, INCLUDING BUT WITHOUT LIMITATION, ALL CONTRACT,

TORT, EQUITY, OR OTHER CLAIMS OR COUNTERCLAIMS AND ALL QUESTIONS INVOLVING USURY AND THE MAXIMUM RATE OF INTEREST WHICH MAY BE CONTRACTED FOR, CHARGED, OR RECEIVED SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. MAKER AND PAYEE HEREBY IRREVOCABLY (I) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN DALLAS, TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY, AND (II) WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY DEFENSE ASSERTING AN INCONVENIENT FORUM IN CONNECTION THEREWITH.

11. JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THIS PROMISSORY NOTE OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR THE ACTIONS OF MAKER OR PAYEE IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MAKER AND PAYEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MAKER AND PAYEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS A CONCLUSIVE EVIDENCE OF THIS WAIVER BY MAKER AND PAYEE.

12. ENTIRETY. THE PROVISIONS OF THIS PROMISSORY NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THIS PROMISSORY NOTE EMBODIES THE FINAL, ENTIRE AGREEMENT OF MAKER AND PAYEE AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE.

MAKER:

_____

[INSERT NAME]

Acknowledged by:

PAYEE:

By: _____

Name: _____

Title:

EXHIBIT G

FORM OF PROMISSORY NOTE

$_____ Dallas, Texas _____, 20__

FOR VALUE RECEIVED, the undersigned, Highland Capital Management, L.P., a Delaware limited partnership ("*Maker*"), hereby unconditionally promises to pay to the order of _____ ("*Payee*"), at _____, or such other address given to Maker by Payee, the principal sum of _____ Dollars ($_____), together with interest (calculated on the basis of a 365-day or 366-day year, as appropriate) on the unpaid principal balance from day to day remaining, computed from the date hereof until paid at the rate per annum that shall from day to day be equal to the lesser of (a) the Maximum Rate, or (b) the Applicable Federal Rate applicable to this Promissory Note on the date hereof [*based on maturity date of this Promissory Note*].

1. Definitions. When used in this Promissory Note, the following terms shall have the respective meanings specified herein or in the Section referred to:

"*Agency Agreement*" means the Agency Provisions set forth in *Section 9* of each Pledge Agreement.

"*Applicable Federal Rate*" has the meaning set forth in the United States Internal Revenue Code of 1986, as amended.

"*Business Day*" means a day upon which business is transacted by national banks in Dallas, Texas.

"*Buy-Sell Agreement*" means the Amended and Restated Buy-Sell and Redemption Agreement dated as of December 31, 2004, and executed by and among Highland Capital Management, LP and its Limited Partners (as defined therein).

"*Default*" has the meaning ascribed to it in Section 5 hereof.

"*Guarantor*" means a guarantor under the Guaranty.

"*Guaranty*" means that certain Limited Guaranty (as amended and modified from time to time), dated as of the date hereof, executed by [list each Guarantor] in favor of Agent (as defined in the Agency Agreement).

"*Loan Documents*" means this Promissory Note, the Guaranty, the Pledge Agreements, and any agreements, documents (and with respect to this Promissory Note, and such other agreements and documents, any modifications, amendments, renewals, extensions, or restatements thereof), or certificates at any time executed or delivered pursuant to the terms of this Promissory Note.

"*Maximum Rate*" means, with respect to the holder hereof, the highest non-usurious rate of interest, if any, permitted by applicable law on such day.

"*Obligation*" means all indebtedness, liabilities, and obligations, of every kind and character, of Maker, now or hereafter existing in favor of Payee arising under this Promissory Note and the Loan Documents.

2. Payment. The unpaid principal of and interest upon this Promissory Note shall be fully amortized and shall be due and payable as follows:

(a) _____ equal quarterly payments of principal in the amount of $_____ shall be due each quarter beginning on _____, 20___;

(b) Interest shall be calculated as set forth herein and payable quarterly at the same time as the payments of principal set forth in Section 2(a); and

(c) One final payment of the unpaid principal of, and accrued and unpaid interest on, this Promissory Note shall be due and payable upon _____, 20___.

All payments of principal and interest of this Promissory Note shall be made by Maker to Payee in federal or other immediately available funds. Payments made to Payee by Maker hereunder shall be applied first to accrued interest and then to principal.

Should the principal of, or any installment of the principal of or interest upon, this Promissory Note become due and payable on any day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and interest shall be payable with respect to such extension.

All past due principal of and, to the extent permitted by applicable law, interest upon this Promissory Note shall bear interest at the Maximum Rate.

3. Waivers. Maker and each surety, endorser, guarantor, and other party ever liable for payment of any sums of money payable upon this Promissory Note, jointly and severally waive presentment, demand, protest, notice of protest and non-payment or other notice of default, notice of acceleration, and intention to accelerate, or other notice of any kind, and agree that their liability under this Promissory Note shall not be affected by any renewal or extension in the time of payment hereof, or in any indulgences, or by any release or change in any security for the payment of this Promissory Note, and hereby consent to any and all renewals, extensions, indulgences, releases, or changes, regardless of the number of such renewals, extensions, indulgences, releases, or changes.

No waiver by Payee of any of its rights or remedies hereunder or under any other document evidencing or securing this Promissory Note or otherwise, shall be considered a waiver of any other subsequent right or remedy of Payee; no delay or omission in the exercise or enforcement by Payee of any rights or remedies shall ever be construed as a waiver of any right or remedy of Payee; and no exercise or enforcement of any such rights or remedies shall ever be held to exhaust any right or remedy of Payee.

4. **Default and Remedies.**

(a) A "*Default*" shall exist hereunder if any one or more of the following events shall occur and be continuing: (i) Maker shall fail to pay when due (A) any principal of, or interest upon, this Promissory Note or (B) any other Obligation, and any such failure under this subsection (i) continues for three (3) Business Days; (ii) any representation or warranty made by Maker (or one or more Guarantors whose aggregate Limited Guaranteed Obligations (as defined in the Guaranty) exceed thirty three percent (33%) of the total Guaranteed Obligations (as defined in the Guaranty)) under the Loan Documents shall prove to be untrue or inaccurate in any material respect; (iii) any default shall occur in the performance of any of the covenants or agreements of Maker (or one or more Guarantors whose aggregate Limited Guaranteed Obligations (as defined in the Guaranty) exceed thirty three percent (33%) of the total Guaranteed Obligations (as defined in the Guaranty)) under the Loan Documents and such

default continues for ten (10) Business Days after notice from Payee to Maker; (iv) Maker (or one or more Guarantors whose aggregate Limited Guaranteed Obligations (as defined in the Guaranty) exceed thirty three percent (33%) of the total Guaranteed Obligations (as defined in the Guaranty)) shall (A) apply for or consent to the appointment of a receiver, trustee, intervenor, custodian or liquidator of itself or of all or a substantial part of its assets, (B) be adjudicated a bankrupt or insolvent or file a voluntary petition for bankruptcy or admit in writing that it is unable to pay its debts as they become due, (C) make a general assignment for the benefit of creditors, (D) file a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, or (E) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding, or take corporate action for the purpose of effecting any of the foregoing; (v) an order, judgment or decree shall be entered by any court of competent jurisdiction or other competent authority approving a petition seeking reorganization of Maker or such Guarantor(s) or appointing a receiver, trustee, intervenor or liquidator of any such person, or of all or substantially all of its or their assets, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days; (vi) Payee's liens, mortgages or security interests in any of the collateral for this Promissory Note or the Guaranty should become unenforceable, or cease to be first priority liens, mortgages or security interests; or (vii) a default shall exist and be continuing under any other promissory note executed by Maker pursuant to Section 14 of the Buy-Sell Agreement.

(b) Subject to *Section (c)* below, if Maker fails or refuses to pay any part of the principal of or interest upon this Promissory Note or the Obligation as the same become due, or upon the occurrence of any Default hereunder or under any other agreement or instrument securing or assuring the payment of this Promissory Note or executed in connection herewith, then in any such event the holder hereof may, at its option, (i) declare the entire unpaid balance of principal and accrued interest of the Obligation to be immediately due and payable without presentment or notice of any kind which Maker waives pursuant to Section 3 herein, (ii) reduce any claim to judgment, and/or (iii) pursue and enforce any of Payee's rights and remedies available pursuant to any applicable law or agreement including, without limitation, foreclosing all liens and security interests securing payment thereof or any part thereof.

(c) Notwithstanding any other provision in this Note, during the existence of a Default, Payee's right to (i) exercise any of its remedies hereunder, (ii) apply any funds received hereunder, and (iii) take any other actions hereunder, shall be subject to the provisions of the Agency Agreement.

5. **Voluntary Prepayment.** Maker reserves the right to prepay the outstanding principal balance of this Promissory Note, in whole or in part, at any time and from time to time, without premium or penalty. Any such prepayment shall be made together with payment of interest accrued on the amount of principal being prepaid through the date of such prepayment.

6. **Usury Laws.** Regardless of any provisions contained in this Promissory Note, Payee shall never be deemed to have contracted for or be entitled to receive, collect, or apply as interest on the Promissory Note, any amount in excess of the Maximum Rate, and, in the event Payee ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance of this Promissory Note, and, if the principal balance of this Promissory Note is paid in full, then any remaining excess shall forthwith be paid to Maker. In determining whether or not the interest paid or payable under any specific contingency exceeds the highest lawful rate, Maker and Payee shall, to the maximum extent permitted under applicable law, (a) characterize any non-principal payment (other than payments which are expressly designated as interest payments hereunder) as an expense, fee, or premium, rather than as interest, (b) exclude voluntary prepayments and the effect thereof, and (c) spread the total amount of interest

throughout the entire contemplated term of this Promissory Note so that the interest rate is uniform throughout such term.

7. Costs. If this Promissory Note is placed in the hands of an attorney for collection, or if it is collected through any legal proceeding at law or in equity, or in bankruptcy, receivership or other court proceedings, Maker agrees to pay all reasonable costs of collection, including, but not limited to, court costs and reasonable attorneys' fees, including all costs of appeal.

8. Notices. All notices required under this Promissory Note shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses set forth below, or sent by facsimile to the fax numbers listed below, or to such other addresses as Maker or Payee may specify from time to time in writing. Notices and other communications shall be effective (a) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (b) if telecopied, when transmitted, or (c) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered.

If to Maker: _____
_____
_____

If to Payee: _____
_____
_____

9. Successor and Assigns. This Promissory Note shall be binding upon and inure to the benefit of Maker and Payee and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Maker hereunder can be assigned without prior written consent of Payee, and Payee may not assign any part of this Promissory Note without the without prior written consent of Maker. Any attempted assignment in violation of this *Section 9* shall be null and void.

10. GOVERNING LAW AND VENUE. THIS PROMISSORY NOTE AND ALL ISSUES AND CLAIMS ARISING IN CONNECTION WITH OR RELATING TO THE INDEBTEDNESS EVIDENCED HEREBY, INCLUDING BUT WITHOUT LIMITATION, ALL CONTRACT, TORT, EQUITY, OR OTHER CLAIMS OR COUNTERCLAIMS AND ALL QUESTIONS INVOLVING USURY AND THE MAXIMUM RATE OF INTEREST WHICH MAY BE CONTRACTED FOR, CHARGED, OR RECEIVED SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. MAKER AND PAYEE HEREBY IRREVOCABLY (I) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN DALLAS, TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY, AND (II) WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY DEFENSE ASSERTING AN INCONVENIENT FORUM IN CONNECTION THEREWITH.

10. JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THIS PROMISSORY NOTE OR THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR THE ACTIONS OF MAKER OR PAYEE IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT

THEREOF. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MAKER AND PAYEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MAKER AND PAYEE ARE HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS A CONCLUSIVE EVIDENCE OF THIS WAIVER BY MAKER AND PAYEE.

11. AMENDMENTS AND ENTIRETY. SUBJECT TO THE AGENCY AGREEMENT, THE PROVISIONS OF THIS PROMISSORY NOTE MAY BE AMENDED OR REVISED BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THIS PROMISSORY NOTE AND ALL THE OTHER LOAN DOCUMENTS EMBODY THE FINAL, ENTIRE AGREEMENT OF MAKER AND PAYEE AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE.

MAKER:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its General Partner

By: _____
Name: _____
Title: _____

Acknowledged by:

PAYEE:

By: _____
Name: _____
Title: _____

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EXHIBIT H

CONTINUING GUARANTY

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, and in consideration of the redemption or purchase by Highland Capital Management, L.P., a Delaware limited partnership (the "*Borrower*") of certain limited partnership interests owned by [list or schedule each note holder] (collectively the "*Lenders*"), each of the undersigned Guarantors being a limited partner in Borrower as of the date hereof (collectively, the "*Guarantor*") hereby severally, and not jointly, furnishes its limited guaranty of the Guaranteed Obligations (as hereinafter defined) as follows for the benefit of___ _____, as Agent to the Lenders pursuant to the Agency Agreement (as defined below):

1. **Guaranty.**

(a) Subject to *Subsection (b)* below, each Guarantor hereby absolutely and unconditionally guarantees, as a guarantee of payment and not merely as a guarantee of collection, prompt payment upon the occurrence and existence a Default under any of the Notes (as defined below), and at all times thereafter, of any and all indebtedness and liabilities of every kind, nature and character, direct or indirect, absolute or contingent, liquidated or unliquidated, voluntary or involuntary, of the Borrower to the Lenders arising under those certain Promissory Notes dated _____ and executed by the Borrower in favor of the Lenders (as amended, modified, and restated from time to time, the "*Notes*") and all instruments, agreements and other documents of every kind and nature now or hereafter executed in connection with the Notes (including all renewals, extensions and modifications thereof and all costs, attorneys' fees and expenses incurred by the Lenders in connection with the collection or enforcement thereof) (collectively, the "*Guaranteed Obligations*"). This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations; or by the existence, validity, enforceability, perfection, or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of the Guarantor under this Guaranty.

(b) Notwithstanding any other provision of this Guaranty, the obligations of each Guarantor hereunder (each such obligation, the "*Limited Guaranteed Obligations*") shall be limited to the lesser of (i) an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code (Title 11, United States Code) or any comparable provisions of any applicable state law, and (ii) for each Guarantor, an aggregate amount equal to the product of (A) the outstanding amount of the Guaranteed Obligations, times (B) the corresponding percentage of such Guarantor as set forth on Schedule A hereto [*Schedule A shall set forth the percentage of the limited partnership interest owned by each Guarantor in the Borrower as of the date of this Guaranty.*]

(c) To the extent that the Agent or any Lender receives any proceeds from the collateral pledged by a Guarantor in the Pledge Agreement dated as of the date of this Guaranty (as renewed, extended, amended or restated) executed by such Guarantor, the proceeds will be applied to reduce the Limited Guaranteed Obligations of such Guarantor as set forth in *paragraph 1(b)* above. Such Guarantor shall be given credit for all such amounts in reduction of its obligations to pay the Limited Guaranteed Obligations.

2. **No Setoff or Deductions; Taxes.** All payments by any Guarantor hereunder shall be paid in full, without setoff or counterclaim or any deduction or withholding whatsoever, including,

without limitation, for any and all present and future taxes. If notwithstanding the foregoing, any Guarantor makes a payment under this Guaranty to which withholding tax applies, or any taxes are at any time imposed on any payments under or in respect of this Guaranty including, but not limited to, payments made pursuant to this ***Paragraph 2***, such Guarantor shall pay all such taxes to the relevant authority in accordance with applicable law such that the applicable Lender receives the sum it would have received had no such deduction or withholding been made and shall also pay to such Lender, on demand, all additional amounts which Agent specifies as necessary to preserve the after-tax yield the applicable Lender would have received if such taxes had not been imposed. Each Guarantor shall promptly provide Agent with an original receipt or certified copy issued by the relevant authority evidencing the payment of any such amount required to be deducted or withheld.

3. **No Termination.** This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until all Guaranteed Obligations and any other amounts payable under this Guaranty are paid and performed in full.

4. **Waiver of Notices.** Each Guarantor waives notice of the acceptance of this Guaranty and of the extension or continuation of the Guaranteed Obligations or any part thereof. Each Guarantor further waives presentment, protest, notice, dishonor or default, demand for payment and any other notices to which such Guarantor might otherwise be entitled.

5. **Subrogation.** No Guarantor shall exercise rights of subrogation, contribution or similar rights with respect to any payments such Guarantor makes under this Guaranty until all of the Guaranteed Obligations and any amounts payable under this Guaranty are paid and performed in full. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Lenders and shall forthwith be paid to Agent to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

6. **Waiver of Suretyship Defenses.** Each Guarantor agrees that Agent or any Lender may, at any time and from time to time, and without notice to the Guarantor, make any agreement with the Borrower or any other Guarantor or with any other person or entity liable on any of the Guaranteed Obligations or providing collateral as security for the Guaranteed Obligations, for the extension, renewal, payment, compromise, discharge or release of the Guaranteed Obligations or any collateral (in whole or in part), or for any modification or amendment of the terms thereof or of any instrument or agreement evidencing the Guaranteed Obligations or the provision of collateral, all without in any way impairing, releasing, discharging or otherwise affecting the obligations of such Guarantor under this Guaranty. Each Guarantor waives any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever of the liability of the Borrower, or any claim that any Guarantor's obligations exceed or are more burdensome than those of the Borrower and waives the benefit of any statute of limitations affecting the liability of such Guarantor hereunder. Each Guarantor waives any right to enforce any remedy which Agent or any Lender now has or may hereafter have against the Borrower and waives any benefit of and any right to participate in any security now or hereafter held by the Agent or any Lender. Further, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

7. **Exhaustion of Other Remedies Not Required.** Subject to ***Paragraph 2(b)*** above, the obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations. Each Guarantor waives diligence by the Lenders and action on delinquency in respect of the Guaranteed Obligations or any part thereof, including, without limitation any provisions of law requiring Agent or any Lender to exhaust any right or remedy or to take any action against the Borrower, any other guarantor or any other person, entity or property before enforcing this

Guaranty against such Guarantor, including but not limited to the benefits of Chapter 34 of the Texas Business and Commerce Code, §17.001 of the Texas Civil Practice and Remedies Code, and Rule 31 of the Texas Rules of Civil Procedure, or any similar statute.

8. **Reinstatement.** Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or be reinstated, as the case may be, against any Guarantor if at any time any payment of any portion of such Guarantor's Limited Guaranteed Obligations is revoked, terminated, rescinded or reduced or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or any other person or entity or otherwise, as if such payment had not been made and whether or not any Lender is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction.

9. **Subordination.** Upon the occurrence and continuance of a Default under the Notes, each Guarantor shall subordinate the payment of all obligations and indebtedness of the Borrower owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrower to such Guarantor as subrogee of the Lenders or resulting from such Guarantor's performance under this Guaranty, to the payment in full of all Guaranteed Obligations. If the Agent or any Lender so requests, any such obligation or indebtedness of the Borrower to any Guarantor shall be enforced and performance received by such Guarantor as trustee for the Lenders and the proceeds thereof shall be paid over to the Agent on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of such Guarantor under this Guaranty.

10. **Information.** Each Guarantor agrees to furnish promptly to the Agent or any Lender any and all financial or other information regarding such Guarantor as such party may reasonably request in writing.

11. **Stay of Acceleration.** In the event that acceleration of the time for payment of any of the Guaranteed Obligations is stayed, upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts shall nonetheless be payable by each Guarantor immediately upon demand by Agent.

12. **Expenses.** Guarantors shall pay on demand to Agent all out-of-pocket expenses (including reasonable attorneys' fees and expenses and the allocated cost and disbursements of internal legal counsel) in any way relating to the enforcement or protection of any Lender's rights under this Guaranty, including any incurred in the preservation, protection or enforcement of any rights of such Lender in any case commenced by or against any Guarantor under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute. The obligations of any Guarantor under the preceding sentence shall survive termination of this Guaranty.

13. **Amendments.** No provision of this Guaranty may be waived, amended, supplemented or modified, *unless* consented to in writing by each Lender, Agent and each Guarantor.

14. **No Waiver; Enforceability.** No failure by Agent or any Lender to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein.

15. **Assignment; Governing Laws; Jurisdiction.** This Guaranty shall (a) bind each Guarantor and its successors and assigns, *provided that* such Guarantor may not assign its rights or obligations under this Guaranty without the prior written consent of Agent (and any attempted assignment without such consent shall be void), (b) inure to the benefit of Agent and its successors and assigns

provided that that no obligations of any Guarantor hereunder can be assigned without prior written consent of Agent, and Agent and the Lenders may not assign this Guaranty without the without prior written consent of each Guarantor, and (c) be governed by the internal laws of the State of Texas. Any attempted assignments in violation of this *Section 9* shall be null and void. Each Guarantor hereby irrevocably (i) submits to the non-exclusive jurisdiction of any United States Federal or State court sitting in Dallas, Texas in any action or proceeding arising out of or relating to this Guaranty, and (ii) waives to the fullest extent permitted by law any defense asserting an inconvenient forum in connection therewith. Service of process by Agent in connection with such action or proceeding shall be binding on the applicable Guarantor if sent to such Guarantor by registered or certified mail at its address specified below.

16. **Condition of the Borrower.** Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower such information concerning the financial condition, business and operations of the Borrower as such Guarantor requires, and that the Lenders have no duty, and such Guarantor is not relying on the Lenders at any time, to disclose to such Guarantor any information relating to the business, operations or financial condition of the Borrower.

17. **Setoff.** If and to the extent any payment is not made when due hereunder, Agent may setoff and charge from time to time any amount so due against any or all of the Guarantor's accounts or deposits with Agent or any Lender.

18. **Other Guarantees.** Unless otherwise agreed by Agent and the Guarantor in writing, this Guaranty is not intended to supersede or otherwise affect any other guaranty now or hereafter given by the Guarantor for the benefit of the Lenders or any term or provision thereof.

19. **Representations and Warranties.** Each Guarantor represents and warrants that (i) this Guaranty constitutes its legal, valid and binding obligation enforceable in accordance with its terms; (ii) the making and performance of this Guaranty does not and will not violate the provisions of any applicable law, regulation or order, and does not and will not result in the breach of, or constitute a default or require any consent under, any material agreement, instrument, or document to which it is a party or by which it or any of its property may be bound or affected, unless such violation, conflict, or default would not have a material adverse effect on such Guarantor or this Guaranty; (iii) all material consents, approvals, licenses and authorizations of, and filings and registrations with, any governmental authority required under applicable law and regulations for the making and performance of this Guaranty by such Guarantor have been obtained or made and are in full force and effect, unless the failure to obtain such consents, approvals, or licenses would not have a material adverse effect on such Guarantor or this Guaranty; and (iv) by virtue of its relationship with the Borrower, the execution, delivery and performance of this Guaranty is for the direct benefit of such Guarantor and it has received adequate consideration for this Guaranty.

20. **Agency Agreement.** Notwithstanding any other provision herein, all rights and actions of Agent and Lenders hereunder and the application of all funds collected hereunder are subject to *Section 9* of each Pledge Agreement dated the date hereof and executed by a Guarantor, Agent and the Lenders (the "*Agency Agreement*").

21. **WAIVER OF JURY TRIAL; FINAL AGREEMENT. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE GUARANTORS AND AGENT EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ON OR ARISING OUT OF THIS GUARANTY. THIS GUARANTY REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS**

BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Executed this ___ day of _____, ____.

[NAMES OF THE GUARANTORS]

Addresses for Guarantors: _____

_____

_____

_____

ACKNOWLEDGED BY AGENT:

By: _____

Name: _____

Title: _____

EXHIBIT A
TO GUARANTY

Name of Guarantor	Percentage for Guarantor

EXHIBIT I

PARTNERSHIP INTEREST PLEDGE AGREEMENT

THIS PARTNERSHIP INTEREST PLEDGE AGREEMENT (the "*Pledge Agreement*") is made effective as of _____, 20___, by _____ ("*Pledgor*"), in favor of ___ _____(the "*Agent*") as Agent for the benefit of the Lenders *[Agent to be appointed by the Lenders and shall be the same Agent in each Agreement]*.

WITNESETH

1. Each Pledgor is the owner of the limited partnership interests in Highland Capital Management, L.P., a Delaware limited partnership (the "*Partnership*") set forth on Schedule 1 attached hereto (all of such interest being herein referred to as the "*Partnership Interest*").

2. The Partnership has entered into certain Promissory Notes, dated _____, 20___ (as amended, supplemented, or restated from time-to-time, the "*Note*"), in favor of the Lenders, pursuant to which the Partnership has evidenced its obligation to pay the unpaid portion of the purchase price for certain limited partnership interests acquired from former limited partners of the Partnership, including the Lenders (the "*Loans*"), in the aggregate original principal amount of $_____.

3. Pledgor has executed a certain Limited Guaranty, dated the date hereof, in favor of Lenders to guarantee the payment of the Notes on the terms set forth therein (the "*Limited Guaranty*").

4. Pledgor wishes to provide collateral security for the Secured Indebtedness (as hereinafter defined) in the form of a pledge of the Pledged Collateral (as hereinafter defined), as required by the Note.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and the direct and indirect material benefit to be received by Pledgor by reason of the Notes, which benefit is hereby expressly acknowledged by Pledgor, the parties hereto agree as follows:

Section 1. Defined Terms. Capitalized terms used herein which are defined in the Notes shall have the same meanings when used herein *unless* the context hereof shall otherwise require or provide. In addition, for the purposes of this Pledge Agreement, the following terms shall have the respective meanings assigned to them in this Section 1:

"*Code*" shall have the meaning set forth in Section 7 hereof.

"*Lenders*" shall mean the payees under each of the Notes.

"*Limited Guaranteed Obligations*" shall have the meaning assigned to it in the Guaranty.

"*Loan Documents*" shall mean the Notes, the Guaranty, and this Pledge Agreement and any agreements, documents (any modifications, amendments, renewals, extensions, or restatements thereof), or certificates at any time executed or delivered pursuant to the terms of thereof.

"*Notes*" shall have the meaning assigned to it in the recitals.

"*Obligations*" means any and all indebtedness and liabilities of every kind, nature and character, direct or indirect, absolute or contingent, liquidated or unliquidated, voluntary or involuntary, of the Partnership to the Lenders arising under the Notes and the other Loan Documents.

"*Pledged Collateral*" shall have the meaning assigned to it in Section 2 hereof.

"*Pledged Interest*" means all limited partnership interests of Pledgor now owned or hereafter acquired by Pledgor.

"*Percentage Interest*" shall mean, at the time of measurement, the ratio, expressed as a percentage, of (a) the outstanding principal amount of the Obligations held by such Lender plus accrued interest to (b) the aggregate outstanding principal amount of all Obligations plus accrued interest.

"*Required Lenders*" shall mean, as of any date of determination, the Lenders holding not less than 66% of the outstanding principal amount of the aggregate Obligations plus accrued interest on such outstanding principal amount.

"*Secured Indebtedness*" shall mean all indebtedness, obligations, and liabilities described or referred to in clauses (a) through (c) immediately below:

(a) the Limited Guaranteed Obligations of Pledgor;

(b) all reasonable fees and expenses incurred by Agent to preserve and maintain the Pledged Collateral; and

(c) all extensions, renewals, amendments, and modifications of any of the foregoing.

Section 2. Pledge. As collateral security for the payment and performance of the Secured Indebtedness, Pledgor hereby pledges, hypothecates, assigns, transfers, sets over, and delivers unto Agent, for the benefit of Lenders, and hereby grants Agent a lien and security interest in, the following:

(a) the Pledged Interest and any certificate(s) representing the Pledged Interest, and all cash, securities, dividends, increases, distributions, and profits received therefrom or in connection therewith, including distributions or payments in partial or complete liquidation or redemption, or as a result of reclassifications, readjustments, reorganizations, or changes in the capital structure of the Partnership thereof, and any other property at any time and from time-to-time received, receivable, or otherwise distributed or delivered to Agent, and all rights and privileges pertaining thereto;

(b) all securities hereafter delivered to Agent in substitution for, or in addition to, any of the foregoing, all certificates representing or evidencing such securities, and all cash, securities, instruments, documents, dividends, increases, distributions, and profits received therefrom, and any other property at any time and from time-to-time received by, receivable by, or otherwise distributed or delivered to Agent in respect of or in exchange for any or all of the property described; and

(c) all products and proceeds of the foregoing and all general intangibles and contract rights related thereto, including without limitation, all revenues, distributions, dividends, property, registration rights, contract rights, and other rights and interests that Pledgor is, or may hereafter become, entitled to receive on account of any collateral described in Sections 2(a) and (b);

(all such Pledged Interest, certificates, securities, instruments, documents, dividends, increases, distributions, profits, intangibles, contract rights, and other property being herein collectively called the "*Pledged Collateral*"). Pledgor shall forthwith deliver to Agent all subscriptions, warrants, options, and all such other rights, and upon delivery to Agent, Agent shall hold such subscriptions, warrants, options and other rights as additional collateral pledged to secure the Secured Indebtedness;

TO HAVE AND TO HOLD the Pledged Collateral, together with all rights, titles, interests, privileges, and preferences appertaining to or incidental thereto, unto Agent, its successors, and assigns, forever subject, however, to the terms, covenants, and conditions hereafter set forth.

Section 3. **Agent As Custodian.** Agent shall have physical possession of the certificates or instruments, if any, representing or evidencing the Pledged Collateral. Pledgor agrees that either (a) all certificates representing the Pledged Interest shall be registered in the appropriate partnership record books in the name of Agent and such registration shall reflect that the registered owner is acting as agent on behalf of lenders, or (b) in lieu of or, at Agent's option, in addition to presently registering the Pledged Collateral in the name of Agent, Pledgor will deposit with Agent, along with the certificates or instruments representing or evidencing the Pledged Collateral, duly executed powers in favor of Agent. In addition, Agent shall at all times have the right to exchange certificates or instruments representing or evidencing the Pledged Collateral for certificates or instruments of smaller or larger denominations for any purpose consistent with its performance of this Pledge Agreement.

Section 4. **Representations and Warranties.** Pledgor hereby represents and warrants that: (a) Pledgor is the sole legal and beneficial owner of the Pledged Collateral free and clear of all liens, charges, pledges, encumbrances, and security interests of every kind and nature, other than liens and security interests in favor of Agent; (b) the Pledged Interest has been validly authorized, issued, and is fully paid and nonassessable; (c) Pledgor has good right and lawful authority to pledge the Pledged Collateral in the manner hereby done or contemplated; (d) no material consent or approval of any governmental authority, or of any securities exchange, is necessary to effect the validity of the rights created hereunder which have not been obtained; (e) *except* for any financing statement which may have been filed by Agent, no financing statement covering the Pledged Collateral, or any part thereof, has been filed with any filing officer or office; (f) no security agreement covering the Pledged Collateral, or any part thereof, has been made and no security interest, other than the one herein created, has attached or been perfected in the Pledged Collateral or any part thereof; (g) the execution, delivery, and consummation of this Pledge Agreement will not violate the charter or bylaws or other similar governing document of Pledgor (if applicable) or any law, regulation, mortgage, indenture, contract, instrument, judgment, or decree applicable to or binding on Pledgor or the issuers of the Pledged Collateral, unless such violation would not have a material adverse effect on Pledgor or this Pledge Agreement; (h) the Pledged Interest constitutes Pledgor's entire ownership interest in all of the issued and outstanding equity interests in the Partnership; and (i) the information contained in all forms or other statements given to Agent by Pledgor is true, complete, and accurate in all material respects; and Pledgor will immediately notify Agent of any change in such information. The delivery at any time by Pledgor to Agent of additional Pledged Collateral shall constitute a representation and warranty by Pledgor that, with respect to such Pledged Collateral and each item thereof, the matters heretofore warranted in clauses (a) through (i) immediately above are true and correct in all material respects at, and as if they were made at, the date of such delivery.

Section 5. **Covenants.**

(a) Additional Documents and Information. Pledgor covenants and agrees to: (i) From time-to-time promptly execute and deliver to Agent all such stock powers, assignments, certificates, supplemental writings, financing statements, and other items and do all other acts or things as Agent may reasonably request in order more fully to evidence and perfect the interest of Agent in the

Pledged Collateral; (ii) punctually and properly perform all of Pledgor's covenants and duties under any other security agreement, deed of trust, collateral pledge agreement, or contract of any kind now or hereafter existing as security for or in connection with payment of the Secured Indebtedness (to the extent liable thereon) in accordance with the terms hereof; (iii) promptly furnish Agent with any information or writings which Agent may reasonably request concerning the Pledged Collateral or the Partnership, including, without limitation, all material non-public information; (iv) allow Agent to inspect all records of Pledgor relating to the Pledged Collateral or to the Secured Indebtedness, and to make and take away copies of such records; (v) promptly notify Agent of any material change in any fact or circumstance warranted or represented by Pledgor in this Pledge Agreement or in any other writing furnished by Pledgor to Agent in connection with the Pledged Collateral or the Secured Indebtedness; (vi) promptly notify Agent of any claim, action, or proceeding affecting title to the Pledged Collateral, or any part thereof, or the security interest therein, and, at the request of Agent, appear in and defend, at Pledgor's expense, any such action or proceeding; and (vii) promptly, after being requested by Agent, pay to Agent the amount of all reasonable expenses, including reasonable attorneys' fees and other legal expenses, incurred by Agent in perfecting, maintaining, and enforcing the security interest.

(b) Proceeds. Should the Pledged Collateral, or any part thereof, ever be in any manner converted by the Partnership or maker into another type of property, or any money or other proceeds ever be paid or delivered to Pledgor as a result of Pledgor's rights in the Pledged Collateral, then, in any such event, all such property, money, and other proceeds, *except* only ordinary cash dividends (*unless* and until payable to Agent pursuant to Section 6(c) hereof), shall become part of the Pledged Collateral and shall be delivered to Agent by such Pledgor.

(c) Performance by Agent. During the occurrence and continuation of a Default under any Note, should any covenant, duty, or agreement of Pledgor fail to be performed in accordance with its terms hereunder, Agent may, but shall never be obligated to, perform or attempt to perform such covenant, duty, or agreement on behalf of Pledgor, and any amount expended by Agent in such performance or attempted performance shall become a part of the Secured Indebtedness. At the request of Agent, Pledgor agrees to pay such amount promptly to Agent at Agent's office in Dallas, Texas, together with interest thereon at the rate provided in the Note.

(d) Negative Covenants. Pledgor covenants and agrees that, without the prior written consent of Agent, Pledgor will not: (i) sell, assign, or transfer any rights of Pledgor in the Pledged Collateral; (ii) grant any options or other rights in the Pledged Collateral; (iii) create any other lien or security interest in, mortgage, or otherwise encumber the Pledged Collateral, or any part thereof, or permit the same to be or become subject to any lien, attachment, execution, sequestration, other legal or equitable process, or any encumbrance of any kind or character, *except* the security interest herein created; (iv) vote for, consent to, or permit any amendment of the charter, partnership agreement, limited liability agreement, or any other governing agreement of the Partnership that could materially adversely affect the value of the Pledged Collateral; (v) permit the Partnership of the Pledged Interest to merge or consolidate with or into any corporation or other person, unless the Partnership is the surviving entity; and (vi) vote for, consent to, or permit (A) any transfer of interest in, or change in ownership of, the Partnership, or (B) any other changes in the capital structure of the Partnership to the extent any such action described in this *subsection (vi)* could materially adversely affect the value of the Pledged Collateral.

Section 6. Voting Rights; Dividends, Etc., Prior to Default.

(a) Rights Prior to Default. So long as no Default exists under any Note and Agent shall not have given written notice to Pledgor of its intention to foreclose upon or otherwise dispose of the Pledged Collateral, or to exercise its voting rights pertaining to the Pledged Collateral:

(i) Pledgor shall be entitled to exercise any and all voting and/or consensual rights and powers relating or pertaining to the Pledged Collateral or any part thereof for any purpose not inconsistent with the terms of this Pledge Agreement; *provided, however,* that Pledgor shall not exercise or refrain from exercising any such right or power if such action would have a material adverse effect on the value of the Pledged Collateral or any part thereof.

(ii) Agent shall execute and deliver (or cause to be executed and delivered) to Pledgor all such proxies, powers of attorney, dividend orders, and other instruments as Pledgor may request for the purpose of enabling Pledgor to exercise the voting and/or consensual rights and powers which it is entitled to exercise pursuant to Section 6(a)(i) above.

(b) Termination of Rights. Upon (i) the occurrence and during the continuance of a Default under any Note, and (ii) the giving of written notice by Agent to Pledgor of its intention to (A) foreclose upon or otherwise dispose of the Pledged Collateral or (B) exercise its voting rights pertaining to the Pledged Collateral, all rights of Pledgor to exercise the voting and/or consensual rights and powers which it is entitled to exercise pursuant to Section 6(a)(i) hereof shall cease, at the option of Agent, and all such rights shall thereupon become vested in Agent, who shall have the sole and exclusive right and authority to exercise such voting and/or consensual rights. Further, Agent shall have the right, at any time during the existence of a Default, to notify and direct the Partnership of the Pledged Collateral to thereafter make all payments, dividends, and any other distributions payable in respect thereof directly to Agent. The Partnership of the Pledged Collateral making any such payment or distribution to Agent hereunder shall be fully protected in relying on the written statement of Agent that it then holds a security interest which entitles it to receive such payments and distributions. Any and all money and other property paid over to or received by Agent pursuant to the provisions of this Section 6(b) shall be retained by Agent as additional collateral hereunder and may be applied (and upon Pledgor's written request all cash shall promptly be applied) in accordance with the provisions hereof.

(c) Distributions. Upon the occurrence and during the continuance of a Default under any of the Notes, all cash distributions, returns of capital, or other similar distributions made on or in respect of the Pledged Collateral, whether resulting from a subdivision, combination, or reclassification of the outstanding capital or other ownership interests of the Partnership, received in exchange for Pledged Collateral or any part thereof, or as a result of any merger, consolidation, acquisition, or other exchange of assets to which the Partnership may be a party or otherwise, and any and all cash and other property received in exchange for the Pledged Collateral, or received in payment of the principal of or in redemption of the Pledged Collateral, shall be paid or delivered to Agent.

Section 7. Rights and Remedies of Agent Upon and After Default.

(a) Remedies. Upon the occurrence of a Default under any of the Notes, in addition to any and all other rights and remedies which Agent may then have hereunder, under other contracts or agreements between Pledgor and Agent, under applicable law, or under the Uniform Commercial Code as in effect in the State of Texas (hereinafter called "*Code*"), or otherwise, Agent may, subject to Section 9 hereof, at its option: (i) declare the entire unpaid balance of principal and all accrued interest on the Secured Indebtedness immediately due and payable, without written notice of demand, notice of intent to accelerate, notice of acceleration, or presentment, all of which are hereby waived; (ii) reduce its claim to judgment, foreclose, or otherwise enforce its security interest in all or any part of the Pledged Collateral by any available judicial procedure; (iii) after notification, if any, expressly provided for herein, sell or otherwise dispose of, at the office of Agent or elsewhere, as chosen by Agent, all or any part of the Pledged Collateral, and any such sale or other disposition may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Pledged Collateral shall not exhaust Agent's power of sale, but sales may be made from time-to-time until all of the Pledged Collateral has been sold or until the Secured Indebtedness has been paid in full;

provided, however that Agent shall have no obligation to sell the Pledged Collateral piecemeal, it being specifically acknowledged that a sale of all of the Pledged Collateral to one purchaser in a single transaction shall be conclusively presumed to be commercially reasonable), and at any such sale it shall not be necessary to exhibit the Pledged Collateral; (iv) at its discretion, retain the Pledged Collateral in satisfaction of the Secured Indebtedness whenever the circumstances are such that Agent is entitled to do so under the Code; (v) purchase the Pledged Collateral at any public sale in accordance with the Code; (vi) purchase the Pledged Collateral at any private sale in accordance with the Code; and (vii) exercise the rights set forth in this Section 7 in accordance with the Code.

(b) Sale of Pledged Collateral. Agent is authorized at any sale of the Pledged Collateral, if it deems it advisable, to restrict the prospective bidders or purchasers to those persons who will represent and agree that they are purchasing for their own account, for investment, and not with a view to distribution or sale of any of the Pledged Collateral. Upon any such sale, Agent shall have the right to deliver, assign, and transfer to the purchaser thereof the Pledged Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption of Pledgor which hereby specifically waives, to the fullest extent permitted by applicable law, all rights of redemption, stay, or appraisal which it has or may have under any rule of law or statute now existing or hereafter adopted, and such waiver shall be deemed to have been made after default. Agent shall give Pledgor ten (10) days' written notice of its intention to make any such public or private sale or sale at broker's board or on a securities exchange. Such notice, in case of sale at broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Pledged Collateral, or that portion thereof so being sold, which will first be offered for sale at such board or exchange. Agent shall have no obligation to disclose or provide any information concerning the Partnership or the Pledged Collateral to prospective purchasers of the Pledged Collateral other than information in its possession at such time, and Pledgor agrees and acknowledges that it shall be commercially reasonable for any notices of any such sale, published or otherwise, to specifically so state. At any such sale the Pledged Collateral may be sold in one lot as an entirety or in separate parcels, as Agent may elect, and any such election shall be presumed to be commercially reasonable. Agent shall not be obligated to make any such sale pursuant to any such notice. Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time-to-time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Pledged Collateral on credit or for future delivery, the Pledged Collateral so sold may be retained by Agent until the selling price is paid by the purchaser thereof, but Agent shall not incur any liability in case of the failure of such purchaser to take and pay for the Pledged Collateral so sold, and, in case of any such failure, such Pledged Collateral may again be sold upon like notice. Agent may also, at its discretion, proceed by a suit or suits at law or in equity to foreclose the pledge and sell the Pledged Collateral, or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction. If any consent, approval, or authorization of any state, municipal, or other governmental department, agency, or authority should be necessary to effectuate any sale or other disposition of the Pledged Collateral, or any partial disposition of the Pledged Collateral, each Pledgor will execute all such applications and other instruments as may be required in connection with securing any such consent, approval, or authorization, and will otherwise use its best efforts to secure the same.

(c) Possible Restrictions on Sale of Pledged Collateral. Because of the Securities Act of 1933, as amended (the "*Securities Act*"), or any other applicable laws or regulations, there may be legal restrictions or limitations affecting Agent in any attempts to dispose of certain portions of the Pledged Collateral in the enforcement of its rights and remedies hereunder. For these reasons Agent is hereby authorized by Pledgor, but not obligated, in the event of any Default hereunder giving rise to Agent's rights, to sell or otherwise dispose of the Pledged Collateral, and after the giving of any notices required herein, to sell all or any part of the Pledged Collateral at a private sale, subject to an investment letter or in any other manner which will not require the Pledged Collateral, or any part thereof, to be

registered in accordance with the Securities Act, as amended, or other applicable rules and regulations promulgated thereunder, or any other law or regulation, at the best price reasonably obtainable by Agent at any such private sale or other disposition in the manner mentioned above, and Pledgor specifically acknowledges that any such disposition shall be commercially reasonable under the Code. Agent is also hereby authorized by Pledgor, but not obligated, to take such actions, give such notices, obtain such consents, and do such other things as Pledgor may deem required or appropriate in the event of a sale or disposition of any of the Pledged Collateral. Pledgor clearly understands that Agent may at its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Pledged Collateral, or any part or parts thereof, than would otherwise be obtainable if same were registered and sold in the open market. Pledgor agrees (i) in the event Agent shall, upon a Default hereunder, sell the Pledged Collateral, or any portion thereof, at such private sale or sales, Agent shall have the right to rely upon the advice and opinion of any member firm of a National Security Exchange (as defined in the Securities Exchange Act of 1934) or other business or stock valuation company as to the best price reasonably obtainable upon such private sale thereof, and (ii) that such reliance shall be conclusive evidence that Agent handled such matter in a commercially reasonable manner under the Code.

(d) Notification. Reasonable notification of the time and place of any public sale of the Pledged Collateral, or reasonable notification of the time after which any private sale or other intended disposition of the Pledged Collateral is to be made, shall be sent to Pledgor and to any other person entitled under the Code to notice; *provided, that* if the Pledged Collateral threatens to decline quickly in value or is of a type customarily sold on a recognized market, Agent may sell or otherwise dispose of the Pledged Collateral without notification, advertisement, or other notice of any kind. It is agreed that notice sent or given not less than ten (10) calendar days prior to the taking of the action to which the notice relates is reasonable notification and notice for the purpose of this Pledge Agreement.

(e) Application of Proceeds. Upon the maturity of any instrument evidencing the Secured Indebtedness or any part thereof, whether such maturity be by such terms of such instruments or through the exercise of any power of acceleration, Agent is authorized and empowered to apply any and all funds realized from the sale of the Pledged Collateral not previously credited against the Secured Indebtedness first, toward the payment of the costs, charges, and expenses, if any, incurred in the collection of such funds hereunder, and then, toward the payment (in such order as Agent shall elect) of the Secured Indebtedness, and shall pay any balance remaining to Pledgor or as prescribed by the Code.

(f) Notices. In the event that any notice is required to be given to Pledgor with respect to any sale or liquidation of the Pledged Collateral, any notice addressed to Pledgor at the address set forth in Section 11(f) below, postage prepaid, deposited in the United States mail ten (10) days prior to the date of any such intended action shall be deemed to be a sufficient and commercially reasonable notice. Nothing contained herein shall prevent Agent from giving notice in any other manner which is considered reasonable.

Section 8. Agent Appointed Attorney-in-Fact. Pledgor hereby appoints Agent as Pledgor's attorney-in-fact for the purpose of carrying out the provisions of this Pledge Agreement and taking any action and executing any instrument which Agent may deem reasonably necessary or advisable to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, upon the occurrence and during the continuance of a Default under any Note, Agent shall have the right and power, *except* and to the extent otherwise provided in Section 6(a)(ii), to receive, endorse, and collect all checks and other orders for the payment of money made payable to Pledgor representing any dividend or other distribution payable or distributable in respect of the Pledged Collateral, or any part thereof, and to give full discharge for the same.

Section 9. Agency Agreement.

(a) Pari Passu Liens. The liens of all the Lenders upon the Pledged Collateral shall rank pari passu.

(b) The Agent.

(i) Appointment and Authorization. Agent hereby declares, and Pledgor and each Lender agree, that Agent holds the right, title and interest of Agent in, to and under each of the Pledge Agreements for the ratable benefit of Lenders as provided herein. By acceptance of the benefits of this Agreement and the other Loan Documents, each Lender (A) consents to the appointment of Agent, as agent hereunder and under the Guaranty, and grants Agent all rights and powers necessary for Agent to perform its obligations hereunder and under the Guaranty, (B) agrees that there shall be only one Agent under the Loan Documents; (C) agrees that upon the occurrence and during the continuance a Default under any Note, subject to subsection (ii) below, Lender shall have the exclusive authority to exercise on behalf of the applicable Lender any rights and remedies such Lender may have under the applicable Note; and (D) confirms that Agent shall have the authority to act as the exclusive agent of each Lender to take any action on behalf of the Lenders contemplated under the Pledge Agreements, the Notes (to the extent a Default under any Note has occurred), and the Guaranty.

(ii) Action Following Default.

(A) So long any Obligations are outstanding, each of the Lenders, hereby for itself, its successors and assigns, severally agrees that no individual Lender shall have the right to foreclose upon or exercise any rights or remedies with respect to the Pledged Collateral or under the Loan Documents, except to the extent set forth in this *Section 9*. Agent, hereby for itself, its successors and assigns, agrees that it shall not have the right to foreclose upon or exercise any rights or remedies in respect of the Pledged Collateral or under any Loan Documents in a manner inconsistent with, or otherwise contrary to the terms of, this *Section 9*.

(B) The Agent (x) shall not exercise any rights or remedies granted to it under any of the Loan Documents, or otherwise available to it at law or in equity, without the approval of the Required Lenders and (y) upon the direction of the Required Lenders, shall exercise such rights and remedies as so directed. The Agent shall incur no liability under or in respect of this Pledge Agreement or the Loan Documents by acting upon any notice, consent, certificate, warranty or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party on parties, or with respect to anything that it may do or refrain from doing in the reasonable exercise of its judgment, or that may seem to it to be necessary or desirable under the circumstances.

(C) Agent shall have the sole authority to waive any Defaults under any of the Loan Documents or enter into any forbearance agreements with the Partnership or any Guarantor solely upon the direction of the Required Lenders.

(D) Nothing set forth herein shall be construed to qualify or otherwise limit the right of any Lender to declare such Lender's Obligations to be due and payable in accordance with the Note of such Lender, *provided that* no such Lender shall be entitled to exercise any other right or remedy with respect to Note, the Guaranty, the Pledge Agreement, the Pledged Collateral, or any other Loan Document except in accordance with the provisions of this *Section 9*.

(iii) Indemnification of Agent by Lenders: The Lenders agree to indemnify the Agent (to the extent not reimbursed by Pledgor or the Partnership) ratably according to the respective amounts of the Obligations originally held by each of the Lenders, from and against any and all liabilities,

obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by or asserted against the Agent in any way relating to anything the Agent does in accordance with the express requirements of this Pledge Agreement or otherwise at the request of the Required Lenders.

(iv) Resignation or Removal of Agent. Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may (i) resign at any time by giving five (5) days' written notice thereof to the Lenders and Pledgor or (ii) be removed by the Required Lenders with or without cause upon five (5) days' written notice to the Agent. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Agent. In the case of resignation by the Agent, if no successor Agent shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Agent's notice of resignation, then the retiring Agent may, on behalf of the Lenders, appoint an interim successor Agent. Any interim successor Agent appointed under the preceding sentence may be replaced at any time by a successor Agent designated by the Required Lenders.

(c) Application of Proceeds of the Pledged Collateral.

(i) Upon (i) the receipt by the Agent under any of the Loan Documents of any insurance or condemnation proceeds arising from the Pledged Collateral, (ii) the receipt by the Agent or any Lender of any funds during the existence of a Default, or (iii) the exercise of any rights or remedies by the Agent under this Pledge Agreement or any of the Loan Documents, any and all proceeds from the sale, foreclosure or other disposition of the Pledged Collateral, including in a bankruptcy or other insolvency proceeding, shall, promptly following their receipt by the Agent, be applied and distributed by the Agent as follows:

(A) First, to the payments of all costs, expenses, liabilities and advances made or incurred by the Agent (in its capacity as Agent and not individually) in connection with such proceedings, adjustments, sale, foreclosure or other disposition and in performing its duties under this Pledge Agreement, including compensation payable to the Agent and the costs, expenses and compensation of agents and legal counsel to the Agent;

(B) Second, to the extent any proceeds remain after payment in full of those items specified in clause (A) above, to the payments of all costs, expenses, liabilities and advances made or incurred by the Lenders in connection with such proceedings, adjustments, sale, foreclosure or other disposition;

(C) Third, to the extent any proceeds remain after payment in full of those items specified in clauses (A) and (B) above, to the payment of the Obligations, to be allocated among each Lender until all remaining Obligations is paid in full; but if such proceeds shall be insufficient to pay the whole amount so due upon the Obligations, then with application to be made pro rata, in accordance with each Lender's Percentage Interest as follows: first, to the unpaid interest thereon; second, to unpaid principal thereof; and third, to all other Obligations;

(D) Fourth, to the extent any proceeds remain after payment in full of those items specified in clauses (A), (B) and (C) above, to the payment of any additional Obligations until all remaining Obligations are paid in full; but if such proceeds shall be insufficient to pay the whole amount of any Obligations, then with application to be made pro rata in accordance with each Lender's respective share of any Obligations; and

(E) Fifth, to the extent any proceeds remain after payment in full of those items specified in clauses (A), (B), (C) and (D) above such proceeds shall be paid to or at the direction of the Pledgor or as a court of competent jurisdiction shall direct.

(ii) The Agent and each Lender signatory hereto hereby agrees that (i) if at any time it shall receive the proceeds of any Pledged Collateral, or shall apply any balances, credits, accounts or monies with the Agent, or such Lender, through the exercise of any right of set-off, counterclaim or other similar right, whether pursuant to the Note or otherwise, (other than through application by the Agent in accordance with this section), it shall promptly turn the same over to the Agent for application in accordance with this section and (ii) it will not take or cause to be taken any action, including, without limitation, the commencement of any legal or equitable proceedings, the purpose of which is to give the Agent or such Lender any preference or priority against the other parties hereto with respect to the Pledged Collateral or the right to payment from the Partnership.

(d) Notices of Default. Agent and Lenders shall each use their best efforts to give to each other copies of any notice of the occurrence or existence of an event of default under the Loan Documents, but the failure to do so shall not affect the validity of such notice or create a cause of action against the party failing to give such notice or create any claim or right on behalf of any third party.

(e) Amendments. No change, amendment, modification, cancellation, or discharge of any provision of this Pledge Agreement shall be valid, *unless* consented to in writing by each Lender, Agent and Pledgor. Furthermore, no Lender shall modify the default, remedy, or agency provisions of its Note, without the prior written consent of each Lender.

(f) Authority of Agent. Agent shall have and be entitled to exercise all such powers hereunder as are specifically delegated to Agent by the terms hereof, together with such powers as are reasonably incidental thereto. Agent may execute any of its duties hereunder by or through sub-agents or employees and shall be entitled to retain counsel and to act in reliance upon the advice of such counsel concerning all matters pertaining to said duties. Agent and any affiliate, director, officer, or employee of Agent shall not be liable for any action taken or omitted to be taken by them or any of them hereunder or in connection herewith, *except* for their own gross negligence or willful misconduct; nor shall Agent be responsible for the validity, effectiveness, or sufficiency hereof or of any document or security furnished pursuant hereto or in connection herewith. Agent shall be entitled to rely on any communication, instrument, or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Pledgor hereby agrees to reimburse Agent, on demand, for all reasonable expenses incurred by it in connection with the administration and enforcement of this Pledge Agreement and agrees to indemnify and hold harmless Agent from and against any and all liability incurred by it hereunder or in connection herewith, *unless* such liability shall be due to willful misconduct or gross negligence on the part of Agent. Other than the exercise of reasonable care in the physical custody of the Pledged Collateral while held by Agent, Agent shall have no responsibility for or obligation or duty with respect to all or any part of the Pledged Collateral or any matter or proceeding arising out of or relating thereto, including, without limitation, any obligation or duty to collect any sums due in respect thereof or to protect or preserve any rights against prior parties or any other rights pertaining thereto, it being understood and agreed that Pledgor shall be responsible generally for the preservation of all rights in the Pledged Collateral. Without limiting the generality of the foregoing, Agent shall be conclusively deemed to have exercised reasonable care in the custody of the Pledged Collateral if Agent takes such action, for purposes of preserving rights in the Pledged Collateral, as Pledgor may reasonably request in writing, but no failure or omission or delay by Agent in complying with any such request by Pledgor, and no refusal by Agent to comply with any such request by Pledgor, shall be deemed to be a failure to exercise reasonable care.

(g) Termination of Agency Agreement. This ***Section 9*** shall survive the release of the Pledged Collateral and/or the termination of this Pledge Agreement, and shall not terminate unless agreed to be by each Lender in writing or upon the repayment in full of all the Obligations.

Section 10. Certain Rights Before and After a Default.

(a) Agent's Responsibility for Pledged Collateral. Agent shall have no duty to fix or preserve rights against prior parties to the Pledged Collateral, and shall never be liable (except for its own gross negligence or willful misconduct) for its failure to use diligence to collect any amount payable with respect to the Pledged Collateral, but shall be liable only to account to Pledgor for what it may actually collect or receive thereon.

(b) Purchase Price for Pledged Collateral. If Agent advances funds to or for the account of Pledgor to enable the latter to purchase or otherwise acquire rights in the Pledged Collateral, or any part thereof, such funds may, at Agent's option, be paid (i) directly to the person, firm, or corporation from whom Pledgor will make such purchase or acquisition or (ii) to Pledgor, in which event such Pledgor covenants to promptly pay the same to such person, firm, or corporation and forthwith furnish to Agent evidence satisfactory to Agent that such payment has been made.

(c) Financing Statement. Agent shall have the right at any time to execute and file this Pledge Agreement as a financing statement, but the failure of Agent to do so shall not impair the validity or enforceability of this Pledge Agreement.

(d) Maximum Interest. It is expressly stipulated and agreed to be the intent of each Pledgor and Agent at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Agent to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section 10(d) shall control every other covenant and agreement in this Pledge Agreement and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under this Pledge Agreement, or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the indebtedness evidenced by the Loan Documents, or if Agent's or any Lender's exercise of the option to accelerate the maturity of any Note (pursuant to a Default or otherwise), or if any prepayment by Pledgor, late payment charge, default interest, or any fee, charge, or imposition of any kind under applicable law results in Pledgor having paid any interest in excess of that permitted by applicable law, then it is Pledgor's and Agent's express intent that all excess amounts theretofore collected by Agent be repaid to such Pledgor with interest thereon at the Maximum Rate (or if any principal of any loan under the Loan Documents is outstanding, that such amounts with such interest thereon be applied to reduce the principal balance of such loans pro rata), and the provisions of this Pledge Agreement, each applicable Note, the Guaranty and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. Notwithstanding anything to the contrary contained herein or in any of the Loan Documents, it is not the intention of Agent to accelerate the maturity of any interest that has not accrued at the time of any acceleration of any Note or to collect unearned interest at the time of such acceleration.

(e) Disclosure. Agent is granted the right to discuss Pledgor's and the Partnership's affairs, finances, and accounts with all parties to such degree as Agent deems necessary or advisable to protect its security interest and/or the repayment of the indebtedness secured hereby. Each Pledgor covenants to do all things necessary or appropriate to permit Agent to fully exercise its rights under this paragraph.

(f) Deposit of Proceeds. *Except* as expressly prescribed above, all payments received by Agent with respect to the Pledged Collateral shall, at Agent's option, be deposited in a special interest bearing account at a bank to be designated by Agent in the name of Agent styled a "*Collateral Account.*" Funds in said account are hereby assigned to Agent and shall be impressed with a lien to secure the Secured Indebtedness, and shall be applied by Agent as provided for above.

(g) Payment of Expenses. At Agent's option, Agent may (but shall not be obligated to) discharge taxes, liens, and interest, perform or cause to be performed, for and on behalf of Pledgor, any actions and conditions, obligations, or covenants which Pledgor has failed or refused to perform, and may pay for the repair, maintenance, or preservation of any of the Pledged Collateral, and all sums so expended, including, but not limited to, reasonable attorneys' fees, court costs, agents' fee or commissions, or any other costs or expenses, shall become part of the Secured Indebtedness, shall bear interest from the date of payment as provided in the Note, shall be payable at the place designated for payment of the Secured Indebtedness, and shall be secured by this Pledge Agreement.

Section 11. Miscellaneous.

(a) Terms Commercially Reasonable. The terms of this Pledge Agreement shall be deemed commercially reasonable within the meaning of the Code in effect and applicable hereto.

(b) Headings. The headings of articles and sections herein are inserted only for convenience and shall in no way define, describe, or limit the scope or intent of any provision of this Pledge Agreement.

(c) Assignments. No obligations of Pledgor hereunder can be assigned without prior written consent of Agent, and Agent or any Lender may not assign any part of this Pledge Agreement without the without prior written consent of Pledgor. Any attempted assignment in violation of this *subsection* shall be null and void.

(d) Parties in Interest. As and when used herein, the term "*Pledgor*" shall mean and include Pledgor herein named and any successors and permitted assigns, and the term "*Agent*" shall mean and include Agent herein named and its successors and assigns, and all covenants and agreements herein shall be binding upon and inure to the benefit of Pledgor and Agents and their respective successors and assigns..

(e) Governing Law and Venue. THIS PLEDGE AGREEMENT AND ALL ISSUES AND CLAIMS ARISING IN CONNECTION WITH OR RELATING TO THE PLEDGED COLLATERAL OR THE SECURED INDEBTEDNESS, INCLUDING BUT WITHOUT LIMITATION, ALL CONTRACT, TORT, EQUITY, OR OTHER CLAIMS OR COUNTERCLAIMS SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT CONSIDERATION OF ITS CONFLICTS OF LAWS RULES) AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. AGENT AND PLEDGOR HEREBY IRREVOCABLY (I) SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT SITTING IN DALLAS, TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY, AND (II) WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY DEFENSE ASSERTING AN INCONVENIENT FORUM IN CONNECTION THEREWITH. If any provision of this Pledge Agreement is held to be invalid or unenforceable, the validity and enforceability of the other provisions of this Pledge Agreement shall remain unaffected.

(f) Notices. Notices and other communications shall be effective (a) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (b) if telecopied, when transmitted, or (c) if hand-delivered, by courier or otherwise (including telegram, lettergram or mailgram), when delivered. Any notices or other communications required or permitted to be given by this Pledge Agreement or any other documents and instruments referred to herein shall be given as follows:

If to Agent: _____

_____

_____

_____

If to Pledgor:

_____

_____

_____

_____

(g) Obligations Absolute. All rights and remedies of Agent hereunder, and all obligations of Pledgor hereunder, shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Note, the Guaranty or any of the other Loan Documents or any other agreement or instrument relating to any of the foregoing;

(ii) any change in the time, manner, or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from the Note or any of the other Loan Documents; or

(iii) any exchange, release, or nonperfection of any interest in any Pledged Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations.

(h) Counterparts. This Pledge Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Pledge Agreement it shall not be necessary to produce or account for more than one such counterpart.

(i) Entirety. This Pledge Agreement and the Note embody the final, entire agreement among Pledgor and Agent with respect to the pledge and assignment of the Pledged Collateral and the other matters addressed herein and therein, and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no oral agreements among the parties hereto.

(j) Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AGENT AND PLEDGOR HERETO HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS PLEDGE AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR

THEREBY, OR THE ACTIONS OF AGENT IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF.

(k) Waiver of Certain Claims. Pledgor hereby waives any right or claim to consequential or punitive damages arising out of or relating to this Pledge Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby, or the actions of Agent in the negotiation, administration, or enforcement hereof or thereof.

(l) Waiver of Notice and Hearing. PLEDGOR HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO NOTICE OR HEARING PRIOR TO SEIZURE BY AGENT OF THE COLLATERAL, WHETHER BY WRIT OF POSSESSION OR OTHERWISE.

Remainder of Page Intentionally Left Blank.
Signature Page(s) To Follow.

The undersigned has executed this Pledge Agreement effective as of the date first written above.

PLEDGOR:

_____
[NAME]

AGREED AND ACKNOWLEDGED TO BY:

LENDERS:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

AGENT:

By: _____
Name: _____
Title: _____

EXHIBIT J

NOTICE INFORMATION

Highland Capital Management, L.P.
13455 Noel Road, Suite 1300
Two Galleria Tower
Dallas, Texas 75240

PARTNERS:	SPOUSES:
Bradford Borud 2533 Merlin Drive Lewisville, Texas 75056	Althea Borud 2533 Merlin Drive Lewisville, Texas 75056
Canis Minor Trust 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
Patrick Daugherty 3621 Cornell Avenue Dallas, Texas 75205	Kimberly Daugherty 3621 Cornell Avenue Dallas, Texas 75205
Davis Deadman 5055 Addison Circle #722 Addison, Texas 75001	N/A
James D. Dondero 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
R. Joseph Dougherty 5055 Addison Circle #724 Addison, Texas 75001	N/A
Paul Kauffman 702 Starlight Pass Heath, Texas 75032	Amy Kauffman 702 Starlight Pass Heath, Texas 75032
John Morgan 3805 Park Place Addison, Texas 75001	Debra Morgan 3805 Park Place Addison, Texas 75001

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Mark K. Okada 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	Pamela Okada University of Texas Southwestern Medical Center of Dallas 5323 Harry Hines Boulevard Dallas, Texas 75390
Kurtis Plumer 6412 Andora Drive Plano, Texas 75093	Kristi Plumer 6412 Andora Drive Plano, Texas 75093
Strand Advisors, Inc. 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
The Get Better Trust 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
The Get Good Trust 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
The Mark and Pamela Okada Family Trust – Exempt Trust #2 13455 Noel Road, Suite 1300 Two Galleria Tower Dallas, Texas 75240	N/A
Todd A. Travers 3613 Cedar Lane Farmers Branch, Texas 75234	Kimberly Travers 3613 Cedar Lane Farmers Branch, Texas 75234
David Walls 4013 Amherst Avenue Dallas, Texas 75225	Cari Walls 4013 Amherst Avenue Dallas, Texas 75225
John Yang 245 Park Avenue, 39th Floor New York, New York 10167	Joyce Yang 245 Park Avenue, 39th Floor New York, New York 10167

EXHIBIT K

ASSIGNMENT OF INTEREST

IN

Highland Capital Management, L.P.,
a Delaware limited partnership

_____ (the "*Assignor*"), as owner of a limited partnership interest in Highland Capital Management, L.P., a Delaware limited partnership (the "*Partnership*"), hereby assigns, transfers, and conveys all of his/her/its right, title, and interest in and to a _____% Percentage Interest in the Partnership and all the capital, profits, and losses of the Partnership associated therewith (the "*Interest*"), free and clear of all liens, encumbrances, security interests, claims or options, to _____ (the "*Assignee*") as of this ____ day of _____, _____ (the "*Effective Date*").

The Assignee hereby accepts this Interest and the capital, profits, and losses allocable to the Interest on and after the Effective Date, and agrees to comply with and be bound by all of the terms and conditions of the Second Amended and Restated Limited Partnership Agreement of the Partnership, dated December 31, 2004, to be effective as of February 29, 2004, as amended (the "*Partnership Agreement*"), and the Amended and Restated Buy-Sell and Redemption Agreement Among Highland Capital Management, L.P. and its Limited Partners, dated December 31, 2004, to be effective as of February 29, 2004, as amended (the "*Buy-Sell Agreement*"). The Assignee further agrees to promptly execute an appropriate addendum or amendment to the Partnership Agreement and the Buy-Sell Agreement.

Remainder of Page Intentionally Left Blank.
Signature Pages to Follow.

IN WITNESS WHEREOF, the Assignor and the Assignee have executed this Assignment effective as of the _____ day of _____, _____.

ASSIGNOR:

_____

ACCEPTED BY ASSIGNEE:

_____

ORIGINAL

2005 HCMLP
LONG-TERM INCENTIVE PLAN

Section 1. Establishment, Purpose, and Effective Date of Plan.

1.1 Establishment. Highland Capital Management, L.P., a Delaware limited partnership (the "***Partnership***") hereby establishes a long-term incentive program for selected key Employees of the Partnership and its Affiliates. The plan shall be known as the 2005 HCMLP Long-term Incentive Plan (the "***Plan***").

1.2 Purpose. The Partnership has established the Plan to create positive morale and teamwork, to attract and retain key talent, and to encourage the achievement of common goals. The Plan will reward participating Employees based on the increased value of the Partnership and its Affiliates through the use of Long-term Incentive Units.

The Plan is intended to be in good faith compliance with Section 409A of the Code, and is to be construed in accordance with Section 409A of the Code and any guidance issued thereunder. This Plan shall be effective for all amounts deferred by Participants that relate to services performed on or after January, 1, 2005. This Plan does not relate to and shall not apply to the HCM Services Long-term Incentive Plan, as amended from time to time (the "Affiliate Plan"). This Plan is not intended as a "material modification" of the Affiliate Plan as such term is described in any guidance issued under Section 409A of the Code. In the event it is determined that any provision in this Plan results in a material modification of the Affiliate Plan, the Administrator shall have the power to unilaterally modify or eliminate any such provision. The Affiliate Plan, as in effect December 31, 2004, shall be subject to the applicable laws in effect prior to the Act.

1.3 Effective Date. The Plan is effective as of January 1, 2005.

1.4 Plan Duration. The Plan shall continue in effect for a term of ten (10) years from the original effective date, unless sooner terminated pursuant to applicable provisions of the Plan.

Section 2. Definitions.

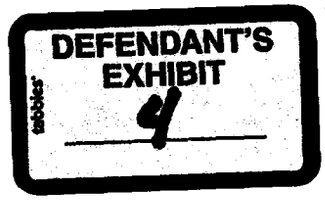
2.1 Definitions. The following terms, when used with initial capital letters, unless the context clearly indicates otherwise, shall have the following respective meanings:

"***Account***" means the bookkeeping record established by the Administrator for each Participant which accurately indicates the unfunded amount which may become payable to the Participant under the terms of this Plan.

"***Account Balance***" means the balance in a Participant's Account that is credited with the Long-term Incentive Units or cash granted to the Participant.

"***Administrator***" means the person(s) or committee appointed pursuant to Section 4 to administer this Plan.

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the



Daugherty
Ex. 39

management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Affiliate Employer" means any Affiliate of the Partnership which is the employer of a Participant.

"*Applicable Entities*" means the Partnership and its Affiliates.

"*Award*" means a grant of Long-term Incentive Units or cash to a Participant pursuant to an Award Agreement.

"*Award Agreement*" means a written agreement between the Partnership and a Participant evidencing an award of Long-term Incentive Units or cash pursuant to this Plan.

"*Cash Award*" means an amount of cash awarded to a Participant under the Plan which may entitle the Participant to receive a payment upon the occurrence of specified Triggering Events.

"*Cause*" means

(i) With respect to a Participant who is a Partner in the Partnership, the conduct by the Participant amounting to (a) the Participant's conviction or plea of *nolo contendere* for any criminal offense or commission by the Participant of any act that the Partnership considers damaging to or tending to discredit any of the Applicable Entities; (b) dishonesty, fraud, misconduct, unlawful discrimination, breach of contract, bad faith or theft on the part of the Participant that is injurious to any of the Applicable Entities; (c) the Participant's using for his/her own benefit any confidential or proprietary information of any of the Applicable Entities, or willfully or negligently divulging any such information to third parties without the prior written consent of the Partnership; (d) a breach or violation of the terms of this Plan or other agreement to which the Participant and any of the Applicable Entities are party in any manner that adversely affects any of the Applicable Entities; (e) the failure or refusal of the Participant to follow the lawful directives of the Partnership or an Affiliate Employer (unless due to sickness, injury, or disabilities, but excluding self-inflicted injuries, drug usage in violation with Partnership or Affiliate Employer policy or addiction to alcohol or other substances hazardous to health); (f) inattention to duty or any other willful, reckless or negligent act (or omission to act) by the Participant, which, in the good faith judgment of the Partnership, injures any of the Applicable Entities; (g) a breach of fiduciary duties; (h) the Participant's commission or participation in any illegal act in the course of his/her employment with the Partnership or an Affiliate Employer, including violation of any statute or regulation; or (i) the Participant's second commission of an act, of which Participant is given written notice, that is determined in good faith by (A) James D. Dondero, with regard to any event involving James D. Dondero, or (B) both James D. Dondero and Mark K. Okada for an event involving Mark K. Okada or any other employee of an Applicable Entity, to constitute disrespect or unacceptably irreverent or inappropriate behavior to James D. Dondero, Mark K. Okada or any other employee of an Applicable Entity; and

(ii) With respect to a Participant who is not a Partner in the Partnership, the conduct by the Participant amounting to (a) the Participant's conviction or plea of *nolo contendere* for any felony offense or commission by the Participant of any act abhorrent to the community that the Partnership considers materially damaging to or tending to discredit any of the Applicable Entities; (b) dishonesty, fraud, willful misconduct, unlawful discrimination, breach of contract, bad faith or theft on the part of the Participant that is materially injurious to any of the Applicable Entities; (c) the Participant's using for his or her own benefit any confidential or proprietary information of any of the Applicable Entities, or willfully or negligently divulging any such information to third parties without the

prior written consent of the Partnership, in any manner that adversely affects any of the Applicable Entities; (d) a material breach or violation of the terms of this Plan or other agreement to which the Participant and any of the Applicable Entities are party in any manner that adversely affects any of the Applicable Entities; (e) the repeated failure or refusal of the Participant to follow the lawful directives of any of the Partnership or Affiliate Employers (unless due to sickness, injury, or disabilities, but excluding self-inflicted injuries, drug usage in violation with Partnership or Affiliate Employer policy or addiction to alcohol or other substances hazardous to health), provided that demonstrable harm for such failure or refusal has continued for more than fifteen (15) days after the Partnership or Affiliate Employer, on behalf of the Partnership or Affiliate Employer, has given written notice to the Participant of such failure or refusal and of the Partnership's or Affiliate Employer's intention to terminate the Participant's employment because of such failure; (f) gross inattention to duty or any other willful, reckless or grossly negligent act (or omission to act) by the Participant, which, in the good faith judgment of the Partnership, materially injures any of the Applicable Entities, including the repeated failure to follow any of the policies and procedures of the Partnership or Affiliate Employer; (g) a material breach of fiduciary duties; or (h) the Participant's second commission of an act, of which the Participant is given written notice, that is determined in good faith by (A) James D. Dondero, with regard to any event involving James D. Dondero, or (B) both James D. Dondero and Mark K. Okada for an event involving Mark K. Okada or any other employee of an Applicable Entity, to constitute disrespect or unacceptably irreverent or inappropriate behavior to James D. Dondero, Mark K. Okada or any other employee of an Applicable Entity.

Any determination of whether an Participant should be terminated for Cause pursuant to this Plan shall be made in the reasonable discretion of the Partnership, shall be made in good faith and shall be binding upon all parties affected thereby.

"***Change in Control***" means either (i) a change in the ownership of the Partnership, such that any one person or more than one person acting as a group, directly or indirectly, acquires ownership of equity interests of the Partnership that, together with equity interests held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the equity interests of the Partnership and the following Persons (either singularly or collectively) fail to retain, directly or indirectly, more than 50 percent of the total fair market value or total voting power of the equity interests of the Partnership: James D. Dondero, Mark K. Okada or their affiliated, family or charitable trusts, employees, former employees, and any long-term incentive plans; or (ii) any one person or more than one person acting as a group acquires during the 12-month period ending on the date of the most recent acquisition by such person or persons assets that have a total gross fair market value of at least 40% of the total gross fair market value of all of the assets of the Partnership immediately prior to such acquisition or acquisitions. The above Change in Control definition shall be construed in accordance with Section 409A(a)(2)(A)(v) of the Code and any guidance issued thereunder. For clarification, the death or retirement of either or both James D. Dondero or Mark K. Okada shall not, in and of itself, constitute a Change in Control.

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

"***Competing Business***" means any business conducted by any of the Applicable Entities at the time the Participant's Continuous Status as an Employee ends.

"***Confidential Information***" includes, but is not limited to:

(i) Information concerning customers, clients, marketing, business and operational methods of the Applicable Entity and their customers or clients, contracts, financial or other data, technical data, e-mail and other correspondence or any other confidential or proprietary information possessed, owned or used by the Applicable Entity;

(ii) Business, pricing and management methods and information;

(iii) Finances, strategies, systems, research, plans, reports, recommendations and conclusions;

(iv) Tear sheets, industry comparative analysis and any other information about Collateralized Loan Obligations (CLOs) and any other structured products;

(v) Names, arrangements with, or other information relating to, any of the Applicable Entity's customers, clients, suppliers, financiers, owners, representatives and other Persons who have business relationships with the Applicable Entity or who are prospects for business relationships with the Applicable Entity; and

(vi) Any matter or thing obtained or ascertained by a Participant through the Participant's association with the Applicable Entity, the use or disclosure of which might reasonably be construed to be contrary to the best interests of the Applicable Entity, its employees or owners.

"***Continuous Status as an Employee***" means that the Participant's employment with the Partnership and all Affiliate Employers is not interrupted or terminated. Continuous Status as an Employee shall not be considered interrupted in the case of (i) any leave of absence approved by the Partnership or Affiliate Employer; (ii) transfers between locations of the Partnership or between any Applicable Entity and any successor thereto; (iii) transfers between one Applicable Entity and any other Applicable Entity, or (iv) any leave of absence permitted by applicable law. A leave of absence approved by the Partnership or Affiliate Employer shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Partnership or Affiliate Employer. Notwithstanding the foregoing, the determination of whether Continuous Status as an Employee is interrupted or terminated shall be made in accordance with any applicable separation from service guidance issued under Section 409A of the Code, including Section 409A(a)(2)(A)(i).

"***Disability***" means a Participant is (i) unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or (ii) by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering Employees. Any determination of a Disability shall be made in accordance with the requirements of Section 409A of the Code and any guidance issued thereunder. Notwithstanding the foregoing, the determination of whether a Participant has a Disability shall be made in accordance with any applicable separation of service guidance issued under Section 409A of the Code, including Section 409A(a)(2)(C).

"***Employee***" means any person employed by the Partnership or an Affiliate Employer as a common law employee.

"***Fair Market Value***" means on any date, the value of the Partnership as determined by the Administrator. Fair Market Value will be calculated and disseminated for each year effective January 1 no later than thirty-one (31) days following January 1 of each year.

"***Grant Date***" means the date on which Long-term Incentive Units or cash are granted to a Participant as evidenced by an Award Agreement.

"***Highland Capital Management***" means Highland Capital Management, L.P., a Delaware limited partnership, or any successor thereto.

"***Long-term Incentive Units***" means the units awarded to a Participant under the Plan which may entitle the Participant to receive a payment upon the occurrence of specified Triggering Events.

"***Participant***" means any Employee who is eligible to participate in the Plan pursuant to Section 3.1.

"Partner" means any Person who has been admitted as a partner in the Partnership pursuant to the terms of the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, dated December 31, 2004, as may be amended, supplemented or restated from time to time.

"***Partnership***" has the meaning set forth in Section 1.1.

"***Person***" means an individual or a corporation, limited liability company, partnership, trust, estate, unincorporated organization, association, or other entity.

"***Plan***" has the meaning set forth in Section 1.1.

"***Retirement***" has the same meaning as provided in the Highland 401(k) Plan, effective as of October 1, 2004, maintained by the Partnership. If, at any time during the period that this Plan is in operation, the Partnership does not maintain a retirement plan, Retirement means a Participant's voluntary termination of the Participant's Continuous Status as an Employee after reaching age sixty-five (65) and completing at least five (5) years of Continuous Status as an Employee. Notwithstanding the foregoing, the determination of whether a Retirement has occurred shall be made in accordance with any applicable separation from service guidance issued under Section 409A of the Code, including Section 409A(a)(2)(A)(i).

"***Specialized Training***" includes, but is not limited to:

(i) Training the Partnership or Affiliate Employer provides to a Participant that is unique to its business and enhances the Participant's ability to perform his/her job duties effectively, including disclosure and access to Confidential Information; and

(ii) Orientation training, sales methods/techniques training, operation methods training, and computer and systems training.

"***Triggering Event***" means the earliest of the following events to occur:

(i) Change in Control;

PDADV_004425

(ii) A Participant's voluntary termination of the Participant's Continuous Service as an Employee after providing the Partnership and Affiliate Employer at least thirty (30) days' advance written notice;

(iii) Involuntary termination of the Participant's Continuous Service as an Employee not for Cause;

(iv) Termination of the Participant's Continuous Service as an Employee due to death;

(v) Termination of the Participant's Continuous Service as an Employee due to Disability;

(vi) Termination of the Participant's Continuous Service as an Employee due to Retirement;

(vii) A Participant's Unforeseeable Emergency if the Administrator determines, in accordance with Section 409A(a)(2)(B) of the Code and any guidance issued thereunder, that the Participant qualifies to exercise Vested Long-Term Incentive Units or to receive cash; or

(ix) any other event specified in an Award Agreement.

"***Vested***" means that a Participant's Long-term Incentive Units or Cash Award have become non-forfeitable except as otherwise specifically provided in this Plan or any Award Agreement. The rights, obligations, and liabilities of the Plan and the Participant with respect to a Long-term Incentive Unit or Cash Award becoming "Vested" are conditioned and dependent on the Participant's consent and agreement to the promises set forth in Section 8.8 and to the enforceability of such covenants as stated therein with respect to that Participant in the event of a dispute between that Participant and the Plan.

2.2 Gender and Number. Except when otherwise indicated by the context, words in the masculine gender when used in the Plan shall include the feminine gender, the singular shall include the plural, and the plural shall include the singular.

Section 3. Eligibility and Participation.

3.1 Eligibility. The Administrator, in its sole and unfettered discretion, shall determine which Employees shall be eligible to participate in the Plan.

3.2 Effective Date of Participation. Upon becoming eligible to participate in the Plan, an Employee shall become a Participant as of the Grant Date.

Section 4. Administration.

4.1 Administration. This Plan shall be administered by the Administrator. The Administrator will be appointed by the Partnership. All questions of interpretation and administration of this Plan, or of the terms and conditions pursuant to which Long-term Incentive Units or Cash Awards are granted or forfeited or pursuant to which amounts are paid under the provisions hereof, shall be

PDADV_004426

subject to the good faith determination of the Administrator. Such good faith determination shall be final and binding upon all parties affected thereby.

The Administrator shall have the exclusive responsibility for the general administration of the Plan according to the terms and provisions of the Plan and shall have all of the powers necessary to accomplish these purposes, including but not by way of limitation, the right, power and authority, in good faith:

(a) To make rules and regulations for the administration of the Plan;

(b) To construe all terms, provisions, conditions, and limitations of the Plan;

(c) To correct any defects, supply any omissions or reconcile any inconsistencies that may appear in the Plan in the manner and to the extent it deems expedient to carry the Plan into effect;

(d) To determine all controversy relating to the administration of the Plan, including but not limited to differences of opinion which may arise between the Partnership or the Administrator and the Participants;

(e) To resolve any question the Administrator deems advisable in order to promote the uniform administration of the Plan;

(f) To determine or modify the terms of eligibility and participation in the Plan;

(g) To authorize the initial number of Long-term Incentive Units to be granted to each Participant;

(h) To authorize the number of Long-term Incentive Units to be awarded in addition to the initial number granted;

(i) To determine the time or times when Long-term Incentive Units will be granted;

(j) To determine the form of the instruments evidencing any Long-term Incentive Units awarded under this Plan and to promulgate the terms and conditions of any awards;

(k) To determine the amounts of Cash Awards; and

(l) To determine the value of the Partnership and the value of the Long-term Incentive units from time to time.

4.2 Administrator's Discretion. The Administrator, in exercising any power or authority granted under this Plan, or in making any determination under this Plan, is authorized to perform those acts in its sole and absolute discretion and judgment. Any decision made by the Administrator, or any refraining to act or any act taken by the Administrator, in good faith shall be final and binding on all parties. All decisions made by the Administrator shall never be subject to de novo review.

4.3 Liability and Indemnity of Administrator. The Administrator shall not be liable for any act done or any determination made in good faith. The Partnership and its Affiliates shall, to the fullest extent permitted by law, indemnify and hold the Administrator, and each of its members, harmless from

PDADV_004427

any and all claims, causes of action, damages and expenses (including reasonable attorneys' fees and expenses) incurred by the Administrator in connection with or otherwise related to his/her service in such capacity.

Section 5. Grants of Long-term Incentive Units and Cash Awards.

5.1 Awards. An award under the Plan will be granted, as of its Grant Date, to a Participant in the form of Long-term Incentive Units or Cash Awards. The number and frequency with which Long-term Incentive Units or Cash Awards are granted to each Participant will be at the discretion of the Administrator. The Administrator may grant additional Long-term Incentive Units shares or Cash Awards to a Participant at its sole and unfettered discretion from time to time.

5.2 Date of Grant. The Grant Date of an award will be set forth in the Award Agreement.

5.3 Account Balance. The Administrator will maintain a record of the Long-term Incentive Units and Cash Awards granted to each Participant and will create a separate Account for each Participant when the first award of Long-term Incentive Units or cash is granted to that Participant.

5.4 Limitation on Grants. The aggregate number of Long-term Incentive Units that may be awarded under the Plan is unlimited. In the event a Participant's rights to Long-term Incentive Units lapse or are forfeited, such Long-term Incentive Units shall become available for future grant under the Plan unless the Plan has terminated.

5.5 Term of Grants. The Award Agreement shall set forth the term of each Award; *provided, however*, an Award shall not be exercisable after the expiration of ten (10) years from the Grant Date of such Award or sooner as set forth under the Plan. The Administrator, at its sole and unfettered discretion, may specify a shorter term and state such term in the Award Agreement.

5.6 Mutual Dependence. Any Award under this Plan, is conditioned and dependent on the Participant's consent and agreement to the promises set forth in Section 8.8 and to the enforceability of such covenants as stated therein with respect to that Participant in the event of a dispute between that Participant and the Plan.

Section 6. Vesting.

6.1 Normal Vesting Schedule. Long-term Incentive Units or Cash Awards may, in the sole and unfettered discretion of the Administrator, be fully and immediately Vested upon issuance or may become Vested in one or more installments while the Participant maintains his/her Continuation Status as an Employee. The vesting schedule for each Award will be set forth in each Award Agreement. Any vesting of a Long-term Incentive Unit or Cash Award is conditioned and dependent on the Participant's consent and agreement to the promises set forth in Section 8.8 and to the enforceability of such covenants as stated therein with respect to that Participant in the event of a dispute between that Participant and the Plan. Unless otherwise specified in the Plan or Award Agreement, Long-term Incentive Units and Cash Awards granted under the Plan will vest as follows:

Vesting Date	Vested Percentage
1st February 28 Following Grant Date	40%
2nd February 28 Following Grant Date	70%
3rd February 28 Following Grant Date	100%

For voluntary termination, the date of notice of such voluntary termination will be the date that determines the amount Vested; *provided, however*, Awards which become Vested in accordance with this Section 6.1 may be forfeited pursuant to other provisions of this Plan or of an Award Agreement.

6.2 Accelerated Vesting Schedule. Except as otherwise provided in an Award Agreement, vesting shall be accelerated under the following instances:

(a) In the event of a Change in Control, all then outstanding Awards shall become fully Vested.

(b) In the event of death of a Participant, all then outstanding Awards granted to such Participant pursuant to any Award Agreement shall become fully Vested.

(c) In the event of Termination of a Participant's Continuous Status as an Employee due to Disability, vesting of all then outstanding Awards granted to such Participant shall be recalculated as if the Participant's original vesting schedule was determined on a monthly (rather than annual) basis with 1/12 of the vesting percentage applicable to the year of Disability applied to such units for each complete month of such year, ending with the first day of the month following the date of Disability.

(d) The Administrator, in its sole and unfettered discretion, may determine that all Long-term Incentive Units or Cash Awards granted to a Participant will become fully Vested.

(e) Notwithstanding the foregoing, Awards that become Vested in accordance with this Section 6.2 may be forfeited pursuant to other provisions of this Plan or of an Award Agreement.

Section 7. Exercise of Awards; Forfeiture.

7.1 Entitlement to Benefit. Vested Awards shall be exercised in accordance with this Section 7 of the Plan upon the occurrence of a Triggering Event or at the discretion of the Administrator, *provided, however*, the exercise of Vested Awards at the discretion of the Administrator is permissible under Section 409A of the Code and any guidance issued thereunder.

7.2 Method of Exercise. After the occurrence of a Triggering Event with respect to a Participant, an Award shall be deemed exercised.

7.3 Change in Control. As set forth in Section 6.2(a), in the event of a Change in Control, all then outstanding Awards shall become fully Vested. Upon a Change in Control, all then outstanding Vested Awards of all Participants shall be deemed to have been exercised as of the effective date of such Change in Control.

7.4 Termination of Continuous Status as an Employee. Except as otherwise provided herein or in an Award Agreement, if the Triggering Event is the termination of a Participant's Continuous Status

PDADV_004429

as an Employee for reasons other than death, Disability, or termination for Cause, any Long-term Incentive Units or Cash Awards which are not Vested shall lapse and be forfeited and shall revert to the Plan, and any then outstanding Vested Long-term Incentive Units or Cash Awards shall be deemed to have been exercised as of the date of the termination of the Participant's Continuous Status as an Employee.

7.5 Death or Disability. Upon the termination of a Participant's Continuous Status as an Employee due to death or Disability, any then outstanding Vested Long-term Incentive Units or Cash Awards shall be deemed to have been exercised as of the date of the termination of the Participant's Continuous Status as an Employee due to death or Disability.

7.6 Termination For Cause. Unless provided otherwise in an Award Agreement, upon the termination of a Participant's Continuous Status as an Employee for Cause, any Award Agreements of the Participant shall immediately terminate and the outstanding Vested Long-term Incentive Units or Cash Awards covered by such Award Agreements shall lapse and be forfeited and shall revert to the Plan.

7.8. Voluntary Termination without Proper Notice. Unless provided otherwise in an Award Agreement, if the Participant voluntarily terminates his/her Continuous Status as an Employee without providing the Partnership and his/her Affiliate Employer (if applicable) at least thirty (30) days' advance written notice, any Award Agreements of the Participant shall immediately terminate and the unexercised Vested Long-term Incentive Units or Cash Awards covered by such Award Agreements shall lapse and be forfeited and shall revert to the Plan.

Section 8. Account Balance.

8.1A Long-term Incentive Unit Formula for Participants Who Are Not Partners in the Partnership. Upon exercise, unless provided otherwise in an Award Agreement, the value of the Participant's Account Balance with respect to Long-term Incentive Units will be determined according to the following formula and adjusted according to Sections 8.2 through 8.8, as applicable:

> The Participant's Account Balance = (i) Lower of: (A) the Fair Market Value as of January 1 of the current year used for grants under the Plan; or (B) the Fair Market Value as of January 1 of the following year used for grants under the Plan, *divided by* (ii) 30,000,000, or, if greater, the total number of Long-term Incentive Units granted under the Plan, *multiplied by* (iii) the number of the Participant's Vested Long-term Incentive Units.

8.1B Long-term Incentive Unit Formula for Participants Who Are Partners in the Partnership. Upon exercise, unless provided otherwise in an Award Agreement, the value of the Participant's Account Balance with respect to Long-term Incentive Units will be determined as follows, and adjusted according to Sections 8.2 through 8.8, as applicable.

(a) The value of the Long-term Incentive Units that become Vested each year shall be determined and added to the Participant's Account as follows:

> The Participant's Account Balance = (i) Lower of: (A) the Fair Market Value as of January 1 of the year ending prior to the year in which such Units Vest, or (B) the Fair Market Value as of January 1 of the year in which such Units Vest, *divided by* (ii) 30,000,000, or, if greater, the total number of Long-term Incentive Units granted under

the Plan (sometimes referred to herein as the "***Fair Market Value of a Unit***"), *multiplied by* (iii) the number of the Participant's Vested Long-term Incentive Units.

After determination of the value of Vested Units, no adjustment shall be made to the value of such Vested Units unless the Fair Market Value of a Unit at the time of a Triggering Event which entitles the Participant to distribution of his/her Account under Section 9 of the Plan (the "***Triggering Event Value***") is less than the Fair Market Value of a Unit calculated above, in which case the Participant's Account Balance shall be determined by applying the Triggering Event Value to such Vested Units. The Fair Market Value at the time of a Triggering Event is determined under the "Account Balance" formula described above in this Section 8.1B, by treating the Units as if they became Vested on the Triggering Event date.

(b) Partnership Interests in the Partnership. Each year when a Participant's Long-term Incentive Units become Vested Units, the Partnership will issue the Participant a new equity interest in the Partnership (***"Interest"***) that will be treated as a "profits interest" for federal income tax purposes, in an amount equal to the quotient of (i) the number of the Participant's Long-term Incentive Units that become Vested Units that year, *divided by* (ii) 30,000,000, or, if greater, the total number of Long-term Incentive Units granted under the Plan. For example only, if a Participant has 10,000 Long-term Incentive Units that become Vested Units in 2008 and 30,000,000 or fewer Long-term Incentive Units have been granted under the Plan, the Participant will receive a new Interest that will be treated as a "profits interest" for federal income tax purposes in 2008 equal to 0.03333% (*i.e.*, 10,000/30,000,000). This Interest will be provided to the Participant in addition to any Awards that the Participant receives.

8.2 Change in Control. Upon a Change in Control, the value of the Participant's Account Balance with respect to Long-term Incentive Units will be equal to (i) the total market capitalization determined (or implied, in the case of a partial Change in Control) by the purchase price of the Partnership at the time of the Change in Control, *multiplied by* (ii) the number of the Participant's Vested Long-term Incentive Units, *divided by* (iii) 30,000,000, or, if greater, the total number of Long-term Incentive Units granted under the Plan.

8.3 Cash Award Formula. The value of the Participant's Account Balance with respect to Cash Awards will be determined as follows: the value of each separate Cash Award shall be determined by adding to the initial amount of the Cash Award interest calculated at five percent (5%) and compounding on an annual basis on December 31 of each year, beginning with the calendar year of the date of grant of the Cash Award. For example, if a Cash Award of $50,000 is made on July 1, 2005, to a Participant, on December 31, 2005, the Account Balance with respect to that Cash Award would be $51,250 ($50,000 plus 5% for 6 months); then, on December 31, 2006, the Account Balance with respect to that Cash Award would be $53,812.50 ($51,250 plus 5% interest for 12 months). Interest shall also be added at the time of distribution of a Cash Award (or any portion of a Cash Award) from the most recent December 31 to the date of actual distribution.

8.4 Voluntary Termination with Proper Notice or Involuntary Termination without Cause. Except as otherwise provided herein and in any applicable Award Agreement, upon exercise of a Vested Award under Section 7 after termination of the Participant's Continuous Status as an Employee either (i) by voluntary termination which is a Triggering Event and the Participant has ten (10) years of service and provides at least four (4) months' advance written notice of such termination to the Partnership and his/her Affiliate Employer (if applicable), or (ii) involuntary termination which is a Triggering Event, such Participant shall become entitled to receive a distribution in accordance with Section 9 equal to one-hundred percent (100%) of his/her Vested Account Balance. However,

(a) If, at the time of an involuntary termination of Continuous Status as an Employee which is a Triggering Event, the Participant does not have ten (10) years of service, then twenty percent (20%) of his/her Vested Account Balance shall automatically lapse and be forfeited and shall revert to the Plan, and such Participant shall become entitled to receive a distribution in accordance with Section 9 equal to eighty percent (80%) of his/her Vested Account Balance; or

(b) If, at the time of a voluntary termination of Continuous Status as an Employee which is a Triggering Event, the Participant either (a) does not have ten (10) years of service; or (b) does not provide at least four (4) months' advance written notice (but does provide at least thirty (30) days' advance written notice) of such termination to the Partnership and his/her Affiliate Employer (if applicable), then twenty percent (20%) of his/her Vested Account Balance shall automatically lapse and be forfeited and shall revert to the Plan, and such Participant shall become entitled to receive a distribution in accordance with Section 9 equal to eighty percent (80%) of his/her Vested Account Balance.

8.5 Death, Disability or Retirement. Except as otherwise provided herein and in any applicable Award Agreement, upon exercise of a Vested Award under Section 7 after termination of the Participant's Continuous Status as an Employee due to death, Disability, or Retirement, such Participant shall be entitled to receive a distribution in accordance with Section 9 equal to one hundred percent (100%) of his/her Vested Account Balance.

8.6 Unforeseeable Emergency. Upon a request by a Participant for a distribution due to Unforeseeable Emergency, the Administrator, in its discretion, shall determine the eligibility of the Participant for a distribution and the percentage of the Participant's Vested Account Balance which may be distributed, but in no event shall the amount of the Unforeseeable Emergency distribution exceed the amount necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or other compensation by insurance or otherwise, or by liquidation of the Participant's assets (to the extent such a liquidation would not cause severe financial hardship).

For purposes of this Section 8.6, an ***"Unforeseeable Emergency"*** means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, or a dependent of the Participant, loss of the Participant's property due to a casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Any determination of Unforeseeable Emergency shall be made in accordance with the requirements of Section 409A of the Code and any guidance issued thereunder.

8.7 Voluntary Termination without Proper Notice or Involuntary Termination for Cause. Unless provided otherwise in an Award Agreement, upon the involuntary termination of a Participant's Continuous Status as an Employee for Cause or the voluntary termination of a Participant's Continuous Status as an Employee which is not a Triggering Event, the Participant's entire Vested Account Balance shall automatically lapse and be forfeited and shall revert to the Plan.

8.8 Forfeiture of All Benefits in Event of Competitive Activity.

(a) Access to Confidential Information and Specialized Training. In addition to the mutual promises contained in this Plan, each Participant acknowledges that he/she received from the Partnership and its Affiliates, at the inception of this Plan and continuing on an ongoing basis during the Participant's participation in the Plan, new Confidential Information and Specialized Training to which

the Participant has not previously had access. Any reference in this Section 8.8 to the Partnership shall be deemed to include all Affiliates of the Partnership.

(b) The Restrictive Covenants. Each Participant recognizes and agrees that: (i) the Partnership has devoted a considerable amount of time, effort, and expense to develop its Confidential Information and business goodwill; (ii) the Confidential Information and the Partnership's business goodwill are valuable assets to the Partnership; and (iii) any unauthorized use or disclosure of the Partnership's Confidential Information would cause irreparable harm to the Partnership and the Plan for which there is no adequate remedy at law, including damage to the Partnership's business goodwill. Accordingly, each Participant agrees that to protect the Confidential Information and business goodwill, it is necessary to enter into the following restrictive covenants, which are ancillary to the enforceable promises between the Plan and the Participant in Sections 6, 7, and 8.8(a). The Participant, either individually or as a principal, partner, stockholder, manager, agent, consultant, contractor, employee, lender, investor, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, agrees that during the period in which the Participant is a participant in the Plan and for a period of one (1) year following the date on which the Participant ceases (for whatever reason) to be in Continuous Status as an Employee (the "***Non-Competition Period***"), the Participant shall not, whether directly or indirectly (excluding the activities of the Participant's spouse or other immediate family members independently engaged in such activities):

(i) Non-Solicitation. Solicit business, attempt to solicit business, or accept business in products or services competitive with products or services sold by any of the Applicable Entities, from any of the Applicable Entities' clients, customers, prospective or potential clients or customers, or those individuals or entities that any of the Applicable Entities did business with during the Participant's employment with the Partnership, with whom the Participant solicited or dealt with, in any capacity, while an employee in the Partnership during the twenty-four (24) months immediately proceeding the Non-Competition Period.

(ii) Non-Recruitment. Hire, solicit for employment, induce or encourage to leave the employment of any of the Applicable Entities or otherwise cease their employment with any of the Applicable Entities, any employee or any former employee of any of the Applicable Entities whose employment with any of the Applicable Entities ceased than less that six (6) months earlier.

(iii) Non-Competition. Within any market in which any of the Applicable Entities provided services or sold products during the twenty-four (24) months immediately proceeding the Non-Competition Period, become employed, advise, perform services or otherwise serve in any capacity with a Competing Business in which Participant would (a) perform similar duties to those performed while at the Partnership, (b) engage in or provide services to any client, customer, or prospective or potential clients or customers of any of the Applicable Entities or competitor of any of the Applicable Entities, (c) or provide services that are competitive with a product, service, process or development on which the Participant worked at the Partnership, or with which the Participant had access to Confidential Information while an employee with the Partnership. However, the Participant may own, directly or indirectly, solely as an investment, securities of any business traded on any national securities exchange or NASDAQ, provided that the Participant is not a controlling person of, or member of a group that controls such business, and provided further that the Participant does not, directly or indirectly, own three percent (3%) or more of any class of securities of such business. If the Partnership or an Affiliate Employer notifies that Participant in writing that he/she is being terminated as the result of a downsizing or reduction in force by the Partnership or Affiliate Employer, then this Section 8.8(b)(iii) shall not apply to that Participant after termination of that Participant's Continuous Status as an Employee.

(c) Remedies. The Participant acknowledges that the restrictions contained in this Section 8.8 are reasonable and necessary to protect the Partnership's legitimate business interests and business goodwill and that any violation of this Plan would result in irreparable injury to the Partnership. In the event of a breach by the Participant of any provision of this Section 8.8, the Plan shall, assuming the provisions of this Section 8.8(c) are applied and upheld, only be entitled to take the action set forth in this Section 8.8(c) as its sole remedy against the Participant for such breach. From the date of breach by the Participant, the Participant's entire Vested Account Balance shall automatically lapse and be forfeited and shall revert to the Plan. In the event any Vested Award has been exercised under Section 7 for any reason other than a Change in Control prior to engaging in competitive activity, unless otherwise provided in an Award Agreement, any amounts otherwise payable under this Plan or any Award Agreement to such Participant shall automatically lapse and be forfeited, and neither the Partnership nor any Affiliate shall have any obligation to make any further payment to such Participant with respect to this Plan, any Award Agreement, or any Award. From the date of breach by the Participant, the Plan shall have no obligation to make any further allocation of Cash Awards, Long-Term Incentive Units, or any other benefits under the Plan to Participant. In addition, the Partnership shall be entitled to (i) a refund from Participant of any payments the Partnership made to Participant pursuant to Section 9, plus (ii) the sum of the Partnership's attorneys' fees, costs and expenses related to the breach. The existence of any claim or cause of action by the Participant against the Plan or the Partnership, whether predicated on this Plan or otherwise, shall not constitute a defense to the enforcement of the provisions contained in this Section 8.9.

(d) Tolling. If a Participant violates any of the restrictions contained in Section 8.8, the Non-Competition Period shall be suspended and will not run in favor of the Participant until such time that the Participant cures the violation to the satisfaction of the Partnership, or for a period of three (3) years after the Participant's Continuous Status as an Employee ended, whichever period is shorter.

(e) Pre-conditional Obligation and Restoration. This Section 8.8 (the "***Non-Compete Article***") is material to this Plan, and this Non-Compete Article is a material and important component of the Plan. The enforceability of the Non-Compete Article is a precondition for the Participant's receipt of any benefits under the Plan, including, without limitation, Long-Term Incentive Units, Cash Awards, or any other awards or benefits. Should all or any part or application of the Non-Compete Article be held or found invalid or unenforceable for any reason whatsoever by a court or other constituted legal authority of competent jurisdiction in an action between a Participant and the Plan, that Participant and Plan agree as follows:

(i) That Participant's entire Vested Account Balance shall automatically lapse and be forfeited and shall revert to the Plan;

(ii) The Plan shall have no obligation to make any further allocation of Cash Awards, Long-Term Incentive Units, or any other benefits under the Plan to that Participant; and

(iii) In the event any Vested Award has been exercised under Section 7 for any reason other than a Change in Control prior to engaging in competitive activity, unless otherwise provided in an Award Agreement, any amounts otherwise payable under this Plan or any Award Agreement to that Participant shall automatically lapse and be forfeited, and neither the Partnership nor any Affiliate shall have any obligation to make any further payment to that Participant with respect to this Plan, any Award Agreement, or any Award.

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Section 9. Payment of Account Balance.

9.1 Normal Form of Distribution; Time of Payment. Unless provided otherwise in an Award Agreement, payments to which a Participant (or his/her successor in interest) may be entitled under the Plan upon exercise of Vested Awards shall be made in a lump sum, subject to the provision of Section 9.2, and in cash (or cash equivalents) as determined by the Administrator and such payments shall begin within thirty (30) days after June 30 of the calendar year following the calendar year in which the Triggering Event occurs; *provided, however,*

(i) If the Triggering Event is a Change of Control, then payment shall begin upon the earlier of (A) one (1) year following the Change of Control, (B) the date the Partnership or Affiliate Employer terminates the Participant's Continuous Status as an Employee without Cause, (C) the date the Partnership or Affiliate Employer reduces the Participant's Compensation (as defined herein) to less than one hundred percent (100%) of his/her prior year's Compensation, or (D) the date either James D. Dondero or Mark K. Okada receives his first payment for his interest in the Partnership; *provided further,* the Plan may loan Participant funds that the Administrator deems necessary for that Participant to pay any federal income tax liability associated with that Change of Control;

(ii) In its discretion, the Administrator may begin payments to a Participant earlier than such date in the event of an Unforeseeable Emergency.

For purposes of this Section 9.1, ***"Compensation"*** means, with respect to any Participant for any calendar year, the sum of (i) that Participant's wages as reported by the Partnership or Affiliate Employer on an IRS Form W-2, (ii) all the Partnership's or Affiliate Employer's contributions to that Participant's 401(k) account, and (iii) any consideration paid to that Participant under that certain HCM Services Option Plan, dated June 28, 2001, as amended from time to time.

9.2 Limitation on Amount of Payment. Unless provided otherwise in an Award Agreement, the aggregate cash payments to a Participant under this Plan and the Amended and Restated Buy-Sell and Redemption Agreement by and among Highland Capital Management and its Limited Partners, dated February 29, 2004, as may be amended, supplemented or restated from time to time, will be limited to two hundred fifty thousand dollars ($250,000.00) per calendar quarter, and deferred balances will accrue simple interest at the appropriate "Applicable Federal Rate" determined by the Internal Revenue Service per annum until paid. Notwithstanding the foregoing, if the Triggering Event is a Change in Control and payments begin due to an event described in part (C) or (D) of Section 9.1(i), the payments to which a Participant may be entitled under the Plan will be fully distributed to the Participant on or before March 10 of the calendar year following the calendar year in which the Change in Control occurs.

9.3 Facility of Payment. If the Administrator determines that any person to whom a payment is due is unable to care for his/her affairs because of minority, or physical or mental disability, the Administrator will have the authority to cause the payments to be made to the spouse, brother, sister or other person the Administrator determines to have incurred, or to be expected to incur, expenses for that person unless a prior claim is made by a qualified guardian or other legal representative. Neither the Administrator nor the Partnership nor any of its Affiliates will be responsible to oversee the application of those payments. Payments made pursuant to this power will be a complete discharge of all liability under the Plan and the obligations of the Partnership, its Affiliates and the Administrator. Any amount payable to a minor under any provision of this Plan, including the foregoing provisions of this Section 9.3, may be paid directly to the minor or to a parent or qualified guardian or conservator. The receipt by the minor (or guardian or conservator) will be a complete discharge of all liability under the Plan and the obligations of the Partnership, its Affiliates and the Administrator.

Section 10. Limitation of Rights.

10.1 Limitation of Rights. Nothing in this Plan shall be construed:

(a) To give any Participant any right to be granted any Award other than at the sole and unfettered discretion of the Administrator;

(b) To disclose to any Participant the right to the formula, including any variables contained in the formula, used by the Administrator to value the Long-term Incentive Units;

(c) To disclose to any Participant the right to any financial information which the Administrator may have used to value the Long-term Incentive Units;

(d) To limit in any way the right of the Partnership or its Affiliates to terminate a Participant's employment with the Partnership and its Affiliates at any time; or

(e) To evidence any agreement or understanding, expressed or implied, that the Partnership or its Affiliates will employ a Participant in any particular capacity or for any particular remuneration.

10.2 No Control and Nature of Interest. The granting of an Award to a Participant under the provisions of the Plan represents only a right to receive compensation as specified solely by the terms of this Plan, as interpreted and administered by the Administrator. **Accordingly, except as otherwise expressly provided herein, the Plan grants no right to, or interest in, either express or implied, any equity position or ownership in the Partnership or continued employment by the Partnership, or its Affiliates.**

Furthermore, the Participant shall take no part in the control or management of the affairs of the Partnership, and shall not be entitled to any rights as a partner or shareholder of the Partnership, nor shall any Participant, acting either alone or in accord, have any right or authority to act for or bind the Partnership, or veto any action taken by the officers or directors of the Partnership, which is in excess of such management right or authority as is customarily appropriate with respect to the duties and responsibilities of the position held by such Participant in the normal course of his/her employment with the Partnership or its Affiliates.

Section 11. Amendment, Modification and Termination of Plan.

11.1 Amendment, Modification, and Termination of Plan. The Administrator may: (i) at any time terminate the Plan, and (ii) from time to time amend or modify the Plan, and (iii) from time to time amend or modify any outstanding Award Agreement; *provided, however*, no such action by the Administrator shall reduce the Vested Account Balance of any Participant. In the event it is determined that any provision in this Plan results in a violation of the requirements of Section 409A of the Code and any guidance issued hereunder, the Administrator shall have the power to unilaterally modify or eliminate such provision.

Section 12. Miscellaneous.

12.1 No Loans. Except as otherwise provided in Section 9.1(i), no loans of any kind shall be permitted under the Plan.

12.2 Alienation. No benefit provided by this Plan shall be transferable by the Participant except on the Participant's death by will or by the laws of descent and distribution. No right or benefit under this Plan shall be subject to anticipation, alienation, sale, assignment, pledge, encumbrance or charge. Any attempt to anticipate, alienate, sell, assign, pledge, encumber or charge any right or benefit under this Plan shall be void. No right or benefit under this Plan shall, in any manner, be liable for or subject to any debts, contracts, liabilities or torts of the person entitled to the right or benefit. If any Participant becomes bankrupt or attempts to anticipate, alienate, assign, pledge, sell, encumber or charge any right or benefit under this Plan, then the right or benefit shall, in the discretion of the Administrator, cease. In that event, the Partnership may hold or apply the right or benefit, or any part of the right or benefit, for the benefit of the Participant, his/her spouse, children, or dependents, the beneficiary or any of them, in the manner or in the proportion that the Administrator shall deem proper, in his/her sole discretion, but is not required to do so. The terms of the Plan and any Award Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Participant.

12.3 Tax Withholding. Payments under the Plan shall be subject to all applicable federal, state, and local tax withholding requirements. To the extent required by applicable federal, state, local or foreign law, a Participant shall make arrangements satisfactory to the Partnership or its Affiliate, if applicable, for the satisfaction of any required statutory federal, state, local and/or foreign withholding tax obligations that arise by reason of a payment under the Plan. Such obligations may, as authorized by the Administrator, consist of a cash payment made by the Participant to the Partnership or its Affiliate, if applicable, a reduction in salary payments to the Participant, withholding the required amount from such payments due pursuant to this Plan or any other form of consideration as authorized by the Administrator.

12.4 Changes in Capitalization. In the event of any merger, acquisition or other restructuring of the Partnership which does not result in a Change in Control or other Triggering Event, the number of Long-term Incentive Units that may be issuable under the Plan, the number of Long-term Incentive Units subject to outstanding awards, and/or the determination of the Account Balance under Section 8 may, at Administrator's discretion, be adjusted so that the proportionate interest of the Participant is maintained as before the occurrence of such event. Except as expressly provided herein, no issuance by the Partnership of shares of equity, or securities convertible or exchangeable into shares of equity of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Long-term Incentive Units issued and available under the Plan.

12.5 Unfunded Plan. The Plan shall be unfunded. The Partnership shall not be required to segregate any assets that may be represented by Long-term Incentive Units or Cash Awards; the Partnership shall not be deemed to be a trustee or fiduciary of any amounts to be paid from an Account. Any liability of the Partnership to pay any Participant with respect to Long-term Incentive Units or Cash Awards shall be based solely upon any contractual obligations created pursuant to the provisions of the Plan; no such obligation shall be deemed to be secured by any pledge or encumbrance on any property of the Partnership. However, the Partnership has the discretion at any time to segregate such assets that may be represented by Long-term Incentive Units or Cash Awards. The assets will at all times remain property of the Partnership. The Participants shall at all times be unsecured creditors of the Partnership.

12.6 Governing Law. The Plan, and all agreements hereunder, has been prepared, is being executed and delivered, and is intended to be performed, in the State of Texas, and, at the sole choice of the Partnership, the substantive laws of Texas, or the applicable law of the state in which the Participant performed services for the Partnership or its Affiliates, and the applicable federal laws of the

United States of America shall govern the validity, construction, enforcement, and interpretation of this Plan.

12.7 Successors and Assigns. This Plan shall be binding on the Partnership's successors and assigns.

Remainder of Page Intentionally Left Blank,
Signature Page To Follow.

IN WITNESS WHEREOF, Highland Capital Management, L.P. acting by and through its officer hereunto duly authorized, has executed this instrument this 6th day of January, 2005.

HIGHLAND CAPITAL MANAGEMENT L.P.
BY: STRAND ADVISORS, INC.

By: _____
James D. Dondero,
President

ATTEST:

_____
Name: Cathy Chambers
Title: _____

PDADV_004439

Patrick Daugherty
Date of Hire: 4/3/1998
Compensation and Benefits Statement

EARNINGS AND AWARDS

2011 Base Salary, as of 12/31/11	$ 500,000
2011 Combined Performance and Retention Bonus (breakdown below):	$ 1,500,000
2011 Performance Cash Bonus Award $ 750,000	

- The Performance Bonus will be paid on February 29, 2012 as an award for your 2011 performance

2011 Retention Bonus Award

- A Retention Bonus of $750,00 will be paid on each of the following date(s) as an employee retention incentive: August 31, 2012
- Employee must be employed on each payment date to receive Retention Bonus Award payments
- Termination, for any reason, results in forfeiture of unpaid installments

Tunstall:	25% of management fees
RCP II:	25% of management fees (10% for PE Team ex: Pat's 25%)
Cornerstone:	40% of Chairman/CEO compensation
REITs:	TBD
ıard Fees:	Keep 100% as allowed per Compliance

2011 Other Awards	
401K Match	$ 4,400
Profit Sharing (Estimated)	$ 19,845
2011 Total Earnings and Awards	**$ 2,024,245**

OTHER BENEFITS

TimeKeeper Usage Not Required
- Update TimeKeeper Through August 31, 2011

Working Summers in Montana
- Summer Defined as June 1 to August 15

Same PTO as Prior Years (24 Days Regular, 2 Floating, 2 Boondoggle)
- Input 2011 Vacation Per Policy

Medical & Dental Insurance	$ 18,504
Life, AD&D and Disability Insurance	$ 746
Executive Long Term Disability	$ 956
Executive MetLife Life Insurance	$ 8,763
Daily Catered Lunches	$ 3,000
Parking	$ 1,200
Cell Phone	$ 1,176
Gym Membership	$ 240
`011 Estimated Total Value of Highland Paid Benefits	**$ 34,585**

HERA 0004221

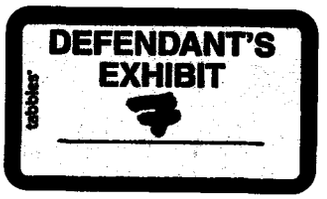
TOTAL COMPENSATION PACKAGE	$ 2,058,830

jdfhsh

From: Jim Dondero
Sent: Saturday, March 19, 2011 3:38 PM
To: Pat Daugherty; Timothy Lawler
Subject: RCP2 ppm and finalized tunstall LP agreement.....

Importance: High

Needs to be a priority this week, and I am very tired of asking for it.....



jdfhsh

From: Jim Dondero
Sent: Sunday, March 20, 2011 10:38 PM
To: Pat Daugherty
Subject: RE: URGENT: FOR REVIEW AND COMPLETION NO LATER THAN FRI 3/18: "Final" Tunstall Advisor LPA

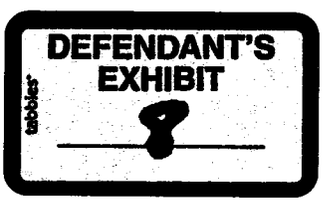
Lets try to punch this out and then there is a few hundred k coming your way.....

-----Original Message-----
From: Thomas Surgent
Sent: Thursday, March 17, 2011 6:57 PM
To: Pat Daugherty
Cc: Jim Dondero
Subject: URGENT: FOR REVIEW AND COMPLETION NO LATER THAN FRI 3/18: "Final" Tunstall Advisor LPA
Importance: High

See revised version attached, which should capture the final agreement. There are not many changes, so it should only take a few minutes to flip through it. Jim wants this final tomorrow.

Call me any time with any comments or issues.

Thomas J. Surgent
Assistant General Counsel
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, Texas 75240
(972) 419-6205 office
(972) 339-8899 mobile
(972) 628-4147 fax
tsurgent@hcmlp.com

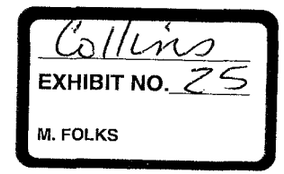


Prepared:5/6/2011

Award Year		Base	Bonus	Install-ments	Spot Bonus	Tax Refund (estimated)	Option IT	STIP	Vessel	HFP	LTIP	NexBank (2004)	401K Match & P/S	DB	Loan Forgiveness	Board Fees	Nominal Total	W-2 Total
	2004											$ 450,012						
Feb	2006	$ 250,000	$ 1,286,600	4	TBD		$ 500,000			$ 500,000	$ -			$ 56,366		N/A	**$ 2,592,970**	**$1,886,685**
Feb	2007	$ 250,000	$ 623,334	4	$ 37,500		$ 3,300,000				$ -			$ 59,748		N/A	**$ 4,270,586**	**TBD**
Feb	2008	$ 250,000	$ 761,502		$ 37,500			$ 3,900,000			$ 2,001	Note 5	$ 28,750	$ 64,320		N/A	**$ 5,044,076**	**$1,059,422**
Feb	2009	$ 333,333			$ -	$ 1,475,816			$ 2,076,479		$ 8,304		$ 4,000		$ 506,354	N/A	**$ 4,404,286**	**$1,359,940**
Feb	2010	$ 500,000	$ 1,473,750	2	$ 50,000						$ 1,253		$ 26,250			$ 87,500	**$ 2,138,755**	**$1,794,410**
Feb	2011	$ 500,000	$ 1,390,000	4	$ -			See Note 2	See Note 4		$ -		$ 24,245				**$ 1,914,249**	**N/A**
CURRENT/PAY OUT VALUE							$ 929,000	$ 493,638	$ 3,176,430	$ -		$ 184,431			$ 506,354	$ 87,500		

Notes:

1. *Dollar amounts reflect value on award date*
2. *90% STIP payout in March 2011 ($444 k) ; remaining 10% ($49 k) in May 2011; see STIP Payout tab for details*
3. *Does not include "PE Comp Vehicle" or Tunstall. The estimated 2010 net income for Tunstall is approximately $1.5 M. Pat's 25% is $375 K.*
4. *Pat was awarded approximately 340 additional Vessel Units as participants left HCMLP and he was reallocated a portion of their Units*
   The value of these additional Vessel Units is approximately $500 K
5. *Received tax distribution of $51 K for 2007 taxes related to NexBank shares*



Prepared:5/4/2011

Award Year		Base	Bonus	Install-ments	Spot Bonus	Tax Refund (estimated)	Option IT	STIP	Vessel	HFP	LTIP	NexBank (2004)	401K Match & P/S	DB	Loan Forgiveness	Board Fees	Nominal Total	W-2 Total
	2004											$ 450,012						
Feb	2006	$ 250,000	$ 1,286,600	4	TBD		$ 500,000			$ 500,000	$ -			$ 56,366		N/A	$ 2,592,970	$1,886,685
Feb	2007	$ 250,000	$ 623,334	4	$ 37,500		$ 3,300,000				$ -			$ 59,748		N/A	$ 4,270,586	TBD
Feb	2008	$ 250,000	$ 761,502	3	$ 37,500			$ 3,900,000			$ 2,001	Note 5	$ 28,750	$ 64,320		N/A	$ 5,044,076	$1,059,422
Feb	2009	$ 333,333			$ -	$ 1,475,816			$ 2,076,479		$ 8,304		$ 4,000		$ 506,354	N/A	$ 4,404,286	$1,359,940
Feb	2010	$ 500,000	$ 1,473,750	2	$ 50,000						$ 1,253		$ 26,250			$ 87,500	$ 2,138,755	$1,794,410
Feb	2011	$ 500,000	$ 1,390,000	4	$ -			See Note 2	See Note 4		$ -		$ 24,245				$ 1,914,249	N/A
CURRENT/PAY OUT VALUE							$ 929,000	$ 493,638	$ 3,176,430	$ -		$ 184,431						

Notes:

1. Dollar amounts reflect value on award date

2. 90% STIP payout in March 2011 ($444 k) ; remaining 10% ($49 k) in May 2011; see STIP Payout tab for details

3. Does not include "PE Comp Vehicle" or Tunstall. The estimated 2010 net income for Tunstall is approximately $1.5 M. Pat's 25% is $375 K.

4. Pat was awarded approximately 340 additional Vessel Units as participants left HCMLP and he was reallocated a portion of their Units

The value of these additional Vessel Units is approximately $500 K

5. Received tax distribution of $51 K for 2007 taxes related to NexBank shares

Patrick Daugherty
Date of Hire: 4/1/1998
Compensation and Benefits Statement

EARNINGS AND AWARDS

2011 Base Salary, as of 12/31/11	$ 500,000
2011 Combined Performance and Retention Bonus (breakdown below):	$ 1,500,000
2011 Performance Cash Bonus Award $ 750,000	

- The Performance Bonus will be paid on February 29, 2012 as an award for your 2011 performance

2011 Retention Bonus Award

- A Retention Bonus of $750,00 will be paid on each of the following date(s) as an employee retention incentive: August 31, 2012
- Employee must be employed on each payment date to receive Retention Bonus Award payments
- Termination, for any reason, results in forfeiture of unpaid installments

Tunstall:	25% of management fees
RCP II:	25% of management fees (10% for PE Team ex: Pat's 25%)
Cornerstone:	~~40% of Chairman/CEO compensation~~
REITs:	~~Minimum of 15%~~
Board Fees:	~~Keep 100%~~ as allowed per Compliance

No, I want you to do what you said you were going to do.

Pat is Trusting me

2011 Other Awards	
401K Match	$ 4,400
Profit Sharing (Estimated)	$ 19,845
2011 Total Earnings and Awards	**$ 2,024,245**

OTHER BENEFITS

TimeKeeper Usage Not Required
- Update TimeKeeper Through August 31, 2011

Working Summers in Montana
- Summer Defined as June 1 to August 15

Same PTO as Prior Years (24 Days Regular, 2 Floating, 2 Boondoggle)
- Input all Vacation Per Policy

Medical & Dental Insurance	$ 18,504
Life, AD&D and Disability Insurance	$ 746
Executive Long Term Disability	$ 956
Executive MetLife Life Insurance	$ 8,763
Daily Catered Lunches	$ 3,000
Parking	$ 1,200
Cell Phone	$ 1,176
Gym Membership	$ 240
2011 Estimated Total Value of Highland Paid Benefits	$ 34,585

Dondero EXHIBIT NO. 167 M. FOLKS

TOTAL COMPENSATION PACKAGE $ 2,058,830

DEFENDANT'S EXHIBIT 16

PLAINTIFFS-0788175

Confidential

HIGHLAND CAPITAL
Management, L.P.

Highland Crusader Offshore Partners, L.P.
Investor Update

January 18, 2012

Dallas New York London Singapore

PLAINTIFFS 0765741

Top Holdings

Current Market Value (as of January 10, 2012)

[redacted]	ISSUER	ASSET	PAR/SHARES	$	%	INVESTMENT MANAGER
[redacted]	Safety-Kleen	Common	15,692,376	$204,000,880	16.2%	Lane Britain
[redacted]	Life Settlements	Common	215,126,007	$166,656,506	13.2%	Life Settlement Team (NYC)
[redacted]	Realogy	12.375% Sr. Sub Notes	144,190,000	$116,974,138	9.3%	Trey Parker
		Sold 5-Year CDS 4.05%	3,750,000	($7,221)	(0.0%)	
	Position Total			$116,916,916	9.3%	
[redacted]	Loral Space & Communications	Common	1,406,204	$91,403,260	7.2%	Trey Parker
[redacted]	Penhall	Class A Common	29,055,772	$75,332,149	6.0%	Trey Parker
[redacted]	Canopy Timberlands	Private Placement Equity	50,120,647	$66,890,380	5.3%	Lane Britain
[redacted]	Epcal	Preferred Equity	2,624,626	$61,624,210	4.9%	Patrick Boyce
[redacted]	Lifecare Holdings	9.250% Sr. Sub Notes	44,165,000	$35,497,619	2.8%	Patrick Boyce
[redacted]	Blackwell BMC	Equity	100	$34,827,936	2.8%	Lane Britain
[redacted]	Cornerstone Healthcare	Common	14,830	$28,501,104	2.3%	Patrick Boyce
		1st Lien Term Loan	3,241,001	2,609,978	0.2%	
	Position Total			$31,111,162	2.5%	
[redacted]						

Note: *Approximately 95% of NAV is covered in this presentation*

- *Large single-name positions (one-page updates): ~75%*
- *Other positions of size: ~12%*
- *ABS positions: ~8%*

PLAINTIFFS 0765747

Personnel

- Who is responsible for trading decisions and monitoring the key investments in the portfolio, especially after the recent departure of Pat Daugherty? Who decides what assets are to be liquidated over a given quarter? Who decides the amount of such assets that to be sold? Please explain the circumstances surrounding the departure of Pat Daugherty and provide current contact information in order for us to conduct an exit interview.
  - *Jim Dondero / Daugherty's departure was consensual and amicable- best described as a "lifestyle" decision*
  - *Daugherty's contact information: Mobile- 972-679-7487 / Pdaugherty@gmail.com*
- Did Pat Daugherty's departure trigger any "key man" or related events in any of your funds (Restoration, for example)?
  - *No*
- Status update on Restoration – (where are they in the investment period, how much capital is uncalled, performance, etc.)?
  - *$291M capital called, $425M invested, 11.5% realized/unrealized gain thru October 2013, beyond IP*
- Did Pat Daugherty sit on the board of any of the companies held in the Funds' portfolio? How involved was he in companies in the Fund's portfolio? What impact will this have on the Fund and who will be replacing him?
  - *6 boards / Replacements have already been made / Solely-deemed non-"eligible" (Lane Britain)*
- What percentage of time does Jim Dondero spend making liquidation decisions for the Fund?
  - *40%*

PLAINTIFFS 076575

EXHIBIT 9

**FIRST AMENDMENT TO THE
SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.
A Delaware Limited Partnership**

This First Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., a Delaware limited partnership (this "***Amendment***") is made and entered into to be effective as of the 15th day of April, 2006 (the "***Effective Date***"), by the General Partner of Highland Capital Management, L.P.

WITNESSETH:

WHEREAS, the General Partner of Highland Capital Management, L.P., a Delaware limited partnership (the "***Partnership***") acting pursuant to that Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated to be effective as of February 29, 2004, as amended (the "***Agreement***"), desires to amend the Agreement as set forth herein (except as otherwise provided herein, all capitalized terms used herein shall have the meaning set forth in the Agreement);

WHEREAS, pursuant to Section 3.7(f) of the Agreement, the General Partner "booked-up" the Capital Accounts of the Partners as of January 1, 2006, and the General Partner desires to make certain other revisions to the Agreement associated therewith;

WHEREAS, pursuant to Section 4.4(a) and 4.4(b) of the Agreement, the General Partner has the right to authorize the issuance of Partnership Interests to new and existing Limited Partners, and on February 28, 2005, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.071% interest as a Limited Partner to Bradford Borud; (ii) a 0.109% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.089% interest as a Limited Partner to David Deadman; (iv) a 0.103% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.100% interest as a Limited Partner to Paul Kauffman; (vi) a 0.095% interest as a Limited Partner to John Morgan; (vii) a 0.077% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.174% interest as a Limited Partner to James Pope; (ix) a 0.131% interest as a Limited Partner to Todd A. Travers; (x) a 0.072% interest as a Limited Partner to David Walls; and (xi) a 0.0370% interest as a Limited Partner to John Yang;

WHEREAS, pursuant to Section 19 of the Amended and Restated Buy-Sell and Redemption Agreement among the Partnership and its Limited Partners, dated December 31, 2004, as amended, the General Partner has the authority to cause the Partnership to redeem the Partnership Interests of certain Limited Partners, and effective July 15, 2005, the Partnership desires to redeem a portion of the Partnership Interests of certain Limited Partners as follows: (i) a 0.037% interest as a Limited Partner from Bradford Borud; (ii) 0.127% interest as a Limited Partner from David Deadman; (iii) a 0.075% interest as a Limited Partner from John Morgan; (iv) 0.101% interest as a Limited Partner from Kurtis Plumer, (v) a 0.038% interest as a Limited Partner from Todd Travers, and (vi) a 0.041% interest as a Limited Partner from David Walls;

WHEREAS, on February 28, 2006, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.032% interest as a Limited Partner to Bradford Borud; (ii) a 0.053% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.007% interest as a Limited Partner to David Deadman; (iv) a 0.038% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.027% interest as a Limited Partner to Paul Kauffman; (vi) a 0.077% interest as a Limited Partner to John Morgan; (vii) a 0.045% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.078% interest as a Limited Partner to James Pope; (ix) a 0.070%

Exhibit
H-9
Daugherty 1/29/2026 L.M.

interest as a Limited Partner to Todd A. Travers; (x) a 0.068% interest as a Limited Partner to David Walls; and (xi) a 0.383% interest as a Limited Partner to John Yang;

WHEREAS, the Partnership shall continue under the terms of the Agreement as amended pursuant to this Amendment.

NOW, THEREFORE, BE IT RESOLVED, the parties hereto hereby agree as follows:

1. The following new Section 3.7(h) shall be added:

"(h) Capital Accounts for Each Partner

(i) The Partners hereby acknowledge that, on February 28, 2005, the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of February 28, 2005, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$4,357,636
Brad Borud	$1,014,920
The Canis Minor Trust	$43,576,358
Patrick Daugherty	$2,037,360
Davis Deadman	$1,825,134
James D. Dondero	$37,432,237
R. Joseph Dougherty	$1,842,317
The Get Good Trust	$52,291,629
The Get Better Trust	$189,164,823
Paul Kauffman	$1,306,761
The Mark and Pamela Okada Family Trust-Exempt #1	$30,503,450
The Mark and Pamela Okada Family Trust-Exempt #2	$13,072,907
John Morgan	$942,659
Mark K. Okada	$65,064,537
Kurtis Plumer	$1,427,214
Todd A. Travers	$2,092,963
David Walls	$681,060
John Yang	$1,366,035
TOTAL	$450,000,000

(ii) The Partners hereby acknowledge that, on January 1, 2006 (after the Partnership's issuance of Partnership Interests to Profits Interest Partners on February 29, 2005 and after the redemption of a portion of the Partnership Interests of certain Limited Partners on July 15, 2005), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of January 1, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$6,474,644
Brad Borud	$1,682,961
The Canis Minor Trust	$63,511,297
The Canis Major Trust	$65,519,123
Patrick Daugherty	$3,722,129
Davis Deadman	$2,585,996
R. Joseph Dougherty	$3,379,045
The Get Good Trust	$76,095,479
The Get Better Trust	$264,739,621
Paul Kauffman	$2,463,611
The Mark and Pamela Okada Family Trust-Exempt #1	$45,496,463
The Mark and Pamela Okada Family Trust-Exempt #2	$18,812,770
John Morgan	$1,401,385
Mark K. Okada	$94,515,006
Kurtis Plumer	$2,032,323
James Pope	$434,852
Todd A. Travers	$3,655,883
David Walls	$1,095,944
John Yang	$2,381,469
TOTAL	$660,000,000

(iii) The Partners hereby acknowledge that, on April 15, 2006 (after the Partnership issued additional Partnership Interests to each Partner on February 28, 2006 and made a tax distribution to each Partner on April 15, 2006), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of April 15, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$6,469,952
Brad Borud	$1,712,501
The Canis Minor Trust	$63,464,379
The Canis Major Trust	$65,471,054
Patrick Daugherty	$3,783,851
Davis Deadman	$2,627,169
R. Joseph Dougherty	$3,434,436
The Get Good Trust	$76,039,177
The Get Better Trust	$264,543,714
Paul Kauffman	$2,505,001
The Mark and Pamela Okada Family Trust-Exempt #1	$45,463,620
The Mark and Pamela Okada Family Trust-Exempt #2	$18,798,694
John Morgan	$1,431,629
Mark K. Okada	$94,444,628
Kurtis Plumer	$2,068,191
James Pope	$455,042
Todd A. Travers	$3,719,004
David Walls	$1,120,141
John Yang	$2,447,819
TOTAL	$660,000,000

2. Section 3.2(b)(ii) shall be deleted in it entirety and replaced with the following:

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"(ii) Next, to the Partners in proportion to their respective positive Capital Account balances until the aggregate Capital Account balances of the Partners (excluding any negative Capital Account balances) equal zero; *provided, however*, losses shall be deemed to first reduce amounts that were last allocated to the Capital Accounts of the Partners; and"

3. The following proviso shall be added in the ninth line of Section 3.9(a), immediately before the "provided, however":

"(and such distributions shall be allocated against increases in Capital Accounts in proportion in which they occurred)"

4. The following sentence shall be added at the end of Section 3.9(a):

"Distributions shall be deemed to first reduce amounts that were first added to the Capital Accounts of the Partners (i.e., a first-in, first-out approach)."

5. The following new Section 4.1(l) shall be added:

"The General Partner may, from time to time, designate one or more Persons to be officers of the Company. No officer need be a Partner. Any officers so designated shall have such authority and perform such duties as the General Partner may, from time to time, delegate to them. The General Partner may assign titles to particular officers, including, without limitation, president, vice president, secretary, assistant secretary, treasurer and assistant treasurer. Each officer shall hold office until such Person's successor shall be duly designated and shall qualify or until such Person's death or until such Person shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Partnership shall be fixed from time to time by the General Partner. Any officer may be removed as such, either with or without cause, by the General Partner whenever in the General Partner's judgment the best interests of the Partnership will be served thereby. Any vacancy occurring in any office of the Partnership may be filled by the General Partner."

6. Section 4.4(a) shall be deleted in its entirety. The following new Section 4.4(a) shall be added:

(a) Issuance of Partnership Interests to New Limited Partners. The General Partner may admit one or more additional Persons as Limited Partners ("***Additional Limited Partners***") to the Partnership at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the admission of any Additional Limited Partner, the Percentage Interest of the members of the Founding Partner Group shall be diluted proportionately. No Person may be admitted to the Partnership as a Limited Partner until he/she/it executes an Addendum to this Agreement in the form attached as Exhibit B (which may be modified by the General Partner in its sole and unfettered discretion) and an addendum to the Amended Buy-Sell and Redemption Agreement.

7. Section 4.4(b) shall be deleted in its entirety. The following new Section 4.4(b) shall be added:

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(b) Issuance of an Additional Partnership Interest to an Existing Partner. The General Partner may issue an additional Partnership Interest to any existing Partner at such times and upon such terms as it deems appropriate in its sole and unfettered discretion. Upon the issuance of an additional Partnership Interest to an existing Partner, the Percentage Interests of the members of the Founding Partner Group shall be diluted proportionately. Any additional Partnership Interest shall be subject to all the terms and conditions of this Agreement and the Amended Buy-Sell and Redemption Agreement.

8. Exhibit A and Exhibit C of the Agreement shall be deleted in their entirety and replaced with the attached Exhibit A and Exhibit C.

9. Except to the extent modified or amended by this Amendment, all terms and provisions of the Agreement shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

10. Any required notices, meetings or consents that are necessary to make an amendment to the Agreement are hereby waived or satisfied.

11. Each party hereto shall take whatever other action is required to give full effect to the provisions of this Amendment, including the acquisition by any Partner of any consent to the action provided for herein.

12. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same Amendment, and any parties to this Amendment may execute this Amendment by signing any one of the counterparts. Any counterpart of this Amendment may be executed via facsimile transmission.

Remainder of Page Intentionally Left Blank.
Signature Page Follows.

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IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

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EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.941%
LIMITED PARTNERS:	
Bradford Borud	0.368%
Canis Minor Trust	9.415%
Canis Major Trust	9.646%
Patrick Daugherty	0.770%
Davis Deadman	0.513%
R. Joseph Dougherty	0.691%
The Get Good Trust	11.298%
The Get Better Trust	39.312%
Paul Kauffman	0.516%
The Mark and Pamela Okada Family Trust-Exempt #1	6.590%
The Mark and Pamela Okada Family Trust-Exempt #2	2.824%
John Morgan	0.377%
Mark K. Okada	14.122%
Kurtis Plumer	0.447%
James Pope	0.252%
Todd A. Travers	0.787%
David Walls	0.302%
John Yang	0.828%
TOTAL	100.0%

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EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
James Pope	
Todd A. Travers	
David Walls	
John Yang	
James Pope	

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EXHIBIT 10

**SECOND AMENDMENT TO THE
SECOND AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
HIGHLAND CAPITAL MANAGEMENT, L.P.
A Delaware Limited Partnership**

This Second Amendment to the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., a Delaware limited partnership (this "***Amendment***") is made and entered into to be effective as of the 15th day of April, 2007 (the "***Effective Date***"), by the General Partner of Highland Capital Management, L.P.

WITNESSETH:

WHEREAS, the General Partner of Highland Capital Management, L.P., a Delaware limited partnership (the "***Partnership***") acting pursuant to that Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P., dated to be effective as of February 29, 2004, as amended (the "***Agreement***"), desires to amend the Agreement as set forth herein (except as otherwise provided herein, all capitalized terms used herein shall have the meaning set forth in the Agreement);

WHEREAS, pursuant to Section 3.7(f) of the Agreement, the General Partner "booked-up" the Capital Accounts of the Partners of the Partnership on each of the following dates: October 15, 2006, February 28, 2007, and April 15, 2007 and the General Partner desires to make revisions to the Agreement associated therewith;

WHEREAS, pursuant to Section 4.4(a) and 4.4(b) of the Agreement, the General Partner has the right to authorize the issuance of Partnership Interests to new and existing Limited Partners, and on February 28, 2007, the Partnership issued the following Partnership Interests that are treated as "profits interests" for federal income tax purposes to the following Persons who agreed to provide services to the Partnership: (i) a 0.028% interest as a Limited Partner to Bradford Borud; (ii) a 0.013% interest as a Limited Partner to Patrick Daugherty; (iii) a 0.007% interest as a Limited Partner to Davis Deadman; (iv) a 0.013% interest as a Limited Partner to R. Joseph Dougherty; (v) a 0.007% interest as a Limited Partner to Paul Kauffman; (vi) a 0.022% interest as a Limited Partner to John Morgan; (vii) a 0.027% interest as a Limited Partner to Kurtis Plumer; (viii) a 0.047% interest as a Limited Partner to James Pope; (ix) a 0.020% interest as a Limited Partner to Todd A. Travers; (x) a 0.043% interest as a Limited Partner to David Walls; (xi) a 0.104% interest as a Limited Partner to John Yang; (xii) a 0.029% interest as a Limited Partner to John Honis; and (xiii) a 0.021% interest as a Limited Partner to Patrick Conner;

WHEREAS, the Partnership shall continue under the terms of the Agreement as amended pursuant to this Amendment.

NOW, THEREFORE, BE IT RESOLVED, the parties hereto hereby agree as follows:

1. The following new Section 3.7(h) shall be added:

"(h) Capital Accounts for Each Partner

(i) The Partners hereby acknowledge that, on October 15, 2006, the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code

Exhibit
H-10
Daugherty 1/29/2026 L.M.

Section 704(c) item. As of October 15, 2006, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$7,791,791.83
Brad Borud	$2,237,521.56
The Canis Minor Trust	$76,682,775.09
The Canis Major Trust	$79,013,648.93
Patrick Daugherty	$4,880,808.00
Davis Deadman	$3,358,856.13
R. Joseph Dougherty	$4,418,857.51
The Get Good Trust	$91,901,252.32
The Get Better Trust	$319,311,373.17
Paul Kauffman	$3,240,581.48
The Mark and Pamela Okada Family Trust-Exempt #1	$54,856,497.76
The Mark and Pamela Okada Family Trust-Exempt #2	$22,824,213.33
John Morgan	$1,969,229.67
Mark K. Okada	$114,072,222.65
Kurtis Plumer	$2,705,675.90
Todd A. Travers	$4,840,844.11
David Walls	$1,550,276.80
John Yang	$3,529,594.20
James Pope	$813,979.56
TOTAL	**$800,000,000.00**

(ii) The Partners hereby acknowledge that, on February 28, 2007 (after the Partnership issued additional Partnership Interests to certain Partners on February 28, 2007), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of February 28, 2007, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc.	$12,672,773.96
Brad Borud	$4,245,939.16
The Canis Minor Trust	$125,492,596.34
The Canis Major Trust	$129,020,389.43
Patrick Daugherty	$9,077,119.71
Davis Deadman	$6,157,861.10
R. Joseph Dougherty	$8,184,672.84
The Get Good Trust	$150,473,037.82
The Get Better Trust	$523,115,703.17
Paul Kauffman	$6,054,480.42
The Mark and Pamela Okada Family Trust-Exempt #1	$89,023,372.64
The Mark and Pamela Okada Family Trust-Exempt #2	$37,467,159.71
John Morgan	$4,025,773.35
Mark K. Okada	$187,286,954.53
Kurtis Plumer	$5,144,318.54
Todd A. Travers	$9,132,344.01
David Walls	$3,195,721.96
John Yang	$8,042,719.43

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James Pope $2,187,061.87

TOTAL $1,320,000,000.00

(iii) The Partners hereby acknowledge that, on April 15, 2007 (after the Partnership made distributions to certain Partners on April 15, 2007), the Partnership "booked-up" the Capital Account of each Partner to its fair market value, and the resulting increase or decrease in the Capital Accounts of each Partner was treated as a Code Section 704(c) item. As of April 15, 2007, the "book" Capital Account for each Partner is set forth below:

Strand Advisors, Inc. $12,661,116.60
Brad Borud $4,320,072.91
The Canis Minor Trust $125,376,022.75
The Canis Major Trust $128,919,134.88
Patrick Daugherty $9,195,662.97
Davis Deadman $6,235,129.25
R. Joseph Dougherty $8,292,161.75
The Get Good Trust $150,333,149.51
The Get Better Trust $522,610,775.06
Paul Kauffman $6,132,131.02
The Mark and Pamela Okada Family Trust-Exempt #1 ..... $88,941,771.13
The Mark and Pamela Okada Family Trust-Exempt #2 ..... $37,432,187.63
John Morgan $4,096,114.89
Mark K. Okada $187,112,094.14
Kurtis Plumer $5,228,857.28
Todd A. Travers $9,258,726.39
David Walls $3,273,040.54
John Yang $8,242,527.88
James Pope $2,259,961.09
John Honis $23,296.08
Patrick Conner $56,066.25

TOTAL $1,320,000,000.00

2. Exhibit A and Exhibit C of the Agreement shall be deleted in their entirety and replaced with the attached Exhibit A and Exhibit C.

3. Except to the extent modified or amended by this Amendment, all terms and provisions of the Agreement shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

4. Any required notices, meetings or consents that are necessary to make an amendment to the Agreement are hereby waived or satisfied.

5. Each party hereto shall take whatever other action is required to give full effect to the provisions of this Amendment, including the acquisition by any Partner of any consent to the action provided for herein.

6. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same Amendment, and any parties to this Amendment may execute this Amendment by signing any one of the counterparts. Any counterpart of this Amendment may be executed via facsimile transmission.

Remainder of Page Intentionally Left Blank.
Signature Page Follows.

IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the day and year above written.

GENERAL PARTNER:

STRAND ADVISORS, INC.,
a Delaware corporation

By: _____
James D. Dondero,
President

EXHIBIT A

Partnership Percentage Interests

GENERAL PARTNER:	Percentage Interest
Strand Advisors, Inc.	0.937%
LIMITED PARTNERS:	
Bradford Borud	0.396%
Canis Minor Trust	9.372%
Canis Major Trust	9.624%
Patrick Daugherty	0.783%
Davis Deadman	0.520%
R. Joseph Dougherty	0.704%
The Get Good Trust	11.246%
The Get Better Trust	39.110%
Paul Kauffman	0.523%
The Mark and Pamela Okada Family Trust-Exempt #1	6.560%
The Mark and Pamela Okada Family Trust-Exempt #2	2.812%
John Morgan	0.399%
Mark K. Okada	14.058%
Kurtis Plumer	0.474%
James Pope	0.298%
Todd A. Travers	0.807%
David Walls	0.345%
John Yang	0.931%
John Honis	0.029%
Patrick Conner	0.069%
TOTAL	**100.0%**

EXHIBIT C

Maximum Available Loan Amounts to Profits Interest Partners Pursuant to Section 4.1(e)(v)

Profits Interest Partner:	Maximum Loan Amount
Bradford Borud	
Patrick Daugherty	
Davis Deadman	
R. Joseph Dougherty	
Paul Kauffman	
John Morgan	
Kurtis Plumer	
James Pope	
Todd A. Travers	
David Walls	
John Yang	
James Pope	
John Honis	
Patrick Conner	

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EXHIBIT 11

AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement (the "***Agreement***") between Highland Capital Management, L.P., a Delaware limited partnership (the "***Company***"), and Patrick Daugherty (the "***Executive***"), is hereby entered into as of December 31, 2004, and replaces and supercedes all prior employment agreements and modifications.

WHEREAS, the Company and the Executive desire to continue the employment relationship under the following terms.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

ARTICLE I

Definitions

1.1. Definitions. In this Agreement, the following terms, unless the context otherwise requires, have the meanings indicated:

"***Affiliate***" means any Person that directly or indirectly controls, is controlled by, or is under common control with the Person in question. As used in this definition, the term "***control***" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble to this Agreement.

"***Applicable Entities***" means the Company and its Affiliates.

"***Base Salary***" has the meaning set forth in Section 3.1(a).

"***Cause***" means conduct by the Executive amounting to (i) the Executive's conviction or plea of *nolo contendere* for any criminal offense or commission by the Executive of any act that the Company considers damaging to or tending to discredit any of the Applicable Entities; (ii) dishonesty, fraud, misconduct, unlawful discrimination, breach of contract, bad faith or theft on the part of the Executive that is injurious to any of the Applicable Entities; (iii) the Executive's using for his/her own benefit any confidential or proprietary information of any of the Applicable Entities, or willfully or negligently divulging any such information to third parties without the prior written consent of the Company; (iv) a breach or violation of the terms of this Agreement or other agreement to which the Executive and any of the Applicable Entities are party in any manner that adversely affects any of the Applicable Entities; (v) the failure or refusal of the Executive to follow the lawful directives of the Company (unless due to sickness, injury, or disabilities, but excluding self-inflicted injuries, drug usage in violation with Company policy or addiction to alcohol or other substances hazardous to health); (vi) inattention to duty or any other willful, reckless or negligent act (or omission to act) by the Executive, which, in the good faith judgment of the Company, injures any of the Applicable Entities; (vii) a breach of fiduciary duties; (viii) the Executive's commission or participation in any illegal act in the course of his/her employment with the Company, including violation of any statute or regulation; or (ix) the Executive's second commission of an act, of which the Executive is given written notice, that is determined by (A) James D. Dondero, with regard to any event involving James D. Dondero, or (B) both James D. Dondero and Mark K. Okada for an event involving Mark K. Okada or any other employee of an Applicable Entity, to constitute disrespect or unacceptably irreverent or inappropriate behavior to James

Exhibit
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Daugherty 1/29/2026 L.M.

D. Dondero, Mark K. Okada or any other employee of an Applicable Entity. Any determination of whether an Executive should be terminated for Cause pursuant to this Agreement shall be made in the reasonable discretion of the Company, shall be made in good faith and shall be binding upon all parties affected thereby.

"***Company***" has the meaning set forth in the preamble to this Agreement.

"***Competing Business***" means any business conducted by any of the Applicable Entities at the time the Executive's Continuous Status as an Executive ends.

"***Confidential Information***" includes, but is not limited to:

(i) Information concerning customers, clients, marketing, business and operational methods of the Applicable Entities and their customers or clients, contracts, financial or other data, technical data, email and other correspondence or any other confidential or proprietary information possessed, owned or used by the Applicable Entities;

(ii) Business, pricing and management methods and information;

(iii) Finances, strategies, systems, research, plans, reports, recommendations and conclusions;

(iv) Tear sheets, industry comparative analysis and Collateralized Loan Obligation (CLO) and other structured products; and

(v) Names, arrangements with, or other information relating to, any of the Applicable Entities' customers, clients, suppliers, financiers, owners, representatives and other persons who have business relationships with any of the Applicable Entities or who are prospects for business relationships with any of the Applicable Entities;

(vi) Any matter or thing obtained or ascertained by the Executive through the Executive's association with the Applicable Entities the use or disclosure of which might reasonably be construed to be contrary to the best interests of the Applicable Entities.

"***Continuous Status as an Executive***" means that the Executive's employment with the Company is not interrupted or terminated. Continuous Status as an Executive shall not be considered interrupted in the case of (i) any leave of absence approved by the Company; (ii) transfers between locations of the Company or between the Company and any other Applicable Entity or any successor thereto; or (iii) any leave of absence permitted by applicable law. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company.

"***Disability***" means disability as defined by the terms of the Company's long-term disability plan as in effect at the determination of such Disability but will not include disabilities related to fatigue or stress. If, at any time during the term of this Agreement, the Company does not maintain a long-term disability plan, Disability shall mean a physical or mental condition which, in the judgment of the Company, permanently prevents the Executive from performing the essential functions of his/her position with the Company, with or without reasonable accommodation, or such other position or job that the Company makes available to him that is of similar status, similar compensation and similar responsibility and for which the Executive is qualified by reason of his/her education, training and experience. In making its determination, the Company may, but is not required to, rely on advice of a physician competent in the area to which such Disability relates. The Company may make the determination in its sole discretion, and any decision of the Company will be binding on all parties.

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"***Executive***" has the meaning set forth in the preamble to this Agreement.

"***Long-term Incentive Plan***" means that certain Second Amended and Restated Long Term Incentive Plan, dated as of December 31, 2004, as such plan may be amended from time to time.

"***Non-Competition Period***" has the meaning set forth in Section 5.3.

"***Person***" means an individual or a corporation, partnership, trust, estate, unincorporated organization, association, or other entity.

"***Release Notice***" has the meaning set forth in Section 5.8.

"***Restricted Securities***" has the meaning set forth in Section 5.8.

"***Specialized Training***" includes, but is not limited to:

(i) Training the Company provides to its employees that is unique to its business and enhances the Executive's ability to perform his/her job duties effectively, including disclosure and access to Confidential Information; and

(ii) Orientation training, sales methods/techniques training, operation methods training, and computer and systems training.

"***Without Cause Severance Pay Period***" means the period of time for which the Executive may be entitled to severance pay upon termination of his/her Continuous Status as an Executive by the Company without Cause, as provided in Section 4.4.

ARTICLE II

Employment and Duties

2.1 Upon the terms and subject to the conditions contained in this Agreement, the Executive agrees to provide full-time services for the Company during the term of this Agreement. The Executive agrees to devote all o his/her time, energy, skill and best efforts to the performance of his/her duties hereunder and to the business of the Company, and shall perform his/her duties in a diligent, trustworthy, and business-like manner, all for the purpose of advancing the business of the Company. The Executive shall not at any time during the term of this Agreement work on any basis (including part-time or as an independent contractor) for a Competing Business and shall not participate in any material way in any other business that is not a Competing Business. Further, any non-material participation in any business that is not a Competing Business shall at all times comply with the written policies of the Company.

2.2 The Executive shall serve the Company as and shall have the title of Senior Portfolio Manager. The duties of the Executive shall be those duties that can reasonably be expected to be performed by a person with such title. The Executive shall report directly and regularly to the President of the Company. The Executive agrees to serve, without additional compensation, in a similar executive capacity with any Applicable Entity.

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ARTICLE III

Compensation and Other Benefits

3.1 For all services rendered by the Executive to the Company, the Company shall compensate, or shall cause any Applicable Entity to compensate, the Executive as follows:

(a) Salary and Bonus. The annual salary (the "***Base Salary***") payable to the Executive during the term of this Agreement shall be an amount determined by the Company (in its sole discretion) and communicated in writing to the Executive, and will be subject to annual review pursuant to the Company's normal review policy for other similarly situated executives of the Company. Any increase in salary shall be based upon the Executive's performance and shall be determined by the Company in its sole discretion. In addition, the Company may from time to time award bonuses to the Executive based on such criteria as the Company may establish in its discretion. Any such bonus, unless specifically stated otherwise, will be paid in three (3) equal installments and is not earned or accrued until each payment date. The Executive must be employed on the payment date(s) in order to be eligible for the bonus. The payment of salary and bonuses shall be subject to all federal, state and withholding taxes, social security deductions and other general obligations. Furthermore, the designation of the Executive's compensation does not constitute a guarantee of employment for any specific period of time.

Notwithstanding the preceding, in the event that the Executive commits an act that is determined in good faith by (i) James D. Dondero, with regard to any event involving James D. Dondero, or (ii) both James D. Dondero and Mark K. Okada for an event involving Mark K. Okada or another member of senior management of an Applicable Entity, to constitute disrespect or unacceptably irreverent or inappropriate behavior to James D. Dondero, Mark K. Okada or another member of senior management of an Applicable Entity, the Company may, effective with the next pay period following its delivery of a written notice to the Executive, reduce the Executive's then applicable Base Salary by fifty percent (50%) for a period not to exceed one calendar year.

(b) Vacation. The Executive shall be entitled to vacations consistent with the written vacation policy of the Company, provided that service for all Applicable Entities shall be recognized in implementing such policy. Unless specifically stated to the contrary in writing by the Company, unused vacations in any year shall lapse and may not be carried forward.

(c) Other Compensation and Benefits. The Executive is entitled to participate during the term of this Agreement in any group health insurance plan, bonus, option or similar incentive compensation plan, including the Long-term Incentive Plan, 401(k) plan, group life plan and automobile allowance program that is made available, from time to time, to other executives of the Company, on a basis consistent with such participation and subject to the terms of the plan documents. Service for all Applicable Entities shall be recognized in implementing the policy of the relevant Applicable Entity in respect of any of the foregoing.

(d) Reimbursement. The Company shall reimburse, or shall cause any Applicable Entity to reimburse, the Executive for properly documented expenses that are incurred by the Executive on behalf of the Company or Applicable Entity in the performance of his/her duties hereunder in accordance with such Applicable Entity's policies in effect from time to time.

3.2 The Executive has previously been granted Long-term Incentive Units under the Long-term Incentive Plan. Such Long-term Incentive Units are subject to the terms and conditions detailed in any Award Agreement(s) between the Executive and the Company, and the Long-term Incentive Plan.

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ARTICLE IV

Term At Will; Termination

4.1 At Will Employment. The term of the Continuous Status as an Executive under this Agreement shall continue until terminated by the Company or the Executive at will, with or without Cause.

4.2 Termination for Cause. The Company may terminate the Continuous Status as an Executive at any time for Cause. Upon termination for Cause, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment hereunder, except for (i) any unpaid Base Salary accrued through the date of termination, (ii) any accrued but unused vacation time, (iii) any unreimbursed expenses properly incurred prior to the date of termination, and (iv) any amounts or rights to which the Executive is entitled under any other written agreements with the Company.

4.3 Termination upon Death or Disability. The Executive's Continuous Status as an Executive may be terminated upon the death or Disability of the Executive. Upon termination of the Executive upon death or Disability, the Company shall have no further liability or obligation to the Executive (or, in the case of death, his/her estate) under this Agreement or in connection with his/her employment hereunder, except for (i) any unpaid Base Salary accrued through the date of termination, (ii) any unpaid bonuses detailed through the date of termination, (iii) any accrued but unused vacation time, (iv) any unreimbursed expenses properly incurred prior to the date of termination, and (v) any amounts or rights to which the Executive is entitled under any other written agreements with the Company.

4.4 Termination Without Cause. The Company may terminate the Continuous Status as an Executive at any time without Cause for any reason whatsoever. Upon termination without Cause (except in the case of termination upon death or Disability, which shall be subject to Section 4.3), the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment hereunder, except for (i) any unpaid Base Salary accrued through the date of termination, (ii) any earned but unused vacation time, (iii) any unreimbursed expenses properly incurred prior to the date of termination, (iv) any amounts or rights to which the Executive is entitled under any other written agreements with the Company, and (v) severance pay equal to the product of (a) three (3) weeks' Base Salary (at the rate then in effect at the time of such termination), multiplied by (b) the number of fully completed years of the Executive's Continuous Status as an Executive. The Executive acknowledges that the Company's obligation to pay severance, if any, will arise only after the Executive's employment has terminated and, only if the Executive signs and returns a duly executed separation agreement and release substantially in the form attached hereto as Exhibit A. The Executive further acknowledges and agrees that severance pay, if any, constitutes consideration for the Executive's release of claims at the time of termination. In the event the Executive declines to sign the separation agreement and release, he/she shall not be entitled to any severance, and the Company will have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment or termination.

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4.5 Voluntary Termination – Non-Competing Business. In the event that the Executive terminates his/her Continuous Status as an Executive hereunder and within one (1) year thereafter the Executive is not employed by a Competing Business, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment hereunder, except for (i) any unpaid Base Salary accrued through the date of termination, (ii) any accrued but unused vacation time, (iii) any amounts or rights to which the Executive is entitled under any other written agreements with the Company, (iv) any unreimbursed expenses properly incurred prior to the date of termination, and (v) severance pay equal to the product of (a) two (2) weeks Base Salary (at the rate then in effect at the time of such termination), multiplied by (b) the number of fully completed years of the Executive's Continuous Status as an Executive; *provided, however*, the total amount of such severance pay shall not exceed an amount equal to six (6) weeks' Base Salary (at the rate then in effect at the time of such termination). The Executive acknowledges that the Company's obligation to pay severance, if any, will arise only after the Executive's employment has terminated and, only if the Executive signs and returns a duly executed separation agreement and release substantially in the form attached hereto as Exhibit A. The Executive further acknowledges and agrees that severance pay, if any, constitutes consideration for the Executive's release of claims at the time of termination. In the event the Executive declines to sign the separation agreement and release, he/she shall not be entitled to any severance, and the Company will have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment or termination.

4.6 Voluntary Termination – Competing Business. In the event that the Executive terminates his/her Continuous Status as an Executive hereunder and within one (1) year thereafter the Executive is employed by a Competing Business, the Company shall have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment hereunder, except for (i) any unpaid Base Salary accrued through the date of termination, (ii) any accrued but unused vacation time, (iii) any amounts or rights to which the Executive is entitled under any other written agreements with the Company, (iv) any unreimbursed expenses properly incurred prior to the date of termination, and (v) severance pay equal to two (2) weeks' Base Salary (at the rate then in effect at the time of such termination). The Executive acknowledges that the Company's obligation to pay severance, if any, will arise only after the Executive's employment has terminated and, only if the Executive signs and returns a duly executed separation agreement and release substantially in the form attached hereto as Exhibit A. The Executive further acknowledges and agrees that severance pay, if any, constitutes consideration for the Executive's release of claims at the time of termination. In the event the Executive declines to sign the separation agreement and release, he/she shall not be entitled to any severance, and the Company will have no further liability or obligation to the Executive under this Agreement or in connection with his/her employment or termination.

4.7 Board Seat. Upon the termination of the Continuous Status as an Executive for any reason, with or without Cause, if the Executive is on the board of directors or holds a position as an officer or committee member of any of the Applicable Entities or any other firm-related entities at the time of such termination, the Executive shall promptly resign from all of such positions by delivery of written notice to such effect.

ARTICLE V

Confidentiality, Non-Competition, Non-Solicitation, and Non-Recruitment

5.1 The Company's Promise to Provide Confidential Information and Specialized Training. At the inception of this Agreement, and continuing on an ongoing basis during the Executive's employment with the Company, the Company agrees to provide the Executive with new Confidential Information and Specialized Training to which the Executive has not previously had access.

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5.2 The Executive's Promise not to Use or Disclose the Confidential Information. In exchange for the Company's promise to provide the Executive with Confidential Information and Specialized Training, the Executive shall not, during his/her employment with the Company under this Agreement or at any time thereafter, disclose to anyone, including, without limitation, any Person, or publish, or use for any purpose, any Confidential Information, except as: (i) required in the ordinary course of the Company's business or the Executive's work for the Company; (ii) required by law; or (iii) directed and authorized in writing by the Company. At the conclusion of the Executive's Continuous Status as an Executive, for any reason, the Executive shall immediately return and deliver to the Company any and all computers, hard-drives, papers, books, records, documents, memoranda, manuals, e-mail, electronic or magnetic recordings or data, including all copies thereof, belonging to the Company or any of the Applicable Entities, containing Confidential Information, or relating to the Company's or any of the Applicable Entities' business, which are in the Executive's possession, whether prepared by the Executive or others. If at any time after termination of the Executive's participation in the Company, for any reason, the Executive determines that the Executive has any Confidential Information in the Executive's possession or control, the Executive shall immediately return to the Company all such Confidential Information in the Executive's possession or control, including all copies and portions thereof.

5.3 The Restrictive Covenants. Each Executive recognizes and agrees that: (i) the Company has devoted a considerable amount of time, effort, and expense to develop its Confidential Information and business goodwill; (ii) the Confidential Information and the Company's business goodwill are valuable assets to the Company; and (iii) any unauthorized use or disclosure of the Company's or any of the Applicable Entities' Confidential Information would cause irreparable harm to the Company for which there is no adequate remedy at law, including damage to the Company's business goodwill. Accordingly, each Executive agrees that to protect the Company's Confidential Information and business goodwill, it is necessary to enter into the following restrictive covenants, which are ancillary to the enforceable promises between the Executive and the Company in this Article V. The Executive, either individually or as a principal, partner, stockholder, manager, agent, consultant, contractor, employee, lender, investor, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, agrees that during the period of the Executive's Continuous Status as an Executive, and for a period of one (1) year following the date on which the Executive's Continuous Status as an Executive ceases (for whatever reason) (the "***Non-Competition Period***"), the Executive shall not, whether directly or indirectly, without the express prior written consent of the Company (excluding the activities of the Executive's spouse or other immediate family members independently engaged in such activities):

(a) Non-Solicitation. Solicit business, attempt to solicit business, or accept business in products or services competitive with products or services sold by any of the Applicable Entities, from any of the Applicable Entities' clients, customers, prospective or potential clients or customers, or those individuals or entities that any of the Applicable Entities did business with during the Executive's employment with the Company, with whom the Executive solicited or dealt with, in any capacity, while employed with the Company during the twenty-four (24) months immediately preceding the Non-Competition Period.

(b) Non-Recruitment. Hire, solicit for employment, induce or encourage to leave the employment of the Company or otherwise cease their employment with any of the Applicable Entities, any employee or any former employee of any Applicable Entities whose employment with any of the Applicable Entities ceased than less than six (6) months earlier.

(c) Non-Competition. Within any market in which any of the Applicable Entities provided services or sold products during the twenty-four (24) months immediately preceding the Non-Competition Period, become employed, advise, perform services or otherwise serve in any capacity with a Competing Business in which the Executive would (a) perform similar duties to those performed while at the Company, (b) engage in or provide services to any client, customer, or prospective or potential clients or customers of any of the Applicable Entities, or competitor of any of the Applicable Entities, or (c) provide

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services that are competitive with a product, service, process or development on which the Executive worked at the Company, or with which the Executive had access to Confidential Information while employed with the Company. However, the Executive may own, directly or indirectly, solely as an investment, securities of any business traded on any national securities exchange or NASDAQ, provided that the Executive is not a controlling person of, or member of a group that controls such business, and provided further that the Executive does not, directly or indirectly, own three percent (3%) or more of any class of securities of such business. If the Company notifies the Executive in writing that he/she is being terminated as the result of a downsizing or reduction in force by the Company, then this Section 5.3(c) shall not apply to the Executive after termination of his/her Continuous Status as an Employee.

5.4 Remedies. The Executive acknowledges that the restrictions contained in this Article V, in view of the nature of the Company's business, are reasonable and necessary to protect the Company's legitimate business interests and business goodwill and that any violation of this Agreement would result in irreparable injury to the Company. In the event of a breach by the Executive of any provision of this Article V, the Company shall, assuming the remedy provisions of Section 15(e)(i) of the Amended and Restated Buy-Sell and Redemption Agreement, dated December 31, 2004, as may be amended from time to time, and Section 8.9(c) of the Long-Term Incentive Plan are applied and upheld, only be entitled to take the following actions as its sole remedy against the Executive for such breach:

(a) In the event of a breach by the Executive of any provision of Articles V (other than Section 5.3(c)), the Company shall be entitled to a temporary restraining order and injunctive relief restraining the Executive from the commission of any breach, and to recover the Company's attorneys' fees, costs and expenses related to the breach.

(b) In the event of a breach by the Executive of Section 5.3(c), the Company shall be entitled to a payment from the Executive equal to the sum of (i) the sum of (A) the amount the Executive received pursuant to Section 4.5 and (B) the amount the Executive would have been entitled to receive under Section 4.6 at the time his/her/her Continuous Status as an Executive ended, plus (ii) the sum of the Company's attorneys' fees, costs and expenses related to the breach.

The existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Company of the restrictive covenants contained in this Article V.

5.5 Reformation. The Executive and the Company agree that all of the covenants contained in this Article V shall survive the termination or expiration of this Agreement, and agree further that in the event any of the covenants contained in this Article V shall be held by any court to be effective in any particular area or jurisdiction only if said covenant is modified to limit its duration or scope, then the court shall have such authority to so reform the covenant and the parties hereto shall consider such covenant(s) and/or other provisions of this Article V to be amended and modified with respect to that particular area or jurisdiction so as to comply with the order of any such court and, as to all other jurisdictions, the covenants contained herein shall remain in full force and effect as originally written. Should any court hold that these covenants are void or otherwise unenforceable in any particular area or jurisdiction, then the Company may consider such covenant(s) and/or provisions of this Article V to be amended and modified so as to eliminate therefrom the particular area or jurisdiction as to which such covenants are so held void or otherwise unenforceable and, as to all other areas and jurisdictions covered hereunder, the covenants contained herein shall remain in full force and effect as originally written.

5.6 Tolling. If the Executive violates any of the restrictions contained in this Article V, the restrictive period will be suspended and will not run in favor of the Executive until such time that the Executive cures the violation to the satisfaction of the Company, or for a period of three (3) years after the Executive's employment with the Company ended, whichever period is shorter.

5.7 Notice. If a Executive, in the future, seeks or is offered employment, or any other position or capacity with another company or entity, the Executive agrees to inform each new employer or entity, before accepting employment, of the existence of the restrictions in this Article V. Further, before taking any employment position with any Person during the Non-Competition Period, the Executive agrees to give prior written notice to the Company of the name of such Person. The Company shall be entitled to advise such Person of the provisions of Article V and to otherwise deal with such Person to ensure that the provisions of Article V are enforced and duly discharged.

5.8 Restricted Securities. The Executive agrees that, during the Non-Competition Period, he/she will not directly or indirectly, invest in or otherwise participate in any investment decision, including the preparation of or contribution to any research relating to Restricted Securities (as defined below) that are designated by the Company as set forth herein for his/her own account or for the account of others without the prior written consent of the Company.

For purposes of this Agreement, "***Restricted Securities***" shall include any debt or equity related security, including common stock. The Company agrees to provide such list of Restricted Securities to the Executive within five (5) days following the termination of the Continuous Status as an Executive, which list shall set forth the Restricted Securities and shall be the list maintained by the Company and/or the Applicable Entities in the ordinary course of business for purposes of compliance with applicable securities law restrictions. The Executive agrees that for the Non-Competition Period, the Executive will not directly or indirectly participate in any investment decision regarding the Restricted Securities on the list provided to the Executive. The Executive may, by written notice to the Company, request that the Restricted Security designation be removed from a specific security or securities. Upon receipt of such notice from the Executive, the Company may, in its sole discretion, determine that the Restricted Security designation be removed from any or all of the securities included in the notice. If the Company so determines, the Company shall send written notice (the "***Release Notice***") to the Executive that the securities specified in such Release Notice are no longer designated as Restricted Securities for purposes of the Agreement. Any security designated as a Restricted Security will become unrestricted upon the earliest to occur of (i) the termination of the Non-Competition Period, (ii) the delivery of a Release Notice by the Company to the Executive covering such security, and (iii) the termination of the Without Cause Severance Pay Period, if applicable. The Company agrees from time to time to maintain a list of Restricted Securities to be used in conjunction with the foregoing and not to vary more than twenty-five percent (25%) in any month the number of Restricted Securities designated thereon.

ARTICLE VI

Return of Company Property

All lists, records, designs, patents, plans, manuals, memoranda and other property delivered to the Executive by or on behalf of any of the Applicable Entities or by any of their clients or customers (including, but not limited to, clients or customers obtained for the Applicable Entities by the Executive), and all records compiled by the Executive that pertain to the business of the Applicable Entities (whether or not confidential) shall be and remain the property of the Company and be subject at all times to its discretion and control. Likewise, all correspondence with clients, customers or representatives, reports, research, records, charts, advertising materials, and any data collected by the Executive, or by or on behalf of the Applicable Entities or its representatives (whether or not confidential) shall be delivered promptly to the Company without request by it upon termination of the Continuous Status as an Executive.

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ARTICLE VII

Miscellaneous

7.1 Complete Agreement. There are no oral representations, understandings or agreements with the Company or any of its officers, directors or representatives covering the same subject matter as this Agreement. This written Agreement is the final, complete and exclusive statement and expression of the agreement between the Company and the Executive and of all the terms of this Agreement, it cancels and replaces and supersedes all prior agreements or modifications with respect to the subject matter hereof, and it cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous oral or written agreements. This written Agreement may not be later modified except by a further writing signed by the Company and the Executive, and no term of this Agreement may be waived except by a writing signed by the party waiving the benefit of such terms.

7.2 No Waiver. No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein.

7.3 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. The Company may assign this Agreement to a Person who or which directly or indirectly succeeds to all or any substantial part of the Company's assets or business. This Agreement is personal to the Executive and may not be assigned or delegated by him and any such purported assignment or delegation shall be null and void.

7.4 Severability; Headings. If any portion of this Agreement is held invalid or inoperative, the other portions of this agreement shall be deemed valid and operative, and so far as it is reasonable and possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The paragraph headings herein are for reference purposes only and are not intended in any way to describe, interpret, define or limit the extent or intent of this Agreement or any part hereof.

7.5 Interpretation. As used in this Agreement, (i) the term "***includes***" and the word "***including***" and words of similar import shall be deemed to be followed by the words "***without limitation***"; (ii) definitions contained in this Agreement apply to singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms; (iii) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (iv) the terms "***hereof***," "***herein***," and "***herewith***" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section, subsection, paragraph references are to the Articles, Sections, subsections and paragraphs of this Agreement unless otherwise specified; (v) the word "***or***" shall not be exclusive; and (vi) provisions shall apply, when appropriate, to successive events and transactions.

7.6 Governing Law; Resolution of Disputes; Service of Process. This Agreement shall, at the choice of the Company, be construed according to the laws of the State of Texas or the applicable law of the state in which the Executive worked for Company. All disputes relating to the interpretation and enforcement of the provisions of this Agreement shall, at the choice of the Company, be resolved and determined exclusively by the federal or state courts in Dallas County, Texas, or in the federal or state courts in the state where the Executive worked for the Company. Service of process shall be effective when given in the manner provided for notices hereunder.

Remainder Of Page Intentionally Left Blank.
Signature Page(s) to Follows.

DAUGHERTY ROGS00336196

IN WITNESS WHEREOF the parties have signed and delivered this Agreement as of the date first set forth above.

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By: _____
James D. Dondero,
President

EXECUTIVE

_____
Name: Patrick Daugherty

EXHIBIT A

FORM OF SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release ("***Agreement***") is between Highland Capital Management Services, Inc. ("***Employer***") and **[*Executive*]** ("***Employee***").

WHEREAS, Employee has been employed by Employer; and

WHEREAS, Employee's employment with Employer is terminated, effective **[*DATE*]**.

WHEREAS, Employee and Employer wish to resolve amicably all outstanding issues between them.

THEREFORE, in consideration of the promises set forth below, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The unnumbered preceding paragraphs are incorporated herein by reference.

2. Employee's employment with Employer is terminated, effective **[*DATE*]**.

   Employer shall pay employee for salary through the date of termination, accrued but unused vacation pay due, and any outstanding reimbursable expenses incurred through the date of termination.

3. **SEVERANCE.** Employer shall pay Employee [$_____] as severance pay (the "***Severance Payments***") in accordance with the following payment schedule: **[*RESERVED*]**. This amount will be paid net of withholding taxes and any amount owed to the Employer for vacation taken over the accrued amount.

   A. Employee acknowledges that he/she is not entitled to the Severance Payments but for his/her execution of this Agreement and Sections 4 through 6 in particular. Employee acknowledges that he/she is not entitled to any further compensation, except as otherwise set forth on Schedule 1, from Employer pursuant to this Agreement or his/her employment.

   B. If Employee breaches this Agreement prior to full payment of the Severance Payments, then, in addition to any other remedy at law or in equity which Employer may have, Employer shall not be obligated to pay an unpaid part of the Severance Payment.

4. **RELEASE.** Employee on behalf of Employee, his/her heirs, executors, successors and assigns, hereby releases, remises and discharges Employer and each and every one of its former or current directors, officers, employees, members, agents, successors, predecessors, subsidiaries, assigns and attorneys of and from all actions, causes of action, claims or complaints (collectively, "***Claims***") in law or equity which Employee or his/her heirs, executors, administrators, assigns, agents, representatives, attorneys, officers or employees ever had or now has by reason of any matter, cause or thing whatsoever at any time up to and including the date of execution of this Agreement, including but not limited to any Claim of discrimination, harassment, retaliation, breach of contract, wrongful termination, interference with contractual relations, intentional infliction of emotional distress, any alleged violation of any federal, state or local statutes, regulations or ordinances, including but not limited to the federal and state laws known as the Civil Rights Acts of 1964 and 1991, the Age

DAUGHERTY ROGS00336198

Discrimination in Employment Act, the Americans With Disabilities Act, the Employee Retirement Income Security Act (other than any accrued benefit(s) to which Employee has a non-forfeitable right under any ERISA pension benefit plan), the retaliation provisions of the Fair Labor Standards Act, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act, and any amendments to any of the foregoing, or any other Claims of any kind. Such release includes, but is not limited to, any claim Employee or his/her counsel may have, or had, for payment of attorney's fees, commissions or reimbursement of expenses. Furthermore, except as provided herein, Employee shall not pursue any such Claim in any court, agency, board, committee or forum whatsoever, and shall reimburse Employer for all fees and expenses associated with Employer's defense should Employee pursue such a Claim, unless that claim challenges the knowing and voluntary nature or the validity of this Separation Agreement and Release under the Older Worker Benefit Protection Act [***this only needs to be included if the employee is 40 years old or older***]. However, this does not preclude Employee from exercising his/her right, if any, to apply for unemployment benefits.

5. The content of this Agreement, the fact of the execution of this Agreement and the circumstances leading to the execution of the Agreement, are confidential and are not to be disclosed by any party except as necessary to a party's respective accountants, attorneys, income tax preparers or similar professionals, each of whom shall be bound by this confidentiality requirement. All documents, records, techniques, business secrets and other information which have come into Employee's possession from time to time during Employee's affiliation with the Employer and/or any of its subsidiaries or affiliates shall be deemed to be confidential and proprietary to the Employer and/or any of its subsidiaries or affiliates and shall be their sole and exclusive property. Employee agrees that Employee will keep confidential and not divulge to any other party any of the Employer's or its subsidiaries' or affiliates' confidential information and business secrets, including, but not limited to, such matters as investor information, proprietary investment strategies, portfolio information, key personnel, operational methods, plans for future developments, and other business affairs and methods and other information not readily available to the public, except as required by law. Additionally, Employee agrees that he/she shall promptly return to the Company any and all confidential and proprietary information that is currently in Employee's possession.

6. **NONDISPARAGEMENT/NONDISRUPTION.**

A. Employee and Employer shall reasonably cooperate with one another to effect a smooth transition of Employee's workload.

B. Employee shall not disparage Employer any partner or employee of Employer nor will Employer's officers and directors disparage Employee in any communication with any third party. Employer and Employee agree that this is a material term of this Agreement. This Section 6.B. does not restrict either party from responding fully and truthfully in the context of a legal or other government proceeding in which either is under oath or responding to subpoena or otherwise required by law to cooperate with a government entity.

C. Neither Employee nor Employer shall not take any action to disrupt the business operations of the other.

DAUGHERTY ROGS00336199

7. Employee understands and agrees that this Release Agreement shall not in any way be construed as an admission by Employer of any unlawful or wrongful acts whatsoever against employee or any other employee, and Employer specifically disclaims any liability to or wrongful acts against Employee or any other person.

8. **Please Note—For the Agreement to validly release claims under the Age Discrimination and Employment Act for employees who are 40 years old or older, the Agreement must contain certain language.**

(a) **Please note—Language if employee is under 40 years old.** The parties acknowledge that each has read carefully this entire Agreement, including but not limited to the release provision of Section 4. By executing this Agreement, Employee acknowledges that (a) Employee has been advised to consult with an attorney of his/her own choosing regarding the terms of this Agreement, (b) any and all questions regarding the terms of this Agreement have been asked and answered to his/her complete satisfaction, (c) Employee has read this Agreement and fully understands its terms and their importance, (d) except as provided in this Agreement, Employee has no other right or claim to any other payments or benefits, and that the consideration provided for herein is good and valuable and of a kind to which Employee was not otherwise entitled, and (e) Employee is entering into this Agreement voluntarily, of his/her own free will, and without any coercion, undue influence, threat or intimidation of any kind or type whatsoever.

(b) **Please note—Language for a single termination if employee is 40 years old or older.** Employee represents and agrees that he/she has had a reasonable time to review the Agreement and is voluntarily entering into this Agreement. Employee understands that he/she may revoke this Agreement within seven (7) days after execution. Employee's notice of revocation must be in writing and addressed and delivered to the attention of (insert name and address), on or before the end of the seven (7)-day period. This Agreement will not be effective or enforceable against the Employer until eight (8) days after the Employer has received employee's signed copy of this Agreement. That will be the "effective date" of this Agreement. If the Employee revokes this Agreement as described herein, the Agreement will not become effective, and Employee will not receive the payments set forth in this Agreement. By signing below, Employee further confirms that he: (a) has read this Agreement carefully and completely; (b) has been given a period of at least twenty-one (21) days to consider and review this Agreement; (c) has been advised to consult with legal counsel; and (d) understands all the provisions in this Agreement.

Employee understands that it is his/her choice whether or not to enter into this Separation Agreement and Release and that his/her decision to do so is voluntary and made knowingly in the absence of fraud, duress, or coercion.

(c) **Please note—Language for multiple terminations if employees are 40 years old or older.** Employee acknowledge that he/she has been advised in writing by Employer that he/she should consult with an attorney prior to executing this Agreement, and Employee further acknowledges that he/she has been given a period of forty-five (45) calendar days after his/her termination by Employer within which to review and consider the provisions of this Separation Agreement and Release.

DAUGHERTY ROGS00336200

Employee acknowledges that he/she has been given information regarding the ages and job titles of persons terminated and eligible for severance as a result of Employer's terminations, and of those persons who are not eligible.

Employee understands and acknowledges that he/she has seven (7) calendar days following the execution of the Separation Agreement and Release to revoke his/her acceptance of this Separation Agreement and Release and that this Agreement shall not become effective and the severance shall not become payable until this revocation period has expired. In order to revoke this Separation Agreement and Release, Employee acknowledges that he/she is required to deliver written notice clearly stating his/her intent to revoke this Separation Agreement and Release to (insert name and address). Employee agrees that his/her notice will not be considered effective unless (insert name), or a representative designated by employer receives it within seven (7) calendar days following Employee's execution of this Separation Agreement and Release.

Employee understands and acknowledges that it is his/her choice whether or not to enter into this Separation Agreement and Release that his/her decision to do so is voluntary and made knowingly in the absence of fraud, duress, or coercion.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

10. If any portion of this Agreement is void or deemed unenforceable for any reason, the unenforceable portion shall be deemed severed from the remaining portions of this Agreement that shall otherwise remain in full force and effect.

11. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements or understandings relating thereto. This Agreement may be modified only in writing and signed by both parties.

Please read carefully as this document includes a release of claims.

As evidenced by my signature below, I hereby certify that I have read the above Separation Agreement and Release and agree to its terms.

_____

Name:_____

Date:_____

Highland Capital Management Services, Inc.

By: _____

Name:_____

Title:_____

Date:_____

DAUGHERTY ROGS00336201

EXHIBIT 12

PDADV_000019-PDADV_000019

Exhibit
H-12
Daugherty 1/29/2026 L.M.

Date: 9/28/11
To: Jim Dondero

I very much appreciate the opportunity to have worked with you and at Highland for the last 13 ½ years. After careful and deliberate consideration, I have decided to move on to the next chapter in my life and am giving my 30 notice of resignation effective today. I wish you and the firm all the best and am available to assist in an appropriate transition.

Sincerely,

Patrick H. Daugherty

cc Patrick Boyce

Dondero
EXHIBIT NO. 170
M. FOLKS

Cause No DC-12-04005
Highland Parties'
Trial Exhibit
85

DAUGHERTY 001043

EXHIBIT 13

PDADV_010520-PDADV_010520

Exhibit
H-13
Daugherty 1/29/2026 L.M.

PAT DAUGHERTY
Date of Hire: 4/3/1998
Comprehensive Compensation and Benefits Statement
February 27, 2009

EARNINGS AND AWARDS

2008 Base Salary, as of 12/31/08	$ 250,000
2009 Base Salary, effective March 1, 2009 : $ 250,000	
2008 Tax Refund	$ 1,475,816

Refund is an estimated amount. If actual refund deviates materially from estimate, other compensation will be fairly adjusted. Refund is expected to be received in approximately 4 months.

Loan Forgiven in 2009 as part of bonus:	$ 500,000
2008 Other Awards	
• 401K Match	$ 4,000
• Defined Benefit	$ 64,320
2008 Deferred Compensation	
• Retention Award	$ 1,300,000

Highland's Hedge Funds and Private Equity funds, for a variety of reasons, largely preclude redemptions and Highland Capital Management, L.P. may or may not be in a position to provide a cash equivalent upon triggering of any employee specific monetization. Therefore for this deferred compensation award and any previous awards of Option IT and STIP, Employee agrees to accept payment in kind settlement of any monetization if necessary. _____ (*Please Initial*)

2008 Total Earnings and Awards	**$ 3,594,136**

HIGHLAND PAID BENEFITS

Medical	$ 16,141
Dental	$ 1,230
Basic and Dependent Life Insurance/AD&D	$ 598
Short Term Disability and Long Term Disability	$ 435
Executive LTD	$ 956
Daily Catered Lunches	$ 3,240
Blackberry	$ 1,440
Parking	$ 1,200
2008 Estimated Total Value of Highland Paid Benefits	**$ 25,240**

TOTAL COMPENSATION PACKAGE $ 3,619,376

Waiver and Release Payments in 2008	$ 75,000

ACCEPTED AND AGREED:

Cause No DC-12-04005
Highland Parties' Trial Exhibit
32

_____ _____
Patrick Daugherty **Date**

DAUGHERTY 001363

PDADV_010520

Exhibit 14 Slipsheet

(Subject to Motion to Seal and Protective Order)

EXHIBIT 15

Form **4605-A**

Department of the Treasury — Internal Revenue Service

Examination Changes - Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations (Unagreed and Excepted Agreed)

Name and address	Employer Identification Number	Form Number
Highland Capital Management 300 Crescent Court, Suite 700 (Prev. Two Galleria Tower 13455 Noc Dallas,, Texas 75201	75-2716725	1065
Person Examination Changes Were Discussed With	Name Highland Capital Management Title Taxpayer	

1. Adjustments to ordinary, distributable net, or taxable income.	Period End: 12/31/2008	Period End:	Period End:
a.			
b.			
c.			
d.			
e.			
f.			
g.			
2. Total adjustments to ordinary, distributable net, or taxable income.			
3. Ordinary, distributable net, or taxable income as reported.	(546,177,906.00)		
4. Corrected ordinary, distributable net, or taxable income.	(546,177,906.00)		
5. Other adjustments			
a. Portfolio income (loss) net short-term gain (loss)			
(1) Adjustment	166,332,713.00		
(2) As Reported	3,570,236.00		
(3) Corrected	169,902,949.00		
b.			
(1) Adjustment			
(2) As Reported			
(3) Corrected			

Remarks
This form only reflects Schedule K items adjusted by this report.

Examiner's Signature:	Employee ID:	Area Office:	Date:
Name Linda Yao	1001554452	Farmers Branch, TX	12/8/2017

Exhibit
H-15
Daugherty 1/29/2026 L.M.

EXHIBIT 16

HIGHLAND CAPITAL MANAGEMENT

February 3, 2018

By Mail and Electronic Mail

Patrick Daugherty
3621 Cornell Ave
Dallas, TX 75205
phdaugherty@gmail.com

Re: Field Examiners' Proposed Tax Adjustments – 2008 Tax Year
Highland Capital Management, L.P.

Dear Patrick,

As previously advised, a team of IRS field examiners ("Exam") conducted an audit of the 2008 partnership tax return filed on behalf of Highland Capital Management, L.P. ("Highland"). Exam concluded their audit and have proposed an adjustment to the 2008 return.

We have enclosed with this letter the following items: (a) IRS Form 886-Z except -A, and (b) IRS Form 870-PT. *At this time, no action on your part is required with respect to these documents unless you wish to agree to Exam's proposed adjustments – which we do not recommend.*

Exam has scheduled a closing conference on March 2, 2018. You do not need to attend the closing conference. Please let us know by the close of business on February 15, 2018 if you wish to attend. Highland will handle the closing conference (unless waived) and appeal the proposed adjustment to the IRS Appeals Office after the conference.

Please contact me at 972-419-4438 if you have any questions.

Regards,

Brian Collins
Director of Human Resources
Highland Capital Management, L.P.

Enclosures

Exhibit
H-16
Daugherty 1/29/2026 L.M.

EXHIBIT 17

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				

Continuation

TIN of Partner (6)	(7)	(8)	(9)	(10)	(11)
[redacted]					
Totals					

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Exhibit
H-17
Daugherty 1/29/2026 L.M.

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				
Daugherty, Patrick [redacted]	[redacted]	0.74030000%	1,257,792.00	
[redacted]				

Continuation

[redacted]					
Totals					

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065
Name of Partnership: Highland Capital Management	TIN of Partnership: 75-2716725	Taxable Year Ended: 12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	(5)
[redacted]				

Continuation

[redacted]					
Totals					

This form only reflects Schedule K-1 items adjusted by the report dated: _____

Form 886-Z (June 2016)	Department of the Treasury - Internal Revenue Service **TEFRA Partners' Shares of Income**	Schedule Number 1065

Name of Partnership	TIN of Partnership	Taxable Year Ended
Highland Capital Management	75-2716725	12/31/2008

Name and Address of Each Partner (1)	TIN of Partner (2)	Percentage of Profit (3)	Portfolio income (loss) net short-term gain (loss) (4)	 (5)
[redacted]				
Totals		100.00000000%	169,902,949.00	

Continuation

[redacted]

This form only reflects Schedule K-1 items adjusted by the report dated: _____

EXHIBIT 18

Form **870-PT** (Rev. 4-2012) For partnership taxable years ending after August 5, 1997	Department of the Treasury — Internal Revenue Service **Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts**	IN REPLY REFER TO:

Taxpayer(s) name(s), address and zip code:	Name of Partnership:	Tax Year(s) Ended:
Daugherty, Patrick 3621 Cornell Ave. Dallas, TX 75205	Highland Capital Management EIN: 75-2716725	12/31/2008
TIN: 452-94-7373	Name of Tax Matters Partner: Strand Advisors, Inc.	

Offer of Agreement to Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts & Waiver of Restrictions on Assessment for Partnership Items, Penalties, Additions to Tax, and Additional Amounts

Under the provisions of sections 6224(c) and 7121 of the Internal Revenue Code (IRC), the Commissioner of the Internal Revenue Service and the undersigned taxpayer(s) agree to the determination of partnership items and partnership level determinations as to penalties, additions to tax, and additional amounts that relate to adjustments to partnership items as shown on the attached Schedule of Adjustments.

The undersigned taxpayer(s), in accordance with IRC sections 6224(b) and 6213(d), also waive(s) the restrictions provided by IRC sections 6225(a) and 6213(a) and consent(s) to the assessment and collection of any deficiency attributable to partnership items, penalties, additions to tax, and additional amounts that relate to partnership items, as set forth in the attached Schedule of Adjustments (plus any interest provided by law). IRC Section 6651 late filing penalty applies to any late filed (or non-filed) returns that are required to report the partnership item adjustments.

This agreement is conditional and will not become effective or final until this agreement form is returned to the Commissioner and is signed on his or her behalf. The one-year extension of the period of limitations on assessments under IRC section 6229(f) will not begin to run until the date the Commissioner's representative signs this form on the Commissioner's behalf. If this is a partial agreement, the period of limitations for assessing any tax attributable to the settled items shall be determined as if this agreement had not been entered into.

If this part of this agreement form is signed for the Commissioner, the treatment of partnership items and partnership level determinations as to penalties, additions to tax and additional amounts that relate to adjustments to partnership items under this agreement will not be reopened in the absence of fraud, malfeasance, or misrepresentation of fact. In addition, no claim for an adjustment of partnership items, refund or credit based on any change in the treatment of partnership items or partnership level determinations as to penalties, additions to tax, and additional amounts may be filed or prosecuted.

Once the taxpayer signs such a waiver and it is countersigned by the Commissioner, the taxpayer cannot file an Administrative Adjustment Request (AAR) on any partnership items for the related TEFRA entity. This includes partnership items not specifically addressed on the attached Schedule of Adjustments.

Signature of Taxpayer	Date Signed	Phone Number
Signature of Taxpayer	Date Signed	Phone Number
By (Signature and Title)	Date Signed	Phone Number

FOR INTERNAL REVENUE USE ONLY	Date accepted for Commissioner	Signature
	Office	Title

Exhibit
H-18
Daugherty 1/29/2026 L.M.

INSTRUCTIONS FOR SIGNING FORM 870-PT

1. Sign the agreement if you wish to agree to the partnership items *and partnership level determinations as to penalties, additions to tax, and additional amounts*, as shown on the attached Schedule of Adjustments. The execution and filing of this offer will expedite the adjustment of tax liability.

2. If a JOINT RETURN OF A HUSBAND AND WIFE was filed and both spouses intend to agree, both spouses should sign Form 870-PT. One spouse may sign as agent for the other if acting under a power of attorney, which, if not previously filed, must accompany this form. The IRS may accept the signature of only one spouse at its discretion. However, the agreement will only be binding on the signing spouse.

3. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature and title of the officer authorized to sign Form 870-PT.

4. Your attorney or agent may sign for you if this action is specifically authorized by a power of attorney, which if not previously filed, must accompany this form.

5. If this offer is signed by a trust, the agreement must be signed with the trust name, followed by the signature and title of the person authorized to sign on behalf of the trust. If the trustee is signing this agreement on behalf of the trust and all beneficiaries, a Form 56 must be signed by the trustee. If an individual beneficiary is signing the agreement to bind themselves to the agreement, no Form 56 is needed.

6. If the partner is an LLC, the agreement should be signed by the manager of the LLC or other authority as authorized by State law. The signature line should show: [Name of LLC], by [Name of Manager], Followed by the title [Manager].

7. For a partner who is a subsidiary corporation in a consolidated group:

   - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, the agreement should be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The common parent corporation signs the agreement in its own name. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(a).

   - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement and should do so in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(6)(iii). The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block. The agreement should also be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should also be displayed in the signature block.

8. For a partner who is the common parent corporation of a consolidated group, a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year(s) should sign the agreement in the name of the common parent corporation. See Treas. Reg. § 1.1502-77(a).

9. If the Tax Matters Partner signs this offer, please include the title with the signature.

10. If the Tax Matters Partner is a subsidiary corporation in a consolidated group:

    - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning before June 28, 2002, then a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for such consolidated return year should sign the agreement on behalf of the Tax Matters Partner. The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should be displayed in the signature block. See Treas. Reg. § 1.1502-77A(a). An authorized officer for the subsidiary corporation should also sign if it, as the Tax Matters Partner, is binding non-notice partners under the agreement. The signature and title of a current officer of the subsidiary corporation, who is authorized to bind the corporation, should be displayed in the signature block

    - If the agreement is for a partnership year(s) ending on or before the last day of a consolidated return year beginning on or after June 28, 2002, then a currently authorized officer of the subsidiary corporation should sign the agreement in the name of the subsidiary corporation. See Treas. Reg. § 1.1502-77(a)(3)(v). The agreement should also be signed by a currently authorized officer of the corporation who was the common parent corporation of the consolidated group for the relevant consolidated return year(s). The signature and title of a current officer of the common parent corporation, who is authorized to bind the common parent corporation, should also be displayed in the signature block.

NOTE: The submission of this offer by you and the acceptance of the offer for the Commissioner may result in an additional tax liability to you plus interest as provided by law. If the result is a decrease in tax, the amount of the decrease will be sent to you with interest as provided by law.

Department of the Treasury — Internal Revenue Service

Agreement for Partnership Items and Partnership Level Determinations as to Penalties, Additions to Tax, and Additional Amounts

SCHEDULE OF ADJUSTMENTS

NAME OF PARTNERSHIP: Highland Capital Management EIN: 75-2716725	TAX YEAR(S) ENDED		
	12/31/2008		
DETAIL OF ADJUSTMENTS TO ORDINARY INCOME:			
a.			
b.			
c.			
d.			
e.			
f.			
g.			
TOTAL ADJUSTMENTS TO ORDINARY INCOME			
OTHER ADJUSTMENTS			
A. Portfolio income (loss) net short-term gain (loss)			
(1) ADJUSTMENT	166,332,713.00		
(2) AS REPORTED	3,570,236.00		
(3) CORRECTED	169,902,949.00		
(1) ADJUSTMENT			
(2) AS REPORTED			
(3) CORRECTED			

REMARKS:

EXHIBIT 19

PDADV_004687-PDADV_004687

Exhibit
H-19
Daugherty 1/29/2026 L.M.

From: **Brian Collins** BCollins@HighlandCapital.com
Subject: 60-Day Letter – 2008 HCMLP Tax Year (Daugherty)
Date: July 3, 2018 at 10:45 AM
To: Patrick Daugherty phdaugherty@gmail.com

BC

Pat,

As a limited partner in Highland Capital Management, L.P. ("Highland") in 2008, you may have recently received a copy of the 60-Day Letter that was sent to the Tax Matters Partner (TMP) of Highland. The 60-Day Letter relates to the audit of Highland's 2008 partnership tax return and the proposed adjustment by the IRS.

As we indicated in our previous correspondence, Highland (through its TMP) will timely appeal the proposed adjustment. Thereafter, the matter will proceed to the IRS Appeals Office. **At this time, you do not need to take any action.**

We may reach a settlement regarding the 2008 adjustment in IRS Appeals. If so, you will have an opportunity to accept the settlement as to your pro rata share or individually dispute the IRS adjustment in judicial proceedings.

-

Brian C. Collins | DIRECTOR OF HUMAN RESOURCES

HIGHLAND CAPITAL MANAGEMENT

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EXHIBIT 20

PDADV_004856-PDADV_004856

Exhibit
H-20
Daugherty 1/29/2026 L.M.

From: **Brian Collins** BCollins@HighlandCapital.com
Subject: Status of Field Examiners' Proposed Tax Adjustments – 2008 Tax Year
Date: December 9, 2019 at 8:31 AM
To: phdaugherty@gmail.com

BC

Dear Pat,

As previously advised, a team of Internal Revenue Service ("IRS") field examiners ("Exam") conducted an audit of the 2008 partnership tax return filed on behalf of Highland Capital Management, L.P. ("Highland"). By letter dated December 8, 2017, Exam indicated that they had concluded their audit and provided a summary report proposing certain adjustments to the 2008 return.

After Exam issued its audit report and the closing conference, Highland formally disagreed with the adjustments proposed by Exam. Exam then transferred the matter to its TEFRA unit for formal processing of Highland's appeal. **The matter recently was transferred to the IRS Office of Appeals.** The Appeals Office is an independent division of the IRS that has the authority to resolve tax disputes such as this one, without litigation, in a fair and impartial manner to the taxpayer.

Highland will continue to defend against the proposed adjustments by Exam and prosecute the appeal of those adjustments in the Appeals Office. At this time, we have no further information regarding when the Appeals Office will review Highland's appeal or when a resolution may be made.

Brian C. Collins | DIRECTOR OF HUMAN RESOURCES

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Exhibit 21 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 22 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 23 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 24 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 25 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 26 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 27 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 28 Slipsheet

(Subject to Motion to Seal and Protective Order)

EXHIBIT 29

Section 6621.--Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

Rev. Rul. 2020-28

Section 6621 of the Internal Revenue Code establishes the interest rates on overpayments and underpayments of tax. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding $10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter. Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month

applies during the first calendar quarter beginning after that month. Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during that month by the Secretary in accordance with section 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

The federal short-term rate determined in accordance with section 1274(d) during October 2020 is the rate published in Revenue Ruling 2020-22, 2020-45 IRB 963, to take effect beginning November 1, 2020. The federal short-term rate, rounded to the nearest full percent, based on daily compounding determined during the month of October 2020 is 0 percent. Accordingly, an overpayment rate of 3 percent (2 percent in the case of a corporation) and an underpayment rate of 3 percent are established for the calendar quarter beginning January 1, 2021. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning January 1, 2021 is 0.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2021, is 5 percent. These rates apply to amounts bearing interest during that calendar quarter.

Sections 6654(a)(1) and 6655(a)(1) provide that the underpayment rate established under section 6621 applies in determining the addition to tax under sections 6654 and 6655 for failure to pay estimated tax for any taxable year. Thus,

the 3 percent rate also applies to estimated tax underpayments for the first calendar quarter beginning January 1, 2021. Pursuant to section 6621(b)(2)(B), in determining the addition to tax under section 6654 for any taxable year for an individual, the federal short-term rate that applies during the third month following the taxable year also applies during the first 15 days of the fourth month following the taxable year. In addition, pursuant to section 6603(d)(4), the rate of interest on section 6603 deposits is 0 percent for the first calendar quarter in 2021.

Interest factors for daily compound interest for annual rates of 0.5 percent are published in Appendix A of this Revenue Ruling. Interest factors for daily compound interest for annual rates of 2 percent, 3 percent and 5 percent are published in Tables 9, 11, and 15 of Rev. Proc. 95-17, 1995-1 C.B. 563, 565, and 569.

Annual interest rates to be compounded daily pursuant to section 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Casey R. Conrad of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue ruling, contact Mr. Conrad at (202) 317-6844 (not a toll-free call).

APPENDIX A

365 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013699	63	0.000863380	125	0.001713784
2	0.000027397	64	0.000877091	126	0.001727506
3	0.000041096	65	0.000890801	127	0.001741228
4	0.000054796	66	0.000904512	128	0.001754951
5	0.000068495	67	0.000918223	129	0.001768673
6	0.000082195	68	0.000931934	130	0.001782396
7	0.000095894	69	0.000945646	131	0.001796119
8	0.000109594	70	0.000959357	132	0.001809843
9	0.000123294	71	0.000973069	133	0.001823566
10	0.000136995	72	0.000986781	134	0.001837290
11	0.000150695	73	0.001000493	135	0.001851013
12	0.000164396	74	0.001014206	136	0.001864737
13	0.000178097	75	0.001027918	137	0.001878462
14	0.000191798	76	0.001041631	138	0.001892186
15	0.000205499	77	0.001055344	139	0.001905910
16	0.000219201	78	0.001069057	140	0.001919635
17	0.000232902	79	0.001082770	141	0.001933360
18	0.000246604	80	0.001096484	142	0.001947085
19	0.000260306	81	0.001110197	143	0.001960811
20	0.000274008	82	0.001123911	144	0.001974536
21	0.000287711	83	0.001137625	145	0.001988262
22	0.000301413	84	0.001151339	146	0.002001988
23	0.000315116	85	0.001165054	147	0.002015714
24	0.000328819	86	0.001178768	148	0.002029440
25	0.000342522	87	0.001192483	149	0.002043166
26	0.000356225	88	0.001206198	150	0.002056893
27	0.000369929	89	0.001219913	151	0.002070620
28	0.000383633	90	0.001233629	152	0.002084347
29	0.000397336	91	0.001247344	153	0.002098074
30	0.000411041	92	0.001261060	154	0.002111801
31	0.000424745	93	0.001274776	155	0.002125529
32	0.000438449	94	0.001288492	156	0.002139257
33	0.000452154	95	0.001302208	157	0.002152985
34	0.000465859	96	0.001315925	158	0.002166713
35	0.000479564	97	0.001329641	159	0.002180441
36	0.000493269	98	0.001343358	160	0.002194169
37	0.000506974	99	0.001357075	161	0.002207898
38	0.000520680	100	0.001370792	162	0.002221627
39	0.000534386	101	0.001384510	163	0.002235356
40	0.000548092	102	0.001398227	164	0.002249085
41	0.000561798	103	0.001411945	165	0.002262815

42	0.000575504	104	0.001425663	166	0.002276544
43	0.000589211	105	0.001439381	167	0.002290274
44	0.000602917	106	0.001453100	168	0.002304004
45	0.000616624	107	0.001466818	169	0.002317734
46	0.000630331	108	0.001480537	170	0.002331465
47	0.000644039	109	0.001494256	171	0.002345195
48	0.000657746	110	0.001507975	172	0.002358926
49	0.000671454	111	0.001521694	173	0.002372657
50	0.000685161	112	0.001535414	174	0.002386388
51	0.000698869	113	0.001549133	175	0.002400120
52	0.000712578	114	0.001562853	176	0.002413851
53	0.000726286	115	0.001576573	177	0.002427583
54	0.000739995	116	0.001590293	178	0.002441315
55	0.000753703	117	0.001604014	179	0.002455047
56	0.000767412	118	0.001617734	180	0.002468779
57	0.000781121	119	0.001631455	181	0.002482511
58	0.000794831	120	0.001645176	182	0.002496244
59	0.000808540	121	0.001658897	183	0.002509977
60	0.000822250	122	0.001672619	184	0.002523710
61	0.000835960	123	0.001686340		
62	0.000849670	124	0.001700062		

366 Day Year

0.5% Compound Rate 184 Days

Days	Factor	Days	Factor	Days	Factor
1	0.000013661	63	0.000861020	125	0.001709097
2	0.000027323	64	0.000874693	126	0.001722782
3	0.000040984	65	0.000888366	127	0.001736467
4	0.000054646	66	0.000902040	128	0.001750152
5	0.000068308	67	0.000915713	129	0.001763837
6	0.000081970	68	0.000929387	130	0.001777522
7	0.000095632	69	0.000943061	131	0.001791208
8	0.000109295	70	0.000956735	132	0.001804893
9	0.000122958	71	0.000970409	133	0.001818579
10	0.000136620	72	0.000984084	134	0.001832265
11	0.000150283	73	0.000997758	135	0.001845951
12	0.000163947	74	0.001011433	136	0.001859638
13	0.000177610	75	0.001025108	137	0.001873324
14	0.000191274	76	0.001038783	138	0.001887011
15	0.000204938	77	0.001052459	139	0.001900698
16	0.000218602	78	0.001066134	140	0.001914385
17	0.000232266	79	0.001079810	141	0.001928073
18	0.000245930	80	0.001093486	142	0.001941760
19	0.000259595	81	0.001107162	143	0.001955448
20	0.000273260	82	0.001120839	144	0.001969136
21	0.000286924	83	0.001134515	145	0.001982824
22	0.000300590	84	0.001148192	146	0.001996512
23	0.000314255	85	0.001161869	147	0.002010201
24	0.000327920	86	0.001175546	148	0.002023889
25	0.000341586	87	0.001189223	149	0.002037578
26	0.000355252	88	0.001202900	150	0.002051267
27	0.000368918	89	0.001216578	151	0.002064957
28	0.000382584	90	0.001230256	152	0.002078646
29	0.000396251	91	0.001243934	153	0.002092336
30	0.000409917	92	0.001257612	154	0.002106025
31	0.000423584	93	0.001271291	155	0.002119715
32	0.000437251	94	0.001284969	156	0.002133405
33	0.000450918	95	0.001298648	157	0.002147096
34	0.000464586	96	0.001312327	158	0.002160786
35	0.000478253	97	0.001326006	159	0.002174477
36	0.000491921	98	0.001339685	160	0.002188168
37	0.000505589	99	0.001353365	161	0.002201859
38	0.000519257	100	0.001367044	162	0.002215550
39	0.000532925	101	0.001380724	163	0.002229242
40	0.000546594	102	0.001394404	164	0.002242933
41	0.000560262	103	0.001408085	165	0.002256625
42	0.000573931	104	0.001421765	166	0.002270317
43	0.000587600	105	0.001435446	167	0.002284010

44	0.000601269	106	0.001449127	168	0.002297702
45	0.000614939	107	0.001462808	169	0.002311395
46	0.000628608	108	0.001476489	170	0.002325087
47	0.000642278	109	0.001490170	171	0.002338780
48	0.000655948	110	0.001503852	172	0.002352473
49	0.000669618	111	0.001517533	173	0.002366167
50	0.000683289	112	0.001531215	174	0.002379860
51	0.000696959	113	0.001544897	175	0.002393554
52	0.000710630	114	0.001558580	176	0.002407248
53	0.000724301	115	0.001572262	177	0.002420942
54	0.000737972	116	0.001585945	178	0.002434636
55	0.000751643	117	0.001599628	179	0.002448331
56	0.000765315	118	0.001613311	180	0.002462025
57	0.000778986	119	0.001626994	181	0.002475720
58	0.000792658	120	0.001640678	182	0.002489415
59	0.000806330	121	0.001654361	183	0.002503110
60	0.000820003	122	0.001668045	184	0.002516806
61	0.000833675	123	0.001681729		
62	0.000847348	124	0.001695413		

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 - PERIODS ENDING DEC. 31, 1986 OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975--Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976--Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978--Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980--Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982--Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983--Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983--Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984--Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984--Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985--Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985--Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986--Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986--Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 - Dec. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B. RATE	TABLE	PG	1995-1 C.B. RATE	TABLE	PG
Jan. 1, 1987--Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987--Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987--Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987--Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988--Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988--Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988--Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988--Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989--Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989--Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989--Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989--Dec. 31, 1989	10%	25	579	11%	27	581

Jan. 1, 1990--Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990--Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990--Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990--Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991--Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991--Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991--Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991--Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992--Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992--Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992--Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992--Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993--Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993--Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993--Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993--Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994--Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994--Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994--Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994--Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995--Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995--Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995--Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995--Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996--Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996--Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996--Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996--Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997--Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997--Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997--Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997--Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998--Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998--Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998--Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998--Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 - PRESENT

NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	1995-1 C.B.		
	RATE	TABLE	PAGE
Jan. 1, 1999--Mar. 31, 1999	7%	19	573
Apr. 1, 1999--Jun. 30, 1999	8%	21	575
Jul. 1, 1999--Sep. 30, 1999	8%	21	575
Oct. 1, 1999--Dec. 31, 1999	8%	21	575
Jan. 1, 2000--Mar. 31, 2000	8%	69	623
Apr. 1, 2000--Jun. 30, 2000	9%	71	625
Jul. 1, 2000--Sep. 30, 2000	9%	71	625
Oct. 1, 2000--Dec. 31, 2000	9%	71	625
Jan. 1, 2001--Mar. 31, 2001	9%	23	577
Apr. 1, 2001--Jun. 30, 2001	8%	21	575
Jul. 1, 2001--Sep. 30, 2001	7%	19	573
Oct. 1, 2001--Dec. 31, 2001	7%	19	573
Jan. 1, 2002--Mar. 31, 2002	6%	17	571
Apr. 1, 2002--Jun. 30, 2002	6%	17	571
Jul. 1, 2002--Sep. 30, 2002	6%	17	571
Oct. 1, 2002--Dec. 31, 2002	6%	17	571
Jan. 1, 2003--Mar. 31, 2003	5%	15	569
Apr. 1, 2003--Jun. 30, 2003	5%	15	569
Jul. 1, 2003--Sep. 30, 2003	5%	15	569
Oct. 1, 2003--Dec. 31, 2003	4%	13	567
Jan. 1, 2004--Mar. 31, 2004	4%	61	615
Apr. 1, 2004--Jun. 30, 2004	5%	63	617
Jul. 1, 2004--Sep. 30, 2004	4%	61	615
Oct. 1, 2004--Dec. 31, 2004	5%	63	617
Jan. 1, 2005--Mar. 31, 2005	5%	15	569
Apr. 1, 2005--Jun. 30, 2005	6%	17	571
Jul. 1, 2005--Sep. 30, 2005	6%	17	571
Oct. 1, 2005--Dec. 31, 2005	7%	19	573
Jan. 1, 2006--Mar. 31, 2006	7%	19	573
Apr. 1, 2006--Jun. 30, 2006	7%	19	573
Jul. 1, 2006--Sep. 30, 2006	8%	21	575
Oct. 1, 2006--Dec. 31, 2006	8%	21	575
Jan. 1, 2007--Mar. 31, 2007	8%	21	575
Apr. 1, 2007--Jun. 30, 2007	8%	21	575
Jul. 1, 2007--Sep. 30, 2007	8%	21	575
Oct. 1, 2007--Dec. 31, 2007	8%	21	575
Jan. 1, 2008--Mar. 31, 2008	7%	67	621
Apr. 1, 2008--Jun. 30, 2008	6%	65	619
Jul. 1, 2008--Sep. 30, 2008	5%	63	617

Oct. 1, 2008--Dec. 31, 2008	6%	65	619
Jan. 1, 2009--Mar. 31, 2009	5%	15	569
Apr. 1, 2009--Jun. 30, 2009	4%	13	567
Jul. 1, 2009--Sep. 30, 2009	4%	13	567
Oct. 1, 2009--Dec. 31, 2009	4%	13	567
Jan. 1, 2010--Mar. 31, 2010	4%	13	567
Apr. 1, 2010--Jun. 30, 2010	4%	13	567
Jul. 1, 2010--Sep. 30, 2010	4%	13	567
Oct. 1, 2010--Dec. 31, 2010	4%	13	567
Jan. 1, 2011--Mar. 31, 2011	3%	11	565
Apr. 1, 2011—-Jun. 30, 2011	4%	13	567
Jul. 1, 2011-—Sep. 30, 2011	4%	13	567
Oct. 1, 2011—-Dec. 31, 2011	3%	11	565
Jan. 1, 2012—-Mar. 31, 2012	3%	59	613
Apr. 1, 2012—-Jun. 30, 2012	3%	59	613
Jul. 1, 2012—-Sep. 30, 2012	3%	59	613
Oct. 1, 2012—-Dec. 31, 2012	3%	59	613
Jan. 1, 2013—-Mar. 31, 2013	3%	11	565
Apr. 1, 2013—-Jun. 30, 2013	3%	11	565
Jul. 1, 2013—-Sep. 30, 2013	3%	11	565
Oct. 1, 2013—-Dec. 31, 2013	3%	11	565
Jan. 1, 2014—-Mar. 31, 2014	3%	11	565
Apr. 1, 2014—-Jun. 30, 2014	3%	11	565
Jul. 1, 2014—-Sep. 30, 2014	3%	11	565
Oct. 1, 2014—-Dec. 31, 2014	3%	11	565
Jan. 1, 2015—-Mar. 31, 2015	3%	11	565
Apr. 1, 2015—-Jun. 30, 2015	3%	11	565
Jul. 1, 2015—-Sep. 30, 2015	3%	11	565
Oct. 1. 2015—-Dec. 31, 2015	3%	11	565
Jan. 1, 2016—-Mar. 31, 2016	3%	59	613
Apr. 1, 2016—-Jun. 30, 2016	4%	61	615
Jul. 1, 2016—-Sep. 30, 2016	4%	61	615
Oct. 1, 2016—-Dec. 31, 2016	4%	61	615
Jan. 1, 2017—-Mar. 31, 2017	4%	13	567
Apr. 1, 2017—-Jun. 30, 2017	4%	13	567
Jul. 1, 2017—-Sep. 30, 2017	4%	13	567
Oct. 1, 2017—-Dec. 31, 2017	4%	13	567
Jan. 1, 2018—-Mar. 31, 2018	4%	13	567
Apr. 1, 2018—-Jun. 30, 2018	5%	15	569
Jul. 1, 2018—-Sep. 30, 2018	5%	15	569
Oct. 1, 2018—-Dec. 31, 2018	5%	15	569
Jan. 1, 2019—-Mar. 31, 2019	6%	17	571
Apr. 1, 2019—-Jun. 30, 2019	6%	17	571
Jul. 1, 2019—-Sep. 30, 2019	5%	15	569
Oct. 1, 2019—-Dec. 31, 2019	5%	15	569
Jan. 1, 2020—-Mar. 31, 2020	5%	63	617
Apr. 1, 2020—-Jun. 30, 2020	5%	63	617
Jul. 1, 2020—-Sep. 30, 2020	3%	59	613
Oct. 1, 2020—-Dec. 31, 2020	3%	59	613

Jan. 1, 2021—-Mar. 31, 2021	3%	11	565

TABLE OF INTEREST RATES

FROM JANUARY 1, 1999 - PRESENT

CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
		1995-1 C.B.			1995-1 C.B.	
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999--Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999--Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999--Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999--Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000--Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000--Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000--Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000--Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001--Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001--Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001--Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001--Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002--Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002--Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002--Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002--Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003--Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003--Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003--Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003--Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004--Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004--Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004--Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004--Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005--Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005--Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005--Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005--Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006--Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006--Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006--Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006--Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007--Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007--Jun. 30, 2007	7%	19	573	8%	21	575

Jul. 1, 2007--Sep. 30, 2007	7%	19	573	8%	21	575
Oct. 1, 2007--Dec. 31, 2007	7%	19	573	8%	21	575
Jan. 1, 2008--Mar. 31, 2008	6%	65	619	7%	67	621
Apr. 1, 2008--Jun. 30, 2008	5%	63	617	6%	65	619
Jul. 1, 2008--Sep. 30, 2008	4%	61	615	5%	63	617
Oct. 1, 2008--Dec. 31, 2008	5%	63	617	6%	65	619
Jan. 1, 2009--Mar. 31, 2009	4%	13	567	5%	15	569
Apr. 1, 2009--Jun. 30, 2009	3%	11	565	4%	13	567
Jul. 1, 2009--Sep. 30, 2009	3%	11	565	4%	13	567
Oct. 1, 2009--Dec. 31, 2009	3%	11	565	4%	13	567
Jan. 1, 2010--Mar. 31, 2010	3%	11	565	4%	13	567
Apr. 1, 2010--Jun. 30, 2010	3%	11	565	4%	13	567
Jul. 1, 2010--Sep. 30, 2010	3%	11	565	4%	13	567
Oct. 1, 2010--Dec. 31, 2010	3%	11	565	4%	13	567
Jan. 1, 2011--Mar. 31, 2011	2%	9	563	3%	11	565
Apr. 1, 2011--Jun. 30, 2011	3%	11	565	4%	13	567
Jul. 1, 2011--Sep. 30, 2011	3%	11	565	4%	13	567
Oct. 1, 2011--Dec. 31, 2011	2%	9	563	3%	11	565
Jan. 1, 2012--Mar. 31, 2012	2%	57	611	3%	59	613
Apr. 1, 2012--Jun. 30, 2012	2%	57	611	3%	59	613
Jul. 1, 2012--Sep. 30, 2012	2%	57	611	3%	59	613
Oct. 1, 2012--Dec. 31, 2012	2%	57	611	3%	59	613
Jan. 1, 2013--Mar. 31, 2013	2%	9	563	3%	11	565
Apr. 1, 2013--Jun. 30, 2013	2%	9	563	3%	11	565
Jul. 1, 2013--Sep. 30, 2013	2%	9	563	3%	11	565
Oct. 1, 2013--Dec. 31, 2013	2%	9	563	3%	11	565
Jan. 1, 2014--Mar. 31, 2014	2%	9	563	3%	11	565
Apr. 1, 2014--Jun. 30, 2014	2%	9	563	3%	11	565
Jul. 1, 2014--Sep. 30, 2014	2%	9	563	3%	11	565
Oct. 1, 2014--Dec. 31, 2014	2%	9	563	3%	11	565
Jan. 1, 2015--Mar. 31, 2015	2%	9	563	3%	11	565
Apr. 1, 2015--Jun. 30, 2015	2%	9	563	3%	11	565
Jul. 1, 2015--Sep. 30, 2015	2%	9	563	3%	11	565
Oct. 1, 2015--Dec. 31, 2015	2%	9	563	3%	11	565
Jan. 1, 2016--Mar. 31, 2016	2%	57	611	3%	59	613
Apr. 1, 2016--Jun. 30, 2016	3%	59	613	4%	61	615
Jul. 1, 2016--Sep. 30, 2016	3%	59	613	4%	61	615
Oct. 1, 2016--Dec. 31, 2016	3%	59	613	4%	61	615
Jan. 1, 2017--Mar. 31, 2017	3%	11	565	4%	13	567
Apr. 1, 2017--Jun. 30, 2017	3%	11	565	4%	13	567
Jul. 1, 2017--Sep. 30, 2017	3%	11	565	4%	13	567
Oct. 1, 2017--Dec. 31, 2017	3%	11	565	4%	13	567
Jan. 1, 2018--Mar. 31, 2018	3%	11	565	4%	13	567
Apr. 1, 2018--Jun. 30, 2018	4%	13	567	5%	15	569
Jul. 1, 2018--Sep. 30, 2018	4%	13	567	5%	15	569
Oct. 1, 2018--Dec. 31, 2018	4%	13	567	5%	15	569
Jan. 1, 2019--Mar. 31, 2019	5%	15	569	6%	17	571
Apr. 1, 2019--Jun. 30, 2019	5%	15	569	6%	17	571
Jul. 1, 2019--Sep. 30, 2019	4%	13	567	5%	15	569
Oct. 1, 2019--Dec. 31, 2019	4%	13	567	5%	15	569
Jan. 1, 2020--Mar. 31, 2020	4%	61	615	5%	63	617

Apr. 1, 2020--Jun. 30, 2020	4%	61	615	5%	63	617
Jul. 1, 2020—-Sep. 30, 2020	2%	57	611	3%	59	613
Oct. 1, 2020—-Dec. 31, 2020	2%	57	611	3%	59	613
Jan. 1, 2021—-Mar. 31, 2021	2%	9	563	3%	11	565

TABLE OF INTEREST RATES FOR LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 - PRESENT

	1995-1 C.B. RATE	TABLE	PG
Jan. 1, 1991--Mar. 31, 1991	13%	31	585
Apr. 1, 1991--Jun. 30, 1991	12%	29	583
Jul. 1, 1991--Sep. 30, 1991	12%	29	583
Oct. 1, 1991--Dec. 31, 1991	12%	29	583
Jan. 1, 1992--Mar. 31, 1992	11%	75	629
Apr. 1, 1992--Jun. 30, 1992	10%	73	627
Jul. 1, 1992--Sep. 30, 1992	10%	73	627
Oct. 1, 1992--Dec. 31, 1992	9%	71	625
Jan. 1, 1993--Mar. 31, 1993	9%	23	577
Apr. 1, 1993--Jun. 30, 1993	9%	23	577
Jul. 1, 1993--Sep. 30, 1993	9%	23	577
Oct. 1, 1993--Dec. 31, 1993	9%	23	577
Jan. 1, 1994--Mar. 31, 1994	9%	23	577
Apr. 1, 1994--Jun. 30, 1994	9%	23	577
Jul. 1, 1994--Sep. 30, 1994	10%	25	579
Oct. 1, 1994--Dec. 31, 1994	11%	27	581
Jan. 1, 1995--Mar. 31, 1995	11%	27	581
Apr. 1, 1995--Jun. 30, 1995	12%	29	583
Jul. 1, 1995--Sep. 30, 1995	11%	27	581
Oct. 1, 1995--Dec. 31, 1995	11%	27	581
Jan. 1, 1996--Mar. 31, 1996	11%	75	629
Apr. 1, 1996--Jun. 30, 1996	10%	73	627
Jul. 1, 1996--Sep. 30, 1996	11%	75	629
Oct. 1, 1996--Dec. 31, 1996	11%	75	629
Jan. 1, 1997--Mar. 31, 1997	11%	27	581
Apr. 1, 1997--Jun. 30, 1997	11%	27	581
Jul. 1, 1997--Sep. 30, 1997	11%	27	581
Oct. 1, 1997--Dec. 31, 1997	11%	27	581
Jan. 1, 1998--Mar. 31, 1998	11%	27	581
Apr. 1, 1998--Jun. 30, 1998	10%	25	579
Jul. 1, 1998--Sep. 30, 1998	10%	25	579
Oct. 1, 1998--Dec. 31, 1998	10%	25	579
Jan. 1, 1999--Mar. 31, 1999	9%	23	577
Apr. 1, 1999--Jun. 30, 1999	10%	25	579
Jul. 1, 1999--Sep. 30, 1999	10%	25	579
Oct. 1, 1999--Dec. 31, 1999	10%	25	579
Jan. 1, 2000--Mar. 31, 2000	10%	73	627
Apr. 1, 2000--Jun. 30, 2000	11%	75	629

Jul. 1, 2000--Sep. 30, 2000	11%	75	629
Oct. 1, 2000--Dec. 31, 2000	11%	75	629
Jan. 1, 2001--Mar. 31, 2001	11%	27	581
Apr. 1, 2001--Jun. 30, 2001	10%	25	579
Jul. 1, 2001--Sep. 30, 2001	9%	23	577
Oct. 1, 2001--Dec. 31, 2001	9%	23	577
Jan. 1, 2002--Mar. 31, 2002	8%	21	575
Apr. 1, 2002--Jun. 30, 2002	8%	21	575
Jul. 1, 2002--Sep. 30, 2002	8%	21	575
Oct. 1, 2002--Dec. 31, 2002	8%	21	575
Jan. 1, 2003--Mar. 31, 2003	7%	19	573
Apr. 1, 2003--Jun. 30, 2003	7%	19	573
Jul. 1, 2003--Sep. 30, 2003	7%	19	573
Oct. 1, 2003--Dec. 31, 2003	6%	17	571
Jan. 1, 2004--Mar. 31, 2004	6%	65	619
Apr. 1, 2004--Jun. 30, 2004	7%	67	621
Jul. 1, 2004--Sep. 30, 2004	6%	65	619
Oct. 1, 2004--Dec. 31, 2004	7%	67	621
Jan. 1, 2005--Mar. 31, 2005	7%	19	573
Apr. 1, 2005--Jun. 30, 2005	8%	21	575
Jul. 1, 2005--Sep. 30, 2005	8%	21	575
Oct. 1, 2005--Dec. 31, 2005	9%	23	577
Jan. 1, 2006--Mar. 31, 2006	9%	23	577
Apr. 1, 2006--Jun. 30, 2006	9%	23	577
Jul. 1, 2006--Sep. 30, 2006	10%	25	579
Oct. 1, 2006--Dec. 31, 2006	10%	25	579
Jan. 1, 2007--Mar. 31, 2007	10%	25	579
Apr. 1, 2007--Jun. 30, 2007	10%	25	579
Jul. 1, 2007--Sep. 30, 2007	10%	25	579
Oct. 1, 2007--Dec. 31, 2007	10%	25	579
Jan. 1, 2008--Mar. 31, 2008	9%	71	625
Apr. 1, 2008--Jun. 30, 2008	8%	69	623
Jul. 1, 2008--Sep. 30, 2008	7%	67	621
Oct. 1, 2008--Dec. 31, 2008	8%	69	623
Jan. 1, 2009--Mar. 31, 2009	7%	19	573
Apr. 1, 2009--Jun. 30, 2009	6%	17	571
Jul. 1, 2009--Sep. 30, 2009	6%	17	571
Oct. 1, 2009--Dec. 31, 2009	6%	17	571
Jan. 1, 2010--Mar. 31, 2010	6%	17	571
Apr. 1, 2010--Jun. 30, 2010	6%	17	571
Jul. 1, 2010--Sep. 30, 2010	6%	17	571
Oct. 1, 2010--Dec. 31, 2010	6%	17	571
Jan. 1, 2011--Mar. 31, 2011	5%	15	569
Apr. 1, 2011—-Jun. 30, 2011	6%	17	571
Jul. 1, 2011—-Sep. 30, 2011	6%	17	571
Oct. 1, 2011—-Dec. 31, 2011	5%	15	569
Jan. 1, 2012—-Mar. 31, 2012	5%	63	617

Apr. 1, 2012—-Jun. 30, 2012	5%	63	617
Jul. 1, 2012—-Sep. 30, 2012	5%	63	617
Oct. 1, 2012—-Dec. 31, 2012	5%	63	617
Jan. 1, 2013—-Mar. 31, 2013	5%	15	569
Apr. 1, 2013—-Jun. 30, 2013	5%	15	569
Jul. 1, 2013—-Sep. 30, 2013	5%	15	569
Oct. 1, 2013—-Dec. 31, 2013	5%	15	569
Jan. 1, 2014—-Mar. 31, 2014	5%	15	569
Apr. 1, 2014—-Jun. 30, 2014	5%	15	569
Jul. 1, 2014—-Sep. 30, 2014	5%	15	569
Oct. 1, 2014—-Dec. 31, 2014	5%	15	569
Jan. 1, 2015—-Mar. 31, 2015	5%	15	569
Apr. 1, 2015—-Jun. 30, 2015	5%	15	569
Jul. 1, 2015—-Sep. 30, 2015	5%	15	569
Oct. 1, 2015—-Dec. 31, 2015	5%	15	569
Jan. 1, 2016—-Mar. 31, 2016	5%	63	617
Apr. 1, 2016-—Jun. 30, 2016	6%	65	619
Jul. 1, 2016-—Sep. 30, 2016	6%	65	619
Oct. 1, 2016-—Dec. 31, 2016	6%	65	619
Jan. 1, 2017—-Mar. 31, 2017	6%	17	571
Apr. 1, 2017—-Jun. 30, 2017	6%	17	571
Jul. 1, 2017—-Sep. 30, 2017	6%	17	571
Oct. 1, 2017—-Dec. 31, 2017	6%	17	571
Jan. 1, 2018—-Mar. 31, 2018	6%	17	571
Apr. 1, 2018—-Jun. 30, 2018	7%	19	573
Jul. 1, 2018—-Sep. 30, 2018	7%	19	573
Oct. 1, 2018—-Dec. 31, 2018	7%	19	573
Jan. 1, 2019—-Mar. 31, 2019	8%	21	575
Apr. 1, 2019—-Jun. 30, 2019	8%	21	575
Jul. 1, 2019—-Sep. 30, 2019	7%	19	573
Oct. 1, 2019—-Dec. 31, 2019	7%	19	573
Jan. 1, 2020—-Mar. 31, 2020	7%	67	621
Apr. 1, 2020—-Jun. 30, 2020	7%	67	621
Jul. 1, 2020—-Sep. 30, 2020	5%	63	617
Oct. 1, 2020—-Dec. 31, 2020	5%	63	617
Jan. 1, 2021—-Mar. 31, 2021	5%	15	569

TABLE OF INTEREST RATES FOR CORPORATE
OVERPAYMENTS EXCEEDING $10,000

FROM JANUARY 1, 1995 - PRESENT

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 1995--Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995--Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995--Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995--Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996--Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996--Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996--Sep. 30, 1996	6.5%	66	620
Oct. 1, 1996--Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997--Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997--Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997--Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997--Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998--Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998--Jun. 30, 1998	5.5%	16	570
Jul. 1. 1998--Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998--Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999--Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999--Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999--Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999--Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000--Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000--Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000--Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000--Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001--Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001--Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001--Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001--Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002--Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002--Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002--Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002--Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003--Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003--Jun. 30, 2003	2.5%	10	564
Jul. 1, 2003--Sep. 30, 2003	2.5%	10	564
Oct. 1, 2003--Dec. 31, 2003	1.5%	8	562
Jan. 1, 2004--Mar. 31, 2004	1.5%	56	610
Apr. 1, 2004--Jun. 30, 2004	2.5%	58	612
Jul. 1, 2004--Sep. 30, 2004	1.5%	56	610

Oct. 1, 2004--Dec. 31, 2004	2.5%	58	612
Jan. 1, 2005--Mar. 31, 2005	2.5%	10	564
Apr. 1, 2005--Jun. 30, 2005	3.5%	12	566
Jul. 1, 2005--Sep. 30, 2005	3.5%	12	566
Oct. 1, 2005--Dec. 31, 2005	4.5%	14	568
Jan. 1, 2006--Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006--Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006--Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006--Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007--Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007--Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007--Sep. 30, 2007	5.5%	16	570
Oct. 1, 2007--Dec. 31, 2007	5.5%	16	570
Jan. 1, 2008--Mar. 31, 2008	4.5%	62	616
Apr. 1, 2008--Jun. 30, 2008	3.5%	60	614
Jul. 1, 2008--Sep. 30, 2008	2.5%	58	612
Oct. 1, 2008--Dec. 31, 2008	3.5%	60	614
Jan. 1, 2009--Mar. 31, 2009	2.5%	10	564
Apr. 1, 2009--Jun. 30, 2009	1.5%	8	562
Jul. 1, 2009--Sep. 30, 2009	1.5%	8	562
Oct. 1, 2009--Dec. 31, 2009	1.5%	8	562
Jan. 1, 2010--Mar. 31, 2010	1.5%	8	562
Apr. 1, 2010--Jun. 30, 2010	1.5%	8	562
Jul. 1, 2010--Sep. 30, 2010	1.5%	8	562
Oct. 1, 2010--Dec. 31, 2010	1.5%	8	562
Jan. 1, 2011--Mar. 31, 2011	0.5%*		
Apr. 1, 2011—-Jun. 30, 2011	1.5%	8	562
Jul. 1, 2011—-Sep. 30, 2011	1.5%	8	562
Oct. 1, 2011—-Dec. 31, 2011	0.5%*		
Jan. 1, 2012—-Mar. 31, 2012	0.5%*		
Apr. 1, 2012—-Jun. 30, 2012	0.5%*		
Jul. 1, 2012—-Sep. 30, 2012	0.5%*		
Oct. 1, 2012—-Dec. 31, 2012	0.5%*		
Jan. 1, 2013—-Mar. 31, 2013	0.5%*		
Apr. 1, 2013—-Jun. 30, 2013	0.5%*		
Jul. 1, 2013—-Sep. 30, 2013	0.5%*		
Oct. 1, 2013—-Dec. 31, 2013	0.5%*		
Jan. 1, 2014—-Mar. 31, 2014	0.5%*		
Apr. 1, 2014—-Jun. 30, 2014	0.5%*		
Jul. 1, 2014—-Sep. 30, 2014	0.5%*		

Oct. 1, 2014—-Dec. 31, 2014	0.5%*		
Jan. 1, 2015—-Mar. 31, 2015	0.5%*		
Apr. 1, 2015—-Jun. 30, 2015	0.5%*		
Jul. 1, 2015—-Sep. 30, 2015	0.5%*		
Oct. 1, 2015—-Dec. 31, 2015	0.5%*		
Jan. 1, 2016—-Mar. 31, 2016	0.5%*		
Apr. 1, 2016—-Jun. 30, 2016	1.5%	56	610
Jul. 1, 2016—-Sep. 30, 2016	1.5%	56	610
Oct. 1, 2016—-Dec. 31, 2016	1.5%	56	610
Jan. 1, 2017—-Mar. 31, 2017	1.5%	8	562
Apr. 1, 2017—-Jun. 30, 2017	1.5%	8	562
Jul. 1, 2017—-Sep. 30, 2017	1.5%	8	562
Oct. 1, 2017—-Dec. 31, 2017	1.5%	8	562
Jan. 1, 2018—-Mar. 31, 2018	1.5%	8	562
Apr. 1, 2018—-Jun. 30, 2018	2.5%	10	564
Jul. 1, 2018—-Sep. 30, 2018	2.5%	10	564
Oct. 1, 2018—-Dec. 31, 2018	2.5%	10	564
Jan. 1, 2019—-Mar. 31, 2019	3.5%	12	566
Apr. 1, 2019—-Jun. 30, 2019	3.5%	12	566
Jul. 1, 2019—-Sep. 30, 2019	2.5%	10	564
Oct. 1, 2019—-Dec. 31, 2019	2.5%	10	564
Jan. 1, 2020—-Mar. 31, 2020	2.5%	58	612
Apr. 1, 2020—-Jun. 30, 2020	2.5%	58	612
Jul. 1, 2020—-Sep. 30, 2020	0.5%*		
Oct. 1, 2020—-Dec. 31, 2020	0.5%*		
Jan. 1, 2021—-Mar. 31, 2021	0.5%*		

* The asterisk reflects the interest factors for daily compound interest for annual rates of 0.5 percent published in Appendix A of this Revenue Ruling.

EXHIBIT 30

26 USC 6662: Imposition of accuracy-related penalty on underpayments
Text contains those laws in effect on February 16, 2026

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 68-ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES
Subchapter A-Additions to the Tax and Additional Amounts
PART II-ACCURACY-RELATED AND FRAUD PENALTIES

Jump To:

Source Credit
Miscellaneous
Codification
Prior Provisions
Amendments
Effective Date

§6662. Imposition of accuracy-related penalty on underpayments

(a) Imposition of penalty

If this section applies to any portion of an underpayment of tax required to be shown on a return, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which this section applies.

(b) Portion of underpayment to which section applies

This section shall apply to the portion of any underpayment which is attributable to 1 or more of the following:

(1) Negligence or disregard of rules or regulations.
(2) Any substantial understatement of income tax.
(3) Any substantial valuation misstatement under chapter 1.
(4) Any substantial overstatement of pension liabilities.
(5) Any substantial estate or gift tax valuation understatement.
(6) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance (within the meaning of section 7701(o)) or failing to meet the requirements of any similar rule of law.
(7) Any undisclosed foreign financial asset understatement.
(8) Any inconsistent estate basis.
(9) Any overstatement of the deduction provided in section 170(p).
(10) Any disallowance of a deduction by reason of section 170(h)(7).

This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 6663. Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A.

(c) Negligence

For purposes of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of this title, and the term "disregard" includes any careless, reckless, or intentional disregard.

(d) Substantial understatement of income tax

(1) Substantial understatement

(A) In general

For purposes of this section, there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of-

(i) 10 percent of the tax required to be shown on the return for the taxable year, or
(ii) $5,000.

(B) Special rule for corporations

In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of-

(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or
(ii) $10,000,000.

(C) Special rule for taxpayers claiming section 199A deduction

In the case of any taxpayer who claims any deduction allowed under section 199A for the taxable year, subparagraph (A) shall be applied by substituting "5 percent" for "10 percent".

(2) Understatement

(A) In general

For purposes of paragraph (1), the term "understatement" means the excess of-

(i) the amount of the tax required to be shown on the return for the taxable year, over

(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.

(B) Reduction for understatement due to position of taxpayer or disclosed item

The amount of the understatement under subparagraph (A) shall be reduced by that portion of the understatement which is attributable to-

(i) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or

(ii) any item if-

(I) the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and

(II) there is a reasonable basis for the tax treatment of such item by the taxpayer.

For purposes of clause (ii)(II), in no event shall a corporation be treated as having a reasonable basis for its tax treatment of an item attributable to a multiple-party financing transaction if such treatment does not clearly reflect the income of the corporation.

(C) Reduction not to apply to tax shelters

(i) In general

Subparagraph (B) shall not apply to any item attributable to a tax shelter.

(ii) Tax shelter

For purposes of clause (i), the term "tax shelter" means-

(I) a partnership or other entity,

(II) any investment plan or arrangement, or

(III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.

(3) Secretarial list

The Secretary may prescribe a list of positions which the Secretary believes do not meet 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(3), and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.

(e) Substantial valuation misstatement under chapter 1

(1) In general

For purposes of this section, there is a substantial valuation misstatement under chapter 1 if-

(A) the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be), or

(B)(i) the price for any property or services (or for the use of property) claimed on any such return in connection with any transaction between persons described in section 482 is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct amount of such price, or

(ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of $5,000,000 or 10 percent of the taxpayer's gross receipts.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation misstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542)).

(3) Net section 482 transfer price adjustment

For purposes of this subsection-

(A) In general

The term "net section 482 transfer price adjustment" means, with respect to any taxable year, the net increase in taxable income for the taxable year (determined without regard to any amount carried to such taxable year from another taxable year) resulting from adjustments under section 482 in the price for any property or services (or for the use of property).

(B) Certain adjustments excluded in determining threshold

For purposes of determining whether the threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

(i) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if-

(I) it is established that the taxpayer determined such price in accordance with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

(ii) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if-

(I) the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

(III) the taxpayer provides such documentation to the Secretary within 30 days of request for such documentation.

(iii) Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

(C) Special rule

If the regular tax (as defined in section 55(c)) imposed by chapter 1 on the taxpayer is determined by reference to an amount other than taxable income, such amount shall be treated as the taxable income of such taxpayer for purposes of this paragraph.

(D) Coordination with reasonable cause exception

For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion.

(f) Substantial overstatement of pension liabilities

(1) In general

For purposes of this section, there is a substantial overstatement of pension liabilities if the actuarial determination of the liabilities taken into account for purposes of computing the deduction under paragraph (1) or (2) of section 404(a) is 200 percent or more of the amount determined to be the correct amount of such liabilities.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(4) unless the portion of the underpayment for the taxable year attributable to substantial overstatements of pension liabilities exceeds $1,000.

(g) Substantial estate or gift tax valuation understatement

(1) In general

For purposes of this section, there is a substantial estate or gift tax valuation understatement if the value of any property claimed on any return of tax imposed by subtitle B is 65 percent or less of the amount determined to be the correct amount of such valuation.

(2) Limitation

No penalty shall be imposed by reason of subsection (b)(5) unless the portion of the underpayment attributable to substantial estate or gift tax valuation understatements for the taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent) exceeds $5,000.

(h) Increase in penalty in case of gross valuation misstatements

(1) In general

To the extent that a portion of the underpayment to which this section applies is attributable to one or more gross valuation misstatements, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2) Gross valuation misstatements

The term "gross valuation misstatements" means-

(A) any substantial valuation misstatement under chapter 1 as determined under subsection (e) by substituting-

(i) in paragraph (1)(A), "200 percent" for "150 percent",

(ii) in paragraph (1)(B)(i)-

(I) "400 percent" for "200 percent", and

(II) "25 percent" for "50 percent", and

(iii) in paragraph (1)(B)(ii)-

(I) "$20,000,000" for "$5,000,000", and

(II) "20 percent" for "10 percent".

(B) any substantial overstatement of pension liabilities as determined under subsection (f) by substituting "400 percent" for "200 percent",

(C) any substantial estate or gift tax valuation understatement as determined under subsection (g) by substituting "40 percent" for "65 percent", and

(D) any disallowance of a deduction described in subsection (b)(10).

(i) Increase in penalty in case of nondisclosed noneconomic substance transactions

(1) In general

In the case of any portion of an underpayment which is attributable to one or more nondisclosed noneconomic substance transactions, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(2) Nondisclosed noneconomic substance transactions

For purposes of this subsection, the term "nondisclosed noneconomic substance transaction" means any portion of a transaction described in subsection (b)(6) with respect to which the relevant facts affecting the tax treatment are not adequately disclosed in the return nor in a statement attached to the return.

(3) Special rule for amended returns

In no event shall any amendment or supplement to a return of tax be taken into account for purposes of this subsection if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

(j) Undisclosed foreign financial asset understatement

(1) In general

For purposes of this section, the term "undisclosed foreign financial asset understatement" means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

(2) Undisclosed foreign financial asset

For purposes of this subsection, the term "undisclosed foreign financial asset" means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the taxpayer as required under the provisions of those sections.

(3) Increase in penalty for undisclosed foreign financial asset understatements

In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting "40 percent" for "20 percent".

(k) Inconsistent estate basis reporting

For purposes of this section, the term "inconsistent estate basis" means any portion of an underpayment attributable to the failure to comply with section 1014(f).

(l) Increase in penalty in case of overstatement of qualified charitable contributions

In the case of any portion of an underpayment which is attributable to one or more overstatements of the deduction provided in section 170(p), subsection (a) shall be applied with respect to such portion by substituting "50 percent" for "20 percent".

(m) Substantial understatement of income tax due to disallowance of applicable energy credits

(1) In general

In the case of a taxpayer for which there is a disallowance of an applicable energy credit for any taxable year, for purposes of determining whether there is a substantial understatement of income tax for such taxable year, subsection (d)(1) shall be applied-

(A) in subparagraphs (A) and (B), by substituting "1 percent" for "10 percent" each place it appears, and

(B) without regard to subparagraph (C).

(2) Disallowance of an applicable energy credit

For purposes of this subsection, the term "disallowance of an applicable energy credit" means the disallowance of a credit under section 45X, 45Y, or 48E by reason of overstating the material assistance cost ratio (as determined under section 7701(a)(52)) with respect to any qualified facility, energy storage technology, or facility which produces eligible components.

(Added Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395 ; amended Pub. L. 101–508, title XI, §11312(a), (b), Nov. 5, 1990, 104 Stat. 1388–454 , 1388-455; Pub. L. 103–66, title XIII, §§13236(a)–(d), 13251(a), Aug. 10, 1993, 107 Stat. 505 , 506, 531; Pub. L. 103–465, title VII, §744(a), (b), Dec. 8, 1994, 108 Stat. 5011 ; Pub. L. 105–34, title X, §1028(c), Aug. 5, 1997, 111 Stat. 928 ; Pub. L. 108–357, title VIII, §§812(b), (d), (e)(1), 819(a), (b), Oct. 22, 2004, 118 Stat. 1578 , 1580, 1584; Pub. L. 109–135, title IV, §§403(x)(1), 412(aaa), Dec. 21, 2005, 119 Stat. 2629 , 2641; Pub. L. 109–280, title XII, §1219(a)(1), (2), Aug. 17, 2006, 120 Stat. 1083 ; Pub. L. 111–147, title V, §512(a), Mar. 18, 2010, 124 Stat. 110 ; Pub. L. 111–152, title I, §1409(b)(1), (2), Mar. 30, 2010, 124 Stat. 1068 , 1069; Pub. L. 113–295, div. A, title II, §208(a), Dec. 19, 2014, 128 Stat. 4028 ; Pub. L. 114–41, title II, §2004(c), July 31, 2015, 129 Stat. 456 ; Pub. L. 115–97, title I, §11011(c), Dec. 22, 2017, 131 Stat. 2070 ; Pub. L. 115–141, div. T, §101(a)(2)(A), div. U, title I, §104(a), title IV, §401(a)(303), (304), Mar. 23, 2018, 132 Stat. 1155 , 1170, 1199; Pub. L. 116–260, div. EE, title II, §212(b)(1), (2), Dec. 27, 2020, 134 Stat. 3067 ; Pub. L. 117–328, div. T, title VI, §605(a)(2)(A), (B), Dec. 29, 2022, 136 Stat. 5394 ; Pub. L. 119–21, title VII, §70512(j)(1), July 4, 2025, 139 Stat. 268 .)

Editorial Notes

Codification

Another section 212(b) of div. EE of Pub. L. 116–260 amended section 63 of this title.

Section 1409(b)(1), (2) of Pub. L. 111–152, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment notes below.

Section 1219(a)(1), (2) of Pub. L. 109–280, which directed the amendment of section 6662 without specifying the act to be amended, was executed to this section, which is section 6662 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

Prior Provisions

A prior section 6662, acts Aug. 16, 1954, ch. 736, 68A Stat. 827 , §6659; May 14, 1960, Pub. L. 86–470, §1, 74 Stat. 132 ; Dec. 30, 1969, Pub. L. 91–172, title I, §101(j)(51), 83 Stat. 531 ; Sept. 2, 1974, Pub. L. 93–406, title II, §1016(a)(19), 88 Stat. 931 ; renumbered §6660, Aug. 13, 1981, Pub. L. 97–34, title VII, §722(a)(1), 95 Stat. 341 ; renumbered §6662, Sept. 3, 1982, Pub. L. 97–248, title III, §323(a), 96 Stat. 613 , directed that additions be treated as tax and set procedure for assessing certain additions to tax, prior to repeal by Pub. L. 101–239, title VII, §7721(a), Dec. 19, 1989, 103 Stat. 2395 , applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989. See section 6665 of this title.

Amendments

2025-Subsec. (m). Pub. L. 119–21 added subsec. (m).

2022-Subsec. (b)(10). Pub. L. 117–328, §605(a)(2)(A), added par. (10).

Subsec. (h)(2)(D). Pub. L. 117–328, §605(a)(2)(B), added subpar. (D).

2020-Subsec. (b)(9). Pub. L. 116–260, §212(b)(1), added par. (9).

Subsec. (l). Pub. L. 116–260, §212(b)(2), added subsec. (l).

2018-Subsec. (d)(1)(C). Pub. L. 115–141, §101(a)(2)(A), substituted "any deduction" for "the deduction".

Subsec. (d)(3). Pub. L. 115–141, §401(a)(303), substituted "section 6664(d)(3)" for "section 6664(d)(2)".

Subsecs. (i), (j). Pub. L. 115–141, §401(a)(304), transferred subsec. (i) to appear before subsec. (j).

Subsec. (k). Pub. L. 115–141, §104(a), amended subsec. (k) generally. Prior to amendment, text read as follows: "For purposes of this section, there is an 'inconsistent estate basis' if the basis of property claimed on a return exceeds the basis as determined under section 1014(f)."

2017-Subsec. (d)(1)(C). Pub. L. 115–97 added subpar. (C).

2015-Subsec. (b)(8). Pub. L. 114–41, §2004(c)(1), added par. (8).

Subsec. (k). Pub. L. 114–41, §2004(c)(2), added subsec. (k).

2014-Subsec. (b)(7). Pub. L. 113–295, §208(a), amended directory language of Pub. L. 111–147, §512(a)(1). See 2010 Amendment note below.

2010-Subsec. (b)(6). Pub. L. 111–152, §1409(b)(1), added par. (6). See Codification note above.

Subsec. (b)(7). Pub. L. 111–147, §512(a)(1), as amended by Pub. L. 113–295, §208(a), added par. (7).

Subsec. (i). Pub. L. 111–152, §1409(b)(2), added subsec. (i). See Codification note above.

Subsec. (j). Pub. L. 111–147, §512(a)(2), added subsec. (j).

2006-Subsec. (e)(1)(A). Pub. L. 109–280, §1219(a)(1)(A), substituted "150 percent" for "200 percent". See Codification note above.

Subsec. (g)(1). Pub. L. 109–280, §1219(a)(1)(B), substituted "65 percent" for "50 percent". See Codification note above.

Subsec. (h)(2)(A)(i), (ii). Pub. L. 109–280, §1219(a)(2)(A), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

"(i) '400 percent' for '200 percent' each place it appears,

"(ii) '25 percent' for '50 percent', and".

See Codification note above.

Subsec. (h)(2)(C). Pub. L. 109–280, §1219(a)(2)(B), substituted " '40 percent' for '65 percent' " for " '25 percent' for '50 percent' ". See Codification note above.

2005-Subsec. (b). Pub. L. 109–135, §403(x)(1), inserted at end "Except as provided in paragraph (1) or (2)(B) of section 6662A(e), this section shall not apply to the portion of any underpayment which is attributable to a reportable transaction understatement on which a penalty is imposed under section 6662A."

Subsec. (d)(3). Pub. L. 109–135, §412(aaa), struck out "the" before "1 or more".

2004-Pub. L. 108–357, §812(e)(1), inserted "on underpayments" after "penalty" in section catchline.

Subsec. (d)(1)(B). Pub. L. 108–357, §819(a), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), paragraph (1) shall be applied by substituting '$10,000' for '$5,000'."

Subsec. (d)(2)(A). Pub. L. 108–357, §812(b), inserted concluding provisions.

Subsec. (d)(2)(C). Pub. L. 108–357, §812(d), amended subpar. (C) generally, substituting provisions relating to inapplicability of subpar. (B) to any item attributable to a tax shelter and defining the term "tax shelter" for provisions relating to, in the case of any item of a taxpayer other than a corporation which is attributable to a tax shelter, inapplicability of subpar. (B)(ii) and inapplicability of subpar. (B)(i), unless the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment, inapplicability of subpar. (B) to any item of a corporation which is attributable to a tax shelter, and provisions defining the term "tax shelter".

Subsec. (d)(2)(D). Pub. L. 108–357, §819(b)(2), struck out heading and text of subpar. (D). Text read as follows: "The Secretary shall prescribe (and revise not less frequently than annually) a list of positions-

"(i) for which the Secretary believes there is not substantial authority, and

"(ii) which affect a significant number of taxpayers.

Such list (and any revision thereof) shall be published in the Federal Register."

Subsec. (d)(3). Pub. L. 108–357, §819(b)(1), added par. (3).

1997-Subsec. (d)(2)(B). Pub. L. 105–34, §1028(c)(1), inserted concluding provisions.

Subsec. (d)(2)(C)(iii). Pub. L. 105–34, §1028(c)(2), substituted "a significant purpose" for "the principal purpose" in concluding provisions.

1994-Subsec. (d)(2)(C)(i). Pub. L. 103–465, §744(b)(1), substituted "In the case of any item of a taxpayer other than a corporation which is" for "In the case of any item" in introductory provisions.

Subsec. (d)(2)(C)(ii). Pub. L. 103–465, §744(a), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (d)(2)(C)(iii). Pub. L. 103–465, §744(a), (b)(2), redesignated cl. (ii) as (iii) and substituted "this subparagraph" for "clause (i)" in introductory provisions.

1993-Subsec. (d)(2)(B)(ii). Pub. L. 103–66, §13251(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return."

Subsec. (e)(1)(B)(ii). Pub. L. 103–66, §13236(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "the net section 482 transfer price adjustment for the taxable year exceeds $10,000,000."

Subsec. (e)(3)(B). Pub. L. 103–66, §13236(b), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: "For purposes of determining whether the $10,000,000 threshold requirement of paragraph (1)(B)(ii) is met, there shall be excluded-

"(i) any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if it is shown that there was a reasonable cause for the taxpayer's determination of such price and that the taxpayer acted in good faith with respect to such price, and

"(ii) any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any of such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States."

Subsec. (e)(3)(D). Pub. L. 103–66, §13236(c), added subpar. (D).

Subsec. (h)(2)(A)(iii). Pub. L. 103–66, §13236(d), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: " '$20,000,000' for '$10,000,000',".

1990-Subsec. (b)(3). Pub. L. 101–508, §11312(b)(1), amended par. (3) generally, substituting "misstatement" for "overstatement".

Subsec. (e). Pub. L. 101–508, §11312(a), substituted "misstatement" for "overstatement" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.-For purposes of this section, there is a substantial valuation overstatement under chapter 1 if the value of any property (or the adjusted basis of any property) claimed on any return of tax imposed by chapter 1 is 200 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

"(2) LIMITATION.-No penalty shall be imposed by reason of subsection (b)(3) unless the portion of the underpayment for the taxable year attributable to substantial valuation overstatements under chapter 1 exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company (as defined in section 542))."

Subsec. (h)(2)(A). Pub. L. 101–508, §11312(b)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "any substantial valuation overstatement under chapter 1 as determined under subsection (e) by substituting '400 percent' for '200 percent',".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2025 AMENDMENT

Amendment by Pub. L. 119–21 applicable to taxable years beginning after July 4, 2025, see section 70512(l)(1) of Pub. L. 119–21, set out in a note under section 45 of this title.

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117–328 applicable to contributions made after Dec. 29, 2022, see section 605(c)(1) of Pub. L. 117–328, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116–260 applicable to taxable years beginning after Dec. 31, 2020, see section 212(d) of div. EE of Pub. L. 116–260, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 101(a)(2)(A) of Pub. L. 115–141 effective as if included in section 11011 of Pub. L. 115–97, see section 101(d) of Pub. L. 115–141, set out as a note under section 62 of this title.

Pub. L. 115–141, div. U, title I, §104(c), Mar. 23, 2018, 132 Stat. 1170 , provided that: "The amendments made by this section [amending this section and section 9503 of this title] shall take effect as if included in the provision of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 [Pub. L. 114–41] to which they relate."

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11011(e) of Pub. L. 115–97, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–41 applicable to property with respect to which an estate tax return is filed after July 31, 2015, see section 2004(d) of Pub. L. 114–41, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title II, §208(b), Dec. 19, 2014, 128 Stat. 4028 , provided that: "The amendment made by this section [amending this section] shall take effect as if included in the provision of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147] to which it relates."

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–152, title I, §1409(e), Mar. 30, 2010, 124 Stat. 1070 , provided that:

"(1) In general.-Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 6662A, 6664, 6676, and 7701 of this title] shall apply to transactions entered into after the date of the enactment of this Act [Mar. 30, 2010].

"(2) Underpayments.-The amendments made by subsections (b) and (c)(1) [amending this section and sections 6662A and 6664 of this title] shall apply to underpayments attributable to transactions entered into after the date of the enactment of this Act.

"(3) Understatements.-The amendments made by subsection (c)(2) [amending section 6664 of this title] shall apply to understatements attributable to transactions entered into after the date of the enactment of this Act.

"(4) Refunds and credits.-The amendment made by subsection (d) [amending section 6676 of this title] shall apply to refunds and credits attributable to transactions entered into after the date of the enactment of this Act."

Pub. L. 111–147, title V, §512(b), Mar. 18, 2010, 124 Stat. 111 , provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Mar. 18, 2010]."

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–280 applicable to returns filed after Aug. 17, 2006, with special rule for certain easements, see section 1219(e)(1), (3) of Pub. L. 109–280, set out as a note under section 170 of this title.

Effective Date of 2005 Amendment

Amendment by section 403(x)(1) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Effective Date of 2004 Amendment

Pub. L. 108–357, title VIII, §812(f), Oct. 22, 2004, 118 Stat. 1580 , as amended by Pub. L. 109–135, title IV, §403(x)(3), Dec. 21, 2005, 119 Stat. 2629 , provided that:

"(1) In general.-Except as provided in paragraph (2), the amendments made by this section [enacting section 6662A of this title and amending this section and section 6664 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

"(2) Disqualified opinions.-Section 6664(d)(3)(B) of the Internal Revenue Code of 1986 [now section 6664(d)(4)(B)] (as added by subsection (c)) shall not apply to the opinion of a tax advisor if-

"(A) the opinion was provided to the taxpayer before the date of the enactment of this Act,

"(B) the opinion relates to one or more transactions all of which were entered into before such date, and

"(C) the tax treatment of items relating to each such transaction was included on a return or statement filed by the taxpayer before such date."

Pub. L. 108–357, title VIII, §819(c), Oct. 22, 2004, 118 Stat. 1585 , provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004]."

Effective Date of 1997 Amendment

Amendment by Pub. L. 105–34 applicable to items with respect to transactions entered into after Aug. 5, 1997, see section 1028(e)(2) of Pub. L. 105–34, set out as a note under section 6111 of this title.

Effective Date of 1994 Amendment

Pub. L. 103–465, title VII, §744(c), Dec. 8, 1994, 108 Stat. 5011 , provided that: "The amendments made by this section [amending this section] shall apply to items related to transactions occurring after the date of the enactment of this Act [Dec. 8, 1994]."

Effective Date of 1993 Amendment

Pub. L. 103–66, title XIII, §13236(e), Aug. 10, 1993, 107 Stat. 506 , provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1993."

Pub. L. 103–66, title XIII, §13251(b), Aug. 10, 1993, 107 Stat. 531 , provided that: "The amendment made by this section [amending this section] shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993."

Effective Date of 1990 Amendment

Pub. L. 101–508, title XI, §11312(c), Nov. 5, 1990, 104 Stat. 1388–455 , provided that: "The amendments made by this section [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 5, 1990]."

Effective Date

Section applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as an Effective Date of 1989 Amendment note under section 461 of this title.

EXHIBIT 31

26 USC 6601: Interest on underpayment, nonpayment, or extensions of time for payment, of tax
Text contains those laws in effect on February 16, 2026

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 67-INTEREST
Subchapter A-Interest on Underpayments

Jump To:
Source Credit
Future Amendments
Miscellaneous
Amendments
Effective Date
Savings Provision

§6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax

(a) General rule

If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid.

(b) Last date prescribed for payment

For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) Extensions of time disregarded

The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under section 6159.

(2) Jeopardy

The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(3) Accumulated earnings tax

In the case of the tax imposed by section 531 for any taxable year, the last date prescribed for payment shall be deemed to be the due date (without regard to extensions) for the return of tax imposed by subtitle A for such taxable year.

(4) Last date for payment not otherwise prescribed

In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary).

(c) Suspension of interest in certain income, estate, gift, and certain excise tax cases

In the case of a deficiency as defined in section 6211 (relating to income, estate, gift, and certain excise taxes), if a waiver of restrictions under section 6213(d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period.

(d) Income tax reduced by carryback or adjustment for certain unused deductions

(1) Net operating loss or capital loss carryback

If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss or net capital loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the net operating loss or net capital loss arises.

(2) Foreign tax credit carrybacks

If any credit allowed for any taxable year is increased by reason of a carryback of tax paid or accrued to foreign countries or possessions of the United States, such increase shall not affect the computation of interest under this

section for the period ending with the filing date for the taxable year in which such taxes were in fact paid or accrued, or, with respect to any portion of such credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.

(3) Certain credit carrybacks

(A) In general

If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the filing date for the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the filing date for such subsequent taxable year.

(B) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

(4) Filing date

For purposes of this subsection, the term "filing date" has the meaning given to such term by section 6611(f)(4)(A).

(e) Applicable rules

Except as otherwise provided in this title-

(1) Interest treated as tax

Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference to this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) Interest on penalties, additional amounts, or additions to the tax

(A) In general

Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68) only if such assessable penalty, additional amount, or addition to the tax is not paid within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest on certain additions to tax

Interest shall be imposed under this section with respect to any addition to tax imposed by section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68 for the period which-

(i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and

(ii) ends on the date of payment of such addition to tax.

(3) Payments made within specified period after notice and demand

If notice and demand is made for payment of any amount and if such amount is paid within 21 calendar days (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000) after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(f) Satisfaction by credits

If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment. The preceding sentence shall not apply to the extent that section 6621(d) applies.

(g) Limitation on assessment and collection

Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(h) Exception as to estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(i) Exception as to Federal unemployment tax

This section shall not apply to any failure to make a payment of tax imposed by section 3301 for a calendar quarter or other period within a taxable year required under authority of section 6157.

(j) 2-percent rate on certain portion of estate tax extended under section 6166

(1) In general

If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, then in lieu of the annual rate provided by subsection (a)-

(A) interest on the 2-percent portion of such amount shall be paid at the rate of 2 percent, and

(B) interest on so much of such amount as exceeds the 2-percent portion shall be paid at a rate equal to 45 percent of the annual rate provided by subsection (a).

For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section.

(2) 2-percent portion

For purposes of this subsection, the term "2-percent portion" means the lesser of-

(A)(i) the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax is to be computed were the sum of $1,000,000 and the applicable exclusion amount in effect under section 2010(c), reduced by

(ii) the applicable credit amount in effect under section 2010(c), or

(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the $1,000,000 amount contained in paragraph (2)(A) shall be increased by an amount equal to-

(A) $1,000,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the next lowest multiple of $10,000.

(4) Treatment of payments

If the amount of tax imposed by chapter 11 which is extended as provided in section 6166 exceeds the 2-percent portion, any payment of a portion of such amount shall, for purposes of computing interest for periods after such payment, be treated as reducing the 2-percent portion by an amount which bears the same ratio to the amount of such payment as the amount of the 2-percent portion (determined without regard to this paragraph) bears to the amount of the tax which is extended as provided in section 6166.

(k) No interest on certain adjustments

For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 817 ; Pub. L. 85–866, title I, §§66(c), 83(a)(1), 84(a), title II, §206(e), Sept. 2, 1958, 72 Stat. 1658 , 1663, 1664, 1685; Pub. L. 87–61, title II, §203(c)(2), June 29, 1961, 75 Stat. 126 ; Pub. L. 87–834, §2(e)(3), Oct. 16, 1962, 76 Stat. 972 ; Pub. L. 88–571, §3(d), Sept. 2, 1964, 78 Stat. 858 ; Pub. L. 89–384, §1(f), Apr. 8, 1966, 80 Stat. 104 ; Pub. L. 90–225, §2(e), Dec. 27, 1967, 81 Stat. 731 ; Pub. L. 91–53, §2(e), Aug. 7, 1969, 83 Stat. 92 ; Pub. L. 91–172, title I, §101(j)(49), title V, §512(e)(3), Dec. 30, 1969, 83 Stat. 531 , 641; Pub. L. 92–178, title VI, §601(d)(3), Dec. 10, 1971, 85 Stat. 559 ; Pub. L. 93–406, title II, §1016(a)(17), Sept. 2, 1974, 88 Stat. 930 ; Pub. L. 93–625, §7(a)(2)(A), (b)(1), Jan. 3, 1975, 88 Stat. 2115 ; Pub. L. 94–452, §3(c)(3), Oct. 2, 1976, 90 Stat. 1514 ; Pub. L. 94–455, title XIII, §1307(d)(2)(H), title XVI, §1605(b)(10), title XIX, §§1906(a)(34), (b)(13)(A), title XX, §2004(b), title XXI, §2107(g)(2)(C), Oct. 4, 1976, 90 Stat. 1728 , 1755, 1829, 1834, 1867, 1904; Pub. L. 95–30, title II, §202(d)(4)(C), May 23, 1977, 91 Stat. 150 ; Pub. L. 95–628, §8(c)(2), Nov. 10, 1978, 92 Stat. 3632 ; Pub. L. 96–223, title I, §101(f)(7), Apr. 2, 1980, 94 Stat. 253 ; Pub. L. 97–248, title III, §§344(b)(1), 346(c)(2), Sept. 3, 1982, 96 Stat. 635 , 637; Pub. L. 98–76, title II, §231(b)(2)(D), Aug. 12, 1983, 97 Stat. 429 ; Pub. L. 98–369, div. A, title I, §158(a), title II, §211(b)(26), title IV, §412(b)(7), title VII, §714(n)(1), July 18, 1984, 98 Stat. 696 , 757, 792, 963; Pub. L. 99–514, title XIV, §1404(c)(3), title XV, §§1511(c)(11), 1512(a), 1564(a), Oct. 22, 1986, 100 Stat. 2714 , 2745, 2746, 2762; Pub. L. 100–203, title X, §10301(b)(5), Dec. 22, 1987, 101 Stat. 1330–429 ; Pub. L. 100–647, title I, §§1015(b)(2)(C), 1018(u)(42), title VI, §6234(b)(1), title VII, §7106(c)(5), Nov. 10, 1988, 102 Stat. 3569 , 3592, 3736, 3774; Pub. L. 101–239, title VII, §7721(c)(8), Dec. 19, 1989, 103 Stat. 2400 ; Pub. L. 101–508, title XI, §11801(c)(20)(B), Nov. 5, 1990, 104 Stat. 1388–528 ; Pub. L. 104–168, title III, §303(a), (b)(1), July 30, 1996, 110 Stat. 1458 ; Pub. L. 105–34, title V, §§501(e), 503(a), (c)(2), (3), title X, §1055(a), title XII, §1242(a), Aug. 5, 1997, 111 Stat. 846 , 852, 853, 944, 1029; Pub. L. 105–206, title III, §3301(b), July 22, 1998, 112 Stat. 741 ; Pub. L. 109–135, title IV, §409(a)(2), Dec. 21, 2005, 119 Stat. 2635 ; Pub. L. 114–74, title XI, §1101(f)(9), Nov. 2, 2015, 129 Stat. 638 ; Pub. L. 115–97, title I, §11002(d)(1)(JJ), Dec. 22, 2017, 131 Stat. 2060 ; Pub. L. 115–141, div. U, title IV, §401(b)(47), Mar. 23, 2018, 132 Stat. 1204 .)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

Editorial Notes

Amendments

2018-Subsec. (b)(2) to (5). Pub. L. 115–141 redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which related to dates prescribed for installment payments.

2017-Subsec. (j)(3)(B). Pub. L. 115–97 substituted "for 'calendar year 2016' in subparagraph (A)(ii)" for "for 'calendar year 1992' in subparagraph (B)".

2015-Subsec. (c). Pub. L. 114–74 struck out at end "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

2005-Subsec. (d)(4). Pub. L. 109–135 substituted "6611(f)(4)(A)" for "6611(f)(3)(A)".

1998-Subsec. (f). Pub. L. 105–206 inserted at end "The preceding sentence shall not apply to the extent that section 6621(d) applies."

1997-Subsec. (c). Pub. L. 105–34, §1242(a), inserted at end "In the case of a settlement under section 6224(c) which results in the conversion of partnership items to nonpartnership items pursuant to section 6231(b)(1)(C), the preceding sentence shall apply to a computational adjustment resulting from such settlement in the same manner as if such adjustment were a deficiency and such settlement were a waiver referred to in the preceding sentence."

Subsec. (d)(2) to (4). Pub. L. 105–34, §1055(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (j). Pub. L. 105–34, §503(c)(3), substituted "2-percent" for "4-percent" in heading.

Subsec. (j)(1). Pub. L. 105–34, §503(a), reenacted par. heading without change and amended text generally. Prior to amendment, text read as follows: "If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, interest on the 4-percent portion of such amount shall (in lieu of the annual rate provided by subsection (a)) be paid at the rate of 4 percent. For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section."

Subsec. (j)(2). Pub. L. 105–34, §503(a), amended heading and text generally. Prior to amendment, text read as follows: "For purposes of this subsection, the term '4-percent portion' means the lesser of-

"(A) $345,800 reduced by the amount of the credit allowable under section 2010(a); or

"(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166."

Subsec. (j)(3). Pub. L. 105–34, §501(e), added par. (3). Former par. (3) redesignated (4).

Subsec. (j)(4). Pub. L. 105–34, §503(c)(2), substituted "2-percent" for "4-percent" wherever appearing.

Pub. L. 105–34, §501(e), redesignated par. (3) as (4).

1996-Subsec. (e)(2)(A). Pub. L. 104–168, §303(b)(1), substituted "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)" for "10 days from the date of notice and demand therefor".

Subsec. (e)(3). Pub. L. 104–168, §303(a), substituted "specified period" for "10 days" in heading and amended text generally. Prior to amendment, text read as follows: "If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand."

1990-Subsec. (b)(2). Pub. L. 101–508 struck out "or 6158(a)" after "6156(a)" in introductory provisions, struck out "or 6158(a), as the case may be" after "6156(a)" in subpar. (A), and struck out at end "For purposes of subparagraph (A), section 6158(a) shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment."

1989-Subsec. (e)(2). Pub. L. 101–239 substituted "section 6651(a)(1) or 6653 or under part II of subchapter A of chapter 68" for "section 6651(a)(1), 6653, 6659, 6660, or 6661" in subpars. (A) and (B).

1988-Subsec. (b)(1). Pub. L. 100–647, §6234(b)(1), inserted "or any installment agreement entered into under section 6159" after "time for payment".

Subsec. (b)(2). Pub. L. 100–647, §1018(u)(42), made technical correction to directory language of Pub. L. 99–514, §1404(c)(3), see 1986 Amendment note below.

Subsec. (e)(2)(A), (B). Pub. L. 100–647, §1015(b)(2)(C), substituted "6653, 6659" for "6659".

Subsec. (i). Pub. L. 100–647, §7106(c)(5), struck out "or 3321" after "3301".

1987-Subsec. (h). Pub. L. 100–203 substituted "section 6654 or 6655" for "section 6154 or 6654".

1986-Subsec. (a). Pub. L. 99–514, §1511(c)(11), substituted "the underpayment rate established under section 6621" for "an annual rate established under section 6621".

Subsec. (b)(2). Pub. L. 99–514, §1404(c)(3), as amended by Pub. L. 100–647, §1018(u)(42), substituted "6156(a) or 6158(a)" for "6152(a), 6156(a), or 6158(a)" in introductory provisions and "6156(b) or 6158(a)" for "6152(b), 6156(b), or 6158(a)" in subpar. (A).

Subsec. (b)(4), (5). Pub. L. 99–514, §1512(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–514, §1564(a), inserted "and interest shall not be imposed during such period on any interest with respect to such deficiency for any prior period".

1984-Subsec. (d)(2)(A). Pub. L. 98–369, §714(n)(1), made technical correction to directory language of Pub. L. 97–248, §346(c)(2)(B). See 1982 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 98–369, §211(b)(26), redesignated par. (4) as (3) and struck out former par. (3) which had provided that if the amount of any tax imposed by subtitle A was reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax would not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2).

Subsec. (e)(2). Pub. L. 98–369, §158(a), in amending par. (2) generally, inserted "(other than an addition to tax imposed under section 6651(a)(1), 6659, 6660, or 6661)", and added subpar. (B).

Subsec. (h). Pub. L. 98–369, §412(b)(7), amended subsec. (h) generally, substituting "any estimated tax required to be paid by section 6154 or 6654" for "estimated tax required by section 6153 or section 6154".

1983-Subsec. (i). Pub. L. 98–76 inserted "or 3321" after "3301".

1982-Subsec. (d)(1). Pub. L. 97–248, §346(c)(2)(A), substituted "the filing date for the taxable year" for "the last day of the taxable year".

Subsec. (d)(2)(A). Pub. L. 97–248, §346(c)(2)(B), as amended by Pub. L. 98–369, §346(c)(2)(B), substituted "the filing date for" for "the last day of" in two places.

Subsec. (d)(4). Pub. L. 97–248, §346(c)(2)(C), added par. (4).

Subsec. (e). Pub. L. 97–248, §344(b)(1), struck out par. (2) which had provided that no interest under this section was to be imposed on the interest provided by this section, and redesignated pars. (3) and (4) as (2) and (3), respectively.

1980-Subsec. (c). Pub. L. 96–223 substituted "certain excise tax cases" for "chapter 41, 42, 43, or 44 tax cases" in heading.

1978-Subsec. (d)(2). Pub. L. 95–628, §8(c)(2)(A), substituted in heading "Certain credit carrybacks" for "Investment credit carryback", designated existing provision as subpar. (A), and in subpar. (A) as so designated, inserted heading "In general" and in text extended the application of the provision to credit carrybacks, previously limited to investment credit carrybacks, included other credit carrybacks, and added subpar. (B).

Subsec. (d)(4), (5). Pub. L. 95–628, §8(c)(2)(B), struck out pars. (4) and (5) which provided for work incentive program credit carrybacks and new employee credit carrybacks, respectively.

1977-Subsec. (d)(5). Pub. L. 95–30 added par. (5).

1976-Subsec. (b)(2). Pub. L. 94–452 substituted ", 6156(a), or 6158(a)" for "or 6156(a)" and ", 6156(b), or 6158(a)" for "or 6156(b)" and inserted requirement that for purposes of subparagraph (A), section 6158(a) of this title shall be treated as providing that the date prescribed for payment of each installment shall not be later than the date prescribed for payment of the 1985 installment.

Subsec. (b)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (c). Pub. L. 94–455, §§1307(d)(2)(H), 1605(b)(10), substituted in heading "chapter 41, 42" for "chapter 42" and "43, or 44" for "or 43".

Subsec. (d)(4). Pub. L. 94–455, §2107(g)(2)(C), inserted ", an investment credit carryback," after "net operating loss carryback".

Subsec. (h). Pub. L. 94–455, §1906(a)(34), struck out "(or section 59 of the Internal Revenue Code of 1939)".

Subsecs. (j), (k). Pub. L. 94–455, §2004(b), added subsec. (j) and redesignated former subsec. (j) as (k).

1975-Subsec. (a). Pub. L. 93–625, §7(a)(2)(A), substituted "an annual rate established under section 6621" for "the rate of 6 percent per annum".

Subsecs. (b) to (l). Pub. L. 93–625, §7(b)(1), struck out subsec. (b) relating to extensions of time for payment of estate tax, redesignated subsecs. (c) to (i) as (b) to (h), respectively, struck out subsec. (j) relating to extensions of time for payment of tax attributable to recoveries of foreign expropriation losses, and redesignated subsecs. (k) and (l) as (i) and (j), respectively.

1974-Subsec. (d). Pub. L. 93–406 inserted reference to chapter 43 in heading, and substituted "certain excise" for "chapter 42" in text.

1971-Subsec. (e)(4). Pub. L. 92–178 added par. (4).

1969-Subsec. (d). Pub. L. 91–172, §101(j)(49), inserted reference to chapter 42 both in subsec. heading and in text.

Subsec. (e)(1). Pub. L. 91–172, §512(e)(3)(A), (B), substituted "loss or capital loss carryback" for "loss carryback" in heading, and "net operating loss or net capital loss" for "net operating loss" wherever it appears in text.

Subsec. (e)(2). Pub. L. 91–172, §512(e)(3)(C), substituted "loss carryback or a capital loss carryback" for "loss carryback".

Subsecs. (k), (l). Pub. L. 91–53 added subsec. (k) and redesignated former subsec. (k) as (l).

1967-Subsec. (e)(2). Pub. L. 90–225 inserted ", or with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year," after "the investment credit carryback arises".

1966-Subsecs. (j), (k). Pub. L. 89–384 added subsec. (j) and redesignated former subsec. (j) as (k).

1964-Subsec. (e). Pub. L. 88–571 added par. (3) and inserted "or adjustment for certain unused deductions" in heading.

1962-Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (1) and added par. (2).

1961-Subsec. (c)(2). Pub. L. 87–61 substituted "6152(a) or 6156(a)" for "6152(a)" in introductory provisions, and "6152(b) or 6156(b), as the case may be" for "6152(b)" in subpar. (A).

1958-Subsec. (b). Pub. L. 85–866, §§66(c), 206(e), inserted reference to section 6166, and substituted "if the time for payment of an amount of such tax is postponed or extended as provided by section 6163" for "if postponement of the payment of an amount of such tax is permitted by section 6163(a)".

Subsecs. (g) to (j). Pub. L. 85–866, §§83(a)(1), 84(a), added subsecs. (g) and (h) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

Statutory Notes and Related Subsidiaries

Effective Date of 2017 Amendment

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Effective Date of 2015 Amendment

Amendment by Pub. L. 114–74 applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, see section 1101(g) of Pub. L. 114–74, set out as an Effective Date note under section 6221 of this title.

Effective Date of 2005 Amendment

Amendment by Pub. L. 109–135 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 409(d) of Pub. L. 109–135, set out as a note under section 961 of this title.

Effective Date of 1998 Amendment

Pub. L. 105–206, title III, §3301(c), July 22, 1998, 112 Stat. 741 , as amended by Pub. L. 105–277, div. J, title IV, §4002(d), Oct. 21, 1998, 112 Stat. 2681–906 , provided that:

"(1) In general.-Except as provided under paragraph (2), the amendments made by this section [amending this section and section 6621 of this title] shall apply to interest for periods beginning after the date of the enactment of this Act [July 22, 1998].

"(2) Special rule.-Subject to any applicable statute of limitation not having expired with regard to either a tax underpayment or a tax overpayment, the amendments made by this section shall apply to interest for periods beginning before the date of the enactment of this Act if the taxpayer-

"(A) reasonably identifies and establishes periods of such tax overpayments and underpayments for which the zero rate applies; and

"(B) not later than December 31, 1999, requests the Secretary of the Treasury to apply section 6621(d) of the Internal Revenue Code of 1986, as added by subsection (a), to such periods."

Effective Date of 1997 Amendment

Amendment by section 501(e) of Pub. L. 105–34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105–34, set out as a note under section 2001 of this title.

Amendment by section 503(a), (c)(2), (3) of Pub. L. 105–34 applicable to estates of decedents dying after Dec. 31, 1997, with special rule in case of estate of any decedent dying before Jan. 1, 1998, with

respect to which there is an election under section 6166 of this title, see section 503(d) of Pub. L. 105–34, set out as a note under section 163 of this title.

Pub. L. 105–34, title X, §1055(c), Aug. 5, 1997, 111 Stat. 945 , provided that: "The amendments made by this section [amending this section and section 6611 of this title] shall apply to foreign tax credit carrybacks arising in taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XII, §1242(b), Aug. 5, 1997, 111 Stat. 1029 , provided that: "The amendment made by this section [amending this section] shall apply to adjustments with respect to partnership taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Effective Date of 1996 Amendment

Pub. L. 104–168, title III, §303(c), July 30, 1996, 110 Stat. 1458 , provided that: "The amendments made by this section [amending this section and section 6651 of this title] shall apply in the case of any notice and demand given after December 31, 1996."

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

Effective Date of 1988 Amendment

Amendment by section 1015(b)(2)(C) of Pub. L. 100–647 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1988, see section 1015(b)(4) of Pub. L. 100–647, set out as a note under section 6013 of this title.

Amendment by section 1018(u)(42) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6234(b)(1) of Pub. L. 100–647 applicable to agreements entered into after Nov. 10, 1988, see section 6234(c) of Pub. L. 100–647, set out as an Effective Date note under section 6159 of this title.

Amendment by section 7106(c)(5) of Pub. L. 100–647 applicable to remuneration paid after Dec. 31, 1988, see section 7106(d) of Pub. L. 100–647, set out as a note under section 3321 of this title.

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

Effective Date of 1986 Amendment

Amendment by section 1404(c)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1404(d) of Pub. L. 99–514, set out as a note under section 643 of this title.

Amendment by section 1511(c)(11) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1512(b), Oct. 22, 1986, 100 Stat. 2746 , provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1985."

Pub. L. 99–514, title XV, §1564(b), Oct. 22, 1986, 100 Stat. 2762 , provided that:

"(1) Effective date.-The amendment made by subsection (a) [amending this section] shall apply to interest accruing after December 31, 1982.

"(2) Statute of limitations.-If refund or credit of any amount resulting from the application of the amendment made by subsection (a) is prevented at any time before the close of the date which is 1 year after the date of the enactment of this Act [Oct. 22, 1986] by the operation of any law or rule of law (including res judicata), refund or credit of such amount (to the extent attributable to the application of the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefore [sic] is filed before the close of such 1-year period."

Effective Date of 1984 Amendment

Pub. L. 98–369, div. A, title I, §158(b), July 18, 1984, 98 Stat. 696 , provided that: "The amendment made by this section [amending this section] shall apply to interest accrued after the date of the enactment of this Act [July 18, 1984], except with respect to additions to tax for which notice and demand is made before such date."

Amendment by section 211(b)(26) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 412(b)(7) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Amendment by section 714(n)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

Effective Date of 1982 Amendment

Amendment by section 344(b)(1) of Pub. L. 97–248 applicable to interest accruing after Dec. 31, 1982, see section 344(c) of Pub. L. 97–248, set out as an Effective Date note under section 6622 of this title.

Amendment by section 346(c)(2) of Pub. L. 97–248 applicable to interest accruing after the 30th day after Sept. 3, 1982, see section 346(d)(2) of Pub. L. 97–248, set out as a note under section 6611 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of Pub. L. 96–223, set out as a note under section 6161 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as a note under section 6511 of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

Effective Date of 1976 Amendments

Amendment by section 2004(b) of Pub. L. 94–455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2004(g) of Pub. L. 94–455, set out as a note under section 6166 of this title.

Amendment by Pub. L. 94–452 effective Oct. 1, 1977, see section 3(e) of Pub. L. 94–452, set out as a note under section 6151 of this title.

Effective Date of 1975 Amendment

Amendment by Pub. L. 93–625 effective July 1, 1975, and applicable to amounts outstanding on such date or arising thereafter, see section 7(e) of Pub. L. 93–625, set out as an Effective Date note under section 6621 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Effective Date of 1971 Amendment

Amendment by Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

Effective Date of 1969 Amendment

Amendment by section 101(j)(49) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 512(e)(3) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as an Effective Date of 1969 Amendment note under section 1212 of this title. Amendment by Pub. L. 91–53

applicable with respect to calendar years beginning after Dec. 31, 1969, see section 4(a) of Pub. L. 91–53, set out as an Effective Date note under section 6157 of this title.

Effective Date of 1967 Amendment

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

Effective Date of 1964 Amendment

Amendment by Pub. L. 88–571 effective, with respect to amounts added to policyholders surplus accounts, for taxable years beginning after Dec. 31, 1958, see section 3(f) of Pub. L. 88–571, set out as a note under section 6501 of this title.

Effective Date of 1962 Amendment

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–61 effective July 1, 1961, see section 208 of Pub. L. 87–61, set out as a note under section 4041 of this title.

Effective Date of 1958 Amendment

Amendment by sections 66(c) and 84(a) of Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Pub. L. 85–866, title I, §83(d), Sept. 2, 1958, 72 Stat. 1664 , provided that: "The amendments made by subsections (a) [amending this section and section 3794 of I.R.C. 1939], (b) [amending section 6611 of this title and section 3771 of I.R.C. 1939], and (c) [amending section 6611 of this title] shall apply only in respect of overpayments credited after December 31, 1957."

For effective date of amendment by section 206(e) of Pub. L. 85–866, see section 206(f) of Pub. L. 85–866, set out as a note under section 6161 of this title.

Savings Provision

For provisions that nothing in amendment by Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

Administration of Penalties and Interest

Pub. L. 105–206, title III, §3801, July 22, 1998, 112 Stat. 782 , provided that: "The Joint Committee on Taxation and the Secretary of the Treasury shall each conduct a separate study-

"(1) reviewing the administration and implementation by the Internal Revenue Service of the interest and penalty provisions of the Internal Revenue Code of 1986 (including the penalty reform provisions of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, see Tables for classification]); and

"(2) making any legislative and administrative recommendations the Committee or the Secretary deems appropriate to simplify penalty or interest administration and reduce taxpayer burden.

Such studies shall be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 1 year after the date of the enactment of this Act [July 22, 1998]."

Interest Not Payable on Underpayments Created or Increased by Tax Reform Act of 1976

Pub. L. 95–30, title III, §305, May 23, 1977, 91 Stat. 152 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that: "No interest shall be payable for any period before April 16, 1977 (March 16, 1977, in the case of a corporation), on any underpayment of a tax imposed by the Internal Revenue Code of 1986 [formerly I.R.C. 1954], to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455]."

Interest on Underpayment

Pub. L. 91–172, title IX, §946(a), Dec. 30, 1969, 83 Stat. 729 , provided that in the case of any taxable year ending before Dec. 30, 1969, no interest on underpayment of taxes, to the extent that such underpayment was attributable to the amendments made by Pub. L. 91–172, was not to be assessed or collected for any period before the 90th day after Dec. 30, 1969.

Interest Attributable to Net Operating Loss Carryback for Certain Taxable Years Ending in 1954

Pub. L. 85–866, title I, §83(e), Sept. 2, 1958, 72 Stat. 1664 , provided that if by reason of the enactment of section 172(b)(1)(A) of this title, a deficiency resulted for the first taxable year preceding a taxable year ending after Dec. 31, 1953 but before Aug. 17, 1954 and an overpayment resulted in the second preceding taxable year, then no interest was payable for any portion of such deficiency for any period during which there existed a corresponding overpayment to which interest was not payable.

EXHIBIT 32

26 USC 6621: Determination of rate of interest
Text contains those laws in effect on February 16, 2026

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 67-INTEREST
Subchapter C-Determination of Interest Rate; Compounding of Interest

Jump To:
Source Credit
Miscellaneous
Amendments
Effective Date
Regulations

§6621. Determination of rate of interest

(a) General rule

(1) Overpayment rate

The overpayment rate established under this section shall be the sum of-
(A) the Federal short-term rate determined under subsection (b), plus
(B) 3 percentage points (2 percentage points in the case of a corporation).

To the extent that an overpayment of tax by a corporation for any taxable period (as defined in subsection (c)(3), applied by substituting "overpayment" for "underpayment") exceeds $10,000, subparagraph (B) shall be applied by substituting "0.5 percentage point" for "2 percentage points".

(2) Underpayment rate

The underpayment rate established under this section shall be the sum of-
(A) the Federal short-term rate determined under subsection (b), plus
(B) 3 percentage points.

(b) Federal short-term rate

For purposes of this section-

(1) General rule

The Secretary shall determine the Federal short-term rate for the first month in each calendar quarter.

(2) Period during which rate applies

(A) In general

Except as provided in subparagraph (B), the Federal short-term rate determined under paragraph (1) for any month shall apply during the first calendar quarter beginning after such month.

(B) Special rule for individual estimated tax

In determining the addition to tax under section 6654 for failure to pay estimated tax for any taxable year, the Federal short-term rate which applies during the 3rd month following such taxable year shall also apply during the first 15 days of the 4th month following such taxable year.

(3) Federal short-term rate

The Federal short-term rate for any month shall be the Federal short-term rate determined during such month by the Secretary in accordance with section 1274(d). Any such rate shall be rounded to the nearest full percent (or, if a multiple of ½ of 1 percent, such rate shall be increased to the next highest full percent).

(c) Increase in underpayment rate for large corporate underpayments

(1) In general

For purposes of determining the amount of interest payable under section 6601 on any large corporate underpayment for periods after the applicable date, paragraph (2) of subsection (a) shall be applied by substituting "5 percentage points" for "3 percentage points".

(2) Applicable date

For purposes of this subsection-

(A) In general

The applicable date is the 30th day after the earlier of-

(i) the date on which the 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Independent Office of Appeals is sent, or

(ii) the date on which the deficiency notice under section 6212 is sent.

The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary.

(B) Special rules

(i) Nondeficiency procedures

In the case of any underpayment of any tax imposed by this title to which the deficiency procedures do not apply, subparagraph (A) shall be applied by taking into account any letter or notice provided by the Secretary which notifies the taxpayer of the assessment or proposed assessment of the tax.

(ii) Exception where amounts paid in full

For purposes of subparagraph (A), a letter or notice shall be disregarded if, during the 30-day period beginning on the day on which it was sent, the taxpayer makes a payment equal to the amount shown as due in such letter or notice, as the case may be.

(iii) Exception for letters or notices involving small amounts

For purposes of this paragraph, any letter or notice shall be disregarded if the amount of the deficiency or proposed deficiency (or the assessment or proposed assessment) set forth in such letter or notice is not greater than $100,000 (determined by not taking into account any interest, penalties, or additions to tax).

(3) Large corporate underpayment

For purposes of this subsection-

(A) In general

The term "large corporate underpayment" means any underpayment of a tax by a C corporation for any taxable period if the amount of such underpayment for such period exceeds $100,000.

(B) Taxable period

For purposes of subparagraph (A), the term "taxable period" means-

(i) in the case of any tax imposed by subtitle A, the taxable year, or

(ii) in the case of any other tax, the period to which the underpayment relates.

(d) Elimination of interest on overlapping periods of tax overpayments and underpayments

To the extent that, for any period, interest is payable under subchapter A and allowable under subchapter B on equivalent underpayments and overpayments by the same taxpayer of tax imposed by this title, the net rate of interest under this section on such amounts shall be zero for such period.

(Added Pub. L. 93–625, §7(a)(1), Jan. 3, 1975, 88 Stat. 2114 ; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834 ; Pub. L. 96–167, §4(b), Dec. 29, 1979, 93 Stat. 1275 ; Pub. L. 97–34, title VII, §711(a)–(c), Aug. 13, 1981, 95 Stat. 340 ; Pub. L. 97–248, title III, §345(a), Sept. 3, 1982, 96 Stat. 636 ; Pub. L. 98–369, div. A, title I, §144(a), July 18, 1984, 98 Stat. 682 ; Pub. L. 99–514, title XV, §§1511(a), (c)(1), 1535(a), Oct. 22, 1986, 100 Stat. 2744 , 2750; Pub. L. 100–647, title I, §1015(d), Nov. 10, 1988, 102 Stat. 3569 ; Pub. L. 101–239, title VII, §7721(b), Dec. 19, 1989, 103 Stat. 2399 ; Pub. L. 101–508, title XI, §11341(a), Nov. 5, 1990, 104 Stat. 1388–470 ; Pub. L. 103–465, title VII, §713(a), Dec. 8, 1994, 108 Stat. 5001 ; Pub. L. 104–188, title I, §1702(c)(6), (7), Aug. 20, 1996, 110 Stat. 1870 ; Pub. L. 105–34, title XIV, §1463(a), title XVI, §1604(b)(1), Aug. 5, 1997, 111 Stat. 1057 , 1097; Pub. L. 105–206, title III, §§3301(a), 3302(a), July 22, 1998, 112 Stat. 741 ; Pub. L. 116–25, title I, §1001(b)(1)(E), July 1, 2019, 133 Stat. 985 .)

Editorial Notes

Amendments

2019-Subsec. (c)(2)(A)(i). Pub. L. 116–25 substituted "Internal Revenue Service Independent Office of Appeals" for "Internal Revenue Service Office of Appeals".

1998-Subsec. (a)(1)(B). Pub. L. 105–206, §3302(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "2 percentage points."

Subsec. (d). Pub. L. 105–206, §3301(a), added subsec. (d).

1997-Subsec. (a)(1). Pub. L. 105–34, §1604(b)(1), substituted "subsection (c)(3), applied by substituting 'overpayment' for 'underpayment')" for "subsection (c)(3))" in concluding provisions.

Subsec. (c)(2)(B)(iii). Pub. L. 105–34, §1463(a), added cl. (iii).

1996-Subsec. (c)(2)(A). Pub. L. 104–188, §1702(c)(6), inserted closing provisions "The preceding sentence shall be applied without regard to any such letter or notice which is withdrawn by the Secretary."

Subsec. (c)(2)(B)(i). Pub. L. 104–188, §1702(c)(7), substituted "this title" for "this subtitle".

1994-Subsec. (a)(1). Pub. L. 103–465 inserted concluding provisions.

1990-Subsec. (c). Pub. L. 101–508 added subsec. (c).

1989-Subsec. (c). Pub. L. 101–239 repealed subsec. (c) which related to attribution of interest on substantial underpayments to tax motivated transactions.

1988-Subsec. (a)(1)(A), (2)(A). Pub. L. 100–647, §1015(d)(1), substituted "Federal short-term" for "short-term Federal".

Subsec. (b). Pub. L. 100–647, §1015(d)(2), substituted "Federal short-term" for "short-term Federal" in heading.

Subsec. (b)(1). Pub. L. 100–647, §1015(d)(1), substituted "Federal short-term" for "short-term Federal".

1986-Subsec. (a). Pub. L. 99–514, §1511(a), added subsec. (a) and struck out former subsec. (a) which read as follows: "The annual rate established under this section shall be such adjusted rate as is established by the Secretary under subsection (b)."

Subsec. (b). Pub. L. 99–514, §1511(a), added subsec. (b) relating to determination of Federal short-term rate and struck out former subsec. (b) which related to interest rate adjustments and establishment of adjusted rates.

Subsec. (c). Pub. L. 99–514, §1511(a), (c)(1), redesignated subsec. (d) as (c), in par. (1), struck out "annual" before "rate of interest" and substituted "the underpayment rate established under this section" for "the adjusted rate established under subsection (b)", and struck out former subsec. (c) definition of prime rate, which read as follows: "For purposes of subsection (b), the term 'adjusted prime rate charged by banks' means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System."

Subsec. (c)(3)(A)(v). Pub. L. 99–514, §1535(a), added cl. (v).

Subsec. (d). Pub. L. 99–514, §1511(c)(1)(A), redesignated subsec. (d) as (c).

1984-Subsec. (d). Pub. L. 98–369 added subsec. (d).

1982-Subsec. (b). Pub. L. 97–248 substituted provisions that if the adjusted prime rate charged by banks (rounded to the nearest full percent) during the 6-month period ending on September 30 of any calendar year, or during the 6-month period ending on March 31 of any calendar year, differs from the interest rate in effect under this section on either such date, respectively, then the Secretary shall establish, within 15 days after the close of the applicable 6-month period, an adjusted rate of interest equal to such adjusted prime rate, and that any adjusted rate of interest established under paragraph (1) shall become effective on January 1 of the succeeding year in the case of an adjustment attributable to paragraph (1)(A), and on July 1 of the same year in the case of an adjustment attributable to paragraph (1)(B), for provisions that the Secretary was to establish an adjusted rate of interest for the purpose of subsection (a) not later than October 15 of any year if the adjusted prime rate charged by banks during September of that year, rounded to the nearest full percent, was at least a full percentage point more or less than the interest rate which was then in effect, and that any such adjusted rate of interest would be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and would become effective on January 1 of the immediately succeeding year.

1981-Subsec. (b). Pub. L. 97–34, §711(a), struck out provision that an adjustment provided for under this subsection not be made prior to the expiration of 23 months following the date of any preceding adjustment under this subsection which changes the rate of interest.

Pub. L. 97–34, §711(c), substituted "January 1" for "February 1".

Subsec. (c). Pub. L. 97–34, §711(b), struck out "90 percent of" before "the average predominant prime rate".

1979-Subsec. (a). Pub. L. 96–167 substituted provisions setting the annual rate established under this section to be such adjusted rate as is established by the Secretary under subsec. (b) of this section for provision that the rate of interest under sections 6601(a), 6602, 6611(a), 6332(c)(1), and 7426(g) of this title, and under section 2411(a) of title 28 was to be 9 percent per annum, or such adjusted rate as was established by the Secretary under subsection (b).

1976-Subsecs. (a), (b). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

Statutory Notes and Related Subsidiaries

Effective Date of 1998 Amendment

Amendment by section 3301(a) of Pub. L. 105–206 applicable to interest for periods beginning after July 22, 1998, and, subject to applicable statutes of limitation, to interest for periods beginning before July 22, 1998, if taxpayer reasonably identifies and establishes periods of overpayments and underpayments for which zero rate applies, and not later than Dec. 31, 1999, requests application of subsec. (d) of this section to such periods, see section 3301(c) of Pub. L. 105–206, set out as a note under section 6601 of this title.

Pub. L. 105–206, title III, §3302(b), July 22, 1998, 112 Stat. 742 , provided that: "The amendment made by this section [amending this section] shall apply to interest for the second and succeeding calendar quarters beginning after the date of the enactment of this Act [July 22, 1998]."

Effective Date of 1997 Amendment

Pub. L. 105–34, title XIV, §1463(b), Aug. 5, 1997, 111 Stat. 1058 , provided that: "The amendment made by subsection (a) [amending this section] shall apply for purposes of determining interest for periods after December 31, 1997."

Amendment by section 1604(b)(1) of Pub. L. 105–34 effective as if included in the sections of the Uruguay Round Agreements Act, Pub. L. 103–465, to which it relates, see section 1604(b)(4) of Pub. L. 105–34, set out as a note under section 412 of this title.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Effective Date of 1994 Amendment

Pub. L. 103–465, title VII, §713(b), Dec. 8, 1994, 108 Stat. 5002 , provided that: "The amendment made by this section [amending this section] shall apply for purposes of determining interest for periods after December 31, 1994."

Effective Date of 1990 Amendment

Pub. L. 101–508, title XI, §11341(b), Nov. 5, 1990, 104 Stat. 1388–471 , provided that: "The amendment made by subsection (a) [amending this section] shall apply for purposes of determining interest for periods after December 31, 1990."

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to returns the due date for which (determined without regard to extensions) is after Dec. 31, 1989, see section 7721(d) of Pub. L. 101–239, set out as a note under section 461 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Effective Date of 1986 Amendment

Amendment by section 1511(a), (c)(1) of Pub. L. 99–514 applicable for purposes of determining interest for periods after Dec. 31, 1986, see section 1511(d) of Pub. L. 99–514, set out as a note under section 47 of this title.

Pub. L. 99–514, title XV, §1535(b), Oct. 22, 1986, 100 Stat. 2750 , provided that: "The amendment made by subsection (a) [amending this section] shall apply to interest accruing after December 31, 1984; except that such amendment shall not apply in the case of any underpayment with respect to which there was a final court decision before the date of the enactment of this Act [Oct. 22, 1986]."

Effective Date of 1984 Amendment

Pub. L. 98–369, div. A, title I, §144(c), July 18, 1984, 98 Stat. 684 , provided that: "The amendments made by this section [amending this section and section 6214 of this title] shall apply with respect to interest accruing after December 31, 1984."

Effective Date of 1982 Amendment

Pub. L. 97–248, title III, §345(b), Sept. 3, 1982, 96 Stat. 636 , as amended by Pub. L. 98–369, div. A, title VII, §714(m), July 18, 1984, 98 Stat. 963 , provided that: "The amendment made by this section [amending this section] shall apply to adjustments taking effect on or after January 1, 1983."

Effective Date of 1981 Amendment

Pub. L. 97–34, title VII, §711(d), Aug. 13, 1981, 95 Stat. 340 , provided that:

"(1) For subsections (a) and (b).-The amendments made by subsections (a) and (b) [amending this section] shall apply to adjustments made after the date of the enactment of this Act [Aug. 13, 1981].

"(2) FOR SUBSECTION (c).-The amendment made by subsection (c) [amending this section] shall apply to adjustments made for periods after 1982."

EFFECTIVE DATE OF 1979 AMENDMENT

Pub. L. 96–167, §4(c)(2), Dec. 29, 1979, 93 Stat. 1276 , provided that: "The amendment made by subsection (b) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 29, 1979]."

EFFECTIVE DATE

Pub. L. 93–625, §7(e), Jan. 3, 1975, 88 Stat. 2116 , provided that: "The amendments made by this section [enacting this section and amending sections 514, 6163, 6166, 6167, 6332, 6504, 6601, 6602, 6611, 6654, 6655, and 7426 of this title and section 2411 of Title 28, Judiciary and Judicial Procedure] shall take effect on July 1, 1975, and apply to amounts outstanding on such date or arising thereafter."

REGULATIONS

Pub. L. 99–514, title XV, §1511(b), Oct. 22, 1986, 100 Stat. 2744 , provided that: "The Secretary of the Treasury or his delegate may issue regulations to coordinate section 6621 of the Internal Revenue Code of 1954 [now 1986] (as amended by this section) with section 6601(f) of such Code. Such regulations shall not apply to any period after the date 3 years after the date of the enactment of this Act [Oct. 22, 1986]."

EXHIBIT 33

26 USC 6622: Interest compounded daily
Text contains those laws in effect on February 16, 2026

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 67-INTEREST
Subchapter C-Determination of Interest Rate; Compounding of Interest

Jump To:
Source Credit
Miscellaneous
Effective Date

§6622. Interest compounded daily

(a) General rule

In computing the amount of any interest required to be paid under this title or sections 1961(c)(1) or 2411 of title 28, United States Code, by the Secretary or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

(b) Exception for penalty for failure to file estimated tax

Subsection (a) shall not apply for purposes of computing the amount of any addition to tax under section 6654 or 6655.

(Added Pub. L. 97–248, title III, §344(a), Sept. 3, 1982, 96 Stat. 635 .)

Statutory Notes and Related Subsidiaries

Effective Date

Pub. L. 97–248, title III, §344(c), Sept. 3, 1982, 96 Stat. 636 , provided that: "The amendments made by this section [enacting this section and amending section 6601 of this title] shall apply to interest accruing after December 31, 1982."

EXHIBIT 34

26 USC 6651: Failure to file tax return or to pay tax
Text contains those laws in effect on February 16, 2026

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 68-ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES
Subchapter A-Additions to the Tax and Additional Amounts
PART I-GENERAL PROVISIONS

Jump To:
Source Credit
Future Amendments
Miscellaneous
Amendments
Effective Date

§6651. Failure to file tax return or to pay tax

(a) Addition to the tax

In case of failure-

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) to pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) to pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

In the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under paragraph (1) shall not be less than the lesser of $435 or 100 percent of the amount required to be shown as tax on such return.

(b) Penalty imposed on net amount due

For purposes of-

(1) subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return,

(2) subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) Limitations and special rule

(1) Additions under more than one paragraph

With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month (or fraction thereof) to which an

addition to tax applies under both paragraphs (1) and (2). In any case described in the last sentence of subsection (a), the amount of the addition under paragraph (1) of subsection (a) shall not be reduced under the preceding sentence below the amount provided in such last sentence.

(2) Amount of tax shown more than amount required to be shown

If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

(d) Increase in penalty for failure to pay tax in certain cases

(1) In general

In the case of each month (or fraction thereof) beginning after the day described in paragraph (2) of this subsection, paragraphs (2) and (3) of subsection (a) shall be applied by substituting "1 percent" for "0.5 percent" each place it appears.

(2) Description

For purposes of paragraph (1), the day described in this paragraph is the earlier of-

(A) the day 10 days after the date on which notice is given under section 6331(d), or

(B) the day on which notice and demand for immediate payment is given under the last sentence of section 6331(a).

(e) Exception for estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6654 or 6655.

(f) Increase in penalty for fraudulent failure to file

If any failure to file any return is fraudulent, paragraph (1) of subsection (a) shall be applied-

(1) by substituting "15 percent" for "5 percent" each place it appears, and

(2) by substituting "75 percent" for "25 percent".

(g) Treatment of returns prepared by Secretary under section 6020(b)

In the case of any return made by the Secretary under section 6020(b)-

(1) such return shall be disregarded for purposes of determining the amount of the addition under paragraph (1) of subsection (a), but

(2) such return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition under paragraphs (2) and (3) of subsection (a).

(h) Limitation on penalty on individual's failure to pay for months during period of installment agreement

In the case of an individual who files a return of tax on or before the due date for the return (including extensions), paragraphs (2) and (3) of subsection (a) shall each be applied by substituting "0.25" for "0.5" each place it appears for purposes of determining the addition to tax for any month during which an installment agreement under section 6159 is in effect for the payment of such tax.

(i) Application to imputed underpayment

For purposes of this section, any failure to comply with section 6226(b)(4)(A)(ii) shall be treated as a failure to pay the amount described in subclause (II) thereof and such amount shall be treated for purposes of this section as an amount shown as tax on a return specified in subsection (a)(1).

(j) Adjustment for inflation

(1) In general

In the case of any return required to be filed in a calendar year beginning after 2020, the $435 dollar amount under subsection (a) shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year determined by substituting "calendar year 2019" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(2) Rounding

If any amount adjusted under paragraph (1) is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.

(Aug. 16, 1954, ch. 736, 68A Stat. 821 ; Pub. L. 90–364, title I, §103(e)(4), June 28, 1968, 82 Stat. 264 ; Pub. L. 91–172, title IX, §943(a), Dec. 30, 1969, 83 Stat. 727 ; Pub. L. 92–9, §3(j)(1), Apr. 1, 1971, 85 Stat. 22 ; Pub. L. 94–455, title XIX, §1904(b)(10)(A)(v), Oct. 4, 1976, 90 Stat. 1817 ; Pub. L. 97–248, title III, §318(a), (b), Sept. 3, 1982, 96 Stat. 610 ; Pub. L. 98–369, div. A, title IV, §412(b)(8), July 18, 1984, 98 Stat. 792 ; Pub. L. 99–514, title XV, §1502(a), (b), Oct. 22, 1986, 100 Stat. 2741 ; Pub. L. 100–203, title X, §10301(b)(6), Dec. 22, 1987, 101 Stat. 1330–429 ; Pub. L. 101–239, title VII, §7741(a), Dec. 19, 1989, 103 Stat. 2404 ; Pub. L. 104–168, title III, §303(b)(2), title XIII, §1301(a), July 30, 1996, 110 Stat. 1458 , 1475; Pub. L. 105–206, title III, §3303(a), July 22, 1998, 112 Stat. 742 ; Pub. L. 110–245, title III, §303(a), June 17, 2008, 122 Stat. 1649 ; Pub. L. 113–295, div. B, title II, §208(a), Dec. 19, 2014, 128 Stat. 4072 ; Pub. L. 114–125, title IX, §921(a), (b), Feb. 24, 2016, 130 Stat. 281 ; Pub. L. 115–97, title I, §11002(d)(1)(KK), Dec. 22, 2017, 131 Stat. 2060 ; Pub. L. 115–141, div. U, title II, §206(n)(1), title IV, §401(a)(299)(A), Mar. 23, 2018, 132

Stat. 1181 , 1198; Pub. L. 116–25, title III, §3201(a), (b), July 1, 2019, 133 Stat. 1017 ; Pub. L. 116–94, div. O, title IV, §402(a), (b), Dec. 20, 2019, 133 Stat. 3179 .)

Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

Editorial Notes

Amendments

2019-Subsec. (a). Pub. L. 116–94, §402(a), substituted "$435" for "$330" in concluding provisions.

Pub. L. 116–25, §3201(a), substituted "$330" for "$205" in concluding provisions.

Subsec. (j)(1). Pub. L. 116–94, §402(b), substituted "$435" for "$330".

Pub. L. 116–25, §3201(b), substituted "2020" for "2014", "$330" for "$205", and "2019" for "2013".

2018-Subsec. (i). Pub. L. 115–141, §206(n)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 115–141, §401(a)(299)(A), which directed amendment of subsec. (i) by inserting "an amount equal to" after "increased by" and "for the calendar year" after "section 1(f)(3)", was executed by making the insertions in subsec. (j) to reflect the probable intent of Congress and the redesignation of subsec. (i) as (j) by Pub. L. 115–141, §206(n)(1), effective as if included in Pub. L. 114–74. See Amendment and Effective Date of 2018 Amendment notes below.

Pub. L. 115–141, §206(n)(1), redesignated subsec. (i) as (j).

2017-Subsec. (i)(1). Pub. L. 115–97 substituted "for 'calendar year 2016' in subparagraph (A)(ii)" for "for 'calendar year 1992' in subparagraph (B)".

2016-Subsec. (a). Pub. L. 114–125, §921(a), substituted "$205" for "$135" in concluding provisions.

Subsec. (i)(1). Pub. L. 114–125, §921(b), substituted "$205" for "$135".

2014-Subsec. (i). Pub. L. 113–295 added subsec. (i).

2008-Subsec. (a). Pub. L. 110–245 substituted "$135" for "$100" in concluding provisions.

1998-Subsec. (h). Pub. L. 105–206 added subsec. (h).

1996-Subsec. (a)(3). Pub. L. 104–168, §303(b)(2), substituted "21 calendar days from the date of notice and demand therefor (10 business days if the amount for which such notice and demand is made equals or exceeds $100,000)" for "10 days of the date of the notice and demand therefor".

Subsec. (g). Pub. L. 104–168, §1301(a), added subsec. (g).

1989-Subsec. (f). Pub. L. 101–239 added subsec. (f).

1987-Subsec. (e). Pub. L. 100–203 substituted "section 6654 or 6655" for "section 6154 or 6654".

1986-Subsec. (c)(1). Pub. L. 99–514, §1502(b), amended par. (1) generally, striking out the designation "(A)" before "With respect to", inserting "(or fraction thereof)", and striking out subpar. (B) which read as follows: "With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand."

Subsecs. (d), (e). Pub. L. 99–514, §1502(a), added subsec. (d) and redesignated former subsec. (d) as (e).

1984-Subsec. (d). Pub. L. 98–369 in amending subsec. (d) generally, substituted in heading "estimated tax" for "declarations of estimated tax", struck out provisions making section inapplicable to any failure to file a declaration of estimated tax required by section 6015 or to any failure to pay any estimated tax required to be paid by section 6153, and made section inapplicable to any failure to pay any estimated tax required to be paid by section 6654.

1982-Subsec. (a). Pub. L. 97–248, §318(a), inserted provision that, in the case of a failure to file a return of tax imposed by chapter 1 within 60 days of the date prescribed for filing of such return (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to tax under par. (1) shall not be less than the lesser of $100 or 100 percent of the amount required to be shown as tax on such return.

Subsec. (c)(1)(A). Pub. L. 97–248, §318(b)(1), inserted provision that in any case described in last sentence of subsec. (a), the amount of the addition under par. (1) of subsec. (a) shall not be reduced under first sentence of this subpar. below the amount provided in such last sentence.

Subsec. (c)(1)(B). Pub. L. 97–248, §318(b)(2), inserted "(determined without regard to the last sentence of such subsection)" after "paragraph (1) of subsection (a)".

1976-Subsec. (e). Pub. L. 94–455 struck out subsec. (e) which related to certain interest equalization tax returns.

1971-Subsec. (e). Pub. L. 92–9 added subsec. (e).

1969-Subsec. (a). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (b). Pub. L. 91–172 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 91–172 added subsec. (c), redesignated former subsec. (c) as (d) and struck out reference to section 6016 of this title and provided that this section would not be applicable for failure to pay any estimated tax required under section 6153 or 6154 of this title.

1968-Subsec. (c). Pub. L. 90–364 struck out reference to section 6016.

Statutory Notes and Related Subsidiaries

Effective Date of 2019 Amendment

Pub. L. 116–94, div. O, title IV, §402(c), Dec. 20, 2019, 133 Stat. 3180 , provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for which (including extensions) is after December 31, 2019."

Pub. L. 116–25, title III, §3201(c), July 1, 2019, 133 Stat. 1017 , provided that: "The amendments made by this section [amending this section] shall apply to returns required to be filed after December 31, 2019."

Effective Date of 2018 Amendment

Amendment by section 206(n)(1) of Pub. L. 115–141 effective as if included in section 1101 of Pub. L. 114–74, see section 207 of Pub. L. 115–141, set out as a note under section 6031 of this title.

Effective Date of 2017 Amendment

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, set out as a note under section 1 of this title.

Effective Date of 2016 Amendment

Pub. L. 114–125, title IX, §921(c), Feb. 24, 2016, 130 Stat. 281 , provided that: "The amendments made by this section [amending this section] shall apply to returns required to be filed in calendar years after 2015."

Effective Date of 2014 Amendment

Pub. L. 113–295, div. B, title II, §208(h), Dec. 19, 2014, 128 Stat. 4074 , as amended by Pub. L. 115–141, div. U, title I, §105(a), Mar. 23, 2018, 132 Stat. 1170 , provided that:

"(1) In general.-Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 6652, 6695, 6698, 6699, 6721, and 6722 of this title] shall apply to returns required to be filed, and statements required to be furnished, after December 31, 2014.

"(2) Subsection (c).-The amendment made by subsection (c) [amending section 6695 of this title] shall apply to returns or claims for refund filed after December 31, 2014."

[Pub. L. 115–141, div. U, title I, §105(b), Mar. 23, 2018, 132 Stat. 1170 , provided that: "The amendments made by this section [amending section 208(h) of div. B of Pub. L. 113–295, set out above] shall take effect as if included in section 208 of the Stephen Beck, Jr., ABLE Act of 2014 [div. B of Pub. L. 113–295]."]

Effective Date of 2008 Amendment

Pub. L. 110–245, title III, §303(b), June 17, 2008, 122 Stat. 1649 , provided that: "The amendment made by this section [amending this section] shall apply to returns required to be filed after December 31, 2008."

Effective Date of 1998 Amendment

Pub. L. 105–206, title III, §3303(b), July 22, 1998, 112 Stat. 742 , provided that: "The amendment made by this section [amending this section] shall apply for purposes of determining additions to the tax for months beginning after December 31, 1999."

Effective Date of 1996 Amendment

Amendment by section 303(b)(2) of Pub. L. 104–168 applicable in case of any notice and demand given after Dec. 31, 1996, see section 303(c) of Pub. L. 104–168, set out as a note under section 6601 of this title.

Pub. L. 104–168, title XIII, §1301(b), July 30, 1996, 110 Stat. 1475 , provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of any return the due date for which (determined without regard to extensions) is after the date of the enactment of this Act [July 30, 1996]."

Effective Date of 1989 Amendment

Pub. L. 101–239, title VII, §7741(b), Dec. 19, 1989, 103 Stat. 2405 , provided that: "The amendment made by subsection (a) [amending this section] shall apply in the case of failures to file returns the due date for which (determined without regard to extensions) is after December 31, 1989."

Effective Date of 1987 Amendment

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10301(c) of Pub. L. 100–203, set out as a note under section 585 of this title.

Effective Date of 1986 Amendment

Pub. L. 99–514, title XV, §1502(c), Oct. 22, 1986, 100 Stat. 2741 , provided that:

"(1) Subsection (a).-The amendments made by subsection (a) [amending this section] shall apply-

"(A) to failures to pay which begin after December 31, 1986, and

"(B) to failures to pay which begin on or before December 31, 1986, if after December 31, 1986-

"(i) notice (or renotice) under section 6331(d) of the Internal Revenue Code of 1954 [now 1986] is given with respect to such failure, or

"(ii) notice and demand for immediate payment of the underpayment is made under the last sentence of section 6331(a) of such Code.

In the case of a failure to pay described in subparagraph (B), paragraph (2) of section 6651(d) of such Code (as added by subsection (a)) shall be applied by taking into account the first notice (or renotice) after December 31, 1986.

"(2) Subsection (b).-The amendment made by subsection (b) [amending this section] shall apply to amounts assessed after December 31, 1986, with respect to failures to pay which begin before, on, or after such date."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Effective Date of 1982 Amendment

Pub. L. 97–248, title III, §318(c), Sept. 3, 1982, 96 Stat. 610 , provided that: "The amendments made by this section [amending this section] shall apply to returns the due date for filing of which (including extensions) is after December 31, 1982."

Effective Date of 1971 Amendment

Pub. L. 92–9, §3(j)(3), Apr. 1, 1971, 85 Stat. 22 , provided that: "The amendments made by this subsection [amending this section and section 6680 of this title] shall apply with respect to returns required to be filed on or after the date of the enactment of this Act [Apr. 1, 1971]."

Effective Date of 1969 Amendment

Pub. L. 91–172, title IX, §943(d), Dec. 30, 1969, 83 Stat. 729 , provided that: "The amendments made by subsections (a) [amending this section] and (c) [amending sections 3121, 5684, and 6653 of this title] shall apply with respect to returns the date prescribed by law (without regard to any extension of time) for filing of which is after December 31, 1969, and with respect to notices and demands for payment of tax made after December 31, 1969. The amendment made by subsection (b) [amending section 6656 of this title] shall apply with respect to deposits the time for making of which is after December 31, 1969."

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90–364, see section 103(f) of Pub. L. 90–364, set out as a note under section 243 of this title.

Illegal Tax Protester Designation

Pub. L. 105–206, title III, §3707, July 22, 1998, 112 Stat. 778 , provided that:

"(a) Prohibition.-The officers and employees of the Internal Revenue Service-

"(1) shall not designate taxpayers as illegal tax protesters (or any similar designation); and

"(2) in the case of any such designation made on or before the date of the enactment of this Act [July 22, 1998]-

"(A) shall remove such designation from the individual master file; and

"(B) shall disregard any such designation not located in the individual master file.

"(b) DESIGNATION OF NONFILERS ALLOWED.-An officer or employee of the Internal Revenue Service may designate any appropriate taxpayer as a nonfiler, but shall remove such designation once the taxpayer has filed income tax returns for 2 consecutive taxable years and paid all taxes shown on such returns.

"(c) EFFECTIVE DATE.-The provisions of this section shall take effect on the date of the enactment of this Act [July 22, 1998], except that the removal of any designation under subsection (a)(2)(A) shall not be required to begin before January 1, 1999."

Exhibit 35 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 36 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 37 Slipsheet

(Subject to Motion to Seal and Protective Order)

EXHIBIT 38

PDADV_004224-PDADV_004225

Pat Daugherty

From: Jim Dondero
Sent: Tuesday, September 27, 2011 5:54 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.

Its not a retrade, we were clarifying a general understanding. You will trust or you will leave; you will get no agreement in writing. You will stop pushing and wasting my time. You will contribute and be rewarded and when u feel unfairly treated you can go elsewhere but I won't deal with this much distraction, disrespect or disruption.

From: Pat Daugherty
Sent: Tuesday, September 27, 2011 02:04 PM
To: Jim Dondero
Subject: RE: What do you stand for? This retrade is unfair and unjust.

You are the one who told me to "f@ck myself", not the other way around. For the record, the agreement always expressly noted that I would have to be employed at Highland in order to get any payment of bonus (as has always been the case). As for Tunstall, we had already negotiated that agreement which clearly states the nature of my interest and your interest. The nature of the Restoration economic interest will be as agreed subject to investor approval as they are going to have their own views of how my, yours and the teams comp should be structured. I have never tried to skim you and I am not trying to now. That said, it is reasonable to get the nature of my compensation in writing so that everyone is clear. Every other Company in the universe commits their economic relationships with their managers to writing so that there can be no confusion down the road. To insist that I do otherwise is flat out wrong and you know it.

If you don't want me to give a damn about you personally then I guess I'll do my best to comply. That said, I have been by your side thru a whole lot of sh@t and it is so refreshing to get your boot up my a$$ now that you are back on your feet. I'm glad to see you are back to the point where you can tell those closest to you to "f@ck themselves".

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
972-628-4100 (phone)
972-628-4147 (fax)
pdaugherty@hcmlp.com

From: Jim Dondero
Sent: Tuesday, September 27, 2011 1:27 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.

Dondero
EXHIBIT NO. 160
M. FOLKS

Cause No DC-12-04005
Highland Parties' Trial Exhibit
160

DAUGHERTY 001349

I won't take you speaking with me like that. "Big brother u never wanted" doesn't allow u to be that disrespectful. I'm not willing to make that indicative letter a contract. There are things that need to be corrected such as bonus amounts of 750k feb aug need to both be described as retention, in-good-standing to receive. 25% interest in Tunstall and RCP need to be described as LP interests not a fee skim. Re REIT you will be treated fairly re a transaction that may or may not happen and if the anticipated deal occurs as expected you can expect approx 15% but its too lose to define and you will have to trust me. You have been treated more than fair in a value proposition that is always shift. If you believe I have been untrustworthy you should move on.
Re my personal life, its not relevant except to say I will tolerate the individual, passions and peculiarities, to a point. Beyond that point it becomes too unpleasant and I'd rather start over alone. You need to stop pushing me.

From: Pat Daugherty
Sent: Tuesday, September 27, 2011 09:48 AM
To: Jim Dondero
Subject: What do you stand for? This retrade is unfair and unjust.

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
972-628-4100 (phone)
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pdaugherty@hcmlp.com

EXHIBIT 39

PDADV_000002-PDADV_000007

HIGHLAND CAPITAL
Management, L.P.

Tax Discussion

March 6, 2009

Objectives

- Provide overview of tax refund estimate calculation
- Describe the next steps that must be taken by Highland and you to obtain the tax refund
- Answer your questions – please hold questions until the end of presentation to ensure we are able to cover all the intended material

Tax Refund Estimate

1. Estimate 2008 loss for Partnership:
- Estimate based on proposed tax strategies

2. Loss Allocation to Partners per Partnership Agreement:
- Allocated portion of 2008 estimated loss to each partner based on terms in Partnership Agreement
  - Based on K-1 income from 2007 and followed by earlier years until loss is completely allocated

3. Estimate of 2008 HCMLP Loss Permitted by IRS:
- Will not exceed loss allocation per partnership agreement
- Will likely be further limited to "At-Risk Basis" – excess loss remainder will be suspended, but can be used towards future partnership income (no time limit)
- Using appropriate basis offset 2008 income first. Excess may create an Net Operating Loss (NOL) that can be then be carried back to 2006 and 2007. Any unused NOL can be carried forward 20 years.

4. Refund Calculation
- 27% effective tax rate utilized on the estimated loss to determine tax refund estimate

Tax Refund Estimate (cont'd)

- How is partner capital calculated?
  - Book basis vs. Tax Basis vs. GAAP Basis
- Can the loss exceed my tax basis in the Firm?
  - Possibly– if you personally guarantee debt of the firm you can claim additional losses up to the amount of debt allocated to you
  - The debt is nonrecourse to you if you do not personally guarantee it
- Why was 27% used as the effective tax rate?
- Factors affecting refund estimate
  - Personal circumstances (itemized deductions, AMT situation, character of HCMLP income)
  - Willingness to personally guarantee firm debt
- Factors affecting timing of refund
  - It is likely the refund related to 2008 income should be received within 6-10 weeks of filing
  - IRS is required to act on the 2006 and 2007 refund claims within 90 days

Tax Refund Estimate (cont'd)

- Can the IRS claw back the refund?
  - Yes, if the return if audited and the outcome is negative
  - Timing?

Next Steps

- Highland will provide by March 31, 2009:
  - Your share of the estimated 2008 Profit & Loss
  - Tax capital amount according to HCM records
  - Estimated debt allocation
  - Examples of filing disclosures that Jim and Mark will utilize

- Potential actions by you to facilitate the refund:
  - Request extension for 2008 return now
  - Prepare 2008 return – file early and then later correct with final numbers (prior to September 15)
  - Claim 2008 tax year loss followed by 2006 and 2007 as eligible

- Call with Deloitte tax professionals late next week to answer your questions and share information

EXHIBIT 40

PDADV_018494-PDADV_018494

From: **Jim Dondero** JDondero@hcmlp.com
Subject: Separation Agreements
Date: October 27, 2011 at 4:49 PM
To: phdaugherty@gmail.com

Pat,

Please see the attached documents for your review and execution, which supersede the document package previously provided to you. Please note that none of the attached documents will be effective until accepted and countersigned by the applicable counterparties.

We are available Friday to discuss any questions you have on the documents.

DISCLAIMER- This email is intended for the recipient(s) only and should not be copied or reproduced without explicit permission. The material provided herein is for informational purposes only and does not constitute an offer or commitment, a solicitation of an offer, or any advice or recommendation, to enter into or conclude any transaction. It may contain confidential, proprietary or legally privileged information. If you receive this message in error, please immediately delete it.

Cornerstone_Daugherty Consulting and Release...

Cornerstone_Daugherty Separation and Resignation Lett...

Sierra Verde LLC_ Highland Capital_Member Consent re_...

Separation Agreement Pat Daugherty 10272011.pdf

PDADV_018494

EXHIBIT 41

PDADV_018476-PDADV_018493

October 27, 2011

Mr. Patrick Daugherty
[redacted]

Dear Pat:

This letter confirms our discussions with you concerning your resignation from your employment with Highland Capital Management, L.P. (hereinafter referred to as "Highland Capital"); and Highland Capital's offer and, by your signature, your acceptance of this proposed General Release and Separation Agreement (this "Agreement") on the terms set forth below. On behalf of Highland Capital, I want to wish you success in your future endeavors.

1. Voluntary Resignation. You hereby voluntarily resign from your position as Partner and from any other positions for Highland Capital Management, L.P. ("Highland Capital") and its affiliates effective as of the close of business on October 31, 2011 ("Separation Date"). Your last day of service as an active employee and Partner will be October 31, 2011. In order to memorialize your resignation as a Partner and to transfer your Interest in the Partnership back to the Partnership, concurrently with the execution hereof you shall execute the Assignment of Interest attached hereto as Appendix B and shall cause your spouse to execute the Spouse's Agreement constituting a part thereof.

2. Salary and Benefits. You have received or will receive regardless of whether you execute this Agreement, the following payments and benefits related to your employment with Highland Capital:

(a) Payment of your regular base salary through the Separation Date;

(b) Payment of accrued and unused vacation leave benefits as of October 31, 2011;

(c) Payment of your monthly medical and dental insurance premiums through October 31, 2011 in accordance with Highland Capital's existing policies; and

(d) Present or future payment or other entitlement to any benefits to which you have vested entitlement under the terms of the employee compensation or benefit plans established by Highland Capital as set forth in Appendix A.

The amounts paid in accordance with subparagraphs (a) and (b) are gross amounts, subject to lawful deductions, including any deductions you have previously authorized, and will be paid to you in accordance with applicable law.

Your paid group health insurance benefits will continue through, October 31, 2011. After the termination of your health insurance benefits on that date, you are entitled at your option to continue your group health insurance coverage in accordance with the health insurance plan and applicable law. Please complete a COBRA election form, which will be furnished to you, and return it to Discovery Benefits at your earliest convenience, in accordance with the terms of the election form, if you elect to continue such insurance coverage.

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You acknowledge that your eligibility for any other employee benefit programs maintained by Highland Capital for current employees will cease as of the Separation Date, except as provided in Section 3 below.

3. Special Separation Compensation. Contingent upon (i) your acceptance of the terms of this Agreement, (ii) your and your spouse's execution of this Agreement (including Appendices), and (iii) your execution and delivery of a written consent of members of Sierra Verde, LLC ("Sierra Verde") acceptable to Highland Capital and Sierra Verde approving the termination or rescission of all compensation agreements, services agreements and/or equity interests or awards to which Sierra Verde is a party or recipient (the "Sierra Verde Agreement"), and in consideration of your undertakings as set forth in this Agreement, Highland Capital offers you, in addition to the pay and benefits you will receive or have received pursuant to Section 2, the following Special Separation Compensation:

(a) Lump sum payment of the equivalent of six weeks base pay (approximately $57,692) paid within 10 business days following the later of either the Effective Date of this Agreement or your Separation Date. This payment is in accordance with and in full satisfaction of any severance payments owed to you per the terms of your Employment Agreement dated on or about December 31, 2004 (the "Employment Agreement").

(b) Employee shall be permitted to retain the 2,875 shares of MGM Holdings Inc. ("MGM") restricted stock received by Employee in connection with Employee's service as a director to MGM solely to the extent such shares are vested prior to the termination or expiration of Employee's service as a director to MGM. To the extent any portion of the value of such vested shares is required to be reimbursed to any funds or accounts managed by Highland, 100% of such amounts shall be paid by Highland (or offset against fees payable to Highland).

(c) Tax:

(i) Tax Payment for 2011. Highland Capital will pay you the Federal Income Tax due that relates to the Federal 2011 K-1 issued for Highland Capital. If a tax refund is generated in 2011 or any previous years as a result of a 2011 Highland Capital Net Operating Loss or Capital Losses, you, shall remit such amounts back to Highland Capital within 10 business days of receipt of refund.

(ii) If you receive a "Notice of Tax Due" or other such letter from a governmental taxing authority demanding payment for taxes that relates to an Internal Revenue Service audit, or State audit, or other governmental agency audit of Highland Capital relating to a tax year during your tenure as a Partner of Highland Capital, Highland Capital agrees to timely payment of the tax, interest, and any penalties associated with the tax obligation upon final resolution of the obligation. Correspondingly, you agree that in order to receive such

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payment, you will submit via certified mail within 10 business days to Highland Capital's Director of Human Resources a copy of the Notice of Tax Due or such letter from the governmental authority demanding payment. If after such payment, a subsequent refund is issued by the governmental authority, you agree to remit such amount back Highland Capital within 10 business days of receipt of refund.

(iii) In addition, if any tax refund issued to you that relates to your partnership interest in Highland Capital (excluding refunds associated with estimated and superseded HCMLP 2008 K-1s), you will remit such amount back to Highland Capital within 10 business days of receipt of refund.

The Special Separation Compensation specified in this Agreement will be provided to you, on the express condition that you have executed this Agreement and delivered a copy of this Agreement to Highland Capital in accordance with this Agreement, that you have fulfilled all your obligations under this Agreement, that you have not violated any of the requirements and prohibitions set forth in this Agreement, and that you have met all other specific conditions for the receipt of any particular payment or benefit set forth in any subparagraphs in this Agreement.

These amounts are gross amounts, subject to lawful deductions, including any deductions you have previously authorized. You agree that you will be responsible for paying all state, federal, and local taxes owed in connection with these payments.

By executing this Agreement, you acknowledge and agree that neither Highland Capital nor any of the other Released Parties (as defined in Section 4 of this Agreement) has any prior legal obligation to provide the Special Separation Compensation to you. You also acknowledge and agree that your acceptance of the Special Separation Compensation and attendant obligations as described in this Agreement is in consideration of your promises and undertakings as set forth in this Agreement.

If any provision of this Agreement (or of any award of compensation) would cause you or Highland Capital to incur any additional tax or interest under Section 409A of the Internal Revenue Code or any regulations or Treasury guidance promulgated thereunder, Highland Capital may reform such provision; provided that it will (i) maintain, to the maximum extent practicable, the original intent of the applicable provision without violating the provisions of Section 409A of the Code and (ii) notify and consult with you regarding such amendments or modifications prior to the effective date of any such change.

4. General Release. In consideration of the Special Separation Compensation described in Section 3 of this Agreement and all promised contained herein, you for yourself and on behalf of your spouse, heirs, successors, and assigns hereby release, acquit, and forever discharge any and all claims and demands of whatever kind or character, whether vicarious, derivative, or direct, that you individually, collectively, or otherwise, on behalf of your spouse, heirs, successors, and assigns, may have or assert against: (i) Highland Capital Management, L.P.; (ii) Highland Capital Management Services, Inc.; (iii) any parent, subsidiary, or affiliated

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or related entity of Highland Capital Management, L.P. or Highland Capital Management Services, Inc., including but not limited to any funds managed by Highland Capital or any of its affiliates; (iv) James Dondero in his individual and official capacities; (v) Mark Okada in his individual and official capacities; (vi) any fiduciary, agent, insurer, attorney, spouses, or any successors and assigns of any of the foregoing entities and individuals, and (vii) any other past or present respective shareholders, partners, officers, directors, employees, independent contractors or representatives of any of the foregoing, in their individual and official capacities (collectively the "Released Parties"). This General Release includes but is not limited to any claim or demand based on any federal, state, or local statutory or common law or constitutional provision that applies or is asserted to apply, directly or indirectly, to the formation, continuation, performance, or termination of your employment relationship with Highland Capital, including but not limited to any claims under that certain Employment Agreement. This General Release also includes but is not limited to claims arising under federal, state, or local laws prohibiting employment discrimination, including but not limited to rights or claims under the Age Discrimination in Employment Act (ADEA). Thus, you agree to waive to the maximum extent permitted by law any claims, liabilities, demands, or causes of action, known or unknown, fixed or contingent, that you may have or claim against Highland Capital or any of the other Released Parties growing out of, resulting from, or connected in any way with your employment, the Employment Agreement and/or the termination from your employment with Highland Capital, and you do hereby agree not to file any lawsuit or other cause of action to assert any such claim.

This release includes any claims or demands for damages (actual or punitive), back wages, future wages or front pay, commissions, bonuses, severance benefits, workers compensation benefits, accrued vacation leave benefits, relocation expenses, or other employment benefits (except as contemplated by this Agreement), compensatory damages, liquidated damages, penalties, equitable relief, attorney's fees, costs of court, disbursements, interest, and any and all other loss, expense, or detriment of whatever kind or character, resulting from, growing out of, connected with, or related in any way to the formation, continuation, performance, or termination of your employment relationship with Highland Capital.

5. General Release of Employee. Contingent upon your acceptance of the terms of this Agreement, and in consideration of your promises and undertakings set forth in this Agreement, Highland Capital hereby releases, acquits and forever discharges any and all claims and demands of whatever kind or character, whether vicarious, derivative, or direct, that relate to the formation, continuation, performance, or your resignation from your employment relationship with Highland Capital that Highland Capital now has against you, except for: (i) any rights or claims against you that may arise by reason of any act, conduct, or omission by you which occurs after the date this Agreement is executed, or which Highland Capital becomes aware of after the date this Agreement is executed; or (ii) that relate in any way to Highland Capital's enforcement of any provision of this Agreement, regardless of when the alleged breach of this Agreement occurred.

6. Return of Property. Whether or not you accept the terms of this Agreement, you must return to Highland Capital or destroy by no later than the close of business on the Separation Date, if you have not already done so, or as soon thereafter as is possible with respect

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to any items not then immediately available, any and all items of Highland Capital's property, including without limitation keys, access cards or devices, computers, software, calculators, equipment, credit cards, telephones, books or other publications, forms, files, manuals, correspondence, business records, lists of fees, personnel data, lists of employees, salary and benefits information (other than relating to you), investor, principal, client or other customer and prospect records, notes, lists of suppliers and vendors, lists of investors, principals, clients, and other customers and prospects, contracts, contract information, brochures, financial data, catalogs, training materials, marketing plans, computer tapes and diskettes or other portable media, computer-readable files and data stored on any form of storage media whether portable or installed, and data processing reports, and any and all other documents (including both originals and all copies of any documents) or property which you have had possession of or control over during the course of your employment with Highland Capital, regardless of the manner in which you acquired possession of the documents or property, and which you have not already returned to Highland Capital. By your signature, you represent that you have complied with these requirements, and that you no longer retain in your possession any such documents or other property or you have destroyed such. You further agree that should you discover any such property still in your possession, you will immediately return such property to Highland Capital, through the Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240.

7. Use of Confidential Information. You acknowledge that during your employment with Highland Capital, Highland Capital and the other Released Parties disclosed to you and/or you learned or came into possession of privileged communications, trade secrets, and proprietary and confidential business information of Highland Capital and the other Released Parties, including but not limited to (i) information pertaining to specific business transactions in which Highland Capital or any of the other Released Parties were, are, or may be involved; (ii) information pertaining to specific legal or compliance matters in which Highland Capital or any of the other Released Parties were, are, or may be involved; (iii) any matters protected by the attorney-client privilege and/or work product doctrine; (iv) information concerning salary and benefits paid to current or former employees of Highland Capital or those of any of the other Released Parties, or any other personnel information relating in any way to current or former employees of Highland Capital or those of any of the other Released Parties; (v) any information, including names, relating to any investor, principal, client, supplier, financier, customer, or other persons who have business relationships with any of the Released Parties or who are prospects for such relationships; (vi) tear sheets, industry comparative analyses and information regarding products of the Released Parties and any Confidential Information possessed by any of the Released Parties; (vii) fee structures or arrangements; (viii) information pertaining to specific contractual matters in which Highland Capital or any of the other Released Parties were, are, or may be involved; (ix) any computer systems, or compilations of information, whether in written, printed or digital form; (x) business, pricing and management methods and information and finances, strategies, systems, research, plans, reports, recommendations and conclusions; (xi) information regarding Highland Capital's or any of the other Released Parties' business continuity plans, security plans and procedures, personnel policies and procedures, and marketing methods and techniques; (xii) other documents and information described in Section 6 above; (xiii) in general, the business, financial and legal affairs, business methods, and

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operations of Highland Capital or any of the other Released Parties; (xiv) the personal, civic, family, and business activities of James Dondero, Mark Okada and their respective family members; and (xv) any document that contains or references confidential or propriety Highland Capital information (any and all such information being hereinafter referred to as "Confidential Information"). "Confidential Information" includes any and all confidential or proprietary information or trade secrets of Highland Capital or any of the other Released Parties that was obtained or developed by you since the commencement of your employment with Highland Capital. Notwithstanding the specific categories of confidential information listed above, this confidentiality provision does not apply to any of the following categories of information: (i) information that was or becomes generally available to the public other than as a result of your disclosure in breach of this Agreement; (ii) information that becomes available to you on a confidential basis from a source other than Highland Capital or any of the other Released Parties, provided that such source is not bound by a confidentiality agreement with Highland Capital; or (iii) information you can establish was within your possession prior to its being furnished to you by or on behalf of Highland Capital or any of the other Released Parties, provided that the source of such information was not known by you to be bound by a confidentiality agreement with Highland Capital in respect thereof. Notwithstanding the preceding sentence, compilations of information collected, generated or prepared by or on behalf of Highland Capital, or any of the other Released Parties will not be considered to fall within any of the exceptions set forth in the preceding sentence (i) if the format in which such information has been collected, collated, maintained and/or disseminated by Highland Capital or any of the other Released Parties is confidential or proprietary to such entities and individuals; or (ii) merely because individual components or combinations thereof are now or become known to the public.

You further acknowledge and agree that Highland Capital and the other Released Parties did not voluntarily disclose the Confidential Information, but rather took precautions to prevent the disclosure of Confidential Information beyond those employees to whom Highland Capital communicated the information. You further acknowledge and agree that such Confidential Information was communicated to you when you knew of its confidential nature, and that such information constitutes valuable, special and unique assets, trade secrets, properties, rights and interests of Highland Capital and the other Released Parties, the disclosure of which could cause substantial injury and loss of profits and good will to Highland Capital, and the other Released Parties.

You acknowledge and agree that you will maintain the confidentiality of, and will not use or disclose, either directly or indirectly, any or all Confidential Information of Highland Capital or any of the other Released Parties, irrespective of whether such information is written, oral, or computerized. In the event it appears that you will be compelled by law or judicial process to disclose such Confidential Information, to avoid potential liability you must notify Human Resources Director, Highland Capital Management, L.P., 13455 Noel Rd, Suite 800, Dallas, TX 75240, by telephone and in writing promptly upon your receipt of a subpoena or other legal process. You further agree that you will use your reasonable efforts to afford Highland Capital and any of the other Released Parties the ability to challenge the disclosure of information pursuant to such subpoena prior to any disclosure by you of the information specified in the subpoena. Furthermore, in the event you are contacted by any person or entity seeking

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Confidential Information about Highland Capital or any of the other Released Parties, you will not provide any such information in response to the request, and you agree to notify Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240, by telephone and in writing promptly upon your receipt of any such request for information.

You further agree that for a period of one (1) year following the date hereof you will abide by all securities laws regarding the use of confidential information related to investment decisions relating to any securities of any issuer listed on a Restricted Securities List to be provided to you on, or within five (5) days after, the Separation Date.

If you breach any obligation under this Section, you acknowledge and agree that Highland Capital and the other Released Parties have no complete and adequate remedy at law and would suffer irreparable harm and substantial loss, and that monetary damages cannot fully compensate Highland Capital or the other Released Parties in such event; and as a result of which you admit that a temporary injunction, without bond, should be entered for Highland Capital or any of the other Released Parties in any such event, restraining you from using or disclosing, in whole or in part, any Confidential Information of Highland Capital or any of the other Released Parties. You further acknowledge and agree that nothing herein will be construed to prohibit Highland Capital or any of the other Released Parties from pursuing other remedies available to them, by law and equity, for breach of any obligation of this Section, and should you breach any obligation under this Section, Highland Capital and any of the other Released Parties will also be entitled to enforce the provisions of this Section by seeking to recover any monetary damages Highland Capital and any of the other Released Parties may sustain as a result of such breach, including but not limited to their attorney's fees and costs of court incurred to enforce the provisions of this Section, and will have no obligation to pay you the unpaid portion of the Special Separation Compensation described above. You further acknowledge and agree that, in enforcing their rights under this Section, Highland Capital or any of the other Released Parties will not be required to prove that any of such information is confidential, proprietary, or a trade secret, or material, or important, and you stipulate that as between you and Highland Capital or any of the other Released Parties, the same are important, material, and confidential or proprietary or a trade secret, and gravely affect the effective and successful conduct of the business of Highland Capital or any of the other Released Parties.

8. Confidentiality, Nonprosecution, and Nondisparagement by Employee. In consideration of the Special Separation Compensation described in Section 3 of this Agreement and all promised contained herein, you further agree that:

(a) The terms of this Agreement will be and remain confidential and will not be disclosed by you to any persons other than your family members and your attorneys (if you choose to retain counsel), accountants and/or tax return preparers if such persons have agreed to keep such information confidential. Notwithstanding the foregoing, you may make any disclosures concerning the terms of this Agreement that are required by law.

(b) Except as requested by Highland Capital or as compelled by law or judicial process, you will not assist, cooperate with, or supply information of any kind to any individual or

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private-party litigant or their agents or attorneys (i) in any proceeding, investigation, or inquiry raising issues under any federal, state, or local law involving the formation, continuation, performance, or termination of your employment relationship, or the employment of other persons, by Highland Capital or any of the other Released Parties; or (ii) in any other litigation, examination, audit or investigation involving or related to Highland Capital or any of the other Released Parties.

(c) You agree to waive any right to monetary recovery should any administrative agency or other individual or group of individuals pursue any claim on your behalf. You further agree that you will not request or accept anything of value from Highland Capital not provided for in this Agreement as compensation or damages related to your employment or your resignation from your employment with Highland Capital. You further acknowledge and agree that this Agreement will bar you from receiving any compensation or personal relief in any such event.

(d) You will not make to any other persons or entities any statement, oral or written, which directly or indirectly impugns the quality or integrity of Highland Capital's or any of the other Released Parties' business or employment practices, or any other disparaging or derogatory remarks about Highland Capital or any of the other Released Parties.

It will not be a breach of the obligations set forth in this Section for you to state to any person that any differences, if you believe any to exist, between you and Highland Capital that have been settled or satisfactorily resolved.

9. Confidentiality, Non-prosecution, and Non-disparagement by Highland Capital or the Released Parties. In consideration of the promises made by you herein, Highland Capital and the Released Parties further agree that:

(a) The terms of this Agreement will be and remain confidential and will not be disclosed by Highland Capital or the Released Parties to other persons or entities, except as may be authorized by you. Notwithstanding the foregoing, disclosures concerning the terms of this Agreement may be made that are required by law. In addition, Highland Capital may disclose all information necessary to provide the Limited Partners of Highland Capital with notice of your resignation.

(b) Highland Capital and/or the Released Parties will not initiate any proceeding, investigation, or inquiry, or any other action of any kind with any governmental agency, with respect to any activity relating to your employment or your resignation from your employment.

(c) Highland Capital and the Released Parties will not make to any other persons or entities any statement, oral or written, which directly or indirectly impugns the quality or integrity of your character, any service or activity you provided relating to your employment or resignation of your employment, or any other disparaging or derogatory remarks about you. Furthermore, neither Highland Capital nor the Released Parties will make any statement, remark, or publication of any fact or opinion that could affect a third

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party from engaging in or refraining from a business relationship of any kind with you. Additionally, neither Highland Capital nor the Released Parties may not cause intentionally or unintentionally through a statement or omission of fact or speculation that would likely result in third party to terminate an existing business relationship of any kind with you.

It will not be a breach of the obligations set forth in this Section for Highland Capital or the Released Parties to state to any person that any differences, if Highland Capital believes any to exist, between you and Highland Capital that have been settled or satisfactorily resolved.

10. Consultation and Cooperation. You agree to cooperate fully and completely with Highland Capital or any of the other Released Parties, at their reasonable request, to consult, and provide such information as may from time to time be requested by Highland Capital in its sole discretion in connection with various legal or business matters in which you were involved during your employment with Highland Capital, or about which you have knowledge or information, and to take any other action reasonably required by Highland Capital relating to matters occurring during your employment with Highland Capital, including cooperation with Highland Capital or any of the other Released Parties, in all pending and future litigation, claims, investigations, examinations, or audits by any federal, state, or local governmental agencies involving Highland Capital and any of the other Released Parties, in which Highland Capital believes you may have relevant knowledge or information. This obligation includes your meeting with Highland Capital or the other Released Parties and their counsel, or with any government investigators or other representatives, at reasonable times upon Highland Capital's request; providing testimony in court or upon deposition and other information (whether by testimony or otherwise) that is truthful, accurate, and complete, according to information known to you, in connection with the prosecution or defense of Highland Capital or any of the other Released Parties in such litigation, claims, investigations, examinations, or audits. If you appear as a witness or provide information in any pending or future litigation, claims, investigations, examinations, or audits at the request of Highland Capital or any of the other Released Parties, Highland Capital agrees to reimburse you at the agreed hourly rate of $400 for your time devoted to such activities, upon presentation of substantiating documentation and for any reasonable out of pocket expenses incurred by you in cooperating pursuant to this Section 10. While performing services pursuant to this Agreement, and thereafter, you acknowledge and agree that your relationship to Highland Capital will be that of an independent contractor, that Highland Capital will not exercise any control or direction over the methods by which you perform services pursuant to this Agreement, and that you will not be nor will you represent to anyone that you are an agent or active employee of Highland Capital. Consequently, you will have no authority to enter into contracts, commitments, or obligations of any kind, or to make any representations, on behalf of Highland Capital, unless expressly authorized to do so in writing by an authorized representative of Highland Capital. Nor will you have or exercise the authority to supervise or direct the activities of any Highland Capital employee. You further agree to hold harmless and indemnify Highland Capital for any claim, expense, loss, or damage, including without limitation its costs and attorney's fees, occasioned by your breach of this obligation. You further acknowledge and agree that, during such period when you are providing consulting services to Highland Capital and thereafter, you will not be eligible to participate in any of the

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rights and benefits afforded to employees of Highland Capital. Highland Capital and the Released Parties agree to hold harmless and indemnify you for any claim, expense, loss or damage, including without limitation your costs and attorney's fees, arising out of or in connection with any such cooperation you undertake pursuant to this Section 10. Notwithstanding the foregoing, this Section 10 will be inapplicable to your consultation to or cooperation with Cornerstone or its subsidiaries, which will be governed exclusively by the Cornerstone Agreement.

11. Restrictive Covenants: Non-Solicitation, Non-Recruitment, and Non-Competition. In consideration of the Special Separation Compensation provided to you by Highland Capital and all promised contained herein, you hereby reaffirm the obligations set forth in Section 5.3 of your Employment Agreement.

You agree that you will forfeit the Special Separation Compensation paid to you by Highland Capital if the obligations in set forth in Section 5.3 of your Employment Agreement are not fulfilled.

12. Personnel Records. You acknowledge and agree that your personnel records will reflect that you are not eligible for rehire with Highland Capital or any of the other Released Parties.

13. Agreement Not to Seek Reemployment. Further in consideration of the Special Separation Compensation and all promised contained herein, you understand and agree that Highland Capital and the other Released Parties have no obligation to employ or to hire or rehire you, to consider you for hire, or to deal with you in any respect at any location, office, or place of business with regard to future employment or potential employment. Accordingly, in consideration of the Special Separation Compensation and all promised contained herein, you hereby agree: (i) that you will not apply for or otherwise seek employment by Highland Capital or any of the other Released Parties at any time in the future, at any location, office, or place of business, and (ii) that your forbearance to seek future employment as just stated is purely contractual and is in no way involuntary, discriminatory, or retaliatory.

14. Non-admission of Liability or Wrongdoing; Non-admissibility. You acknowledge and agree that this Agreement does not in any manner constitute an admission of liability or wrongdoing on the part of Highland Capital or any of the other Released Parties, or on your part. In fact, Highland Capital and the other Released Parties and you expressly deny any such liability or wrongdoing. Further, neither this Agreement nor any part of it may be construed, used, or admitted into evidence in any judicial, administrative, or arbitral proceedings, except to the extent necessary to enforce this Agreement.

15. Authority to Execute. You represent and warrant that you have the authority to execute this Agreement on behalf of all the Releasing Parties, and that you have not assigned, sold, transferred or otherwise granted to any person any right related to your employment by, or your resignation from your employment with, Highland Capital, including any claims or demands in respect thereof. You further agree to indemnify fully and hold harmless Highland Capital and any of the other Released Parties from any and all claims brought by the Releasing

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Parties or derivative of your own, including the amount of any such claims Highland Capital or any of the other Released Parties are compelled to pay, and the costs and attorneys' fees incurred in defending against all such claims.

16. Governing Law and Interpretation. This Agreement and the rights and duties of the parties under it will be governed by and construed in accordance with the laws of the State of Texas. If any provision of this Agreement is held to be unenforceable, such provision will be considered separate, distinct, and severable from the other remaining provisions of this Agreement, and will not affect the validity or enforceability of such other remaining provisions, and that, in all other respects, this Agreement will remain in full force and effect. If any provision of this Agreement is held to be unenforceable as written but may be made to be enforceable by limitation thereof, then such provision will be enforceable to the maximum extent permitted by applicable law. The language of all parts of this Agreement will in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. Any dispute regarding the subject matter, terms, or performance of this Agreement will be brought only in a court of competent jurisdiction in Dallas County, Texas. Highland Capital and you expressly agree that proper jurisdiction and venue for any such disputes must be in Dallas County, Texas only.

17. Breach of Agreement. If you violate or fail to comply with any of your obligations as set forth in this Agreement, including but not limited to Section 11. Restrictive Covenants: Non-Solicitation, Non-Recruitment, and Non-Competition, Highland Capital will have no obligation to make payment of any unpaid Special Separation Compensation, however all other provisions of this Agreement will remain in full force and effect.

If, notwithstanding your release of claims as described in Section 4 above, you (or any other party asserting any claim derivative of your own) should nonetheless proceed to make any such claims against Highland Capital or any of the other Released Parties by bringing an action in a federal, state, or municipal court, or before any administrative or arbitral body that has the power to make a monetary or equitable award, then in addition to any other legal or equitable remedies available to Highland Capital for your breach of this Agreement, Highland Capital may seek, and the court or other body hearing the claims may hold you liable for, Highland Capital's damages and costs, including attorneys' fees, incurred in defending against your claims.

Both Highland Capital and you agree that any controversy or claim arising out of or relating to this Agreement will first be submitted to non-binding mediation prior to the commencement of litigation proceedings, with mediation expenses to be borne equally by the parties. Only in the event the parties are unable to resolve their differences through mediation may either party initiate litigation proceedings to enforce this Agreement.

You agree and acknowledge that Highland Capital and/or the other Released Parties would suffer irreparable harm, incur substantial damage and would not have an adequate remedy at law for money damages if you were to breach this Agreement. Accordingly, you acknowledge that, without the necessity of proving actual damages or posting bond or other security, Highland Capital and/or the other Released Parties are entitled to temporary or permanent injunction or injunctions to prevent breaches of performance and to specific enforcement of applicable

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covenants in addition to any other remedy to which Highland Capital and/or the other Released Parties may be entitled, at law or in equity. In such a situation, Highland Capital and/or the other Released Parties may pursue any remedy available, including declaratory relief, concurrently or consecutively in any order as to any breach, violation, or threatened breach or violation of any of the provisions set forth in this Agreement, and the pursuit of any particular remedy is not to be deemed an election of remedies or waiver of the right to pursue any other remedy.

18. Expiration of Offer. Highland Capital's offer of the Special Separation Compensation will expire at 5:00 p.m. twenty-one (21) days following the date of this Agreement (the "Expiration Date"). You may accept the terms and condition contained in this Agreement at any time before the Expiration Date by signing in the space provided below, and delivering this Agreement to Human Resources Director, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240. Whether or not you execute this Agreement, you are required to fulfill the obligations set forth in Sections 6 and 7 of this Agreement.

19. Effective Date. This Agreement will become effective and enforceable upon the expiration of seven (7) days after your and the Company's execution of it and delivery of a signed copy to the Human Resources Department, Highland Capital Management, L.P., 13455 Noel Road, Suite 800, Dallas, Texas 75240 ("Effective Date").

20. Assignment of Work Product/Works for Hire. You further acknowledge and agree that any work product prepared, conceived or developed by you during the term of your employment with Highland Capital, including but not limited to all written documents and electronic data pertaining thereto, are and shall remain the exclusive property of Highland Capital, and will be considered Confidential Information subject to the terms of this Agreement. You agree that when appropriate, and upon written request of Highland Capital, you will acknowledge that your work product constitute "works for hire" and will cooperate in the filing for patents or copyrights with regard to any or all such work product and will sign documentation necessary to evidence ownership of such work product in Highland Capital.

21. Consultation with an Attorney. You acknowledge that you have the right and are encouraged to consult with an attorney of your choosing before executing this Agreement.

22. Assignment of Claims. Further in consideration of the promises and undertakings of Highland Capital memorialized in this Agreement, you represent and warrant to Highland Capital that you have not assigned any part of your claims or causes of action, whether vicarious, derivative, or direct, to anyone, and that no persons are or may be entitled to any portion of the proceeds paid in settlement of your claims or causes of action, if any, either by subrogation or otherwise, except as may be set forth in this Agreement. You further agree to indemnify fully and hold Highland Capital and any of the other Released Parties harmless from any and all claims derivative of your own, including the amount of any such claim Highland Capital or any of the other Released Parties are compelled to pay, and the costs, including attorney's fees, incurred by them in defending against all such claims.

23. Knowing and Voluntary Agreement. You acknowledge that this Agreement has been read and explained to you by your attorney if you choose to retain counsel, or that you have

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had the opportunity to engage an attorney for such purpose; and that you have had a reasonable period of time in which to deliberate regarding its terms and to consider whether you wish to enter into this Agreement, that you fully understand the meaning and effect of your action in executing it; and that your execution of this Agreement is knowing and voluntary. You further acknowledge that neither Highland Capital nor any of the other Released Parties has made any promise or representation to you that is not expressed in this Agreement, and that in entering this Agreement, you are not relying on any statement or representation by Highland Capital or any of the other Released Parties, but are instead relying solely on your own judgment in consultation with your attorneys, if you choose to retain counsel.

24. Status of Released Parties as Third-Party Beneficiaries. Highland Capital and you further acknowledge and agree that all the other Released Parties and third-party beneficiaries of this Agreement, and, in that capacity, are entitled to assert their own claims against you or Highland Capital (as the case may be) in the event of your or Highland Capital's breach of this Agreement that adversely affects their interests. Further, this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

25. Arbitration. In the event there is an unresolved legal dispute between the parties and/or any of their respective officers, directors, partners, employees, agents, affiliates or other representatives that involves legal rights or remedies arising from this Agreement or the employment relationship between Employee and Highland Capital or the Released Parties, the parties agree to submit their dispute to binding arbitration under the authority of the Federal Arbitration Act; provided, however, that Highland Capital or the Released Parties thereof may pursue a temporary restraining order and/or preliminary injunctive relief in connection with any non-competition, non-solicitation and/or confidentiality covenants or agreements binding on Employee, with related expedited discovery for the parties, in a court of law, and, thereafter, require arbitration of all issues of final relief. This paragraph does not prohibit Employee from filing or cooperating in a charge before a federal administrative agency without pursuing private litigation. Insured workers compensation claims (other than wrongful discharge claims), and claims for unemployment insurance are excluded from arbitration under this provision. The Arbitration will be conducted by the American Arbitration Association, or another, mutually agreeable arbitration service. The arbitrator(s) shall be duly licensed to practice law in the State of Texas. The discovery process shall be limited to the following: Each side shall be permitted no more than (i) two party depositions of six hours each. Each deposition is to be taken pursuant to the Texas Rules of Civil Procedure; (ii) one non-party deposition of six hours; (iii) twenty-five interrogatories; (iv) twenty-five requests for admission; (v) ten requests for production. In response, the producing party shall not be obligated to produce in excess of 5,000 total pages of documents. The total pages of documents shall include electronic documents; (vi) one request for disclosure pursuant to the Texas Rules of Civil Procedure. Documents produced pursuant to Texas Rule of Civil Procedure 194.2(f) shall not be included in, or counted toward, the 5,000 page limit described supra. Any discovery not specifically provided for in this paragraph, whether to parties or non-parties, shall not be permitted. The arbitrator(s) shall be required to state in a written opinion all facts and conclusions of law relied upon to support any decision rendered. No arbitrator will have authority to render a decision that contains an outcome

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determinative error of state or federal law, or to fashion a cause of action or remedy not otherwise provided for under applicable state or federal law. Any dispute over whether the arbitrator(s) has failed to comply with the foregoing will be resolved by summary judgment in a court of law. In all other respects, the arbitration process will be conducted in accordance with the American Arbitration Association's employment dispute resolution rules or other mutually agreeable, arbitration service rules. As necessary Highland Capital will pay any up-front arbitration costs and arbitrator's fees, subject to a final arbitration award on who should bear costs and fees. All proceedings shall be conducted in Dallas, Texas, or another mutually agreeable site. Each party shall bear its own attorneys fees, costs and expenses, including any costs of experts, witnesses and/or travel, subject to a final arbitration award on who should bear costs and fees. The duty to arbitrate described above shall survive the termination of this Agreement. Except as otherwise provided above, the parties hereby waive trial in a court of law or by jury. All other rights, remedies, statutes of limitation and defenses applicable to claims asserted in a court of law will apply in the arbitration. Employee expressly acknowledges and agrees that the agreements set forth in this paragraph shall also apply to any disputes under all other agreements between Employee and either of Highland Capital or any Released Parties.

26. Waiver. You and Highland Capital further acknowledge and agree that the failure of Highland Capital or any of the other Released Parties or you at any time to enforce any provisions of this Agreement shall not be construed to be a waiver of such provisions or any other provisions of this Agreement, or of Highland Capital's or any of the other Released Parties' right thereafter to enforce any such provision.

27. Entire Agreement. This Agreement (i) contains and constitutes the entire understanding and agreement between you and Highland Capital with respect to its subject matter; (ii) supersedes and cancels any previous negotiations, agreements, commitments, and writings with respect to that subject matter; and (iii) may not be released, discharged, abandoned, supplemented, changed, or modified in any manner except by a writing of concurrent or subsequent date executed by both you and an authorized officer of Highland Capital. This Section 27 is not applicable to Article V of your Employment Agreement, the Sierra Verde Agreement, the Cornerstone Agreement or any other confidentiality, non-compete, non-recruit, or non-solicitation provisions in any other documents you are subject to.

_____

PDADV_018489

If you are in agreement with the provisions of this Agreement, please execute both copies in the space provided below. You should return one executed original as provided above, and maintain the other executed original in your files.

Sincerely,

Highland Capital Management, L.P.

By:_____

ACCEPTED AND AGREED TO:

_____
Patrick Daugherty

Date Signed:_____

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Appendix A

Subject to the terms provided for in this Appendix A, the following payments shall be made to you in satisfaction of all monies owed to you under the terms of Highland Capital's compensation or employee benefit plans:

Long Term Incentive Plan
Payment in accordance with terms of 2005 HCMLP Long-Term Incentive Plan (the "LTIP") dated on or about January 1, 2005 for the 372,830 vested LTIP units. For the avoidance of doubt, compliance with LTIP Section 8.8(b) "The Restrictive Covenants" is required to receive payment for the Long Term Incentive Plan Units. LTIP Section 8.8(b) "The Restrictive Covenants" includes Non-Solicitation, Non-Recruitment, and Non-Competition.

Option IT
Payment in accordance with terms of 2005 HCMLP Option Plan Option Agreement (the "Option Plan Agreement') based on underlying net asset values as of October 31, 2011. The resulting payment under the Option Plan Agreement shall be provided within ten business days of applicable final net asset values being produced for the month ended October 31, 2011. The amounts paid are subject to lawful deductions, including any deductions you have previously authorized, and will be paid to you in accordance with applicable law.

Defined Benefit Plan
These monies will be paid out, at your request, by the plan administrator per the terms of the plan.

401K Plan
These monies will be paid out, at your request, by the plan administrator per the terms of the plan.

PDADV_018491

Appendix B

ASSIGNMENT OF INTEREST

IN

Highland Capital Management, L.P., a Delaware Limited Partnership

Patrick Daugherty (the "Assignor") hereby assigns, transfers, surrenders and conveys of all of his right, title, and interest in and to a 1.24276 % Percentage Interest in the Partnership, as represented by 372,830 Long Term Incentive Plan units, and all the capital, profits, and losses of the Partnership associated therewith (the "Interest"), free and clear of all liens, encumbrances, security interests, claims, or options, to the Partnership as of this 31 day of October 2011 (the "Effective Date"), subject to the General Release and Separation Agreement, including Appendix A, dated on or about October 17, 2011.

IN WITNESS WHEREOF, the Assignor and Partnership have executed this Assignment effective as of the ___day of _____, _____.

ASSIGNOR:

_____
Patrick Daugherty

ACCCEPTED BY THE PARTNERSHIP

Highland Capital Management, L.P.

By: Strand Advisors, Inc.,
Its general partner

By: _____
Name: _____
Title: _____

PDADV_018492

The undersigned spouse of Patrick Daugherty, in consideration of the Salary and Benefits, Special Consideration, and Benefits, covenants and agreements set forth in the Separation Agreement of even date herewith of which this Agreement of Interest is a part, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, hereby agrees to this Assignment of Interest and the terms of the Separation Agreement.

SPOUSE OF ASSIGNOR:_____

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EXHIBIT 42

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From: **Patrick Daugherty** phdaugherty@gmail.com
Subject: Re: Highland 2008 Audit Letter Attachments - Daugherty
Date: February 13, 2018 at 8:58 AM
To: Brian Collins BCollins@HighlandCapital.com
Cc: Human Resources HR@hcmlp.com

I do not consent to allow Highland Capital to represent me regarding the field examiners' proposed tax adjustments based on their audit of the 2008 partnership tax return, and I reserve the right to attend the closing conference (personally, through my own counsel, or both) and actively participate in it if I feel it is necessary to protect my interests concerning the proposed adjustment. Please provide me with any future correspondence that Highland Capital receives from the IRS concerning the audit and proposed adjustments.

Patrick Daugherty

> On Feb 7, 2018, at 4:38 PM, Brian Collins <BCollins@HighlandCapital.com> wrote:
>
> The closing conference for the Highland 2008 audit is scheduled for March 2, 2018 from 10:00am to 12:00pm. The closing conference will take place at the IRS offices located in the federal building at 4050 Alpha Road in Farmers Branch. Once through security, typically an IRS employee escorts taxpayers to the closing conference room. We will provide more details regarding this once it is made available to Highland.
>
> The IRS has requested we provide any questions in advance of the closing conference. We must provide them no later than February 8 so that they may have sufficient time to prepare. Please send us the questions you have by Noon on February 8.
>
> For your convenience, we have enclosed the 2008 Schedule K-1 that you received from Highland and were required to report on your personal 2008 federal tax return. You should speak with your tax advisor regarding the consequences under federal income tax law of such reporting as it related to our question as to your status as a partner in Highland.
>
> Brian C. Collins | DIRECTOR OF HUMAN RESOURCES
> 300 Crescent Court | Suite 700 | Dallas, Texas 75201
> O: 972.419.4438 | F: 972.628.4137
> bcollins@highlandcapital.com | www.highlandcapital.com
>
> -----Original Message-----
> From: Patrick Daugherty [mailto:phdaugherty@gmail.com]
> Sent: Monday, February 5, 2018 6:00 PM
> To: Brian Collins <BCollins@HighlandCapital.com>
> Cc: Human Resources <HR@hcmlp.com>
> Subject: Re: Highland 2008 Audit Letter Attachments - Daugherty
>
> I will attend the closing conference with the IRS on March 2, 2018. Please send details of the meeting.
>
> Patrick Daugherty
>
> > On Feb 5, 2018, at 12:46 PM, Brian Collins <BCollins@HighlandCapital.com> wrote:
> >
> > <Transmittal Letter for 2008 Summary Report Daugherty.pdf>
>
> _____
>
> DISCLAIMER- This email is intended for the recipient(s) only and should not be copied or reproduced without explicit permission. The material provided herein is for informational purposes only and does not constitute an offer or commitment, a solicitation of an offer, or any advice or recommendation, to enter into or conclude any transaction. It may contain confidential, proprietary or legally privileged information. If you receive this message in error, please immediately delete it.
> <Excelsior_20180207_070216.pdf>

EXHIBIT 43

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
	§	
v.	§	
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant and Counter-Plaintiff,	§	
	§	**DALLAS COUNTY, TEXAS**
v.	§	
	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
	§	
Third-Party Defendants.	§	
	§	**68th JUDICIAL DISTRICT**

FINAL JUDGMENT

On January 14, 2014, this case was called to trial. Plaintiff/Counter-Defendant Highland Capital Management, L.P. ("Highland"), and Third-Party Defendants Sierra Verde, LLC and James Dondero ("Dondero") appeared themselves and/or through their attorneys of record and announced ready for trial. Defendant/Counter-Plaintiff/Third-Party Plaintiff Patrick Daugherty ("Daugherty") appeared himself and through his attorneys of record and announced ready for trial. Highland Employee Retention Assets LLC ("HERA"), Patrick Boyce, and William L. Britain appeared themselves and/or through their attorneys of record and announced ready for trial.

After a jury was impaneled and sworn, it heard evidence and arguments of counsel. In response to the jury charge, the jury made findings that the Court received, filed, and entered of record. The questions submitted to the jury and the jury's findings are attached as Exhibit 1 hereto and incorporated by reference.

The Court renders this Final Judgment under the jury verdict and the evidence heard at trial, as well as having considered any and all post-verdict motions and briefing submitted to the Court and arguments of counsel.

The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty owed to Highland, and after hearing evidence and considering the nature of the harm suffered by Highland as a result, finds and concludes that Highland is entitled to relief hereinafter given.

It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from retaining, using, disclosing, publishing or disseminating Highland's (or its affiliates') confidential, proprietary, and/or privileged information, including but not limited to information concerning Highland's customers, clients, marketing, business and operational methods, contracts, financial data, technical data, e-mail, pricing, management methods, finances, strategies, systems, research, plans, reports, recommendations and conclusions, tear sheets, industry comparative analysis, Collateralized Loan Obligation (CLO) and other structured products, and names, arrangements with, or other information relating to Highland's (or its affiliates') customers, clients, suppliers, financiers, owners, and business prospects. Notwithstanding the foregoing, Daugherty may use or disclose the information described in this paragraph only as (i) required by law; or (ii) directed and authorized in writing by Highland.

The Court further ORDERS that Highland have and recover from Daugherty $2,800,000 for reasonable and necessary attorneys' fees rendered through trial.

It is further ORDERED that the total amount of the judgment here rendered for Highland against Daugherty will bear interest at the rate of 5% per annum from the date this judgment is signed until paid.

Furthermore, the Court, after considering the jury's findings regarding HERA's breach of the implied covenant of good faith and fair dealing, finds and concludes that Daugherty is entitled to relief hereinafter given.

It is therefore further ORDERED that Daugherty have and recover $2,600,000 from HERA, ~~representing the full value of Daugherty's interest in HERA as determined by the jury.~~

It is further ORDERED that Daugherty shall no longer have any ownership or other interest in HERA or any proceeds or accounts arising from Daugherty's prior interest in HERA that were not distributed to Daugherty prior to the entry of this judgment, Daugherty having been awarded the full value of that interest in HERA as determined by the jury.

It is further ORDERED that total amount of the actual damages rendered against HERA herein will bear prejudgment interest at the rate of 5% simple interest from May 22, 2012, until the day before this judgment is signed.

It is further ORDERED that the total amount of the judgment here rendered against HERA will bear interest at the rate of 5% per annum, compounded annually, from the date this judgment is signed until paid.

Furthermore, the Court, after considering the jury's findings regarding the claims for breach of fiduciary duty asserted against Patrick Boyce and William L. Britain by Third-PartyCounter -Plaintiff Patrick Daugherty, suing individually and/or suing derivatively on behalf of Highland Employee Retention Assets LLC, finds that Boyce and Britain are entitled to a take-nothing judgment as to all claims asserted against them.

It is therefore further ORDERED that Third-Party Counter-Plaintiff Patrick Daugherty, suing individually and/or derivatively on behalf of Highland Employee Retention Assets LLC,

shall take nothing on the claims for breach of fiduciary duty against Patrick Boyce and William L. Britain.

This judgment disposes of all claims asserted against Patrick Boyce and William L. Britain in the above-captioned cause. All other relief that Daugherty seeks pertaining to Boyce and Britain not expressly granted in this judgment is denied.

It is further ORDERED that all Parties shall bear their own respective costs of Court.

All writs and processes for the enforcement and collection of the judgment may issue as necessary.

All relief requested and not expressly granted is denied. This judgment disposes of all parties and claims and is appealable.

SIGNED on July 11, 2014.

The Honorable Martin Hoffman

EXHIBIT 44

Verdict Copy

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P., AND CORNERSTONE HEALTHCARE GROUP HOLDING, INC.	§	**IN THE DISTRICT COURT OF**
Plaintiffs,	§	
v.	§	
PATRICK DAUGHERTY,	§	**DALLAS COUNTY, TEXAS**
Defendant and Counter-Plaintiff,	§	
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	**68th JUDICIAL DISTRICT**
Third-Party Defendants.	§	

JURY CHARGE

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

2. The presiding juror has these duties:

   a. have the complete charge read aloud if it will be helpful to your deliberations;

   b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;

   c. give written questions or comments to the bailiff who will give them to the judge;

   d. write down the answers you agree on;

   e. get the signatures for the verdict certificate; and f.

   notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

If 11 jurors agree on every answer, those eleven jurors sign the verdict

If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

JUDGE PRESIDING

GENERAL INSTRUCTIONS AND DEFINITIONS

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.

2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

4. Deposition testimony is testimony which has previously been taken under oath. You are instructed that such testimony is entitled to be given the same weight you would give it if it were presented by a witness appearing in the courtroom during trial.

5. You are to make up your own minds about the facts. You are the sole judges of the

credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

6. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

7. All the questions and answers are important. No one should say that any question or answer is not important.

8. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

9. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

10. Do not answer questions by drawing straws or by any method of chance.

11. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

12. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

13. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS

The following terms are defined in the Court's charge as follows:

"Boyce" shall mean Patrick Boyce.

"Britain" shall mean William L. Britain.

"Buy-Sell Agreement" shall mean the Amended and Restated Buy-Sell Redemption Agreement.

"Daugherty" shall mean Patrick Daugherty.

"Dondero" shall mean James Dondero.

"Employment Agreement" shall mean the Amended Employment Agreement between Highland and Daugherty entered into on December 31, 2004.

"HERA" shall mean Highland Employee Retention Assets LLC.

"Highland" shall mean Highland Capital Management, L.P.

"LTIP Agreement" shall mean the 2005 HCMLP Long-Term Incentive Plan.

"Sierra Verde" shall mean Sierra Verde, LLC.

"**HERA Agreement**" means the Highland Employee Retention Assets Limited Liability Company Agreement.

"**Second Amended HERA Agreement**" means Second Amended and Restated HERA Limited Liability Company Agreement.

QUESTION NO. 1

Did Daugherty fail to comply with his Employment Agreement or with the Buy-Sell Agreement?

Daugherty failed to comply with either agreement if he used or disclosed Confidential Information belonging to Highland or its affiliates, or failed to immediately return Confidential Information upon the conclusion of his employment.

"Confidential Information" means (i) information concerning customers, clients, marketing, business and operational methods of Highland and/or its affiliates and their customers or clients, contracts, financial or other data, technical data, email and other correspondence or any other confidential or proprietary information possessed, owned or used by Highland and/or its affiliates; (ii) business, pricing and management methods and information; (iii) finances, strategies, systems, research, plans, reports, recommendations and conclusions; (iv) tear sheets, industry comparative analysis and Collateralized Loan Obligation (CLO) and other structured products; (v) names, arrangements with, or other information relating to, Highland's and/or its affiliates' customers, clients, suppliers, financiers, owners, representatives and other persons who have business relationships with any of the Applicable Entities or who are prospects for business relationships with any of the Applicable Entities; and (vi) any matter or thing obtained or ascertained by Daugherty through his association with Highland and/or its affiliates, the use or disclosure of which might reasonably be construed to be contrary to the best interests of Highland and/or its affiliates.

Daugherty also failed to comply with the Employment Agreement if he failed to return any other property belonging to Highland or its affiliates immediately upon the conclusion of his employment.

Answer "Yes" or "No" for each of the following:

a. Employment Agreement: Confidential Information Yes

b. Employment Agreement: Other Property Yes

c. Buy-Sell Agreement Yes

If you answered "Yes" to any part of Question No. 1, then answer the corresponding part(s) of the following question. Otherwise, do not answer the following question.

QUESTION NO. 2

Was Daugherty's failure to comply excused?

Failure to comply by Daugherty is excused if:

(1) Highland waived compliance with the Employment Agreement and the Buy-Sell Agreement. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right;

or

(2) Highland (a) by words or conduct made a false representation or concealed material facts with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and with the intention that Daugherty would rely on the false representation or concealment in acting or deciding not to act; and (b) Daugherty did not know and had no means of knowing the real facts and relied to his detriment on the false representation or concealment of material facts.

Answer "Yes" or "No" for each of the following:

a. Employment Agreement: Confidential Information NO

b. Employment Agreement: Other Property NO

c. Buy-Sell Agreement NO

QUESTION NO. 3

Did Highland fail to comply with the Employment Agreement?

Highland failed to comply with the Employment Agreement if it failed to pay Daugherty any amount to which he was entitled under any other written agreement with Highland after Daugherty fulfilled all conditions precedent to receiving those amounts.

Highland failed to comply with the Employment Agreement if it failed to pay Daugherty severance pay after Daugherty fulfilled all conditions precedent to receiving severance pay.

A "condition precedent" is an event that must happen or be performed before a right can accrue to enforce an obligation.

Answer "Yes" or "No" for each of the following:

a. the LTIP Plan. NO

b. the HERA Agreement. NO

c. severance pay. NO

If you answered "No" to either Question No. 2(a) or 2(b) and "Yes" to any part of Question No. 3, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 4

Who failed to comply with the Employment Agreement first?

Answer "Daugherty" or "Highland."

Answer: N/A

If you answered (I) "No" to Question No. 2(a) or 2(b) and "No" all of Question No. 3, or (II) if you answered "Daugherty" to Question No. 4, then answer the following question relating to the Employment Agreement.

If you answered "No" to Question 2(c), then answer the corresponding part of Question No. 5 relating to the Buy-Sell Agreement.

Otherwise, do not answer the following question.

QUESTION NO. 5

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Highland for its damages, if any, that resulted from Daugherty's failure to comply with his Employment Agreement or the Buy-Sell Agreement?

Consider the following elements of damage, if any, and none other. Answer separately in dollars and cents for damages, if any. Do not add any amount for interest on damages, if any.

	Employment Agreement	**Buy-Sell Agreement**
Lost profits for lost business activity that, but for Daugherty's failure to comply with the Agreement, Highland would naturally, probably, and foreseeably have obtained —		
(1) incurred in the past	$ Ø	$ Ø
(2) in the future	$ Ø	$ Ø

If you answered any part of Question No. 5, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 6

What is the reasonable fee for the necessary services of Highland's attorneys in this case, stated in dollars and cents?

You are instructed to limit your answers to fees attributable to legal services performed relating to the claims in Questions 1 through 5 only.

Factors to consider in determining a reasonable attorneys' fees award include:

- the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

a. For representation in the trial court. Answer: $ 2.8 Million

b. For representation through appeal to the court of appeals. Answer: $ 0

c. For representation at the petition for review stage in the Supreme Court of Texas. Answer: $ 0

d. For representation at the merits briefing stage in the Supreme Court of Texas. Answer: $ 0

If you answered (I) any part of Question No. 3 "Yes" and did not answer Question No. 4, or (II) if you answered "Highland" to Question No. 4, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 7

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Daugherty for his damages, if any, that resulted from Highland's failure to comply with the Employment Agreement?

Consider the following elements of damage, if any, and none other. Answer separately in dollars and cents for damages, if any. Do not add any amount for interest on damages, if any.

a. The value of Daugherty's severance pay.	$_____
b. The value of Daugherty's interest in the LTIP Plan.	$_____
c. The value of Daugherty's interest in HERA.	$_____

If you answered any part of Question No. 7, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 8

What is the reasonable fee for the necessary services of Daugherty's attorneys in this case, stated in dollars and cents?

You are instructed to limit your answers to fees attributable to legal services performed relating to the claims in Questions 1 through 4 and 7 only.

Factors to consider in determining a reasonable attorneys' fees award include:

- the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;
- the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

Answer with an amount for each of the following:

a. For representation in the trial court. Answer: $_____

b. For representation through appeal to the court of appeals. Answer: $_____

c. For representation at the petition for review stage in the Supreme Court of Texas. Answer: $_____

d. For representation at the merits briefing stage in the Supreme Court of Texas. Answer: $_____

QUESTION NO. 9

Did Daugherty fail to comply with his fiduciary duty to Highland?

As an employee of Highland, Daugherty owed a fiduciary duty of good faith, honesty, and loyalty to Highland.

To prove Daugherty failed to comply with his fiduciary duty, Highland must show—

(1) Daugherty did not make reasonable use of the confidence that Highland placed in him; or

(2) Daugherty failed to act in the utmost good faith or exercise the most scrupulous honesty toward Highland; or

(3) Daugherty placed his own interests before Highland's, used the advantage of his position to gain a benefit for himself at Highland's expense, or placed himself in a position where his self-interest might conflict with his obligations as a fiduciary.

Answer "Yes" or "No": Yes

QUESTION NO. 10

Did Daugherty misappropriate any trade secrets from Highland?

"Misappropriation" is the unauthorized use or disclosure of a party's trade secrets without the party's authorization.

A "trade secret" is any formula, pattern, device, information, or combination of any of the foregoing that is used in a business and that gives the owner an opportunity to obtain an advantage over his competitors who do not know or use it.

In considering whether something is a trade secret, you should consider (1) the extent to which the information is known outside of Highland's business; (2) the extent to which it is known by employees and others involved in Highland's business; (3) the extent of the measures taken by Highland to guard the secrecy of the information; (4) the value of the information to Highland and its competitors; (5) the amount of effort or money expended by Highland in developing that information; (6) the ease or difficulty with which the Highland information could be properly acquired or duplicated by others. A trade secret does not have to satisfy all six factors.

"Use" means a commercial use by which a party seeks to profit.

Answer "Yes" or "No": NO

QUESTION NO. 11

Did Daugherty disparage Highland's business?

Daugherty disparaged Highland's business if he published a disparaging false statement about the business, and (1) when he published the statement, he knew the falsity of the statement or acted with reckless disregard of whether the statement was false, or acted with ill will or intended to interfere with Highland's economic interest; and (2) his publication of the statement played a substantial part in inducing others not to do business with Highland and resulted in a specific pecuniary loss to Highland.

A statement is "published" if it is intentionally communicated to a person other than Highland who is capable of understanding its meaning.

Answer "Yes" or "No" for each statement listed below.

a. Highland had intentionally made the Crusader Fund illiquid to the detriment of investors. Answer: NO

b. Highland was intentionally manipulating the net asset values of the Crusader Fund's assets. Answer: NO

c. Highland was intentionally deviating from the Crusader Fund's mandates. Answer: NO

d. Highland had neither the desire nor the capital to support CCS Medical. Answer: NO

If you answered "Yes" to any part of Question No. 9, 10, or 11, then answer the corresponding part(s) of the following question. Otherwise, do not answer the following question.

QUESTION NO. 12

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Highland for its damages, if any, that were proximately caused by such conduct?

Consider the following elements of damage, if any, and none other.

"Proximate cause" means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer separately in dollars and cents for damages, if any. Do not add any amount for interest on damages, if any.

	Breach of Fiduciary Duty	**Misappropriation**	**Disparagement**
Lost profits for lost business activity			
(1) incurred in the past	$ 0	$	$
(2) in the future	$ 0	$	$

QUESTION NO. 13

Did Dondero or Sierra Verde fail to comply with the Sierra Verde Limited Liability Company Agreement?

Dondero and Sierra Verde failed to comply with the Sierra Verde Limited Liability Company Agreement if Dondero, as Manager of Sierra Verde, lacked express authority under the Sierra Verde Limited Liability Company Agreement to rescind the Services Agreements and Compensation Agreements with Cornerstone and Trussway.

Dondero and Sierra Verde failed to comply with the Sierra Verde Limited Liability Company Agreement if they failed to comply with the implied covenant of good faith and fair dealing.

Every contract contains implied covenants from the parties of good faith and fair dealing. In determining whether a party is acted in good faith and fair dealing, you must consider what the parties would have agreed to themselves had they considered the issue in their original bargaining positions at the time of contracting. In other words, is it clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith and fair dealing—had they thought to negotiate with respect to that matter.

"Good faith" means faithfulness to the scope, purpose, and terms of the parties' contract. "Fair dealing" means a commitment to deal "fairly" in the sense of consistently with the terms of the parties' agreement and its purpose.

An implied covenant of good faith and fair dealing requires that a party refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of his bargain. When exercising a discretionary right, a party to the contract must exercise its discretion reasonably.

Answer "Yes" or "No" for each of the following.

	Express Authority	**Implied Covenant of Good Faith and Fair Dealing**
a. Dondero	NO	NO
b. Sierra Verde	NO	NO

If you answered "Yes" to any part of Question No. 13, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 14

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Daugherty for his damages, if any, that resulted from such failure to comply?

> "Fair market value" is typically defined as the amount a willing buyer, who desires to buy but is under no obligation to buy, would pay to a willing seller, who desires to sell but is under no obligation to sell.

Answer separately in dollars and cents, if any.

a. Fair market value of Daugherty's Sierra Verde Units at the time of rescission. Answer: _____

b. Fair market value of Daugherty's Sierra Verde Units at the highest intermediate value between October 2011 and the time of trial. Answer: _____

QUESTION NO. 15

Did Dondero, as the Manager of Sierra Verde, breach his fiduciary duty, if any, to Daugherty?

A fiduciary owes the duties of care, loyalty, and to act in good faith.

The duty of loyalty mandates that the best interests of the company and its shareholders takes precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the stockholders generally.

The duty of care requires that the directors individually and the board collectively inform themselves fully and in a deliberate manner before voting as a board upon a transaction.

A failure to act in good faith may be shown: (1) where the fiduciary intentionally acts with a purpose other than that of advancing the best interests of the company; (2) where the fiduciary acts with the intent to violate applicable positive law; or (3) where the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties.

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question No. 15, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 16

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Daugherty for his damages, if any, that were proximately caused by such conduct?

> "Fair market value" is typically defined as the amount a willing buyer, who desires to buy but is under no obligation to buy, would pay to a willing seller, who desires to sell but is under no obligation to sell.

Answer separately in dollars and cents, if any.

a. Fair market value of Daugherty's Sierra Verde Units at the time of rescission. Answer: _____

b. Fair market value of Daugherty's Sierra Verde Units at the highest intermediate value between October 2011 and the time of trial. Answer: _____

QUESTION NO. 17

Did HERA fail to comply with the HERA Agreement?

HERA failed to comply with the HERA Agreement by amending the HERA Agreement to include Section 12.1 of the Second Amended HERA Agreement if the Second Amended HERA Agreement divested Daugherty's Series A Preferred Units.

HERA failed to comply with the HERA Agreement if it failed to comply with the implied covenant of good faith and fair dealing by amending the HERA Agreement to include Section 12.1 of the Second Amended HERA Agreement.

Do not consider any actions taken by HERA after February 16, 2012, when the Second Amended and Restated Limited Liability Company Agreement of HERA was adopted when determining if HERA failed to comply with the HERA Agreement.

Every contract contains implied covenants from the parties of good faith and fair dealing. In determining whether a party is acted in good faith and fair dealing, you must consider what the parties would have agreed to themselves had they considered the issue in their original bargaining positions at the time of contracting. In other words, is it clear from what was expressly agreed upon that the parties who negotiated the express terms of the contract would have agreed to proscribe the act later complained of as a breach of the implied covenant of good faith and fair dealing—had they thought to negotiate with respect to that matter.

"Good faith" means faithfulness to the scope, purpose, and terms of the parties' contract. "Fair dealing" means a commitment to deal "fairly" in the sense of consistently with the terms of the parties' agreement and its purpose.

An implied covenant of good faith and fair dealing requires that a party refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of his bargain. When exercising a discretionary right, a party to the contract must exercise its discretion reasonably.

Answer "Yes" or "No" for each of the following.

	Divesting by Section 12.1	**Implied Covenant of Good Faith and Fair Dealing by Section 12.1**
HERA	NO	yes

If you answered "Yes" to any part of Question No. 17, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 18

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Daugherty for his damages, if any, that resulted from such failure to comply?

Answer separately in dollars and cents, if any.

Fair market value of Daugherty's HERA Units. Answer: 2.6 Million

QUESTION NO. 19

Did Boyce or Britain, in bad faith, fail to comply with their implied contractual covenant of good faith and fair dealing owed to HERA by amending the HERA Agreement to include the dispute resolution provision in Section 12.1 of the HERA Agreement or by directing the Offer to Purchase to be sent to minority holders of units in HERA?

Consider the following additional instructions in answering:

Bad faith means that a fiduciary intentionally acts with a purpose other than that of advancing the best interests of the company, or the fiduciary intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties to the company.

A party does not act in bad faith by relying on contract provisions for which that party bargained where doing so simply limits advantages to another party.

Do not consider any actions taken by Boyce or Britain after the Second Amended and Restated Limited Liability Company Agreement of HERA was adopted or the Offer to Purchase was sent to minority holders of units in HERA when determining if Boyce or Britain failed to comply with their implied contractual covenant of good faith and fair dealing owed to HERA.

Answer "Yes" or "No" for each of the following parties.

a. Boyce

Answer: NO

b. Britain

Answer: NO

If you answered "Yes" to any part of Question No. 19, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 20

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate HERA for damages, if any, that were proximately caused by such conduct?

Answer separately in dollars and cents, if any.

Fair market value of Daugherty's HERA Units. Answer: _____

QUESTION NO. 21

Did Dondero or Highland publish a defamatory statement concerning Daugherty that was false at the time it was made?

"Publish" means intentionally or negligently to communicate the matter to a person other than Daugherty who is capable of understanding its meaning.

"Defamatory" means an ordinary person would interpret the statement in a way that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach the person's honesty, integrity, virtue, or reputation. In deciding whether a statement is defamatory, you must construe the statement as a whole and in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.

"False" means that a statement is not literally true or not substantially true. A statement is not "substantially true" if, in the mind of the average person, the gist of the statement is more damaging to the person affected by it than a literally true statement would have been.

Answer "Yes" or "No" for each of the following.

	Dondero	**Highland**
a. Daugherty left Highland for lifestyle reasons	yes	yes
b. Daugherty left Highland because he was burned out	yes	yes

If you answered "Yes" to any part of Question No. 21, then answer the corresponding part(s) of the following question. Otherwise, do not answer the following question.

QUESTION NO. 22

Were the statements privileged?

> A statement is privileged if the party making the statement reasonably believes that the party to whom the statement is made has a common interest in the particular subject matter of the statement. The common interest may be a financial, moral, social, or legal interest.

Answer "Yes" or "No" for each of the following.

	Dondero	**Highland**
a. Daugherty left Highland for lifestyle reasons	yes	yes
b. Daugherty left Highland because he was burned out	yes	yes

If you answered "No" to any part of Question No. 22, then answer the corresponding part(s) of the following question. Otherwise, do not answer the following question.

QUESTION NO. 23

Did one or more of the following parties know or should have known, in the exercise of ordinary care, that the statements contained in Question No. 21 were false and had the potential to be defamatory?

> "Ordinary care" concerning the truth of the statement and its potential to be defamatory means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

Answer "Yes" or "No" for each of the following.

	Dondero	**Highland**
a. Daugherty left Highland for lifestyle reasons		
b. Daugherty left Highland because he was burned out		

If you answered "Yes" to any part of Question No. 22, then answer the corresponding part of the following question. Otherwise, do not answer the following question.

QUESTION NO. 24

Do you find by clear and convincing evidence that, at the time Dondero or Highland made the statement or statements in Question No. 21—

1. Highland or Dondero knew it was false as it related to Daugherty, or

2. Highland or Dondero made the statement with a high degree of awareness that it was probably false, to an extent that Highland or Dondero had serious doubts as to the truth of the statement?

"Clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the jury a firm belief or conviction as to the truth of the allegations sought to be established.

Answer "Yes" or "No" for each of the following.

	Dondero	**Highland**
a. Daugherty left Highland for lifestyle reasons	yes	yes
b. Daugherty left Highland because he was burned out	yes	yes

If you answered "Yes" to any part of Question No. 23 or any part of Question No. 24, then answer the corresponding parts of the following question. Otherwise, do not answer the following question.

QUESTION NO. 25

What sum of money, if paid now in cash, would fairly and reasonably compensate Daugherty for his injuries, if any, that were proximately caused by the statements?

> Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately in dollars and cents for damages if any.

	Lost Earning Capacity Sustained in the Past	**Loss of earning capacity that, in a reasonable probability, Daugherty will sustain in the future.**
a. Daugherty left Highland for lifestyle reasons	0	0
b. Daugherty left Highland because he was burned out	0	0

Verdict Certificate

Check one:

_____ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

_____ _____
Signature of Presiding Juror Printed Name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

__X__ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	Signature	Name Printed
1.	Janice Richardson	Janice Richardson
2.	Casey Brown	Casey Brown
3.	Patricia Ramos	PATRICIA RAMOS
4.	Betty Keefe	Betty Keefe
5.		JOCELYN JESUS
6.	Tara Smith	Tara Smith
7.	James B. Chase	JAMES B. CHASE
8.		Bradley Bunch
9.	Mary Massey	Mary Massey
10.	Roberta F. Marshall	Roberta F. Marshall
11.		

EXHIBIT 45

ORIGINAL
FILED
12 MAY 22 PM 4:20
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
ANGELICA HERNANDEZ DEPUTY

5-CIT atty

def $100

NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
Plaintiff and Counter-Defendant,	§	
v.	§	
PATRICK DAUGHERTY,	§	
Defendant and Counter-Plaintiff,	§	**DALLAS COUNTY, TEXAS**
v.	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
Third-Party Defendants.	§	**68th JUDICIAL DISTRICT**

DEFENDANT'S ORIGINAL ANSWER, COUNTERCLAIM AND THIRD-PARTY PETITION

COMES NOW, Patrick Daugherty ("Daugherty") and files this his Original Answer, Counterclaim and Third-Party Petition and would respectfully show the Court as follows:

I.

GENERAL DENIAL

1. Daugherty generally denies each and every allegation contained in Highland Capital Management, L.P.'s ("HCM" or "Defendant") Original Petition and demands strict proof thereof.

II.

COUNTERCLAIM AND THIRD-PARTY PETITION

PARTIES

2. Patrick Daugherty is an individual who resides in Dallas County, Texas.

3. Counterclaim Defendant Highland Capital Management, L.P. has already entered an appearance in this cause. Therefore, no further service of process is required at this time.

4. Third-Party Defendant Sierra Verde, LLC ("Sierra Verde") is a Delaware limited liability company that maintains its principal office in Dallas, Texas and may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

5. Third-Party Defendant Highland Employee Retention Assets LLC ("HERA") is a Delaware limited liability company that maintains its principal office in Dallas, Texas and may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

6. Third-Party Defendant James Dondero ("Dondero") is a Texas resident and may be served with process at 3807 Miramar, Dallas, Texas 75205, or 300 Crescent Court, Suite 700, Dallas, Texas 75201, or wherever he may be found.

7. Third-Party Defendant Patrick Boyce ("Boyce") is a Texas resident and may be served with process at 6617 Muirfield Circle, Plano, Texas 75093, or 300 Crescent Court, Suite 700, Dallas, Texas 75201, or wherever he may be found.

8. Third-Party Defendant William L. ~~Britain~~ ("Britain") is a Texas resident and may be served with process at 5603 Caruth Blvd., Dallas, Texas 75209, or 300 Crescent Court, Suite 700, Dallas, Texas 75201, or wherever he may be found.

III.

VENUE AND JURISDICTION

9. This Court has jurisdiction over this matter under the laws and Constitution of the State of Texas. The amount in controversy, exclusive of interest and costs, is within the jurisdictional limits of this Court.

10. Venue is proper in Dallas County, Texas pursuant to Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(1) and (a)(2), because all or a substantial part of the events or omissions giving rise to the claims in this action occurred in Dallas County, Texas, and all of the Defendants either reside or had their principal place of business in Dallas County, Texas at the time the causes of action accrued.

IV.

DISCOVERY PLAN

11. Discovery is to be conducted pursuant to a Level III Discovery Control Plan Scheduling Order in accordance with Texas Rules of Civil Procedure 190.4.

V.

FACTUAL BACKGROUND

12. In April 1998, Daugherty was hired by HCM as a Portfolio Analyst. He reported to Dondero and his duties initially consisted of underwriting and performing credit analysis for a portfolio of corporate loans held by investment vehicles known as collateralized loan obligations

("CLOs"). Daugherty prepared annual self-reviews through 2008, where his yearly performance was evaluated and benchmarked against other employees within the firm. These evaluations reflected his strong performance, and he was promoted several times to more senior positions as his responsibilities and compensation grew. After 2008, Daugherty was no longer required to prepare self-reviews.

13. Through his tenure at HCM, Daugherty was promoted from Portfolio Analyst to Senior Analyst to Portfolio Manager to Senior Portfolio Manager to Team Leader to Head of Distressed to Head of Distressed and Special Situations to Head of Distressed, Special Situations and Private Equity. Daugherty founded HCM's profitable stressed, distressed and private equity lines of business. He also served twice as General Counsel of HCM during his successful career there.

14. During Daugherty's employment, he entered into various agreements with HCM, including an Amended Employment Agreement, effective December 31, 2004, which purports to contain a non-competition provision and various other restrictive covenants (the "Employment Agreement").

15. During Daugherty's annual compensation review, he received a Compensation and Benefits Statement that detailed various forms of earnings and awards granted to Daugherty as a result of his performance at HCM over the previous year. These awards included cash and incentive-based compensation in the form of equity or equity-like options that served to track the performance of reference investments which Dondero and HCM deemed important. The equity and equity-like options were issued under various tax based structures and were generally

referred to as the STIP program, the Option-it program and the Vessel program (also known as the LTIP/Vessel program). The LTIP/Vessel programs included HERA and Sierra Verde.

16. The STIP consisted of reference positions in the Highland Crusader Fund, L.P., Highland Real Estate Fund 2002-A, L.P., Highland CDO and Structured Products Fund and the Highland Credit Strategies Fund, L.P.

17. The Option-it program consisted of reference positions in the Highland Crusader Fund, L.P., Highland Real Estate Fund 2002-A, L.P., Highland CDO and Structured Product Fund, Highland Equity Focus Fund, L.P. and the Highland Credit Strategies Fund-HCF.

18. The LTIP/Vessel programs included at least two valuable, vested awards for Daugherty: 1) the HERA program (the Amended and Restated Limited Liability Company Agreement between HERA and HCM), which included most HCM employees; and 2) the Sierra Verde program, which included Daugherty's private equity team.

19. The HERA program consisted of limited partnership grants in the Restoration Capital Partners, L.P. ("Restoration"), HE Sugarland Project, LLC., and the Highland CLO Value Fund, L.P.

20. The Sierra Verde vessel, an entity formed in December 2010 to hold and distribute assets, was a program conceived to retain, reward and incentivize Daugherty and his private equity team, which received equity and options in Cornerstone Healthcare Group Holdings, Inc. ("Cornerstone") and Trussway Holdings, Inc.

21. For high ranking employees ("Partners"), HCM also awarded LTIP interests that tracked the performance of the Highland Partnership. This program was separate from the LTIP/Vessel program. The LTIP program (the 2005 HCMLP Long-Term Incentive Plan) is an

incentive plan created for non-voting partners in HCM, a partnership controlled by Strand Advisors which is controlled by affiliates of Dondero. Daugherty also had an interest in the Defined Benefit Pension Plan.

22. Contrary to HCM's assertions, which characterize Daugherty as some "unmanageable, erratic and insubordinate" or brain-damaged[1] employee, Daugherty was dedicated, hard-working, healthy and consistently ranked and paid as the top performer through the 2011 bonus year. In fact, Daugherty was held out by Dondero as the model manager which others should aspire to emulate. Dondero regularly praised Daugherty's "warrior" mentality and effective restructuring skills. However, beginning in 2006, Daugherty, in his role of Portfolio Manager, began to disagree with the firm's shift in strategy and risk. He was concerned that the Highland Crusader Fund, L.P. ("Crusader"), started in 2000 by Daugherty and Dondero, had drifted too far from its original mandate and had become an unfocused and levered mix of non-

[1] HCM falsely alleges that Daugherty "recently" admitted to having "two strokes," that left him with "dead spots in his brain." Such statement is a complete fabrication. In January of 2000, Daugherty suffered a Transient Ischemic Attack while working at HCM. The symptoms abated within less than 60 seconds without Daugherty ever losing consciousness. EMS was called to the scene and Daugherty was taken to the hospital for evaluation. Daugherty received a battery of tests that came back inconclusive. After not feeling well a few days later, Daugherty returned to the hospital and underwent a series of tests including numerous blood tests, electrocardiograms, MRIs, CatScans, Carotid Ultrasounds, and a Transesophageal Echocardiogram. It was determined that Daugherty had a Atrial Septal heart defect consisting of a "hole" in his heart about the size of a quarter. The remedy was routine open-heart surgery to patch/repair the hole between the two upper chambers of Daugherty's heart. Daugherty had successful surgery to make the repair in early April of 2000.

HCM was fully aware that Daugherty reported back to work within 10 days of having the surgery and actively participated in leading the Genesis/Multicare bankruptcy and restructuring negotiations. At no time did Daugherty suffer damage to his brain as a result of the 2000 TIA. Daugherty has had no recurrence of TIA. Daugherty has had no adverse neurological or cardiovascular occurrences or tests since 2000. HCM was fully aware that Daugherty received a full release from his cardiologist and neurologist within months of the surgery in 2000. HCM was fully aware of Daugherty's medical releases as he qualified for HCM's Life Insurance and Healthcare coverage programs within a year of the surgery.

core strategies. He was particularly troubled by the fact that Dondero had begun to more actively and unilaterally change the focus and risk profile of Crusader, allocating the vast majority of the fund's assets to Dondero's other "seed" initiatives that were beyond the expertise of HCM and its employees' skill sets. Daugherty voiced these concerns to Dondero on numerous occasions beginning in 2006.

23. From 2006 thru 2008, Daugherty objected to speculative bets being placed on heavily concentrated and leveraged public equities, residential mortgage backed securities ("RMBS"), commercial mortgage backed securities ("CMBS"), treasuries, foreign exchange, life settlement investments, undeveloped residential real estate, timber, and oil and gas investments—all utilizing the assets of Crusader. Daugherty was quite vocal in expressing his growing disapproval of the increased leverage being used in Crusader.

24. In late October 2007, Daugherty pleaded with Dondero to reduce the leverage in Crusader's equity portfolio on the basis that it left no room for error. Despite having positive year-to-date returns, Dondero was not satisfied with the performance, and said that if Crusader could not achieve certain unrealistic return goals by the end of the year, then he would take the firm's capital out of Crusader and invest it elsewhere where he could achieve those returns. Daugherty thought this was wrong and continued to lobby to reduce the leverage in Crusader. Even so, Dondero rejected Daugherty's advice and assigned Dave Semic to reallocate vast portions of Crusader's capital, and increase its overall leverage by shorting treasuries and buying RMBS and CMBS securities on virtually limitless margins.

25. During 2007, HCM also decided to pursue a new distressed for control private equity fund named Restoration. This fund was created based on Daugherty's successful

distressed for control track record within Crusader. However, HCM's senior management decided that Daugherty would not be part of the Restoration management team. When Daugherty objected, Mark Okada ("Okada"), HCM's co-founder, explained to him (with Dondero and Jack Yang ("Yang") on the phone) that while they appreciated his contributions to the track record, they had decided to reduce their exposure to Daugherty and feature another manager within HCM, John Honis ("Honis"), despite the fact that Honis had much less involvement with the referenced track record. Daugherty was disappointed with their decision, but agreed to assist in the development of the target strategy and preparation of the marketing materials.

26. Soon after the launch of Restoration, it was apparent that the marketing process was failing miserably. Initially Yang and Okada blamed Honis for having poor marketing skills as cause for the failure. Honis was even directed to enroll in a public speaking course. Yang then briefly took control of the marketing effort for Restoration, but he, too, failed due to his lack of knowledge of the details behind the track record.

27. Ultimately, it was determined that Daugherty needed to be included in the Restoration marketing effort, because he was best suited to handle the in-depth questions that arose from detailed investor due diligence. Daugherty hesitantly accepted the new role as a key man in the revised Restoration platform and spent the second half of 2007 leading Restoration's capital-raising efforts.

28. By the end of 2007, Honis had been functionally removed from Restoration and was replaced with Brett Pope ("Pope"), who was named co-manager with Daugherty. Dondero announced that Daugherty would be in charge of sourcing and restructuring of distressed

investments, while Pope would be placed in charge of post-restructured operations and traditional private equity. Neither Pope nor Daugherty favored this arrangement, since the responsibilities were ambiguous and the available capital for each initiative came from the same source.

29. In January 2008, Daugherty informed Dondero of his intent to leave the firm on his anniversary date in April 2008. He offered a 6-month transition period. Also in January, HCM experienced the worst performance of its existence with many funds deteriorating significantly. By March 2008, Pope resigned from HCM. The problems at HCM and the funds it managed had continued to escalate and Dondero asked Daugherty to stay and help him manage through the crisis. Daugherty agreed to stay and assist HCM, even though he would experience significant deterioration in his personal wealth by not having sold out of the various incentive compensation awards he could have liquidated had he resigned as planned. Daugherty worked with Britt Brown and Brian Lording from the accounting team at HCM and began to raise cash for various HCM funds by selling investments, as the firm and its funds entered a severe liquidity crisis. He was also appointed to sole head of the Private Equity Team and Senior Manager of the Restoration Fund.

30. By July 2008, Daugherty was troubled to hear that available cash was flowing out of HCM to support struggling initiatives and affiliates of HCM that were experiencing liquidity crises of their own. He was equally concerned to hear that Dondero refused to de-lever (reducing debt by selling more assets) in anticipation of further deterioration because Dondero had declared to Daugherty, Okada and Kurt Plumer that he was going to "robo trade our way out of this."

31. Daugherty's concerns were validated when later in July/August, Dondero refused to satisfy a prime brokerage capital call with its bank counter party, triggering a breach in the financing line for several of its funds. This led to a daily liquidity crisis, since margin arrangements could be modified by the bank at its sole discretion. Instead of meeting the mandated margin call, Dondero chose not to liquidate the necessary assets and only authorized a partial payment. However, the margin call required 100% satisfaction, and this partial payment resulted in a breach of the loan (total return swap arrangement). On the Friday that the breach occurred, Dondero was happily passing out $100 bills and dinner vouchers to accountants and analysts in attendance, thinking he had done "enough" to comply with the requirement. HCM found out the following Monday that the breach had caused an immediate acceleration in the credit line and that Crusader was now at the mercy of its creditors.

32. In August 2008, Daugherty continued to raise cash in Crusader and other funds for margin calls, as well as for investor redemptions that were due to be paid in early October. Daugherty attempted to reject several purchases into Crusader (e.g., life settlement and real estate investments), but Dondero overruled him, instructing him that he was to make purchases if Crusader had cash to make the trade on that day, regardless of what the future impact on cash would be post looming redemptions. In fact, Dondero instructed Daugherty to respond only with "ok" in response to Dondero's trades if Crusader had cash.

33. Dondero's actions had led to a substantial write down/write-off in the value of Daugherty's and the other employees' previously awarded incentive compensation. By September 10, 2008, Daugherty was out of patience with Dondero's reckless and self-serving actions. He formally submitted his resignation in writing, although he gave 30 days' notice in

order to effect an orderly transition. By the last week in September, Daugherty had raised enough cash to meet margin calls as well as make a partial cash payment to prior redeemers in Crusader. By this time, it was apparent that Crusader and the Highland Credit Strategy Fund ("Strat") would have to liquidate by October with a "payment in-kind" distribution of securities and assets to investors, because there simply wasn't enough cash to pay redeemers in full.

34. During the last week in September, Michael Colvin ("Colvin") and Okada came to Daugherty's office to seek his help in preventing Dondero from orchestrating a series of trades that would sell the most liquid investments in Crusader and Strat to the CLOs and then have Crusader take that cash and funnel it into Highland Financial Partners ("HFP"). HFP was another HCM fund which was experiencing a major liquidity crisis, even though Dondero had previously transferred over $100 million in cash to keep it afloat, in return for illiquid notes to be held by Crusader and Strat. Colvin and Okada explained their concerns and objections with the appropriateness of the transactions and Daugherty agreed.

35. Daugherty phoned Dondero, told him of his conversation with Colvin and Okada, and informed him that the trades in question should not be completed. At first, Dondero calmly explained that his intention was to make Crusader, Strat and HFP as illiquid as possible to punish Barclays for raising the margin requirements on HCM's pledge of limited partnership interests to another loan. Dondero then instructed Daugherty to authorize the trades. Daugherty resisted and told Dondero that he would not allow the trades. Dondero grew angry and ordered Daugherty to make the trades, claiming that it was his decision, and telling Daugherty to stay out of the trade approval process. Daugherty then angrily shouted to Dondero that he was not going to approve the trades nor was he going to let Dondero make the trades. Dondero was furious. He told

Daugherty that he was not to "waste any more of his time" and was to immediately "go home until further notice." Daugherty was further instructed by Dondero to inform Boyce, the Chief Administrative Officer, Chief Operating Officer and Chief Financial Officer of HCM at the time, of his absence and was not to discuss the matter with anyone at HCM until further notice.

36. Daugherty followed Dondero's instruction and stayed at home for the remainder of the last week of September 2008. While Daugherty was at home on the mandated leave, the trades were completed. Britain took control of Daugherty's team during this time and directed Daugherty's team at the time the trades were executed. Boyce, as CFO and head of the Pricing Committee, also presided over the execution and settlement of the trades. Daugherty received an email from a Haynes and Boone attorney attempting to formalize closing of the trades and asking Daugherty whether "Crusader approves of these trades." Since Daugherty was on orders from Dondero to keep his views to himself, he simply responded: "I don't think Crusader has a say." The Haynes and Boone representative pressed more directly and asked Daugherty, as Portfolio Manager of Crusader, if he "approves of the trades on behalf of the Crusader investors." To which Daugherty replied: "Jim Dondero is approving these trades on behalf of the Crusader investors."

37. In September 2008, Lehman Brothers failed, causing it to file for bankruptcy. HCM was directly and indirectly impacted by the Lehman collapse because Dondero had invested HCM's and many of its fund's last remaining cash on a desperate bet for Lehman's survival. Additionally, with the fall of Lehman, HCM and the funds it managed lost almost all of their hedges because Lehman was its counter-party and had failed in its obligations when it filed for bankruptcy. As the crisis worsened, asset prices reached new lows, and financial firms were

liquidating performing loans at pennies on the dollar. HCM was forced to "put up the gates" to stem withdrawals at Crusader and Strat. Shockingly, Dondero determined that he would not make "payment in kind" distributions to the Crusader and Strat investors. In fact, he declared that he had traded the positions of the funds in such a manner as to render them completely illiquid in order to punish those investors who had redeemed or might attempt to redeem in the future. He used this approach to take advantage of investors who needed immediate liquidity by offering to buy their partnership interests at huge discounts to value. He and Okada purchased these interests into Highland Capital Services, L.P. ("Highland Services"), an entity wholly owned and operated by Dondero, Okada and their affiliates. He further schemed to manufacture a dispute between the "prior redeemers" and the "compulsory redeemers" of the two funds so that he could delay unwinding the fund until the "dispute" was eventually resolved.

38. Many of the Crusader and Strat investors brought suits or threatened to bring suits against HCM for its self-serving actions. The investors were disgusted with HCM's blatant disregard for its fiduciary duties towards them, but were being held hostage with their own money, since Dondero refused to liquidate the portfolio until he received full releases from the investors. These suits were ultimately resolved through settlement negotiations that were finalized in July 2011. Dondero declared the outcome a success and ordered news releases posted to the HCM website so that the investment community and the SEC would see the news.

39. By "putting up the gates," HCM effectively committed to a liquidation of Crusader and Strat, and lost its ability to charge most of its management and incentive fees to those funds. This would play a critical role later in 2012, as HCM attempted to purchase the

assets being liquidated from these funds at deep discounts into other HCM-managed funds or into portfolio companies owned by other HCM-managed funds that were paying full fees.

40. Late in 2008, HCM was widely viewed as a firm certain to default. Dondero assigned Yang with the task of negotiating a restructure of HCM's credit facility. The banks were furious to discover that Dondero and Okada had been siphoning tens of millions of dollars out of HCM into their closely-held affiliated account at Highland Services under the guise of repaying their loan to HCM.

41. The banks demanded that the cash be returned immediately or they would put HCM into an involuntary bankruptcy. During a telephonic bank meeting, Dondero refused to return the cash and defiantly proclaimed: "Highland will fail before I fail." To make matters worse, Yang was repeatedly caught lying to the bank group about the status of HCM and its funds (namely Crusader, Strat and HFP) and their redemption activity. The situation deteriorated so badly that the banks would no longer speak with Yang. In January 2009, Boyce asked Daugherty to intervene.

42. Boyce and Daugherty agreed that the payments to Highland Services needed to stop immediately. Daugherty then assumed an active role in negotiations with the bank group. During the process of negotiating with the banks, Dondero and Okada refused to provide collateral pledges to the banks until they were allowed to withdraw tens of millions of additional non-cash assets from HCM. Dondero brought the negotiations to the brink of a midnight bankruptcy filing in June 2009 until he got what he wanted. Dondero ultimately took the incremental amount he demanded from the employee compensation reserve, which had been set aside by the banks in order to retain employees during the crisis. Neither Dondero nor Okada

returned the tens of millions of cash they siphoned from HCM during this horrible crisis in late 2008, despite ordering lay-offs of more than 50% of HCM's employees.

43. By the Compensation Review period for February 27, 2009, moral was at an all-time low at HCM. Employees were resigning and being fired en mass. HCM had very little cash and available assets for incentive compensation grants. In fact, Dondero, Okada and Boyce announced that managers were to consider the tax-loss refund checks for prior year's compensation awards that had been written off in 2008 as their "bonus" for 2009. Dondero and Boyce determined arbitrary values for the "2008 Tax Refund" and distributed them to employees in their Compensation and Benefits Statement for 2009. These "awards" were notorious for being inconsistent with what the employees actually received from the Internal Revenue Service.

44. During late 2009, members of Daugherty's private equity team (Lawler, Carl Moore ("Moore"), Callan, and Smith) expressed to Daugherty their concerns regarding the stability of HCM. They were especially concerned about the tens of millions of dollars that Dondero and Okada had siphoned from HCM and what that said about their commitment to HCM. Accordingly, the members of the team presented a proposal that would incentivize them to stay with HCM, while aligning their interests with those of the investors. The plan included options and equity that tracked the performance of certain HCM-managed portfolio companies targeted for the plan. Options were chosen in addition to equity grants, since it was generally HCM's policy to grant option-like compensation programs to reward performance when the stock price of the underlying Company could have sufficient value that would lead to high cash taxes in the year of the grant. Importantly, these options would not create a taxable event for the recipient until they were exercised.

45. The intent of the plan was to provide equity-based incentives to the private equity team that would be realized upon the successful sale of certain portfolio companies managed by the team. Daugherty, together with Moore and Lawler, presented the plan to Dondero for approval. Daugherty explained to Dondero that the plan would act as an incentive to retain the employees on the private equity platform, since much of the value of their existing HCM retention-based incentive compensation had been destroyed as a result of right-offs and the liquidations caused by HCM's numerous margin defaults in late 2008.

46. After a series of discussions between Dondero, Moore, Thomas Surgent ("Surgent") (HCM's in-house attorney and Chief Compliance Officer) and Daugherty, including one where Dondero inserted himself into the program as the largest recipient under the retention plan, Dondero approved moving forward on the plan. He then instructed Daugherty to work with Surgent and Moore to implement the plan. In addition, Dondero gave strict instructions that the plan was not to be mentioned to Boyce, since he believed Boyce would also demand to be included, and he did not want to include Boyce in this particular incentive plan.

47. Surgent then gave instructions to Daugherty and Moore on what processes were required in order to make the plan align with HCM's Compliance Policy. He instructed Daugherty and Moore that any rewards under the plan would be subject to the Turnover Grid (a chart listing what percentage of compensation must be repaid or turned over to certain funds and what percentage of compensation could be retained by HCM employees in compliance with the various fund indenture agreements) applied to HCM employees who received compensation as portfolio company board members.

48. Surgent also instructed Daugherty that independent counsel would need to be retained on behalf of the portfolio companies involved and that the independent board members of the companies involved would have to approve of the plans. In January 2010, Moore retained Matt Lyons ("Lyons") of Andrews Kurth LLP to review the plan and negotiate on behalf of the portfolio companies and the board of directors (the board generally consisted of the Chief Executive Officer, Highland Private Equity personnel and independent board members). Numerous discussions took place between Lyons, Daugherty, Moore, senior executive management and the independent board members. Lyons advised all of the board members, including Daugherty, that all options awarded to executive management, independent board members and HCM employees should have the same strike prices.

49. Over the next several months, Lyons negotiated the various other points and concerns with Moore and Daugherty, who interceded on behalf of Dondero. These negotiations caused numerous delays on finalizing the incentive compensation to the executive teams and the independent board members, but by July 2010, the plans were submitted to the independent board members for final approval.

50. During the board meetings and prior to seeking approval of the independent board members, Lyons detailed the purpose, merits, market standards and fairness for each one of the option incentive grants. Lyons hosted question and answer sessions (with and without HCM representatives present) where all board members had the opportunity to discuss any matters regarding the option plans. Daugherty and the other board members relied heavily on Lyon's advice during these sessions. Finally, a vote for final approval was made with all HCM affiliated board members abstaining from the vote. By the end of July 2010, each portfolio company

received final approval to grant the options to the executive management teams, independent board members and the private equity team.

51. In accordance with Dondero's instruction, the HCM employee grants were amalgamated and held in a separate holding entity called Sierra Verde. This was an entity named by Moore and created by Lyons to resemble the HERA vessel which was created to hold equity-based compensation for other HCM employees. Final ownership of Sierra Verde was allocated among the private equity team on December 16, 2010, with Dondero receiving the largest share at 24%. As far as Daugherty was concerned, Sierra Verde was finalized and was just another component of his and the private equity team's deferred compensation package from HCM.

52. HCM began to stabilize in the second half of 2009, although it remained significantly leveraged and had become the target of many large lawsuits. In late 2009, Dondero informed the senior managers at HCM that he intended to position future fund initiatives outside of HCM to avoid having to contribute such interests to the bank group's collateral pool. He sketched a schematic for Daugherty where new "brands" would be created for HCM's future initiatives, with Dondero, Okada and their affiliates retaining 75% via Highland Services. The proposed brands eventually included:

> Tunstall – for stressed and distressed investing in hedge fund, private equity fund and 40act sub-advisory (retail funds) – led by Daugherty;
>
> ACIS – for structured product and CLOs – led by Mahmoud, later Terry;
>
> Falcon – for oil and gas investments in private equity funds – led by Britain;
>
> Canopy – for timber investments in private equity funds – led by Britain;

Highland Funds (now Pyxis) – for various comingled, sub-advisored and equity based 40act funds (retail) – led by Joe Dougherty (no relation to Patrick Daugherty);

Granite Bay – for long-short credit investing – led by Okada and Kaufman with Dondero taking a minority interest;

Brazillian Fund-unnamed at Daugherty's departure to pursue debt investing with Brazilian partners – led by Latimer, later Bramer; and

Swiss Fund – unnamed at Daugherty's departure to pursue healthcare venture capital investing based on Gregory and Daugherty's track record in healthcare – led by Gregory.

53. Dondero offered to partner with Daugherty on the Tunstall fund initiative, giving Daugherty 25% of Tunstall Capital Management, LP ("Tunstall Capital"). He also offered Daugherty 5-10% of all of the other management companies (or branded initiatives). The rest of the initiatives were doled out by Dondero to the managers he believed were most critical to their success.

54. In December 2009, Daugherty spoke to Dondero about the desire of several independent board members within the private equity portfolio platform to get better returns on the accumulated cash on their balance sheets. Daugherty suggested a non-leveraged, lower risk fund primarily with senior debt, bonds and highly liquid public equities that would carry no fees. Dondero agreed with the concept but wanted to incorporate a fee structure consistent with the hedge fund standard of 2% management fee and 20% incentive fee. Daugherty was opposed to charging a fee for managing these funds, since the cash balances were owned by companies that were owned by pre-existing funds managed by HCM and so were already being charged such fees or had their fees intentionally terminated (as was the case with Crusader and Strat).

55. Further, because Dondero intended to structure the fund like a hedge fund with monthly marking, both the management fee and the incentive fee would be paid monthly without disclosure to the various fund investors. This contrasted with the Sierra Verde equity/options, which would not be paid until a realization event occurred (e.g. when the companies were actually sold), at which time all distributions would be transparent to fund investors, and any turnover or netbacks against HCM's incentive fees would be made. Dondero agreed to make the incentive fee subject to realization events (actual sales of the investments), but Daugherty was not satisfied because there was no pass-through distribution to fund investors, unlike Sierra Verde. Daugherty thought the new fund idea had died until early January 2010, when Dondero inquired about the progress and instructed Daugherty and Surgent to "get it done."

56. Daugherty enlisted the help of Moore and once again retained Lyons at Andrew Kurth to advise them on the best way to achieve Dondero's demand. On January 26, 2010, Daugherty received an email from Surgent, copying Dondero, Boyce, Clint Gilchrist ("Gilchrist") and Honis, with attachments for documents related to Tunstall Distressed Opportunities Fund, which was later renamed Tunstall Special Opportunities Fund ("Tunstall"). In the email, Surgent instructed Daugherty that Dondero directed that the documents were to be distributed to the board of directors by the end of the day. This was just one of many emails from Surgent to Daugherty pushing to get Tunstall launched. Daugherty continued to resist signing the Tunstall Capital Management, LP ("Tunstall Capital") documents because he was not comfortable with numerous elements of the documents, including the fee structure to be paid to Tunstall Capital to manage Tunstall.

57. Daugherty made his views opposing the structure of Tunstall Capital and the fees paid by Tunstall clear to Dondero during several meetings in Dondero's office. On September 1, 2010, Daugherty learned that all committee members for the portfolio companies had approved the formation of Tunstall and the fees structure.

58. On January 22, 2011, Dondero sent Daugherty another email stating that 75% of Tunstall Capital fees had already been distributed (to Dondero and Okada and their affiliates via Highland Services), and that the remainder must be distributed by February 15, 2011 to Daugherty, and he needed to sign the documents. Daugherty again refused to sign. On March 13, 2011, Daugherty was informed that Tunstall Capital was a part of his compensation for 2010. He received several other emails from Dondero, declaring that he needed to sign the Tunstall Capital documents. Daugherty again refused to sign.

59. Having his past incentive compensation awards virtually wiped out from late 2008 to early 2009, but avoiding a bankruptcy filing for HCM, Daugherty focused on managing his HCM private equity portfolio back to health, and again began to experience significant successes by the end of 2009 and into 2010. HCM stabilized, primarily as a result of hundreds of millions of dollars of gains due to Daugherty's investments and restructuring contributions. Dondero proposed that Daugherty launch a new follow-on fund to Restoration, which had been tremendously successful under his leadership. Daugherty began the marketing process for Tunstall RCP II in early 2011.

60. Daugherty received his Compensation and Benefits letter for 2010 on the last day of February 2011. He was disappointed to see that he was awarded less compensation than the year before, reduced by 50% of the board fees he was allowed to keep pursuant to HCP's Board

Compensation Turnover Plan, with a payout over two years instead of one. He was also told that Dondero would not grant him the promised 5-10% ownership interests in any of the new branding initiatives agreed to earlier. Finally, he was again told to sign the Tunstall Capital documents so that he could receive his 25% share and fees earned at that entity. Daugherty expressed his disappointment to Dondero. Dondero explained that Daugherty had to trust him and that he based his decision on Highland 2.0 (a "back to future" attempt at resetting HCM's culture to the earlier days of HCM when Dondero made decisions and awarded or changed compensation purely at his discretion). Daugherty told Dondero that Highland 2.0 would not work for him because he wanted an agreement in writing that clearly defined how he and his team would be compensated. He told Dondero that he would negotiate in good faith thru the end of the summer of 2011, explaining that if they did not have a deal by that time, he would resign from HCM at the end of the summer.

61. In the spring of 2011, Dondero asked Daugherty and David Smith ("Smith") what they thought the ultimate value and recovery would be for Cornerstone equity and bank debt, respectively, and whether Daugherty would be interested in buying some cheap for the Restoration Fund. Daugherty and Smith gave Dondero their views regarding the value of the Cornerstone debt and equity consistent with their presentations that had been prepared on a quarterly and semi-annual basis for investors. Daugherty and Smith presented Dondero with a series of analyses demonstrating what the value of the Company could be once the reimbursement environment had stabilized. Dondero then directed HCM trading personnel to offer to purchase Cornerstone's equity and debt at a significant discount from the valuation offered by Daugherty and Smith.

62. After a couple of weeks had passed, Dondero informed Daugherty and Smith that the seller was actually the committee representative for the Strat Fund, and that they were willing to pursue a sale of their Cornerstone interests for liquidity reasons, so long as the buying party was not affiliated with HCM because they did not trust Dondero's or HCM's pricing motives. More time passed, leading Daugherty and Smith to assume that the trade had died.

63. As summer began, Dondero began to show enhanced interest in how Cornerstone was valued. Daugherty found this strange, since the value used for Cornerstone was basically meaningless because the funds that held the investment did not pay fees based on estimated values; they only paid incentive fees based on realized values (e.g. when the asset was actually sold). Daugherty and Smith had appropriately and conservatively marked the position for many months and had discounted the negative factors that could impact the stock price over the foreseeable future.

64. As Dondero continued to pursue a transaction with the Highland Credit Strat Committee, he directed that a third-party valuation of Cornerstone should be performed. By early August, the new valuation of Cornerstone had been completed, and Smith presented it to Dondero. However, Dondero was not pleased with the new valuation of Cornerstone because it was "not low enough." Smith explained that Cornerstone was already conservatively marked and that he and the third-party valuation expert had already valued Cornerstone at a steep discount compared to its publicly-traded peers. Boyce was put in charge of getting a "better" third-party valuation.

65. While Daugherty was out of the office, Dondero and Boyce directed Smith to present additional and more onerous discounts to the third-party valuation expert. Additionally,

Dondero, after being fully appraised of the value of real estate owned by Cornerstone as well as settlement negotiations in Cornerstone's pending litigation, instructed Smith to ignore and to omit any other value from the third-party firm's data package. Dondero and Boyce instructed Smith to make additional value reduction assumptions, including more draconian future reimbursement assumptions and management team discounts that would further reduce the third-party valuation. Finally, Dondero and Boyce received the lower valuation they had sought and presented it to the Highland Credit Strat Committee as proof for the legitimacy of their low bid price.

66. About this same time, Dondero instructed Daugherty and Smith to begin the process of granting another series of options for the Sierra Verde vehicle in order to true-up the dilutive effect of the rights offering promulgated by the Restoration investment into Cornerstone in December 2010, which effectively diluted/reduced the ownership of preexisting holders by approximately 30%. The purpose of the original rights offering was to infuse additional capital into Cornerstone so that it could make strategic acquisitions and acquire hospital real estate assets.

67. By the end of August 2011, Smith reported to Daugherty that Lyons was not comfortable with the mechanics of the second round of equity/option grants and that the request had "numerous problems." Daugherty instructed Moore, who had been the point man on the original Sierra Verde transaction, to take over the discussions with Andrews Kurth, and to advise Daugherty about any problems he discovered. By mid-September, Moore indicated that a second round of equity/option grants was not advisable at the past levels due to the company's material improvement since the last grants. Daugherty agreed with Moore's assessment and

informed Dondero accordingly. Dondero disagreed with the assessment and instructed Daugherty to "find a way to get it done." Daugherty said he would try to find a way to complete the transaction, but that it was unlikely.

68. Also during the summer of 2011, Dondero broached the subject of having Daugherty serve as CEO of Cornerstone, while Dondero assumed the role of Chairman of the Board. Dondero told Daugherty that they could each collect the equivalent of a CEO's salary via this arrangement. Daugherty disagreed and explained to Dondero that there could only be the equivalent of one CEO's salary paid, regardless of the split between the CEO and Chairman responsibilities. Dondero then proposed a co-CEO arrangement: Daugherty would manage "operations" and work at Cornerstone three days a week while Dondero would handle "marketing" and work at Cornerstone two days a week. Dondero also informed Daugherty that Dondero would receive 60% of the CEO compensation while Daugherty would receive 40%. Dondero suggested that they would not have to follow the firm's Turnover guidelines as used for board fees. Daugherty disagreed. Dondero gave Daugherty a highlighted copy of the Restoration indenture and told him that HCM's legal/compliance group recommended that they would have to turnover certain compensation mandated by the indentures consistent with the process for board fees earned by HCM employees, but that Dondero thought it was a "grey area" and would let Daugherty decide. Daugherty showed the highlighted document to Moore and told him he did not think there was any way to keep all of the compensation as Dondero suggested. Moore agreed, and Daugherty informed Dondero that he concurred with HCM's legal/compliance department's conclusions that Dondero's approach was not permitted. Dondero and Daugherty were elected as co-CEO's of Cornerstone during the last week of

August 2011. Daugherty resigned by the end of September and never collected any compensation for his services as co-CEO of Cornerstone.

69. In early September 2011, Dondero informed Daugherty of his intent to issue a second rights offering for NexBank Capital, Inc. ("NexBank Capital"). NexBank Capital is a holding Company controlled by Dondero, Okada and their affiliates, and is the sole shareholder of NexBank Capital, SSB). Daugherty and other senior HCM and affiliate employees had been granted shares in NexBank Capital pursuant to their Compensation and Benefits award for 2004. After Todd Travers and Davis Deadman left HCM and its affiliates in 2010, Dondero ordered the first rights offering to raise capital for NexBank Capital. Dondero disputed with Travers and Deadman regarding the "fair value" and lack of arms length process for the rights offering. Dondero guided the valuation experts' price lower so that he could cheaply dilute existing holders who were unwilling to participate under Dondero's leadership. Existing holders that were HCM employees were expected to be "loyal" and participate or suffer reprisals in their 2011 bonuses. Travers and Deadman were removed from the board and subsequently diluted. Daugherty reluctantly participated and was named to the NexBank Capital board of directors in early 2011. When Dondero informed Daugherty of his intent to launch a second rights offering in September 2011, Daugherty protested. This time, Dondero launched an even lower value for the rights offering and did not even bother to retain a third-party valuation expert. Dondero assured Daugherty that he would benefit because his purpose was to increase the ownership of current HCM employees like Daugherty and decrease the ownership of those former employees perceived as "disloyal" to the firm. He specifically identified Travers and Deadman as being his targets for dilution. Daugherty and other senior ranking HCP employees declined to participate.

Daugherty later learned that Amit Wahlia, who did not participate, was subsequently demoted and reassigned to report to a more junior HCM employee, Trey Parker, in early 2012.

70. Daugherty worked from Montana during the Summer of 2011, and spent most of his weeks on the road attempting to raise funds for Tunstall RCP II, a second distressed for control private equity fund. From March 2011 to September 2011, Daugherty was also in the process of negotiating his future compensation package with Dondero that would keep him at HCM through the investment period of Tunstall RCP II, which was about 5 years. Daugherty made it clear to Dondero in March 2011 that he intended to leave HCM if a new arrangement could not be worked out. He also told Dondero that he would not remain at HCM through the first close on Tunstall RCP II without an agreement that committed him to the firm for the investment period of the Tunstall RCP II Fund. Dondero assured Daugherty that he would provide him and his team with more autonomy and a market-based deal by the end of the summer.

71. Dondero offered Daugherty a Compensation and Benefits Statement that was delivered to Daugherty by Brian Collins on September 26, 2011. The statement included a series of inducements that included cash and bonuses, 25% of the management fees in Tunstall RCP II, the 40% share of the CEO compensation from Cornerstone, full retention of portfolio board fees as allowed by HCM compliance, 15% of a future REIT (assuming it was launched) and 25% of the before-mentioned Tunstall Capital management fees.

72. Daugherty had concerns about some of the components of the compensation offer, namely the co-CEO role at Cornerstone and the Tunstall Capital fees. However, before he could address these issues, Dondero retracted the REIT award and inexplicably rescinded the entire

offer on September 27, 2011. When Daugherty called Dondero to protest, he was told "Fuck you! Quit!" When he later tried to discuss the matter by email, Dondero sent him a response (with a copy to Boyce) telling him: "[You] will get no agreement in writing" and "[You] will trust or you will leave."

73. By this point, Daugherty was already very frustrated by the proposition of having Dondero as a co-CEO of Cornerstone, since he regularly missed entire board meetings and corporate dinners for Cornerstone and other portfolio companies in which he served as board member. He was also tired of having his job made more complicated by constantly having to find solutions to Dondero's self-dealing and conflicts of interest. Further, he was generally disgusted by Donderos's attempts to manipulate mark-downs so that he could take advantage of his own investors. Daugherty was unwilling to tolerate Dondero's latest attempt to re-trade his commitment to Daugherty's compensation and bonus terms and was totally fed up with the entire HCM culture, which pitted senior managers against one another in order to incite negative comments and backstabbing to justify paying each less. Daugherty submitted his letter of resignation on September 28, 2011.

74. The day following his resignation and pursuant to his 30-day notice, Daugherty reported to work and attended a meeting in Boyce's conference room to present his thoughts and recommendations on each investment within his portfolio and each member of his team. Boyce and Britain were in attendance. Daugherty again brought up the problems with issuing a second round of equity/option grants for Cornerstone to the Sierra Verde entity. He also told all in attendance that the lawyers at Andrews Kurth, as counsel to Cornerstone and the board, were

unlikely to approve of the supplemental issuance demanded by Dondero and that the idea should not be pursued. He continued to give his views on other portfolio positions and personnel.

75. After the meeting, Boyce and Britain conspired to deprive Daugherty of his earned compensation by converting and modifying contracts and vessels which Daugherty had vested ownership in. They both disliked Daugherty and each stood to gain by acquiring power and prestige with his departure. Throughout 2011, Boyce inserted himself into the affairs of Daugherty's team and created problems and tensions in order to undermine Daugherty. Boyce and Britain also led the implementation of Highland 2.0, which was used to reduce Daugherty's influence at the firm and over his team.

76. On September 30, 2012, Boyce and Britain began interrogating many of the members of Daugherty's private equity team regarding the initial Sierra Verde grants and the formation of that vessel. Boyce was livid to learn that he had not been included in the Sierra Verde transaction and that its value was now substantial. In fact, Boyce and Britain focused much of their attention in the days following Daugherty's departure on investigating and confronting private equity team members with the fact that their equity/option grants could now be worth more than what Boyce and Britain had received in total compensation for 2010.

77. Their accusations were self-serving and wholly ignored the fact that the Sierra Verde grant process began in 2009, when all security levels were much lower because of the global financial crisis against a context where HCM itself had defaulted on its bank loans and had contemplated filing for bankruptcy. Their investigation ignored the fact that these grants were approved by the independent board members on behalf of each company following a process that was dictated by outside counsel at Andrews Kurth and by HCM counsel, Surgent, on

behalf of the HCM-managed funds. In fact, Britain boasted that he intended to never speak to Daugherty again upon hearing of his resignation. This obviously made it difficult for Britain to determine the reason for Sierra Verde's creation and the purpose and process behind it.

78. Several of the private equity team members, including Moore, Lawler, Smith and Callan, reported to Daugherty that Boyce and Britain were determined to unwind the Sierra Verde vessel and presented it as a rogue transaction promulgated by Daugherty. Never once did Britain or Boyce seek Daugherty's explanation for the genesis, scope and intent of the plan. They later discovered that Dondero had mandated the plan in 2009 and that Surgent had given the Legal Department's approval for the plan -- with Lyon's blessing.

79. On October 2, 2011, Dondero reached out to Daugherty to have drinks at Nicola's Restaurant telling Daugherty: "Life is too short for it to be anything but a pleasant exchange between two battle-hardened warriors." They met at Nicolas's on October 6, 2011. In that meeting, Dondero discussed, in great detail, how he recently discovered his wife's infidelity. He suggested that other wives of HCM employees had not been faithful to their husbands as well, while assuring Daugherty that his wife had remained faithful.

80. Dondero then offered, as evidence of his wife's unfaithfulness to their marriage, about 20 pages of emails and text messages between his wife and her alleged lover. He explained to Daugherty that he had spent about three sleepless days reading almost 20,000 emails and texts raided from various tracking sources he had through his connections with certain branches of the intelligence community. Dondero explained that the emails and texts covered every communication his wife had over their five-year marriage. He also mentioned

that he had used sources that were illegal in order to obtain the information and had committed about 20,000 misdemeanors in the process.

81. In the meeting, Dondero went on to explain that at the time of Daugherty's resignation, he was in the process of reviewing these communications and that initially, a cell phone number he identified as belonging to Daugherty kept recurring, causing him to think Daugherty may have been having an affair with his wife as well. Dondero admitted that it was not until the following week when he was able to match up phone numbers with messages that he had been able to determine that his wife was communicating with Daugherty's wife, primarily regarding children's activities.

82. Dondero then attempted to entice Daugherty to come back to HCM by re-offering him the options of Cornerstone that had previously been held in the Sierra Verde vessel, which had been illegally dissolved after Daugherty's departure. He also offered Daugherty the full CEO position at Cornerstone, conditioned upon Daugherty's agreement that Dondero could alter his compensation as he felt appropriate and that his private equity team members could be reassigned as Dondero determined to be necessary. Dondero also told Daugherty that he would continue to lead the marketing effort for the Tunstall RCP II Fund. He dangled other incentives before Daugherty in order to attempt to entice him to return, including his right to maintain his board positions at MGM Studios and Safety-Kleen Systems, Inc.

83. Daugherty was understandably unnerved by this entirely bizarre conversation. He thanked Dondero for the offer, but respectfully declined. As Daugherty prepared to leave, Dondero asked that Daugherty think it over and get back to him with a final answer later. The following morning, Daugherty reported to work and was soon greeted by Boyce who remarked

that he had heard the meeting with Dondero "went well" and that Daugherty would be staying at HCM under the revised offer proposed by Dondero. Daugherty informed Boyce that while the meeting was civil, he had no intention of remaining at HCM under the new terms or under any other terms. Boyce left Daugherty's office with a surprised look on his face.

84. On October 12, 2011, Boyce informed Daugherty that Dondero had originally instructed him to find a way to get out of paying Daugherty under Sierra Verde the day after Daugherty resigned. Boyce, in an attempt to play "good cop," then assured Daugherty that he would try and get him the value of his Sierra Verde holdings. Boyce's efforts were hollow, since he did not like Daugherty. Boyce considered Daugherty a threat and envied Daugherty's senior position within the firm. Boyce desperately wanted to lead the private equity group managed by Daugherty. When Daugherty informed Boyce that he was unwilling to accept Dondero's revised offer, Boyce aggressively lobbied to have Daugherty removed from the office immediately.

85. When Daugherty returned to the office on October 17, 2011, Boyce had Brian Collins, Head of Human Resources, present Daugherty with three documents relating to HCM's separation offer: (1) Sierra Verde Consent – a document to be signed by the Board of Directors of Sierra Verde agreeing to have the vessel dissolved; (2) Cornerstone Separation Agreement - a document dictating that Daugherty was no longer co-CEO and Chairman of Cornerstone, and that he would be paid $600,000.00 over the following 18 months in exchange for his continuing duty to consult and cooperate relating to Cornerstone matters; and (3) HCM Separation Agreement – with new and more restrictive terms and release provisions from Daugherty's 2004 Employment Agreement. At this meeting, Daugherty stated that he wanted his compensation

awards and that he was exercising any rights to be paid such awards. Daugherty received a compensation spreadsheet explaining his remaining payouts.

86. Daugherty was also informed by various HCM employees that Dondero had hastily called a brief meeting with Restoration investors the previous Friday and had informed them that Daugherty had resigned from the firm because he had "flaked out" and "wanted to go to Montana because he didn't know what he wanted to do with his life." Dondero also told Julie Silcock at Houlihan Lokey that Daugherty had "taken a one year leave of absence."

87. Within days of being asked to vacate HCM's offices, Daugherty received immediate pressure from Surgent, Collins and Dondero to sign the new separation documents, which he refused to do. He also noted that the documents he was given instructed him to seek the advice of legal counsel, which he had not had a chance to do. On October 20, 2011, Daugherty asked Collins if the offer was an all or nothing deal and whether he had to execute all three documents in order for any one of them to be effective. Collins replied that he did.

88. Daugherty also inquired of Surgent why Sierra Verde was being unwound and dissolved. Surgent told him it was an "improper transaction" and was not permitted under the relevant indenture documents. When Daugherty asked how it was that this was just being discovered now, especially since Surgent was involved in the Sierra Verde approval and formation process dating back to 2009, Surgent did not respond. Daugherty said he was willing to entertain substitute consideration if there was a legitimate mistake, but that he was confused as to how it was now determined that the indenture did not permit Daugherty and the private equity team to receive options on the performance of Cornerstone and Trussway – especially since a payment could only be realized upon a successful sale of the company, with full disclosure to the

funds' investors. Further, if the Sierra Verde vessel was improper, Daugherty could not understand how it was permissible for him to receive monthly payments by Cornerstone equaling $600,000.00 under the proposed Cornerstone Separation Agreement, when there was no connection to Cornerstone's performance and the payments would not be visible to the fund's investors. Surgent again did not respond.

89. Daugherty further inquired about how the rest of his private equity team was being compensated. Surgent refused to answer Daugherty's question, other than to say that his former private equity team had been taken care of. Finally, Daugherty asked Surgent how it was deemed that the performance-driven option program under Sierra Verde was considered impermissible but the Tunstall fees were considered permissible. Surgent did not respond.

90. Daugherty later discovered that the Cornerstone independent board members had not been informed of the Sierra Verde unwind and were completely unaware that there was a compensation dispute with Daugherty. Dondero left voice messages with Daugherty telling him he needed to sign the documents and offering to update him on "what it's like to be married to a tramp wife."

91. On October 27, 2011, Dondero sent Daugherty an email notifying him that HCM had changed the documents and that all of the new documents would have to be signed. Surgent, Collins and Dondero attempted to schedule another meeting to discuss the new documents on October 28, 2011. Daugherty declined to discuss the matter further with HCM and referred the matter to his attorneys.

92. In January 2012, Daugherty was informed that Dondero, Boyce, Britain and Honis were schedule to host an investor committee update for the Crusader Fund. Daugherty

was listed in the presentation materials as having left HCM for "lifestyle" reasons. Dondero explained to those in attendance that Daugherty left HCM due to "lifestyle" reasons, that he was "burned out," that he was only willing to "work 30 hour weeks," and that he had effectively spent the summer of 2011 on vacation in Montana. Dondero, Boyce, Britain and Honis knew these remarks were wholly untrue, misleading and defamatory in nature. To the contrary, Daugherty was actively managing the various funds and investments and people that reported to him, and was aggressively marketing the new Tunstall RCP II Fund. Dondero was fully aware of, and indeed specifically approved of, Daugherty's request to work from a base in Montana during the summer of 2011 since so much of his time was spent on the road attending board meetings and marketing Tunstall RCP II in places like Dallas, Chicago, Boston and New York. In fact, Daugherty maintained an approximate 57 hour per week average approved by Dondero through the day of his resignation.

93. The Crusader investors did not trust Dondero because of the misrepresentations, broken promises and activities that took place with the management of their fund since 2008. Many of them knew Daugherty to be blunt, honest and hard working, and found it suspicious that he would leave HCM for "lifestyle" reasons. They insisted on having access to Daugherty to conduct an exit interview. Dondero and HCM complied with this demand and included Daugherty's email and contact information in the same presentation materials that listed Daugherty as having left for "lifestyle" reasons.

94. In late January 2012, Daugherty participated in exit interviews with certain fund committee members and detailed his views on the prospects and liquidity for the various fund investments and his reasons for leaving HCM. Daugherty presented his views in the same

manner and thoroughness that he had done while conducting quarterly and semi-annual updates consistent with his responsibilities at HCM.

95. Apparently, Daugherty's views were materially inconsistent with information and advice provided by Dondero, Boyce and Britain regarding the companies in the Fund. Daugherty gave a very strong review of one of the fund's largest investments, noting that discussions were taking place at the board level to sell one of the Fund's companies to a private equity firm or take it public in an IPO (Initial Public Offering) in the third quarter of 2012, which would likely more than double the price of the stock. Britain and Dondero had presented a completely different scenario to these investors, telling them there were no plans for a liquidity event.

96. Britain and Dondero had recommended that these investors sell their shares into a HCM-endorsed tender that the portfolio company was pursuing at the direction of Dondero and Britain at half of the expected IPO/sale price. The investors were told this was their only foreseeable option for liquidity, while Dondero and Britain were simultaneously campaigning to block the company from pursuing the IPO or outright sale. Dondero and Britain knew this would transfer more value to themselves and to HCM, since other HCM-managed funds were paying full management fees and incentive fees to HCM and this would increase one fund's percentage ownership of the company at the expense of another fund's investors. The net effect of their scheme allowed higher fee paying funds to increase their ownership and take part in the higher price liquidity event later, while funds that had suspended fees to HCM would sell out at depressed levels. Additionally, Dondero and Britain were actively trying to acquire shares in the

company from an investment bank for their personal accounts, while instructing the fund's investors to tender (sell) their shares.

97. Daugherty was asked by the committee to give his views on value and future prospects of another portfolio company. Daugherty told the group that the bank debt was easily worth 100% on the dollar, and that the equity would likely be worth two and maybe three times its current market price. Daugherty mentioned that EBITDA had significantly improved and there was a significant potential value from a proposed settlement.

98. In contrast, Daugherty learned that Dondero and Boyce had presented a far lower and bleaker value picture. In addition, among other things, they omitted any reference to the EBITDA improvement. Instead, they focused their analysis on the trailing reported quarterly EBITDA numbers and contraction by trading multiples of industry peers. Daugherty later learned that Dondero and Boyce were attempting to buy the debt and equity in this company from other Highland fund investors at deep discounts.

99. This pattern of abuse and self-dealing continues through the acts of Dondero, Okada, Britain, Boyce and Surgent. Recently, these same principals threatened investors to agree to being bought out at .75 cents on the dollar on their entire holdings in a fund, or run the risk of having their covenants stripped and being made silent partners if HCM was able to raise enough cash to buy over 50% of the partnership. Simply put, HCM is attempting to raise cash from new investors in order to steal the assets of its old investors by claiming that they are "distressed."

100. In response to a request from Dondero on Christmas Eve 2011, Daugherty agreed to meet Dondero for drinks on February 2, 2012. Daugherty had been subpoenaed by Rebecca Dondero to testify in the Dondero's divorce that morning, but the hearing had been postponed.

Dondero again chose Nicola's Restaurant to meet. During the meeting, which lasted about an hour and a half, Dondero explained to Daugherty how evil his wife was and why he was determined to pay her nothing in the divorce. Daugherty advised Dondero to pay his wife the $5 million stipulated in their prenuptial agreement because she would always be the mother of his children and would always have primary custody of them. Daugherty also advised Dondero that it wasn't good for the kids to see their father disparaging their mother in public as a "whore." Dondero said he was leery about the cost of litigation, but was following his lawyer's advice that "if his wife got all of the money up front, it would be too easy to just leave the kids with a nanny and go party in Aspen." Dondero further commented that he could also trade custody for more cash compensation at a later date.

101. Dondero then briefly mentioned Daugherty's unresolved compensation issues and acknowledged that Daugherty was treated poorly during his exit from HCM. Daugherty expressed his opinions about the real value of Sierra Verde and its underlying investments. Dondero mentioned his appreciation for Daugherty's most recent investments/restructurings and the positive impact they had on the firm's performance (MGM, Safety-Kleen, Rotech and Graceway Pharmaceuticals just to name a few). Dondero further stated that he would try to get Daugherty's compensation issues resolved quickly.

102. Daugherty awoke the next morning to a phone message requesting that he call Dondero back. The message had been left around 9:00 p.m. the previous night. Daugherty called Dondero around 7:30 a.m., and Dondero proceeded to interrogate Daugherty as to why Rebecca Dondero was seeking his testimony. Daugherty explained that he did not know, but that he was subpoenaed and was required to produce any emails between him and Dondero in 2011,

any financial information of HCM, any partnership documents, and to surrender his cell phone. Dondero then attempted to help Daugherty remember how he should testify regarding his wife, suggesting that it was Daugherty's idea that he pay his wife nothing and that Daugherty had referred to Dondero's wife as a whore. Daugherty denied Dondero's manipulated version of the facts and reminded Dondero that he had encouraged him to seek marriage counseling in September 2011. Dondero became annoyed and hung up on Daugherty.

103. On February 9, 2012, Dondero phoned Daugherty and left him a message, again offering to pay him $600,000.00 from Cornerstone with a "consulting contract" in exchange for seizing his Sierra Verde shares. He also offered to purchase Daugherty's shares in Nexbank Holdings for $40 per share, compared to a recent rights offering price of $30 per share, as long as Daugherty would cease communications with former investors and executives of companies affiliated with HCM's funds.

104. Daugherty reminded Dondero that he was very familiar with the appropriate value for Cornerstone, since he had presided over the investment in various capacities as Chairman, Executive Chairman and CEO since 2008. Daugherty refused to accept Dondero and Boyce's valuation. Dondero raged at Daugherty, claiming it was his mark that was used for valuation purposes, but Daugherty reminded Dondero that it was his and Boyce's valuation, since they were the ones who ordered Smith to have the company revalued by a third-party firm while Daugherty was working from Montana.

105. Dondero then angrily proclaimed that he had spoken to someone at Concorde who told him they were not pursuing the Strat sale because Daugherty had given them HCM's confidential information and had told them not to do so. This was not true. Concorde

representative served on both the Crusader committee and the Strat committee, and were thus informed of Daugherty's views of Cornerstone during the exit interview granted by HCM. Concorde independently determined not to sell to Dondero or his affiliates, despite numerous attempts by Dondero to induce a sale through the summer of 2011.

106. In the last week of February 2012, Dondero instructed certain HCM employees, as board members of the HERA program, to amend the governing documents. The amendments would allow the entity to terminate the payments and ownership interests if the board, in its sole discretion, determined that a former employee violated the terms of the confidentiality provisions in HCM's employment agreement. Dondero also instructed the board members to amend the governing documents to cause any former employee to forfeit his interest if he or she ever brought suit against HCM. This effectively made it impossible for anyone to enforce collection under the rewards program. These actions took place even though Daugherty was fully vested in the program and received a 2011 W2 from HCM claiming it as income for Daugherty and an expense for HCM.

107. In the first week of March 2012, Dondero, Okada, Boyce and Britain called a mandatory meeting among HCM professionals to inform them that there would soon be litigation with Daugherty, and that anyone caught communicating with Daugherty for any reason would be fired on the spot. They were also told that anyone who helped HCM provide damaging testimony or dirt on Daugherty would be well-regarded by management, and any misdeeds or failings of the past would be forgiven.

108. On March 19, 2012, Daugherty received a letter from counsel for HCM alleging broad, ambiguous and unsupported violations of various agreements, and claiming that

Daugherty had therefore forfeited "compensation and other payments and distributions" that he was entitled to under "any policy, plan, or agreement with Highland or any of its affiliates." Such conduct constitutes an anticipatory repudiation of the parties' agreements.

109. On April 4, 2012, Daugherty testified, pursuant to a subpoena issued by Rebecca Dondero, in Dondero's divorce proceedings, currently pending in a Family District Court in Dallas County. At the hearing, Daugherty testified that he believed Highland was stable and solvent. He also testified that while he was having drinks with Dondero, Dondero told Daugherty that he was going to get his net worth down to as little as possible in order to avoid paying his wife the $5 million that she was entitled to pursuant to the couple's prenuptial agreement. During the hearing and after Daugherty had testified, Dondero stated, off the record, that he would "destroy" Daugherty. Two weeks later, Plaintiff filed its Original Petition.

V.

GENERAL CAUSES OF ACTION

110. For each cause of action herein, Daugherty re-alleges and incorporates by reference each and every allegation and statement contained in the foregoing paragraphs as if fully set forth herein.

A. REQUEST FOR DECLARATORY JUDGMENT AS TO THE EMPLOYMENT AGREEMENT

111. Pursuant to Section 37.001 of the Texas Civil Practice & Remedies Code, *et seq.*, Plaintiff requests that the Court determine the rights of the parties with regard to the Restrictive Covenants contained in Section 5.3 of the Employment Agreement. Plaintiff seeks a declaratory judgment that the non-solicitation and non-competition covenants are overly-broad and unenforceable and not reasonably tailored to protect the business interests and good will of HCM

and are accordingly, unenforceable under Section 15.50 of the Texas Business & Commerce Code.

B. BREACH OF THE EMPLOYMENT AGREEMENT AGAINST HCM

112. Pursuant to the Employment Agreement, Daugherty was entitled to participate in any bonus, option or similar incentive compensation plan, including the LTIP, the HERA Plan, Sierra Verde and HCM's Defined Benefit Pension Plan. Daughtery's termination under the Employment Agreement was a "Voluntary Termination—Non-Competing Business," as dictated by Section 4.5 of the Employment Agreement, which requires HCM to honor any amounts or rights to which the employee would be entitled to under any other written agreements with HCM.

113. Section 4.5 of the Employment Agreement further required HCM to pay Daugherty severance pay dependent upon his execution of a separation agreement and release "substantially in the form" as Exhibit "A" to the Employment Agreement. In further breach of the Employment Agreement, HCM presented Daugherty with a General Release and Separation Agreement on October 27, 2011 which did not resemble, in any respect, Exhibit "A" to the Employment Agreement.

114. By reason of the foregoing acts and conduct of HCM, and breach of numerous agreements, including the Employment Agreement, Daugherty has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

C. DEFAMATION AGAINST HCM AND DONDERO

115. In connection with Daugherty leaving his employment with HCM, HCM and Dondero published false statements of fact regarding Daugherty stating, among other things, that Daugherty was "burned out" and had left for "lifestyle" reasons. HCM and Dondero made such statements knowing them to be false, and published them to third parties intentionally with actual malice or reckless disregard for the truth and/or created an unreasonable risk that the defamatory statements would be communicated to third parties.

116. HCM and Dondero's actions constitute defamation *per se,* because the nature of the defamatory statements related to Daugherty's professional character, reputation or standing. HCM and Dondero's defamation of Daugherty proximately caused damage to Daugherty in excess of the minimum jurisdictional limits of this Court.

VI.

SIERRA VERDE CAUSES OF ACTION

117. For each cause of action herein, Daugherty re-alleges and incorporates by reference each and every allegation and statement contained in the foregoing paragraphs as if fully set forth herein.

A. BREACH OF CONTRACT AGAINST SIERRA VERDE AND DONDERO

118. On December 16, 2010, a Limited Liability Company Agreement ("Agreement") was entered into by Sierra Verde and certain Members, including Daugherty, who were holders of units. Pursuant to the Agreement, Dondero was named the Manager of Sierra Verde and given "sole right, power and authority to manage, direct and control all of the business and affairs" of Sierra Verde.

119. After Daughterly left his employment at HCM, and in an illegal and unilateral breach of the Agreement intended to cause harm to Daugherty and to deprive him of his valuable ownership interests in Sierra Verde, Sierra Verde and Dondero took steps to purportedly unwind and dissolve Sierra Verde.

120. Sierra Verde and Dondero further breached the Agreement by failing to give Daugherty, as a holder of units, his entitled vote, as required by Section 3.3 of the Agreement.

121. Sierra Verde and Dondero failed to deliver to Daugherty, as a holder of units, the quarterly reports required by Section 3.5 of the Agreement, again in breach of the Agreement.

122. Sierra Verde and Dondero engaged in other acts amounting to blatant, illegal breaches of the Sierra Verde Agreement, including but not limited to, the improper delegation of power and authority to Dondero as Manager and the failure to properly distribute cash and assets of Sierra Verde to Daughtery, as a holder of units, upon the dissolution of Sierra Verde.

123. By reason of the foregoing acts and conduct of Sierra Verde and Dondero, Daugherty has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

B. OPPRESSION OF A MINORITY SHAREHOLDER AGAINST SIERRA VERDE AND DONDERO

124. At all relevant times, Daugherty was a minority holder of units in Sierra Verde. Sierra Verde and Dondero, as Manager, have engaged in conduct that constitutes oppression of Daugherty, a minority shareholder, including but not limited to the following: (i) unwinding and dissolving Sierra Verde; (ii) failing to provide Daugherty with required quarterly reports; (iii) committing multiple breaches of the Sierra Verde Agreement; (iv) failing to provide Daugherty

with his voting rights under the Agreement; and (v) failing to distribute any property or other assets to Daughtery in accordance with his ownership interests.

125. The actions of Sierra Verde and Dondero served to substantially defeat the expectations of Daugherty, as a member of Sierra Verde with a minority ownership. Daugherty's expectations were both reasonable under the circumstances and central to his decision to continue in the employ of HCM. Further, the actions of Sierra Verde and Dondero were burdensome, harsh, and wrongful conduct amounting to a lack of probity and fair dealing in the affairs of Sierra Verde to the prejudice of Daugherty. Sierra Verde and Dondero visibly departed from the standards of fair dealing on which Daugherty was entitle to rely.

126. By reason of the foregoing acts and conduct, Daugherty has suffered damages in an amount in excess of the minimum jurisdictional limits of this Court.

C. BREACH OF FIDUCIARY DUTY ON BEHALF OF SIERRA VERDE

127. At all relevant times, Daugherty was a holder of units in Sierra Verde, and may thus pursue a derivative action if Sierra Verde refuses to pursue action against Dondero.

128. As a majority shareholder and an officer of Sierra Verde, Dondero owed fiduciary duties of due care and loyalty to Sierra Verde.

129. Dondero engaged in unfair business transactions with respect to Sierra Verede, including: (i) unwinding and dissolving Sierra Verde; (ii) fraudulently inducing holders of units in Sierra Verde to agree to unwind Sierra Verde based upon false statements of fact; (iii) attempting to coerce Daugherty to agree to unwind Sierra Verde; (iv) failing to provide Daugherty with required quarterly reports; (v) committing multiple breaches of the Sierra Verde Agreement; (vi) failing to provide Daugherty with his voting rights under the Agreement; and

(vii) failing to distribute any property or other assets to Daughtery in accordance with his ownership interests.

130. Specifically, Dondero breached his duties of (i) candor; (ii) loyalty and utmost good faith; (iii) refraining from self-dealing; (iv) integrity of the strictest kind; and (v) full disclosure.

131. The transactions decreased the value of Sierra Verde's shares and caused damages to Sierra Verde and its unit holders.

D. IMPROPER WITHHOLDING OF CORPORATE BOOKS AND RECORDS

132. Defendant is a minority holder of units and has demanded to inspect Sierra Verde's books and records. Defendant's purpose for inspecting the company books and records is reasonably related to his ownership of a minority holder of units. Dondero refused to allow Daugherty access to the books and records; thus, they violated Tex. Bus. Corp. Act, Art. 2.44(B) and damaged Sierra Verde and its unit holders. Daugherty hereby requests that the Court compel Dondero to open the books and records of Sierra Verde to Daugherty for inspection and to award Daugherty his reasonable attorneys' fees pursuant to Tex. Bus. Corp. Act, Art. 2.44(B).

E. CONVERSION AGAINST SIERRA VERDE AND DONDERO

133. Daugherty, as a holder of units in Sierra Verde, owned, possessed, or had the right to immediate possession of his property.

134. Sierra Verde and Dondero, in engaging in the above described intentional conduct, wrongfully exercised dominion and control over Daugherty's personal property in a manner inconsistent with Daugherty's exclusive rights to the property. This conversion of Daugherty's property was willful, malicious and in conscious disregard of Daugherty's rights.

135. Consequently, Daugherty suffered damages in an amount in excess of the minimum jurisdictional limits of this Court. Further, Daugherty is entitled to an award of exemplary damages sufficient to punish Sierra Verde and Dondero and to serve as a deterrent to such conduct in the future.

F. UNJUST ENRICHMENT AGAINST SIERRA VERDE AND DONDERO

136. Sierra Verde and Dondero illegally received and retained benefits from Daugherty when they wrongfully dissolved and maintained the property and assets of Sierra Verde. The benefits obtained by Sierra Verde and Dondero were not gratuitous, and Sierra Verde and Dondero will be unjustly enriched if allowed to retain the benefits.

137. As a direct and proximate result of unjust enrichment, Daugherty has sustained damages in an amount in excess of the minimum jurisdictional limits of this Court.

G. BREACH OF FIDUCIARY DUTY AGAINST DONDERO

138. As Manager of Sierra Verde, Dondero controlled Sierra Verde. In engaging in the wrongful conduct described above, Dondero breached fiduciaty duties owed to Daugherty as a minority holder of units in Sierra Verde. A special relationship of trust and confidence exists between Daugherty and Dondero. Specifically, Dondero breached his duties of (i) candor; (ii) loyalty and utmost good faith; (iii) refraining from self-dealing; (iv) integrity of the strictest kind; and (v) full disclosure. Dondero's breaches of these duties has materially harmed Daugherty and unlawfully benefited Dondero and Sierra Verde.

139. Daugherty is entitled to recover damages sustained by him as a result of Dondero's breach of fiduciary duty. In addition to actual damages, Daugherty is also entitled to

recover exemplary damages because Dondero intentionally and maliciously violated the fiduciary duties he owed Daugherty.

VII.

HERA CAUSES OF ACTION

140. For each cause of action herein, Daugherty re-alleges and incorporates by reference each and every allegation and statement contained in the foregoing paragraphs as if fully set forth herein.

A. BREACH OF CONTRACT AGAINST HCM AND HERA

141. On October 26, 2009, a Limited Liability Company Agreement ("Agreement") was entered into by HERA and HCM and other members of the board of HERA, including Daugherty. The purpose of the HERA Plan was to receive and hold assets contributed by HCM and to distribute proceeds of those assets from time to time to create a retention initiative. Daugherty was granted units of ownership in the HERA Plan. The unilateral decision of HCM and HERA to amend the Agreement to divest Daugherty of his valuable ownership interest constitutes a material breach of the Agreement.

142. As a result of this breach of contract, Daugherty has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

B. SHAREHOLDER OPPRESSION AGAINST DONDERO, BOYCE AND BRITAIN

143. Dondero, as well as, Boyce and Britain, who were members of HERA's board of directors, which is effectively controlled by Dondero, engaged in oppressive conduct by unilaterally amending the Agreement to suspend distributions for any holder of units who commenced litigation, initiated a dispute or made a claim related to HERA or its management or

members. This conduct substantially defeated the expectations of Daugherty, as a member of the HERA Plan with a minority ownership. Daugherty's expectations were both reasonable under the circumstances and central to his decision to join HCM. Further, these defendants engaged in burdensome, harsh, and/or wrongful conduct and a lack of probity and fair dealing in the company's affairs to the prejudice of Daugherty. Defendants visibly departed from the standards of fair dealing on which Daugherty was entitled to rely.

144. As a direct and proximate result, Daugherty has suffered damages in an amount in excess of the minimum jurisdictional limits of this Court.

C. DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY

145. At all relevant times, Daugherty was a member of HERA with a minority ownership.

146. As members of HERA's Board of Directors, Dondero, Boyce, and Britain owed fiduciary duties of due care and loyalty to Sierra Verde.

147. Dondero, Boyce, and Britain enganged in unfair business transactions with respect to HERA by unilaterally amending the Agreement to suspend distributions for any holder of units who commenced litigation, initiated a dispute or made a claim related to HERA or its management or members, making it impossible for anyone to enforce collections through the rewards program.

148. By engaging in the aforementioned conduct, Dondero, Boyce, and Britain breached their duties of (i) candor; (ii) loyalty and utmost good faith; (iii) refraining from self-dealing; (iv) integrity of the strictest kind; and (v) full disclosure.

149. The transactions decreased the value of ownership in HERA and caused damages to HERA and its members.

D. CONVERSION AGAINST HERA, HCM, DONDERO, BOYCE AND BRITAIN

150. Daugherty owned, possessed, or had the right to immediate possession of his property, including his interests in HERA.

151. These Defendants wrongfully exercised dominion and control over Daugherty's personal property in a manner inconsistent with Daugherty's exclusive rights to the property. Daugherty suffered injury in an amount in excess of the minimum jurisdictional limits of this Court. Defendants' conversion of Daugherty's property was willful, malicious and in conscious disregard of Daugherty's rights. Consequently, Daugherty is entitled to an award of exemplary damages sufficient to punish HERA, HCM, Dondero, Boyce and Britain and to serve as a deterrent to such conduct in the future.

VIII.

LTIP CAUSES OF ACTION

152. For each cause of action herein, Daugherty re-alleges and incorporates by reference each and every allegation and statement contained in the foregoing paragraphs as if fully set forth herein.

A. BREACH OF CONTRACT AGAINST HCM

153. Effective January 1, 2005, HCM established a long-term incentive program for selected key employees, including Daugherty. The LTIP was established to create positive morale and teamwork, to attract and retain key talent and to encourage achievement of common goals. Daugherty was granted long-term incentive units in the LTIP. HCM's unilateral decision

to divest Daugherty of his valuable ownership interest in units held by him constitutes a material breach of the parties' agreement.

154. As a result of this breach of contract, Daugherty has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

B. CONVERSION AGAINST HCM

155. Daugherty owned, possessed, or had the right to immediate possession of his property, including his interests in the LTIP.

156. HCM wrongfully exercised dominion and control over Daugherty's personal property in a manner inconsistent with Daugherty's exclusive rights to the property. Daugherty suffered injury in an amount in excess of the minimum jurisdictional limits of this Court. HCM's conversion of Daugherty's property was willful, malicious and in conscious disregard of Daugherty's rights. Consequently, Daugherty is entitled to an award of exemplary damages sufficient to punish HCM and to serve as a deterrent to such conduct in the future.

IX.

ATTORNEYS' FEES AGAINST HCM, DONDERO, SIERRA VERDE AND HERA

157. Daugherty seeks recovery of the costs and reasonable and necessary attorneys' fees incurred in connection with this action pursuant to Sections 37.009 and 38.001 of the Texas Civil Practice and Remedies Code.

X.

REQUEST FOR DISCLOSURE

158. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, HCM, HERA, Sierra Verde, Dondero, Boyce and Britain are hereby requested to disclose the information or material

described in Rule 194.2. This is a continuing duty and requires supplementation in accordance with the Texas Rules of Civil Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Daugherty respectfully requests that this Honorable Court grant the following relief:

Upon trial of this cause, that the Court make an award in favor of Daugherty and against HCM, HERA, Sierra Verde, Dondero, Boyce and Britain for the following:

a. Actual damages and exemplary damages;

b. A declaratory judgment that the covenants not to compete are unenforceable under Section 15.50 of the Texas Business & Commerce Code;

c. Reasonable and necessary attorneys' fees and costs incurred; prejudgment and post judgment interest as allowed by law; and,

d. Any and all further relief the Court deems just and equitable.

Respectfully submitted,

By: _____

James W. Ribman
State Bar No. 00797762
Ruth Ann Daniels
State Bar No. 15109200
Looper Reed & McGraw P.C.
1601 Elm Street, Suite 4600
Dallas, Texas 75201
(214) 954-4135
(214) 953-1332 (Fax)

ATTORNEYS FOR PATRICK DAUGHERTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted by certified mail – return receipt requested to counsel for Defendant, Marc D. Katz and Aaron J. Epstein, Andrews Kurth LLP, 1717 Main St., Suite 3700, Dallas, Texas 75201, on this 22nd day of May, 2012.

James W. Ribman

EXHIBIT 46

CAUSE NO. 12-04005

HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
PATRICK DAUGHERTY,	§	
	§	
Defendant and Counter-Plaintiff,	§	
	§	
v.	§	**DALLAS COUNTY, TEXAS**
	§	
SIERRA VERDE, LLC, HIGHLAND EMPLOYEE RETENTION ASSETS LLC, JAMES DONDERO, PATRICK BOYCE, AND WILLIAM L. BRITAIN,	§	
	§	
Third-Party Defendants.	§	**68th JUDICIAL DISTRICT**

ORDER ON AGREED MOTION TO PARTIALLY VACATE THE FINAL JUDGMENT DATED JULY 14, 2014

On this day the Court considered the *Agreed Motion to Partially Vacate the Final Judgment Dated July 14, 2014* (the "Motion") filed by plaintiff Highland Capital Management, L.P. ("Highland") and defendant Patrick Daugherty ("Daugherty"). Capitalized terms not defined in this Order shall have the meanings ascribed to them in the Motion. The Court finds that it has plenary jurisdiction to enter this Order on the Motion because the Motion is agreed to by Highland and Daugherty and only affects the portion of the Judgment relating to Highland's claims against Daugherty. The Court further finds that it has plenary jurisdiction to enter this Order based on its plenary jurisdiction to enforce the Judgment, including the permanent injunction against Daugherty that was included in the Judgment. Additionally, the Court finds that it has authority to issue this Order modifying the permanent injunction contained in the Judgment because of

changed circumstances that now exist. The Court also finds that Highland and Daugherty stipulated that the Motion constituted an agreement pursuant to Tex. R. Civ. P. 11, and the Court has plenary jurisdiction to enforce that agreement irrespective of whether the Court lost its plenary jurisdiction over the Judgment itself. *See Coale v. Scott*, 331 S.W.3d 829, 831-32 (Tex. App.—Amarillo 2011, no pet.) ("Irrespective of whether a trial court lost its plenary jurisdiction over its judgment, the trial court's authority to approve a Rule 11 agreement does not depend on whether it has such jurisdiction").

IT IS THEREFORE ORDERED that the following portions of the Judgment are hereby vacated:

a. The entirety of the second full paragraph on Page 2 of the Judgment, which begins "The Court, after considering the jury's findings regarding Daugherty's breaches of contract and breaches of fiduciary duty . . .";

b. The entirety of the permanent injunction rendered against Daugherty in the third full paragraph on Page 2 of the Judgment, which begins "It is therefore further ORDERED that Daugherty be and hereby is commanded to cease and desist from . . .";

c. The entirety of the fourth and fifth full paragraphs on Page 2 of the Judgment awarding Highland a monetary judgment against Daugherty for reasonable and necessary attorney's fees, as well as post-judgment interest on that award.[1]

[1] Daugherty previously satisfied the monetary judgment awarded to Highland, and Highland filed a release of the monetary judgment. Although Highland and Daugherty agree to vacate the monetary judgment awarded to Highland, Highland is not required to reimburse Daugherty for his prior satisfaction of the monetary judgment. *See* Motion at 3, n.1. To the extent Daugherty is entitled to indemnification from any liabilities, losses, and damages allegedly incurred by him for actions taken in connection with Highland's business, including the liabilities Daugherty allegedly incurred in connection with the action and the Judgment, the Parties have represented that all of Daugherty's claims

IT IS FURTHER ORDERED that the jury's answers to Questions 1, 2, 5, 6, 9 and 12 in the jury's verdict, which was attached as Exhibit 1 to the Judgment, are hereby vacated.

IT IS FURTHER ORDERED that if either Party has any pending motions seeking relief against the other Party, such motions are denied as moot in conformity with their Settlement Agreement.

IT IS FURTHER ORDERED that Highland shall not seek to enforce the permanent injunction in any manner.

IT IS FURTHER ORDERED that this Order shall not affect any provision or term of the Judgment not specifically vacated herein, and all such provisions shall remain in full force and effect.

SIGNED THIS ____ DAY OF MARCH 2022.

_____

HONORABLE MARTIN HOFFMAN
JUDGE PRESIDING

against the Highland Released Parties, including such indemnification claims, were fully and finally resolved in the Settlement Agreement approved by the Court in Highland's Bankruptcy Case.

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Suzy Langley on behalf of Andrew York
Bar No. 24051554
slangley@grayreed.com
Envelope ID: 62716775
Status as of 3/18/2022 8:08 AM CST

Associated Case Party: HIGHLAND CAPITAL MANAGEMENT LP

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Gant		sgant@bsfllp.com	3/17/2022 3:58:09 PM	SENT
Zachery Z.Annable		zannable@haywardfirm.com	3/17/2022 3:58:09 PM	SENT

Associated Case Party: PATRICK DAUGHERTY

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Ruth AnnDaniels		rdaniels@lrmlaw.com	3/17/2022 3:58:09 PM	SENT
Andrew K.York		dyork@grayreed.com	3/17/2022 3:58:09 PM	SENT
James W.Ribman		jribman@lrmlaw.com	3/17/2022 3:58:09 PM	ERROR

Associated Case Party: HIGHLAND EMPLOYEE RETENTION ASSETS LLC

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Dow Jones & Company, Inc.

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Tom Leatherbury		tleatherbury@velaw.com	3/17/2022 3:58:09 PM	SENT
Megan Coker		megancoker@velaw.com	3/17/2022 3:58:09 PM	ERROR

Case Contacts

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Charles Frazier
Deborah AJohnson
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Dot Young
Crystal Jamison Woods
Andrea Meshonn Evans Brown
DEBBIE REESE
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James Ribman

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EXHIBIT 47

From: Scott Wilson <SWilson@hcmlp.com>
To: Brian Collins <BCollins@hcmlp.com>, Patrick Boyce <PBoyce@hcmlp.com>
Subject: Draft TL Q&A
Date: Thu, 26 Feb 2009 21:54:02 +0000
Importance: Normal
Attachments: Potential_TL_compensation_questions_and_answers.doc

---

Please let me know what you think…. We had onemore potential question but I would prefer to share it verbally with you

Brian will share will Swadley to give him a chance eto review, if you approve, Patrick. I've already incorporated hisanswers from my previous discussions with him in this version.

_____

Scott Wilson
Principal, Internal Strategy
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
Phone: (972) 419-4437
Fax: (972) 628-4147
Email: swilson@hcmlp.com

Potential TL compensation questions and answers (written as if they were answered by Jim and Mark)

- **Q: Why am I not getting any cash compensation until at least May?**
  - As part of our ongoing negotiations with our bank group, we needed to reduce our total compensation paid in February
  - Rather than further reduce bonus amounts across the board, or even within just TLs, we felt that any delay should be felt by the firm's leaders more than the majority of our employees
  - Therefore, we felt it was best to delay the cash payments to TLs until we receive our next flow of fees in May
- **How did you determine my bonus?**
  - We evaluated each TL's performance in 2008, using your own self-evaluations, financial results, results of other efforts/projects led, feedback from around the firm, and our own experiences. Then we set a target total cash compensation for each TL based on their performance. The total cash compensation includes base salary from 2008, the 2008 Defined Benefit contribution, any Waiver and Release payments, other bonuses or compensation given in 2008, as well as a cash bonus award, and any anticipated estimated upcoming tax refund from taxes paid by partners in 2006 and 2007 via a distribution from Highland.
  - From this target total cash compensation, we subtracted all other forms of compensation listed above except for the cash bonus award, and if there was any additional amount remaining, made the cash bonus award equal to that remaining amount
- **Why would you consider the tax refund as part of compensation? Isn't the refund in my name?**
  - When you paid taxes in 2006 and 2007 that are now potentially subject to a refund, you received a distribution from Highland to pay those taxes. Now we believe that the taxes were overpaid, due to

subsequent losses, and as such, Highland distributed an excessive amount to you to pay the taxes. Accordingly, any difference, now or then, ends up being extra compensation to you, and keeping the refund represents an extra compensation to you from Highland **(NOTE: this is by no means well researched legal argument. The Tax Dept. is investigating various legal and tax rationale in this matter, and we can discuss various options on this argument further in a verbal conversation)**

- **Is the tax refund amount listed what I should expect to receive?**
  - It is the Tax Department's current best estimate. As we get closer to completing the work to generate K-1 statements for you, we will have a better sense of the amounts (your tax professional would then use the K-1 statement to file your refund request).
  - The specific amount for each person will vary based on each person's individual tax situation and rates in the years 2006 and 2007, so there is not a single answer. The number shown assumes an estimated 27% tax rate, and then grosses-up the tax refund at that rate to show a true, apples-to-apples number vs. the other forms of compensation (which are pre-tax, while the tax refund is not taxable). Each person's own actual refund may vary based on their own effective tax rate
  - Furthermore, these tax refund amounts are not guaranteed, as the IRS still has the authority to audit our claimed losses and resulting refunds due
- **What would happen if my actual tax refund is different from this estimate, or if the timing is significantly delayed? Would I be "trued-up" if is it less? What if it is more?**
  - If the actual refund ends up being different than the estimated amount, then we would consider what action to take on a case-by-case basis, considering several factors including the difference in the refund amount and if that creates any "gap" between the target total cash compensation and your actual cash compensation would be.

Keep in mind one thing – the tax refund would be one lump sum, so it would be effectively a much greater amount of money than you may have received as a bonus in past years, which have been paid in installments. By getting the money in 1 installment, at time 0, we think this creates a form of compensation that you will value much more.

- **When can I expect my tax refund? My cash bonus award?**
  - The IRS has 90 days to respond to a refund filing. A response may be paying the refund, or it may be additional clarifying questions or even an audit request. You can file for your refund once you have received a K-1 statement from Highland. The tax refund covers tax years 2006 and 2007, and these statements from each of these years may be ready at different times. We expect to have an estimated version (**of 2006, 2007, or both?)** ready within the next two weeks **(note: this is from Rick, who also says that he, Patrick B, others should have a conversation to discuss this process and how we would want to communicate this to others partners)**
  - The first installment of the cash bonus award will follow our next CLO flow payments, which is May 1. Like everyone else in the firm with bonuses greater than $50,000, the cash bonus will be paid in 4 installments: early May 2009, August 31, 2009, February 26, 2010, and August 31, 2010.
- **What is the 2009 Deferred Compensation / Retention Award?**
  - Three year cliff vest (100% vesting occurs on February 28, 2012)
  - Invested 50% into Restoration and 50% into the Real Estate Fund
  - Awarded under terms of the Highland Capital Management, L.P. and Affiliates Short-Term Incentive Plan (STIP)
  - Deferred Compensation is composed of:
    - Retention Award, which is designed to enhance the alignment of interests between the firm and key performers

- Retention Award - Catch-up, which maintains alignment of interests for previously awarded Option IT and STIP and recognizes decline in value of those awards

- **Why Restoration and Real Estate?**
  - We feel these funds are the most appropriate at this time for the Retention structure and purpose
- **Why am I finding out that I will not get any 2008 cash bonus paid in February now instead of earlier in the month?**
  - As most of you are aware, our discussions with our bank group have consistently evolved in recent days and weeks. This created enough uncertainty to prevent us from committing to anything earlier, although we were happy to be able to pay the last portion of the 2007 cash award earlier than expected

EXHIBIT 48

HIGHLAND CAPITAL MANAGEMENT, L.P.
HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.
13455 Noel Road, Suite 1300
Two Galleria Tower
Dallas, Texas 75240

December 31, 2004

Patrick Daugherty
3621 Cornell Avenue
Dallas, TX 75205

Dear Pat:

Highland Capital Management, L.P. (the "***Partnership***") has agreed to grant you a percentage interest as a limited partner in the Partnership (the "***Interest***") that will be treated as a "profits interest" for U.S. federal income tax purposes. The rights and obligations associated with the ownership of the Interest are governed by the Second Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the ***"LP Agreement"***), as well as the Amended and Restated Buy-Sell and Redemption Agreement Among Highland Capital Management, L.P. and its Limited Partners (the "***Buy-Sell Agreement***"). We have provided you with a copy of the LP Agreement and the Buy-Sell Agreement.

Highland Capital Management Services, Inc. (***"HCMS"***) also has provided you with a draft of your Amended and Restated Employment Agreement (the ***"Employment Agreement"***), the Second Amended and Restated Long Term Incentive Plan (the ***"LTIP"***), and the Letter Agreement to amend your Award Agreement under the LTIP (the ***"Letter Agreement"***)

In connection with your receipt of the Interest, and the revisions to your Employment Agreement, the LTIP and your Letter Agreement, by signing below, you acknowledge the following:

1. By executing this letter, you hereby represent and warrant to the Partnership and to each of the partners of the Partnership (the ***"Partners"***) that you are acquiring your Interest for investment, solely for your own account, with the intention of holding such Interest for investment and not with a view to, or for resale in connection with, any distribution or public offering or resale of any portion of the Interest within the meaning of the Securities Act of 1933, as amended (the "***Securities Act***"), or any other applicable federal or state securities law, rule or regulation (collectively, the "***Security Laws***").

2. By executing this letter, you hereby represent and warrant to the Partnership and to each of the Partners that you have adequate means of providing for your current needs and possible personal contingencies and have no need now and anticipate no need in the foreseeable future to sell your Interest. You hereby acknowledge that you have carefully evaluated your financial resources and investment position and the risks associated with an investment in the Partnership and you are able to bear the economic risks of this investment and consequently, without limiting the generality of the foregoing, you are able to hold your Interest for an indefinite period of time and have a sufficient net worth to sustain a loss of your entire investment in the Partnership in the event such loss should occur.

3. By executing this letter, you hereby represent and warrant to the Partnership and to each of the other Partners that you are aware that you must bear the economic risk of your investment in the Partnership for an indefinite period of time because the Interests have not been registered under the Securities Act, or under any Security Laws. Further, you hereby acknowledge that you understand that only the Partnership can take action so as to register the Interests on behalf of the Partnership and the Partnership is under no obligation to do so and does not propose to do so. You hereby acknowledge that you understand that neither the Securities and Exchange Commission nor the securities administrator of any state has made any finding or determination relating to the fairness or desirability of an investment in the Partnership and that the Interests have not been approved or disapproved by the Securities and Exchange Commission or by any other federal or state agency, and no such agency has passed on the accuracy or adequacy of the Agreement.

4. By executing this letter, you hereby represent and warrant to the Partnership, to each of the other Partners and HCMS that prior to signing this letter:

   (a) You have received a copy of (i) the LP Agreement, (ii) the Buy-Sell Agreement, (iii) the LTIP, (iv) your Letter Agreement, and (iv) your Employment Agreement. The LP Agreement, the Buy-Sell Agreement, LTIP, your Letter Agreement and your Employment Agreement shall be referred to as the "***Documents***";

   (b) You have read the Documents carefully and are fully understand their contents;

   (c) You have had the opportunity to obtain any additional information necessary to verify the accuracy of the information regarding an investment in the Partnership, and you hereby further acknowledge that the Partnership has made available to you the opportunity to obtain additional information to evaluate the merits and risks of your investment in the Partnership.

   (d) You have been given the opportunity to meet with James D. Dondero and Mark K. Okada, both acting in their capacity as officers and directors of Strand Advisors, Inc., the sole general partner of the Partnership, to ask any questions regarding the terms and conditions of an investment in the Partnership, the LP Agreement and the Buy-Sell Agreement, and all such questions have been answered to your full satisfaction; and

   (e) You have been given the opportunity to meet with James D. Dondero and Mark K. Okada, both acting in their capacity as officers and directors of HCMS, to ask any questions regarding the terms and conditions of the LTIP, your Letter Agreement, and your Employment Agreement, and all such questions have been answered to your full satisfaction.

5. By executing this letter, you hereby represent and warrant to the Partnership and each of the other Partners that you are aware that under the terms of the Buy-Sell Agreement, James D. Dondero and Mark K. Okada have the sole right to set the value of your Partnership Interest, which will affect the amount you will receive for the Partnership Interest on any voluntary or involuntary disposition of your Partnership Interest pursuant to the terms of the Buy-Sell Agreement. You acknowledge that (i) on February 29, 2004, the Partnership has an Agreed Value (as defined in the Buy-Sell Agreement) of $125,000,000 and (ii) on May 27, 2004 and continuing through the date hereof, the Partnership has an Agreed Value of $200,000,000.

6. By executing this letter, you hereby represent and warrant to (i) the Partnership and each of the other Partners and (ii) HCMS that you understand:

   (a) The rights, liabilities and obligation of the parties under the Employment Agreement, the Buy-Sell Agreement, and the LTIP in the event of a termination for Cause (as defined in the Buy-Sell Agreement, the Employment Agreement, and the LTIP); and

   (b) The parties' rights, liabilities and obligations under any of the confidentiality, non-competition, non-solicitation and non-recruitment provisions found in the Buy-Sell Agreement, the Employment Agreement, and the LTIP.

7. Please note that substantial amendments to the LTIP will be required to comply with the new tax laws addressing deferred compensation set forth in the American Jobs Creation Act of 2004. Thus, by executing this letter, you acknowledge that the LTIP will need to be amended in 2005 and operated throughout 2005 to be in compliance with these new tax laws, and you agree to cooperate in any manner necessary to effectuate such amendments and operation.

8. By executing this letter, you hereby represent that you are an Accredited Investor, as such term is defined in Section 501 of Regulation D promulgated under the Securities Act.

9. You acknowledge that you have been encouraged by the Partnership and HCMS to seek independent legal counsel to assist you in reviewing the Documents and this letter. You further acknowledge and agree that each of the foregoing representations, warranties and acknowledgments have been made only after consultation with your advisors and consultants.

Sincerely,

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its General Partner

By: _____
James D. Dondero,
President

HIGHLAND CAPITAL MANAGEMENT SERVICES, INC.

By: _____
James D. Dondero,
President

I HAVE READ THE ABOVE LETTER AND AGREE TO ITS TERMS HEREIN AS EVIDENCED BY MY SIGNATURE.

Patrick Daugherty

Date: December 31, 2004

EXHIBIT 49

EXECUTION VERSION

CLAIMANT TRUST AGREEMENT

This Claimant Trust Agreement, effective as of August 11, 2021 (as may be amended, supplemented, or otherwise modified in accordance with the terms hereof, this "Agreement"), by and among Highland Capital Management, L.P. (as debtor and debtor-in-possession, the "Debtor"), as settlor, and James P. Seery, Jr., as trustee (the "Claimant Trustee"), and Wilmington Trust, National Association, a national banking association ("WTNA"), as Delaware trustee (in such capacity hereunder, and not in its individual capacity, the "Delaware Trustee," and together with the Debtor and the Claimant Trustee, the "Parties") for the benefit of the Claimant Trust Beneficiaries entitled to the Claimant Trust Assets.

RECITALS

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. filed with the United States Bankruptcy Court for the District of Delaware, a voluntary petition for relief under chapter 11 of the Bankruptcy Code, which case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court") and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 (the "Chapter 11 Case");

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"),[1] which was confirmed by the Bankruptcy Court on February 22, 2021, pursuant to the *Findings of Fact and Order Confirming Plan of Reorganization for the Debtor* [Docket No. 1943] (the "Confirmation Order");

WHEREAS, this Agreement, including all exhibits hereto, is the "Claimant Trust Agreement" described in the Plan and shall be executed on or before the Effective Date in order to facilitate implementation of the Plan; and

WHEREAS, pursuant to the Plan and Confirmation Order, the Claimant Trust Assets are to be transferred to the Claimant Trust (each as defined herein) created and evidenced by this Agreement so that (i) the Claimant Trust Assets can be held in a trust for the benefit of the Claimant Trust Beneficiaries entitled thereto in accordance with Treasury Regulation Section 301.7701-4(d) for the objectives and purposes set forth herein and in the Plan; (ii) the Claimant Trust Assets can be monetized; (iii) the Claimant Trust will transfer Estate Claims to the Litigation Sub-Trust to be prosecuted, settled, abandoned, or resolved as may be determined by the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement, for the benefit of the Claimant Trust; (iv) proceeds of the Claimant Trust Assets, including Estate Claims, may be distributed to the Claimant Trust Beneficiaries[2] in accordance with the Plan; (v) the Claimant Trustee can resolve

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. The confirmed Plan included certain amendments filed on February 1, 2021. *See Debtor's Notice of Filing of Plan Supplement to the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified)*, Docket No. 1875, Exh. B.

[2] For the avoidance of doubt, and as set forth in the Plan, Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests will be Claimant Trust Beneficiaries only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest in accordance with the terms and conditions set forth herein and in the Plan.

Disputed Claims as set forth herein and in the Plan; and (vi) administrative services relating to the activities of the Claimant Trust and relating to the implementation of the Plan can be performed by the Claimant Trustee.

DECLARATION OF TRUST

NOW, THEREFORE, in order to declare the terms and conditions hereof, and in consideration of the premises and mutual agreements herein contained, the confirmation of the Plan and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor, the Claimant Trustee, and the Delaware Trustee have executed this Agreement for the benefit of the Claimant Trust Beneficiaries entitled to share in the Claimant Trust Assets and, at the direction of such Claimant Trust Beneficiaries as provided for in the Plan.

TO HAVE AND TO HOLD unto the Claimant Trustee and his successors or assigns in trust, under and subject to the terms and conditions set forth herein and for the benefit of the Claimant Trust Beneficiaries, and for the performance of and compliance with the terms hereof and of the Plan; provided, however, that upon termination of the Claimant Trust in accordance with Article IX hereof, this Claimant Trust Agreement shall cease, terminate, and be of no further force and effect, unless otherwise specifically provided for herein.

IT IS FURTHER COVENANTED AND DECLARED that the Claimant Trust Assets are to be strictly held and applied by the Claimant Trustee subject to the specific terms set forth below.

ARTICLE I.
DEFINITION AND TERMS

1.1 Certain Definitions. Unless the context shall otherwise require and except as contained in this Section 1.1 or as otherwise defined herein, the capitalized terms used herein shall have the respective meanings assigned thereto in the "Definitions," Section 1.1 of the Plan or if not defined therein, shall have the meanings assigned thereto in the applicable Section of the Plan. For all purposes of this Agreement, the following terms shall have the following meanings:

(a) "Acis" means collectively, Acis Capital Management, L.P. and Acis Capital Management GP, LLP.

(b) "Bankruptcy Court" has the meaning set forth in the Recitals hereof.

(c) "Cause" means (i) a Person's willful failure to perform his material duties hereunder (which material duties shall include, without limitation, with respect to a Member, or to the extent applicable, the Claimant Trustee, regular attendance at regularly scheduled meetings of the Oversight Board), which is not remedied within 30 days of notice; (ii) a Person's commission of an act of fraud, theft, or embezzlement during the performance of his or her duties hereunder; (iii) a Person's conviction of a felony (other than a felony that does not involve fraud, theft, embezzlement, or jail time) with all appeals having been exhausted or appeal periods lapsed; or (iv) a Person's gross negligence, bad faith, willful misconduct, or knowing violation of law in the performance of his or her duties hereunder.

(d) "Claimant Trust Agreement" means this Agreement.

(e) "Claimant Trustee" means James P. Seery, Jr., as the initial "Claimant Trustee" hereunder and as defined in the Plan, and any successor Claimant Trustee that may be appointed pursuant to the terms of this Agreement.

(f) "Claimant Trust" means the "Highland Claimant Trust" established in accordance with the Delaware Statutory Trust Act and Treasury Regulation Section 301.7701-4(d) pursuant to this Agreement.

(g) "Claimant Trust Assets" means (i) other than the Reorganized Debtor Assets (which are expressly excluded from this definition), all other Assets of the Estate, including, but not limited to, all Causes of Action, Available Cash, any proceeds realized or received from such Assets, all rights of setoff, recoupment, and other defenses with respect, relating to, or arising from such Assets, (ii) any Assets transferred by the Reorganized Debtor to the Claimant Trust on or after the Effective Date, (iii) the limited partnership interests in the Reorganized Debtor, and (iv) the ownership interests in New GP LLC. For the avoidance of doubt, any Causes of Action that, for any reason, are not capable of being transferred to the Claimant Trust shall constitute Reorganized Debtor Assets.

(h) "Claimant Trust Beneficiaries" means the Holders of Allowed General Unsecured Claims, Holders of Allowed Subordinated Claims, and, only upon certification by the Claimant Trustee that the Holders of such Claims have been paid indefeasibly in full plus, to the extent applicable, post-petition interest at the federal judgment rate in accordance with the terms and conditions set forth herein, Holders of Allowed Class B/C Limited Partnership Interests, and Holders of Allowed Class A Limited Partnership Interests.

(i) "Claimant Trust Expense Cash Reserve" means $[•] million in Cash to be funded pursuant to the Plan into a bank account of the Claimant Trust on or before the Effective Date for the purpose of paying Claimant Trust Expenses in accordance herewith.

(j) "Claimant Trust Expenses" means the costs, expenses, liabilities and obligations incurred by the Claimant Trust and/or the Claimant Trustee in administering and conducting the affairs of the Claimant Trust, and otherwise carrying out the terms of the Claimant Trust and the Plan on behalf of the Claimant Trust, including without any limitation, any taxes owed by the Claimant Trust, and the fees and expenses of the Claimant Trustee and professional persons retained by the Claimant Trust or Claimant Trustee in accordance with this Agreement.

(k) "Committee Member" means a Member who is/was also a member of the Creditors' Committee.

(l) "Conflicted Member" has the meaning set forth in Section 4.6(c) hereof.

(m) "Contingent Trust Interests" means the contingent interests in the Claimant Trust to be distributed to Holders of Class A Limited Partnership Interests and Class B/C Limited Partnership Interests in accordance with the Plan.

(n) "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Case, comprised of Acis, Meta-e Discovery, the Redeemer Committee and UBS.

(o) "Delaware Statutory Trust Act" means the Delaware Statutory Trust Act 12 Del C. §3801, et seq. as amended from time to time.

(p) "Delaware Trustee" has the meaning set forth in the introduction hereof.

(q) "Disability" means as a result of the Claimant Trustee's or a Member's incapacity due to physical or mental illness as determined by an accredited physician or psychologist, as applicable, selected by the Claimant Trustee or the Member, as applicable, the Claimant Trustee or such Member has been substantially unable to perform his or her duties hereunder for three (3) consecutive months or for an aggregate of 180 days during any period of twelve (12) consecutive months.

(r) "Disinterested Members" has the meaning set forth in Section 4.1 hereof.

(s) "Disputed Claims Reserve" means the reserve account to be opened by the Claimant Trust on or after the Effective Date and funded in an initial amount determined by the Claimant Trustee [(in a manner consistent with the Plan and with the consent of a simple majority of the Oversight Board)] to be sufficient to pay Disputed Claims under the Plan.

(t) "Employees" means the employees of the Debtor set forth in the Plan Supplement.

(u) "Employee Claims" means any General Unsecured Claim held by an Employee other than the Claims of the Senior Employees subject to stipulations (provided such stipulations are executed by any such Senior Employee of the Debtor prior to the Effective Date).

(v) "Estate Claims" has the meaning given to it in Exhibit A to the *Notice of Final Term Sheet* [Docket No. 354].

(w) "Equity Trust Interests" has the meaning given to it in Section 5.1(c) hereof.

(x) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(y) "General Unsecured Claim Trust Interests" means interests in the Claimant Trust to be distributed to Holders of Allowed Class 8 General Unsecured Claims (including Disputed General Unsecured Claims that are subsequently Allowed) in accordance with the Plan.

(z) "GUC Beneficiaries" means the Claimant Trust Beneficiaries who hold General Unsecured Claim Trust Interests.

(aa) "GUC Payment Certification" has the meaning given to it in Section 5.1(c) hereof.

(bb) "HarbourVest" means, collectively, HarbourVest 2017 Global Fund, L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment, L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners, L.P.

(cc) "Investment Advisers Act" means the Investment Advisers Act of 1940, as amended.

(dd) "Investment Company Act" means the Investment Company Act of 1940, as amended.

(ee) "Litigation Sub-Trust" means the sub-trust created pursuant to the Litigation Sub-Trust Agreement, which shall hold the Claimant Trust Assets that are Estate Claims and investigate, litigate, and/or settle the Estate Claims for the benefit of the Claimant Trust.

(ff) "Litigation Sub-Trust Agreement" means the litigation sub-trust agreement to be entered into by and between the Claimant Trustee and Litigation Trustee establishing and setting forth the terms and conditions of the Litigation Sub-Trust and governing the rights and responsibilities of the Litigation Trustee.

(gg) "Litigation Trustee" means Marc S. Kirschner, and any successor Litigation Trustee that may be appointed pursuant to the terms of the Litigation Sub-Trust Agreement, who shall be responsible for investigating, litigating, and settling the Estate Claims for the benefit of the Claimant Trust in accordance with the terms and conditions set forth in the Litigation Sub-Trust Agreement.

(hh) "Managed Funds" means Highland Multi-Strategy Credit Fund, L.P., Highland Restoration Capital Partners, L.P., and any other investment vehicle managed by the Debtor pursuant to an Executory Contract assumed pursuant to the Plan; *provided, however,* that the Highland Select Equity Fund, L.P. (and its direct and indirect subsidiaries) will not be considered a Managed Fund for purposes hereof.

(ii) "Material Claims" means the Claims asserted by UBS, Patrick Hagaman Daugherty, Integrated Financial Associates, Inc., and the Employees.

(jj) "Member" means a Person that is member of the Oversight Board.

(kk) "New GP LLC" means the general partner of the Reorganized Debtor.

(ll) "Oversight Board" means the board comprised of five (5) Members established pursuant to the Plan and Article III of this Agreement to oversee the Claimant Trustee's performance of his duties and otherwise serve the functions set forth in this Agreement and those of the "Claimant Trust Oversight Committee" described in the Plan. Subject to the terms of this Agreement, the initial Members of the Oversight Board shall be: (i) Eric Felton, as representative of the Redeemer Committee; (ii) Josh Terry, as representative of Acis; (iii) Elizabeth Kozlowski, as representative of UBS; (iv) Paul McVoy, as representative of Meta-e Discovery; and (v) David Pauker.

(mm) "Plan" has the meaning set forth in the Recitals hereof.

(nn) "Privileges" means the Debtor's rights, title and interests in and to any privilege or immunity attaching to any documents or communications (whether written or oral) associated with any of the Estate Claims or Employee Claims, including, without limitation, to,

attorney-client privilege and work-product privilege as defined in Rule 502(g) of the Federal Rules of Evidence; provided, however, that "Privileges" shall not include the work-product privilege of any non-Employee attorney or attorneys that has not been previously shared with the Debtor or any of its employees and the work-product privilege shall remain with the non-Employee attorney or attorneys who created such work product so long as it has not been previously shared with the Debtor or any of its employees, or otherwise waived.

(oo) "PSZJ" means Pachulski Stang Ziehl & Jones LLP.

(pp) "Redeemer Committee" means the Redeemer Committee of the Highland Crusader Fund.

(qq) "Registrar" has the meaning given to it in Section 5.3(a) hereof.

(rr) "Reorganized Debtor Assets" means any limited and general partnership interests held by the Debtor, the management of the Managed Funds and those Causes of Action (including, without limitation, claims for breach of fiduciary duty), that, for any reason, are not capable of being transferred to the Claimant Trust. For the avoidance of doubt, "Reorganized Debtor Assets" includes any partnership interests or shares of Managed Funds held by the Debtor but does not include the underlying portfolio assets held by the Managed Funds.

(ss) "Securities Act" means the Securities Act of 1933, as amended.

(tt) "Subordinated Beneficiaries" means the Claimant Trust Beneficiaries who hold Subordinated Claim Trust Interests.

(uu) "Subordinated Claim Trust Interests" means the subordinated interests in the Claimant Trust to be distributed to Holders of Allowed Class 9 Subordinated Claims in accordance with the Plan.

(vv) "TIA" means the Trust Indenture Act of 1939, as amended.

(ww) "Trust Interests" means collectively the General Unsecured Claim Trust Interests, Subordinated Claim Trust Interests, and Equity Trust Interests.

(xx) "Trust Register" has the meaning given to it in Section 5.4(b) hereof.

(yy) "Trustees" means collectively the Claimant Trustee and Delaware Trustee, however, it is expressly understood and agreed that the Delaware Trustee shall have none of the duties or liabilities of the Claimant Trustee.

(zz) "UBS" means collectively UBS Securities LLC and UBS AG London Branch.

(aaa) "WilmerHale" Wilmer Cutler Pickering Hale & Dorr LLP.

1.2 General Construction. As used in this Agreement, the masculine, feminine and neuter genders, and the plural and singular numbers shall be deemed to include the others in all

cases where they would apply. "Includes" and "including" are not limiting and "or" is not exclusive. References to "Articles," "Sections" and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Articles, Sections and other subdivisions of this Agreement, and the words "herein," "hereafter" and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision of this Agreement. Amounts expressed in dollars or following the symbol "$" shall be deemed to be in United States dollars. References to agreements or instruments shall be deemed to refer to such agreements or instruments as the same may be amended, supplemented, or otherwise modified in accordance with the terms thereof.

1.3 Incorporation of the Plan. The Plan is hereby incorporated into this Agreement and made a part hereof by this reference.

ARTICLE II.
ESTABLISHMENT OF THE CLAIMANT TRUST

2.1 Creation of Name of Trust.

(a) The Claimant Trust is hereby created as a statutory trust under the Delaware Statutory Trust Act and shall be called the "Highland Claimant Trust." The Claimant Trustee shall be empowered to conduct all business and hold all property constituting the Claimant Trust Assets in such name in accordance with the terms and conditions set forth herein.

(b) The Trustees shall cause to be executed and filed in the office of the Secretary of State of the State of Delaware the Certificate of Trust and agree to execute, acting solely in their capacity as Trustees, such certificates as may from time to time be required under the Delaware Statutory Trust Act or any other Delaware law.

2.2 Objectives.

(a) The Claimant Trust is established for the purpose of satisfying Allowed General Unsecured Claims and Allowed Subordinated Claims (and only to the extent provided herein, Allowed Class A Limited Partnership Interests and Class B/C Limited Partnership Interests) under the Plan, by monetizing the Claimant Trust Assets transferred to it and making distributions to the Claimant Trust Beneficiaries. The Claimant Trust shall not continue or engage in any trade or business except to the extent reasonably necessary to monetize and distribute the Claimant Trust Assets consistent with this Agreement and the Plan and act as sole member and manager of New GP LLC. The Claimant Trust shall provide a mechanism for (i) the monetization of the Claimant Trust Assets and (ii) the distribution of the proceeds thereof, net of all claims, expenses, charges, liabilities, and obligations of the Claimant Trust, to the Claimant Trust Beneficiaries in accordance with the Plan. In furtherance of this distribution objective, the Claimant Trust will, from time to time, prosecute and resolve objections to certain Claims and Interests as provided herein and in the Plan.

(b) It is intended that the Claimant Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of section 301.7701-4(d) of the Treasury Regulations. In furtherance of this objective, the Claimant Trustee shall, in his business judgment,

make continuing best efforts to (i) dispose of or monetize the Claimant Trust Assets and resolve Claims, (ii) make timely distributions, and (iii) not unduly prolong the duration of the Claimant Trust, in each case in accordance with this Agreement.

2.3 Nature and Purposes of the Claimant Trust.

(a) The Claimant Trust is organized and established as a trust for the purpose of monetizing the Claimant Trust Assets and making distributions to Claimant Trust Beneficiaries in a manner consistent with "liquidating trust" status under Treasury Regulation Section 301.7701-4(d). The Claimant Trust shall retain all rights to commence and pursue all Causes of Action of the Debtor other than (i) Estate Claims, which shall be assigned to and commenced and pursued by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement, and (ii) Causes of Action constituting Reorganized Debtor Assets, if any, which shall be commenced and pursued by the Reorganized Debtor at the direction of the Claimant Trust as sole member of New GP LLC pursuant to the terms of the Reorganized Limited Partnership Agreement. The Claimant Trust and Claimant Trustee shall have and retain, and, as applicable, assign and transfer to the Litigation Sub-Trust and Litigation Trustee, any and all rights, defenses, cross-claims and counter-claims held by the Debtor with respect to any Claim as of the Petition Date. On and after the date hereof, in accordance with and subject to the Plan, the Claimant Trustee shall have the authority to (i) compromise, settle or otherwise resolve, or withdraw any objections to Claims against the Debtor, provided, however, the Claimant Trustee shall only have the authority to compromise or settle any Employee Claim with the unanimous consent of the Oversight Board and in the absence of unanimous consent, any such Employee Claim shall be transferred to the Litigation Sub-Trust and be litigated, comprised, settled, or otherwise resolved exclusively by the Litigation Trustee and (ii) compromise, settle, or otherwise resolve any Disputed Claims without approval of the Bankruptcy Court, which authority may be shared with or transferred to the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement. For the avoidance of doubt, the Claimant Trust, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and applicable state trust law, is appointed as the successor-in-interest to, and representative of, the Debtor and its Estate for the retention, enforcement, settlement, and adjustment of all Claims other than Estate Claims, the Employee Claims, and those Claims constituting Reorganized Debtor Assets.

(b) The Claimant Trust shall be administered by the Claimant Trustee, in accordance with this Agreement, for the following purposes:

(i) to manage and monetize the Claimant Trust Assets in an expeditious but orderly manner with a view towards maximizing value within a reasonable time period;

(ii) to litigate and settle Claims in Class 8 and Class 9 (other than the Employee Claims, which shall be litigated and/or settled by the Litigation Trustee if the Oversight Board does not unanimously approve of any proposed settlement of such Employee Claim by the Claimant Trustee) and any of the Causes of Action included in the Claimant Trust Assets (including any cross-claims and counter-claims); provided, however, that Estate Claims transferred to the Litigation Sub-Trust shall be litigated and settled by the Litigation Trustee pursuant to the terms of the Litigation Sub-Trust Agreement;

(iii) to distribute net proceeds of the Claimant Trust Assets to the Claimant Trust Beneficiaries;

(iv) to distribute funds from the Disputed Claims Reserve to Holders of Trust Interests or to the Reorganized Debtor for distribution to Holders of Disputed Claims in each case in accordance with the Plan from time to time as any such Holder's Disputed Claim becomes an Allowed Claim under the Plan;

(v) to distribute funds to the Litigation Sub-Trust at the direction the Oversight Board;

(vi) to serve as the limited partner of, and to hold the limited partnership interests in, the Reorganized Debtor;

(vii) to serve as the sole member and manager of New GP LLC, the Reorganized Debtor's general partner;

(viii) to oversee the management and monetization of the Reorganized Debtor Assets pursuant to the terms of the Reorganized Limited Partnership Agreement, in its capacity as the sole member and manager of New GP LLC pursuant to the terms of the New GP LLC Documents, all with a view toward maximizing value in a reasonable time in a manner consistent with the Reorganized Debtor's fiduciary duties as investment adviser to the Managed Funds; and

(ix) to perform any other functions and take any other actions provided for or permitted by this Agreement and the Plan, and in any other agreement executed by the Claimant Trustee.

2.4 Transfer of Assets and Rights to the Claimant Trust; Litigation Sub-Trust.

(a) On the Effective Date, pursuant to the Plan, the Debtor shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Claimant Trust Assets and related Privileges held by the Debtor to the Claimant Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan and this Agreement. To the extent certain assets comprising the Claimant Trust Assets, because of their nature or because such assets will accrue or become transferable subsequent to the Effective Date, and cannot be transferred to, vested in, and assumed by the Claimant Trust on such date, such assets shall be considered Reorganized Debtor Assets, which may be subsequently transferred to the Claimant Trust by the Reorganized Debtor consistent with the terms of the Reorganized Limited Partnership Agreement after such date.

(b) On or as soon as practicable after the Effective Date, the Claimant Trust shall irrevocably transfer, assign, and deliver, and shall be deemed to have transferred, assigned, and delivered, all Estate Claims and related Privileges held by the Claimant Trust to the Litigation Sub-Trust Trust free and clear of all Claims, Interests, Liens, and other encumbrances, and liabilities, except as provided in the Plan, this Agreement, and the Litigation Sub-Trust Agreement. Following the transfer of such Privileges, the Litigation Trustee shall have the power to waive the Privileges being so assigned and transferred.

(c) On or before the Effective Date, and continuing thereafter, the Debtor or Reorganized Debtor, as applicable, shall provide (i) for the Claimant Trustee's and Litigation Trustee's reasonable access to all records and information in the Debtor's and Reorganized Debtor's possession, custody or control, (ii) that all Privileges related to the Claimant Trust Assets shall transfer to and vest exclusively in the Claimant Trust (except for those Privileges that will be transferred and assigned to the Litigation Sub-Trust in respect of the Estate Claims), and (iii) subject to Section 3.12(c), the Debtor and Reorganized Debtor shall preserve all records and documents (including all electronic records or documents), including, but not limited to, the Debtor's file server, email server, email archiving system, master journal, SharePoint, Oracle E-Business Suite, Advent Geneva, Siepe database, Bloomberg chat data, and any backups of the foregoing, until such time as the Claimant Trustee, with the consent of the Oversight Board and, if pertaining to any of the Estate Claims, the Litigation Trustee, directs the Reorganized Debtor, as sole member of its general partner, that such records are no longer required to be preserved. For the purposes of transfer of documents, the Claimant Trust or Litigation Sub-Trust, as applicable, is an assignee and successor to the Debtor in respect of the Claimant Trust Assets and Estate Claims, respectively, and shall be treated as such in any review of confidentiality restrictions in requested documents.

(d) Until the Claimant Trust terminates pursuant to the terms hereof, legal title to the Claimant Trust Assets (other than Estate Claims) and all property contained therein shall be vested at all times in the Claimant Trust as a separate legal entity, except where applicable law in any jurisdiction requires title to any part of the Claimant Trust Assets to be vested in the Claimant Trustee, in which case title shall be deemed to be vested in the Claimant Trustee, solely in his capacity as Claimant Trustee. For purposes of such jurisdictions, the term Claimant Trust, as used herein, shall be read to mean the Claimant Trustee.

2.5 Principal Office. The principal office of the Claimant Trust shall be maintained by the Claimant Trustee at the following address: 100 Crescent Court, Suite 1850, Dallas, Texas 75201.

2.6 Acceptance. The Claimant Trustee accepts the Claimant Trust imposed by this Agreement and agrees to observe and perform that Claimant Trust, on and subject to the terms and conditions set forth herein and in the Plan.

2.7 Further Assurances. The Debtor, Reorganized Debtor, and any successors thereof will, upon reasonable request of the Claimant Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Claimant Trustee any portion of the Claimant Trust Assets intended to be conveyed hereby and in the Plan in the form and manner provided for hereby and in the Plan and to vest in the Claimant Trustee the powers, instruments or funds in trust hereunder.

2.8 Incidents of Ownership. The Claimant Trust Beneficiaries shall be the sole beneficiaries of the Claimant Trust and the Claimant Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized herein.

ARTICLE III.
THE TRUSTEES

3.1 Role. In furtherance of and consistent with the purpose of the Claimant Trust, the Plan, and this Agreement, the Claimant Trustee, subject to the terms and conditions contained herein, in the Plan, and in the Confirmation Order, shall serve as Claimant Trustee with respect to the Claimant Trust Assets for the benefit of the Claimant Trust Beneficiaries and maintain, manage, and take action on behalf of the Claimant Trust.

3.2 Authority.

(a) In connection with the administration of the Claimant Trust, in addition to any and all of the powers enumerated elsewhere herein, the Claimant Trustee shall, in an expeditious but orderly manner, monetize the Claimant Trust Assets, make timely distributions and not unduly prolong the duration of the Claimant Trust. The Claimant Trustee shall have the power and authority and is authorized to perform any and all acts necessary and desirable to accomplish the purposes of this Agreement and the provisions of the Plan and the Confirmation Order relating to the Claimant Trust, within the bounds of this Agreement, the Plan, the Confirmation Order, and applicable law. The Claimant Trustee will monetize the Claimant Trust Assets with a view toward maximizing value in a reasonable time.

(b) The Claimant Trustee, subject to the limitations set forth in Section 3.3 of this Agreement shall have the right to prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, or otherwise deal with and settle any and all Claims and Causes of Action that are part of the Claimant Trust Assets, other than the Estate Claims transferred to the Litigation Sub-Trust, as the Claimant Trustee determines is in the best interests of the Claimant Trust; provided, however, that if the Claimant Trustee proposes a settlement of an Employee Claim and does not obtain unanimous consent of the Oversight Board of such settlement, such Employee Claim shall be transferred to the Litigation Sub-Trust for the Litigation Trustee to litigate. To the extent that any action has been taken to prosecute, defend, compromise, adjust, arbitrate, abandon, or otherwise deal with and settle any such Claims and Causes of Action prior to the Effective Date, on the Effective Date the Claimant Trustee shall be substituted for the Debtor in connection therewith in accordance with Rule 25 of the Federal Rules of Civil Procedure, made applicable by Rule 7025 of the Federal Rules of Bankruptcy Procedure, and the caption with respect to such pending action shall be changed to the following "[Claimant Trustee], not individually but solely as Claimant Trustee for the Claimant Trust, et al. v. [Defendant]".

(c) Subject in all cases to any limitations contained herein, in the Confirmation Order, or in the Plan, the Claimant Trustee shall have the power and authority to:

(i) solely as required by Section 2.4(d), hold legal title to any and all rights of the Claimant Trust and Beneficiaries in or arising from the Claimant Trust Assets, including collecting and receiving any and all money and other property belonging to the Claimant Trust and the right to vote or exercise any other right with respect to any claim or interest relating to the Claimant Trust Assets in any case under the Bankruptcy Code and receive any distribution with respect thereto;

(ii) open accounts for the Claimant Trust and make distributions of Claimant Trust Assets in accordance herewith;

(iii) as set forth in Section 3.11, exercise and perform the rights, powers, and duties held by the Debtor with respect to the Claimant Trust Assets (other than Estate Claims), including the authority under section 1123(b)(3) of the Bankruptcy Code, and shall be deemed to be acting as a representative of the Debtor's Estate with respect to the Claimant Trust Assets, including with respect to the sale, transfer, or other disposition of the Claimant Trust Assets;

(iv) settle or resolve any Claims in Class 8 and Class 9 other than the Material Claims and any Equity Interests;

(v) sell or otherwise monetize any publicly-traded asset for which there is a marketplace and any other assets (other than the Other Assets (as defined below)) valued less than or equal to $3,000,000 (over a thirty-day period);

(vi) upon the direction of the Oversight Board, fund the Litigation Sub-Trust on the Effective Date and as necessary thereafter;

(vii) exercise and perform the rights, powers, and duties arising from the Claimant Trust's role as sole member of New GP LLC, and the role of New GP LLC, as general partner of the Reorganized Debtor, including the management of the Managed Funds;

(viii) protect and enforce the rights to the Claimant Trust Assets by any method deemed appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(ix) obtain reasonable insurance coverage with respect to any liabilities and obligations of the Trustees, Litigation Trustee, and the Members of the Oversight Board solely in their capacities as such, in the form of fiduciary liability insurance, a directors and officers policy, an errors and omissions policy, or otherwise. The cost of any such insurance shall be a Claimant Trust Expense and paid by the Claimant Trustee from the Claimant Trust Assets;

(x) without further order of the Bankruptcy Court, but subject to the terms of this Agreement, employ various consultants, third-party service providers, and other professionals, including counsel, tax advisors, consultants, brokers, investment bankers, valuation counselors, and financial advisors, as the Claimant Trustee deems necessary to aid him in fulfilling his obligations under this Agreement; such consultants, third-party service providers, and other professionals shall be retained pursuant to whatever fee arrangement the Claimant Trustee deems appropriate, including contingency fee arrangements and any fees and expenses incurred by such professionals engaged by the Claimant Trustee shall be Claimant Trust Expenses and paid by the Claimant Trustee from the Claimant Trust Assets;

(xi) retain and approve compensation arrangements of an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Claimant Trust as may be required by this Agreement, the Plan, the Confirmation Order, and applicable laws and as may be reasonably and appropriate in Claimant Trustee's discretion. Subject to the foregoing, the Claimant Trustee may commit the Claimant Trust to, and shall pay,

such independent public accounting firm reasonable compensation for services rendered and reasonable and documented out-of-pocket expenses incurred, and all such compensation and reimbursement shall be paid by the Claimant Trustee from Claimant Trust Assets;

(xii) prepare and file (A) tax returns for the Claimant Trust treating the Claimant Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), (B) an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity, or (C) any periodic or current reports that may be required under applicable law;

(xiii) prepare and send annually to the Beneficiaries, in accordance with the tax laws, a separate statement stating a Beneficiary's interest in the Claimant Trust and its share of the Claimant Trust's income, gain, loss, deduction or credit, and to instruct all such Beneficiaries to report such items on their federal tax returns;

(xiv) to the extent applicable, assert, enforce, release, or waive any attorney-client communication, attorney work product or other Privilege or defense on behalf of the Claimant Trust (including as to any Privilege that the Debtor held prior to the Effective Date), including to provide any information to insurance carriers that the Claimant Trustee deems necessary to utilize applicable insurance coverage for any Claim or Claims;

(xv) subject to Section 3.4, invest the proceeds of the Claimant Trust Assets and all income earned by the Claimant Trust, pending any distributions in short-term certificates of deposit, in banks or other savings institutions, or other temporary, liquid investments, such as Treasury bills;

(xvi) request any appropriate tax determination with respect to the Claimant Trust, including a determination pursuant to section 505 of the Bankruptcy Code;

(xvii) take or refrain from taking any and all actions the Claimant Trustee reasonably deems necessary for the continuation, protection, and maximization of the value of the Claimant Trust Assets consistent with purposes hereof;

(xviii) take all steps and execute all instruments and documents necessary to effectuate the purpose of the Claimant Trust and the activities contemplated herein and in the Confirmation Order and the Plan, and take all actions necessary to comply with the Confirmation Order, the Plan, and this Agreement and the obligations thereunder and hereunder;

(xix) exercise such other powers and authority as may be vested in or assumed by the Claimant Trustee by any Final Order;

(xx) evaluate and determine strategy with respect to the Claimant Trust Assets, and hold, pursue, prosecute, adjust, arbitrate, compromise, release, settle or abandon the Claimant Trust Assets on behalf of the Claimant Trust; and

(xxi) with respect to the Claimant Trust Beneficiaries, perform all duties and functions of the Distribution Agent as set forth in the Plan, including distributing Cash from

the Disputed Claims Reserve, solely on account of Disputed Class 1 through Class 7 Claims that were Disputed as of the Effective Date, but become Allowed, to the Reorganization Debtor such that the Reorganized Debtor can satisfy its duties and functions as Distribution Agent with respect to Claims in Class 1 through Class 7 (the foregoing subparagraphs (i)-(xxi) being collectively, the "Authorized Acts").

(d) The Claimant Trustee and the Oversight Committee will enter into an agreement as soon as practicable after the Effective Date concerning the Claimant Trustee's authority with respect to certain other assets, including certain portfolio company assets (the "Other Assets").

(e) The Claimant Trustee has the power and authority to act as trustee of the Claimant Trust and perform the Authorized Acts through the date such Claimant Trustee resigns, is removed, or is otherwise unable to serve for any reason.

3.3 Limitation of Authority.

(a) Notwithstanding anything herein to the contrary, the Claimant Trust and the Claimant Trustee shall not (i) be authorized to engage in any trade or business, (ii) take any actions inconsistent with the management of the Claimant Trust Assets as are required or contemplated by applicable law, the Confirmation Order, the Plan, and this Agreement, (iii) take any action in contravention of the Confirmation Order, the Plan, or this Agreement, or (iv) cause New GP LLC to cause the Reorganized Debtor to take any action in contravention of the Plan, Plan Documents or the Confirmation Order.

(b) Notwithstanding anything herein to the contrary, and in no way limiting the terms of the Plan, the Claimant Trustee must receive the consent by vote of a simple majority of the Oversight Board pursuant to the notice and quorum requirements set forth in Section 4.5 herein, in order to:

(i) terminate or extend the term of the Claimant Trust;

(ii) prosecute, litigate, settle or otherwise resolve any of the Material Claims;

(iii) except otherwise set forth herein, sell or otherwise monetize any assets that are not Other Assets, including Reorganized Debtor Assets (other than with respect to the Managed Funds), that are valued greater than $3,000,000 (over a thirty-day period);

(iv) except for cash distributions made in accordance with the terms of this Agreement, make any cash distributions to Claimant Trust Beneficiaries in accordance with Article IV of the Plan;

(v) except for any distributions made in accordance with the terms of this Agreement, make any distributions from the Disputed Claims Reserve to Holders of Disputed Claims after such time that such Holder's Claim becomes an Allowed Claim under the Plan;

(vi) reserve or retain any cash or cash equivalents in an amount reasonably necessary to meet claims and contingent liabilities (including Disputed Claims and any indemnification obligations that may arise under Section 8.2 of this Agreement), to maintain the value of the Claimant Trust Assets, or to fund ongoing operations and administration of the Litigation Sub-Trust;

(vii) borrow as may be necessary to fund activities of the Claimant Trust;

(viii) determine whether the conditions under Section 5.1(c) of this Agreement have been satisfied such that a certification should be filed with the Bankruptcy Court;

(ix) invest the Claimant Trust Assets, proceeds thereof, or any income earned by the Claimant Trust (for the avoidance of doubt, this shall not apply to investment decisions made by the Reorganized Debtor or its subsidiaries solely with respect to Managed Funds);

(x) change the compensation of the Claimant Trustee;

(xi) subject to ARTICLE X, make structural changes to the Claimant Trust or take other actions to minimize any tax on the Claimant Trust Assets; and

(xii) retain counsel, experts, advisors, or any other professionals; provided, however, the Claimant Trustee shall not be required to obtain the consent of the Oversight Board for the retention of (i) PSZJ, WilmerHale, or Development Specialists, Inc. and (ii) any other professional whose expected fees and expenses are estimated at less than or equal to $200,000.

(c) [Reserved.]

3.4 Investment of Cash. The right and power of the Claimant Trustee to invest the Claimant Trust Assets, the proceeds thereof, or any income earned by the Claimant Trust, with majority approval of the Oversight Board, shall be limited to the right and power to invest in such Claimant Trust Assets only in Cash and U.S. Government securities as defined in section 29(a)(16) of the Investment Company Act; provided, however that (a) the scope of any such permissible investments shall be further limited to include only those investments that a "liquidating trust" within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service ("IRS") guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise, (b) the Claimant Trustee may retain any Claimant Trust Assets received that are not Cash only for so long as may be required for the prompt and orderly monetization or other disposition of such assets, and (c) the Claimant Trustee may expend the assets of the Claimant Trust (i) as reasonably necessary to meet contingent liabilities (including indemnification and similar obligations) and maintain the value of the assets of the Claimant Trust during the pendency of this Claimant Trust, (ii) to pay Claimant Trust Expenses (including, but not limited to, any taxes imposed on the Claimant Trust and reasonable attorneys' fees and expenses in connection with litigation), and (iii) to satisfy other liabilities incurred or assumed by the Claimant Trust (or to which the assets are otherwise subject) in accordance with the Plan or this Agreement).

3.5 Binding Nature of Actions. All actions taken and determinations made by the Claimant Trustee in accordance with the provisions of this Agreement shall be final and binding upon any and all Beneficiaries.

3.6 Term of Service. The Claimant Trustee shall serve as the Claimant Trustee for the duration of the Claimant Trust, subject to death, resignation or removal.

3.7 Resignation. The Claimant Trustee may resign as Claimant Trustee of the Claimant Trust by an instrument in writing delivered to the Bankruptcy Court and Oversight Board at least thirty (30) days before the proposed effective date of resignation. The Claimant Trustee shall continue to serve as Claimant Trustee after delivery of the Claimant Trustee's resignation until the proposed effective date of such resignation, unless the Claimant Trustee and a simple majority of the Oversight Board consent to an earlier effective date, which earlier effective date shall be no earlier than the date of appointment of a successor Claimant Trustee in accordance with Section 3.9 hereof becomes effective.

3.8 Removal.

(a) The Claimant Trustee may be removed by a simple majority vote of the Oversight Board for Cause for Cause immediately upon notice thereof, or without Cause upon 60 days' prior written notice. Upon the removal of the Claimant Trustee pursuant hereto, the Claimant Trustee will resign, or be deemed to have resigned, from any role or position he or she may have at New GP LLC or the Reorganized Debtor effective upon the expiration of the foregoing 60 day period unless the Claimant Trustee and a simple majority of the Oversight Board agree otherwise.

(b) To the extent there is any dispute regarding the removal of a Claimant Trustee (including any dispute relating to any compensation or expense reimbursement due under this Agreement) the Bankruptcy Court shall retain jurisdiction to consider and adjudicate such dispute. Notwithstanding the foregoing, the Claimant Trustee will continue to serve as the Claimant Trustee after his removal until the earlier of (i) the time when a successor Claimant Trustee will become effective in accordance with Section 3.9 of this Agreement or (ii) such date as the Bankruptcy Court otherwise orders.

3.9 Appointment of Successor.

(a) Appointment of Successor. In the event of a vacancy by reason of the death or Disability (in the case of a Claimant Trustee that is a natural person), dissolution (in the case of a Claimant Trustee that is not a natural person), or removal of the Claimant Trustee, or prospective vacancy by reason of resignation, a successor Claimant Trustee shall be selected by a simple majority vote of the Oversight Board. If Members of the Oversight Board are unable to secure a majority vote, the Bankruptcy Court will determine the successor Claimant Trustee on motion of the Members. If a final decree has been entered closing the Chapter 11 Case, the Claimant Trustee may seek to reopen the Chapter 11 Case for the limited purpose of determining the successor Claimant Trustee, and the costs for such motion and costs related to re-opening the Chapter 11 Case shall be paid by the Claimant Trust. The successor Claimant Trustee shall be appointed as soon as practicable, but in any event no later than sixty (60) days after the occurrence of the

vacancy or, in the case of resignation, on the effective date of the resignation of the then acting Claimant Trustee.

(b) Vesting or Rights in Successor Claimant Trustee. Every successor Claimant Trustee appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trust, the exiting Claimant Trustee, the Oversight Board, and file with the Bankruptcy Court, an instrument accepting such appointment subject to the terms and provisions hereof. The successor Claimant Trustee, without any further act, deed, or conveyance shall become vested with all the rights, powers, trusts and duties of the exiting Claimant Trustee, except that the successor Claimant Trustee shall not be liable for the acts or omissions of the retiring Claimant Trustee. In no event shall the retiring Claimant Trustee be liable for the acts or omissions of the successor Claimant Trustee.

(c) Interim Claimant Trustee. During any period in which there is a vacancy in the position of Claimant Trustee, the Oversight Board shall appoint one of its Members to serve as the interim Claimant Trustee (the "Interim Trustee") until a successor Claimant Trustee is appointed pursuant to Section 3.9(a). The Interim Trustee shall be subject to all the terms and conditions applicable to a Claimant Trustee hereunder. Such Interim Trustee shall not be limited in any manner from exercising any rights or powers as a Member of the Oversight Board merely by such Person's appointment as Interim Trustee.

3.10 Continuance of Claimant Trust. The death, resignation, or removal of the Claimant Trustee shall not operate to terminate the Claimant Trust created by this Agreement or to revoke any existing agency (other than any agency of the Claimant Trustee as the Claimant Trustee) created pursuant to the terms of this Agreement or invalidate any action taken by the Claimant Trustee. In the event of the resignation or removal of the Claimant Trustee, the Claimant Trustee shall promptly (i) execute and deliver, by the effective date of resignation or removal, such documents, instruments, records, and other writings as may be reasonably requested by his successor to effect termination of the exiting Claimant Trustee's capacity under this Agreement and the conveyance of the Claimant Trust Assets then held by the exiting Claimant Trustee to the successor Claimant Trustee; (ii) deliver to the successor Claimant Trustee all non-privileged documents, instruments, records, and other writings relating to the Claimant Trust as may be in the possession or under the control of the exiting Claimant Trustee, provided, the exiting Claimant Trustee shall have the right to make and retain copies of such documents, instruments, records and other writings delivered to the successor Claimant Trustee and the cost of making such copies shall be a Claimant Trust Expense to be paid by the Claimant Trust; and (iii) otherwise assist and cooperate in effecting the assumption of the exiting Claimant Trustee's obligations and functions by his successor, provided the fees and expenses of such assistance and cooperation shall be paid to the exiting Claimant Trustee by the Claimant Trust. The exiting Claimant Trustee shall irrevocably appoint the successor Claimant Trustee as his attorney-in-fact and agent with full power of substitution for it and its name, place and stead to do any and all acts that such exiting Claimant Trustee is obligated to perform under this Section 3.10.

3.11 Claimant Trustee as "Estate Representative". The Claimant Trustee will be the exclusive trustee of the Claimant Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estate appointed pursuant to section 1123(b)(3)(B) of the Bankruptcy Code (the "Estate Representative") with respect to the Claimant

Trust Assets, with all rights and powers attendant thereto, in addition to all rights and powers granted in the Plan and in this Agreement; provided that all rights and powers as representative of the Estate pursuant to section 1123(b)(3)(B) shall be transferred to the Litigation Trustee in respect of the Estate Claims and the Employee Claims. The Claimant Trustee will be the successor-in-interest to the Debtor with respect to any action pertaining to the Claimant Trust Assets, which was or could have been commenced by the Debtor prior to the Effective Date, except as otherwise provided in the Plan or Confirmation Order. All actions, claims, rights or interest constituting Claimant Trust Assets are preserved and retained and may be enforced, or assignable to the Litigation Sub-Trust, by the Claimant Trustee as an Estate Representative.

3.12 Books and Records.

(a) The Claimant Trustee shall maintain in respect of the Claimant Trust and the Claimant Trust Beneficiaries books and records reflecting Claimant Trust Assets in its possession and the income of the Claimant Trust and payment of expenses, liabilities, and claims against or assumed by the Claimant Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained as reasonably necessary to facilitate compliance with the tax reporting requirements of the Claimant Trust and the requirements of Article VII herein. Except as otherwise provided herein, nothing in this Agreement requires the Claimant Trustee to file any accounting or seek approval of any court with respect to the administration of the Claimant Trust, or as a condition for managing any payment or distribution out of the Claimant Trust Assets.

(b) The Claimant Trustee shall provide quarterly reporting to the Oversight Board and Claimant Trust Beneficiaries of (i) the status of the Claimant Trust Assets, (ii) the balance of Cash held by the Claimant Trust (including in each of the Claimant Trust Expense Reserve and Disputed Claim Reserve), (iii) the determination and any re-determination, as applicable, of the total amount allocated to the Disputed Claim Reserve, (iv) the status of Disputed Claims and any resolutions thereof, (v) the status of any litigation, including the pursuit of the Causes of Action, (vi) the Reorganized Debtor's performance, and (vii) operating expenses; provided, however, that the Claimant Trustee may, with respect to any Member of the Oversight Board or Claimant Trust Beneficiary, redact any portion of such reports that relate to such Entity's Claim or Equity Interest, as applicable and any reporting provided to Claimant Trust Beneficiaries may be subject to such Claimant Trust Beneficiary's agreement to maintain confidentiality with respect to any non-public information.

(c) The Claimant Trustee may dispose some or all of the books and records maintained by the Claimant Trustee at the later of (i) such time as the Claimant Trustee determines, with the unanimous consent of the Oversight Board, that the continued possession or maintenance of such books and records is no longer necessary for the benefit of the Claimant Trust, or (ii) upon the termination and winding up of the Claimant Trust under Article IX of this Agreement; provided, however, the Claimant Trustee shall not dispose of any books and records related to the Estate Claims or Employee Claims without the consent of the Litigation Trustee. Notwithstanding the foregoing, the Claimant Trustee shall cause the Reorganized Debtor and its subsidiaries to retain such books and records, and for such periods, as are required to be retained pursuant to Section 204-2 of the Investment Advisers Act or any other applicable laws, rules, or regulations.

3.13 Compensation and Reimbursement; Engagement of Professionals.

(a) Compensation and Expenses.

(i) Compensation. As compensation for any services rendered by the Claimant Trustee in connection with this Agreement, the Claimant Trustee shall receive compensation of $150,000 per month (the "Base Salary"). Within the first forty-five days following the Confirmation Date, the Claimant Trustee, on the one hand, and the Committee, if prior to the Effective Date, or the Oversight Board, if on or after the Effective Date, on the other, will negotiate go-forward compensation for the Claimant Trustee which will include (a) the Base Salary, (b) a success fee, and (c) severance.

(ii) Expense Reimbursements. All reasonable out-of-pocket expenses of the Claimant Trustee in the performance of his or her duties hereunder, shall be reimbursed as Claimant Trust Expenses paid by the Claimant Trust.

(b) Professionals.

(i) Engagement of Professionals. The Claimant Trustee shall engage professionals from time to time in conjunction with the services provided hereunder. The Claimant Trustee's engagement of such professionals shall be approved by a majority of the Oversight Board as set forth in Section 3.3(b) hereof.

(ii) Fees and Expenses of Professionals. The Claimant Trustee shall pay the reasonable fees and expenses of any retained professionals as Claimant Trust Expenses.

3.14 Reliance by Claimant Trustee. Except as otherwise provided herein, the Claimant Trustee may rely, and shall be fully protected in acting or refraining from acting, on any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other instrument or document that the Claimant Trustee has no reason to believe to be other than genuine and to have been signed or presented by the proper party or parties or, in the case of facsimiles, to have been sent by the proper party or parties, and the Claimant Trustee may conclusively rely as to the truth of the statements and correctness of the opinions or direction expressed therein. The Claimant Trustee may consult with counsel and other professionals, and any advice of such counsel or other professionals shall constitute full and complete authorization and protection in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trustee shall have the right at any time to seek instructions from the Bankruptcy Court, or any other court of competent jurisdiction concerning the Claimant Trust Assets, this Agreement, the Plan, or any other document executed in connection therewith, and any such instructions given shall be full and complete authorization in respect of any action taken or not taken by the Claimant Trustee in accordance therewith. The Claimant Trust shall have the right to seek Orders from the Bankruptcy Court as set forth in Article IX of the Plan.

3.15 Commingling of Claimant Trust Assets. The Claimant Trustee shall not commingle any of the Claimant Trust Assets with his or her own property or the property of any other Person.

3.16 Delaware Trustee.

(a) The Delaware Trustee shall have the limited power and authority, and is hereby authorized and empowered, to (i) accept legal process served on the Claimant Trust in the State of Delaware; and (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates in the office of the Secretary of State of the State of Delaware, and take such action or refrain from taking such action under this Agreement, in either case as may be directed in a writing delivered to the Delaware Trustee by the Claimant Trustee and upon which the Delaware Trustee shall be entitled to conclusively and exclusively rely; provided, however, that the Delaware Trustee shall not be required to take or to refrain from taking any such action if the Delaware Trustee shall believe, or shall have been advised by counsel, that such performance is likely to involve the Delaware Trustee in personal liability or to result in personal liability to the Delaware Trustee, or is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes a party or is otherwise contrary to law. The Parties agree not to instruct the Delaware Trustee to take any action or to refrain from taking any action that is contrary to the terms of this Agreement or of any document contemplated hereby to which the Claimant Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Agreement, the Delaware Trustee shall have no duty or power to take any action for or on behalf of the Claimant Trust. For the avoidance of doubt, the Delaware Trustee will only have such rights and obligations as expressly provided by reference to the Delaware Trustee hereunder. The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Claimant Trustee set forth herein. The Delaware Trustee shall be one of the trustees of the Claimant Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Delaware Statutory Trust Act and for taking such actions as are required to be taken by a Delaware Trustee under the Delaware Statutory Trust Act. The duties (including fiduciary duties), liabilities and obligations of the Delaware Trustee shall be limited to those expressly set forth in this Section 3.16 and there shall be no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity, of the Delaware Trustee. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Claimant Trust, the other parties hereto or any beneficiary of the Claimant Trust, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Agreement.

(b) The Delaware Trustee shall serve until such time as the Claimant Trustee removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Claimant Trustee in accordance with the terms hereof. The Delaware Trustee may resign at any time upon the giving of at least thirty (30) days' advance written notice to the Claimant Trustee; provided, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Claimant Trustee in accordance with the terms hereof. If the Claimant Trustee does not act within such thirty (30) day period, the Delaware Trustee may apply to the Court of Chancery of the State of Delaware for the appointment of a successor Delaware Trustee.

(c) Upon the resignation or removal of the Delaware Trustee, the Claimant Trustee shall appoint a successor Delaware Trustee by delivering a written instrument to the

outgoing Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Claimant Trustee and any undisputed fees, expenses and indemnity due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement.

(d) The Delaware Trustee shall be paid such compensation as agreed to pursuant to a separate fee agreement. The Claimant Trust shall promptly advance and reimburse the Delaware Trustee for all reasonable out-of-pocket costs and expenses (including reasonable legal fees and expenses) incurred by the Delaware Trustee in connection with the performance of its duties hereunder.

(e) WTNA shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

(f) Any corporation or association into which WTNA may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Delaware Trustee is a party, will be and become the successor Delaware Trustee under this Agreement and will have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

ARTICLE IV.
THE OVERSIGHT BOARD

4.1 Oversight Board Members. The Oversight Board will be comprised of five (5) Members appointed to serve as the board of managers of the Claimant Trust, at least two (2) of which shall be disinterested Members selected by the Creditors' Committee (such disinterested members, the "Disinterested Members"). The initial Members of the Oversight Board will be representatives of Acis, the Redeemer Committee, Meta-e Discovery, UBS, and David Pauker. David Pauker and Paul McVoy, the representative of Meta-e Discovery, shall serve as the initial Disinterested Board Members; provided, however, that if the Plan is confirmed with the Convenience Class or any other convenience class supported by the Creditors' Committee, Meta-

E Discovery and its representative will resign on the Effective Date or as soon as practicable thereafter and be replaced in accordance with Section 4.10 hereof..

4.2 Authority and Responsibilities.

(a) The Oversight Board shall, as and when requested by either of the Claimant Trustee and Litigation Trustee, or when the Members otherwise deem it to be appropriate or as is otherwise required under the Plan, the Confirmation Order, or this Agreement, consult with and advise the Claimant Trustee and Litigation Trustee as to the administration and management of the Claimant Trust and the Litigation Sub-Trust, as applicable, in accordance with the Plan, the Confirmation Order, this Agreement, and Litigation Sub-Trust Agreement (as applicable) and shall have the other responsibilities and powers as set forth herein. As set forth in the Plan, the Confirmation Order, and herein, the Oversight Board shall have the authority and responsibility to oversee, review, and govern the activities of the Claimant Trust, including the Litigation Sub-Trust, and the performance of the Claimant Trustee and Litigation Trustee, and shall have the authority to remove the Claimant Trustee in accordance with Section 3.8 hereof or the Litigation Trustee in accordance with the terms of the Litigation Sub-Trust Agreement; provided, however, that the Oversight Board may not direct either Claimant Trustee and Litigation Trustee to act inconsistently with their respective duties under this Agreement (including without limitation as set in Section 4.2(e) below), the Litigation Sub-Trust Agreement, the Plan, the Confirmation Order, or applicable law.

(b) The Oversight Board shall also (i) monitor and oversee the administration of the Claimant Trust and the Claimant Trustee's performance of his or her responsibilities under this Agreement, (ii) as more fully set forth in the Litigation Sub-Trust Agreement, approve funding to the Litigation Sub-Trust, monitor and oversee the administration of the Litigation Sub-Trust and the Litigation Trustee's performance of his responsibilities under the Litigation Sub-Trust Agreement, and (iii) perform such other tasks as are set forth herein, in the Litigation Sub-Trust Agreement, and in the Plan.

(c) The Claimant Trustee shall consult with and provide information to the Oversight Board in accordance with and pursuant to the terms of the Plan, the Confirmation Order, and this Agreement to enable the Oversight Board to meet its obligations hereunder.

(d) Notwithstanding any provision of this Agreement to the contrary, the Claimant Trustee shall not be required to (i) obtain the approval of any action by the Oversight Board to the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is required to be taken by applicable law, the Plan, the Confirmation Order, or this Agreement or (ii) follow the directions of the Oversight Board to take any action the extent that the Claimant Trustee, in good faith, reasonably determines, based on the advice of legal counsel, that such action is prohibited by applicable law the Plan, the Confirmation Order, or this Agreement.

(e) Notwithstanding provision of this Agreement to the contrary, with respect to the activities of the Reorganized Debtor in its capacity as an investment adviser (and subsidiaries of the Reorganized Debtor that serve as general partner or in an equivalent capacity) to any Managed Funds, the Oversight Board shall not make investment decisions or otherwise participate

in the investment decision making process relating to any such Managed Funds, nor shall the Oversight Board or any member thereof serve as a fiduciary to any such Managed Funds. It is agreed and understood that investment decisions made by the Reorganized Debtor (or its subsidiary entities) with respect to Managed Funds shall be made by the Claimant Trustee in his capacity as an officer of the Reorganized Debtor and New GP LLC and/or such persons who serve as investment personnel of the Reorganized Debtor from time to time, and shall be subject to the fiduciary duties applicable to such entities and persons as investment adviser to such Managed Funds.

4.3 Fiduciary Duties. The Oversight Board (and each Member in its capacity as such) shall have fiduciary duties to the Claimant Trust Beneficiaries consistent with the fiduciary duties that the members of the Creditors' Committee have to unsecured creditors and shall exercise its responsibilities accordingly; provided, however, that the Oversight Board shall not owe fiduciary obligations to any Holders of Class A Limited Partnership Interests or Class B/C Limited Partnership Interests until such Holders become Claimant Trust Beneficiaries in accordance with Section 5.1(c) hereof; provided, further, that the Oversight Board shall not owe fiduciary obligations to a Holder of an Equity Trust Interest if such Holder is named as a defendant in any of the Causes of Action, including Estate Claims, in their capacities as such, it being the intent that the Oversight Board's fiduciary duties are to maximize the value of the Claimant Trust Assets, including the Causes of Action. In all circumstances, the Oversight Board shall act in the best interests of the Claimant Trust Beneficiaries and in furtherance of the purpose of the Claimant Trust. Notwithstanding anything to the contrary contained in this Agreement, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

4.4 Meetings of the Oversight Board. Meetings of the Oversight Board are to be held as necessary to ensure the operation of the Claimant Trust but in no event less often than quarterly. Special meetings of the Oversight Board may be held whenever and wherever called for by the Claimant Trustee or any Member; provided, however, that notice of any such meeting shall be duly given in writing no less than 48 hours prior to such meeting (such notice requirement being subject to any waiver by the Members in the minutes, if any, or other transcript, if any, of proceedings of the Oversight Board). Unless the Oversight Board decides otherwise (which decision shall rest in the reasonable discretion of the Oversight Board), the Claimant Trustee, and each of the Claimant Trustee's designated advisors may, but are not required to, attend meetings of the Oversight Board.

4.5 Unanimous Written Consent. Any action required or permitted to be taken by the Oversight Board in a meeting may be taken without a meeting if the action is taken by unanimous written consents describing the actions taken, signed by all Members and recorded. If any Member informs the Claimant Trustee (via e-mail or otherwise) that he or she objects to the decision, determination, action, or inaction proposed to be made by unanimous written consent, the Claimant Trustee must use reasonable good faith efforts to schedule a meeting on the issue to be set within 48 hours of the request or as soon thereafter as possible on which all members of the Oversight Board are available in person or by telephone. Such decision, determination, action, or inaction must then be made pursuant to the meeting protocols set forth herein.

4.6 Manner of Acting.

(a) A quorum for the transaction of business at any meeting of the Oversight Board shall consist of at least three Members (including no less than one (1) Disinterested Member); provided that if the transaction of business at a meeting would constitute a direct or indirect conflict of interest for the Redeemer Committee, Acis, and/or UBS, at least two Disinterested Members must be present for there to be a quorum. Except as set otherwise forth herein, the majority vote of the Members present at a duly called meeting at which a quorum is present throughout shall be the act of the Oversight Board except as otherwise required by law or as provided in this Agreement. Any or all of the Members may participate in a regular or special meeting by, or conduct the meeting through the use of, conference telephone, video conference, or similar communications equipment by means of which all Persons participating in the meeting may hear each other, in which case any required notice of such meeting may generally describe the arrangements (rather than or in addition of the place) for the holding hereof. Any Member participating in a meeting by this means is deemed to be present in person at the meeting. Voting (including on negative notice) may be conducted by electronic mail or individual communications by the applicable Trustee and each Member.

(b) Any Member who is present and entitled to vote at a meeting of the Oversight Board when action is taken is deemed to have assented to the action taken, subject to the requisite vote of the Oversight Board, unless (i) such Member objects at the beginning of the meeting (or promptly upon his/her arrival) to holding or transacting business at the meeting; (ii) his/her dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he/she delivers written notice (including by electronic or facsimile transmission) of his/her dissent or abstention to the Oversight Board before its adjournment. The right of dissent or abstention is not available to any Member of the Oversight Board who votes in favor of the action taken.

(c) Prior to a vote on any matter or issue or the taking of any action with respect to any matter or issue, each Member shall report to the Oversight Board any conflict of interest such Member has or may have with respect to the matter or issue at hand and fully disclose the nature of such conflict or potential conflict (including, without limitation, disclosing any and all financial or other pecuniary interests that such Member may have with respect to or in connection with such matter or issue, other than solely as a holder of Trust Interests). A Member who, with respect to a matter or issue, has or who may have a conflict of interest whereby such Member's interests are adverse to the interests of the Claimant Trust shall be deemed a "Conflicted Member" who shall not be entitled to vote or take part in any action with respect to such matter or issue. In the event of a Conflicted Member, the vote or action with respect to such matter or issue giving rise to such conflict shall be undertaken only by Members who are not Conflicted Members and, notwithstanding anything contained herein to the contrary, the affirmative vote of only a majority of the Members who are not Conflicted Members shall be required to approve of such matter or issue and the same shall be the act of the Oversight Board.

(d) Each of Acis, the Redeemer Committee, and UBS shall be deemed "Conflicted Members" with respect to any matter or issue related to or otherwise affecting any of their respective Claim(s) (a "Committee Member Claim Matter"). A unanimous vote of the Disinterested Members shall be required to approve of or otherwise take action with respect to any

Committee Member Claim Matter and, notwithstanding anything herein to the contrary, the same shall be the act of the Oversight Board.

4.7 Tenure of the Members of the Oversight Board. The authority of the Members of the Oversight Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Claimant Trust is terminated in accordance with Article IX hereof. The Members of the Oversight Board will serve until such Member's successor is duly appointed or until such Member's earlier death or resignation pursuant to Section 4.8 below, or removal pursuant to Section 4.9 below.

4.8 Resignation. A Member of the Oversight Board may resign by giving prior written notice thereof to the Claimant Trustee and other Members. Such resignation shall become effective on the earlier to occur of (i) the day that is 90 days following the delivery of such notice, (ii) the appointment of a successor in accordance with Section 4.10 below, and (iii) such other date as may be agreed to by the Claimant Trustee and the non-resigning Members of the Oversight Board.

4.9 Removal. A majority of the Oversight Board may remove any Member for Cause or Disability. If any Committee Member has its Claim disallowed in its entirety the representative of such entity will immediately be removed as a Member without the requirement for a vote and a successor will be appointed in the manner set forth herein. Notwithstanding the foregoing, upon the termination of the Claimant Trust, any or all of the Members shall be deemed to have resigned.

4.10 Appointment of a Successor Member.

(a) In the event of a vacancy on the Oversight Board (whether by removal, death, or resignation), a new Member may be appointed to fill such position by the remaining Members acting unanimously; provided, however, that any vacancy resulting from the removal, resignation, or death of a Disinterested Member may only be filled by a disinterested Person unaffiliated with any Claimant or constituency in the Chapter 11 Case; provided, further, that if an individual serving as the representative of a Committee Member resigns from its role as representative, such resignation shall not be deemed resignation of the Committee Member itself and such Committee Member shall have the exclusive right to designate its replacement representative for the Oversight Board. The appointment of a successor Member will be further evidenced by the Claimant Trustee's filing with the Bankruptcy Court (to the extent a final decree has not been entered) and posting on the Claimant Trustee's website a notice of appointment, at the direction of the Oversight Board, which notice will include the name, address, and telephone number of the successor Member.

(b) Immediately upon the appointment of any successor Member, the successor Member shall assume all rights, powers, duties, authority, and privileges of a Member hereunder and such rights and privileges will be vested in and undertaken by the successor Member without any further act. A successor Member will not be liable personally for any act or omission of a predecessor Member.

(c) Every successor Member appointed hereunder shall execute, acknowledge, and deliver to the Claimant Trustee and other Members an instrument accepting the appointment

under this Agreement and agreeing to be bound thereto, and thereupon the successor Member without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of a Member hereunder.

4.11 Compensation and Reimbursement of Expenses. Unless determined by the Oversight Board, no Member shall be entitled to compensation in connection with his or her service to the Oversight Board; provided, however, that a Disinterested Member shall be compensated in a manner and amount initially set by the other Members and as thereafter amended from time to time by agreement between the Oversight Board and the Disinterested Member. Notwithstanding the foregoing, the Claimant Trustee will reimburse the Members for all reasonable and documented out-of-pocket expenses incurred by the Members in connection with the performance of their duties hereunder (which shall not include fees, costs, and expenses of legal counsel).

4.12 Confidentiality. Each Member shall, during the period that such Member serves as a Member under this Agreement and following the termination of this Agreement or following such Member's removal or resignation, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Person to which any of the Claimant Trust Assets relates or of which such Member has become aware in the Member's capacity as a Member ("Confidential Trust Information"), except as otherwise required by law. For the avoidance of doubt, a Member's Affiliates, employer, and employer's Affiliates (and collectively with such Persons' directors, officers, partners, principals and employees, "Member Affiliates") shall not be deemed to have received Confidential Trust Information solely due to the fact that a Member has received Confidential Trust Information in his or her capacity as a Member of the Oversight Board and to the extent that (a) a Member does not disclose any Confidential Trust Information to a Member Affiliate, (b) the business activities of such Member Affiliates are conducted without reference to, and without use of, Confidential Trust Information, and (c) no Member Affiliate is otherwise directed to take, or takes on behalf of a Member or Member Affiliate, any actions that are contrary to the terms of this Section 4.12.

ARTICLE V.
TRUST INTERESTS

5.1 Claimant Trust Interests.

(a) General Unsecured Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue General Unsecured Claim Trust Interests to Holders of Allowed Class 8 General Unsecured Claims (the "GUC Beneficiaries"). The Claimant Trustee shall allocate to each Holder of an Allowed Class 8 General Unsecured Claim a General Unsecured Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 8 Claim bears to the total amount of the Allowed Class 8 Claims. The General Unsecured Claim Trust Interests shall be entitled to distributions from the Claimant Trust Assets in accordance with the terms of the Plan and this Agreement.

(b) Subordinated Claim Trust Interests. On the date hereof, or on the date such Claim becomes Allowed under the Plan, the Claimant Trust shall issue Subordinated Claim Trust Interests to Holders of Class 9 Subordinated Claims (the "Subordinated Beneficiaries"). The

Claimant Trustee shall allocate to each Holder of an Allowed Class 9 Subordinated Claim a Subordinated Claim Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 9 Claim bears to the total of amount of the Allowed Class 9. The Subordinated Trust Interests shall be subordinated in right and priority to the General Unsecured Claim Trust Interests. The Subordinated Beneficiaries shall only be entitled to distributions from the Claimant Trust Assets after each GUC Beneficiary has been repaid in full with applicable interest on account of such GUC Beneficiary's Allowed General Unsecured Claim, and all Disputed General Unsecured Claims have been resolved, in accordance with the terms of the Plan and this Agreement.

(c) Contingent Trust Interests. On the date hereof, or on the date such Interest becomes Allowed under the Plan, the Claimant Trust shall issue Contingent Interests to Holders of Allowed Class 10 Class B/C Limited Partnership Interests and Holders of Allowed Class 11 Class A Limited Partnership Interests (collectively, the "Equity Holders"). The Claimant Trustee shall allocate to each Holder of Allowed Class 10 Class B/C Limited Partnership Interests and each Holder of Allowed Class 11 Class A Limited Partnership Interests a Contingent Trust Interest equal to the ratio that the amount of each Holder's Allowed Class 10 or Class 11 Interest bears to the total amount of the Allowed Class 10 or Class 11 Interests, as applicable, under the Plan. Contingent Trust Interests shall not vest, and the Equity Holders shall not have any rights under this Agreement, unless and until the Claimant Trustee files with the Bankruptcy Court a certification that all GUC Beneficiaries have been paid indefeasibly in full, including, to the extent applicable, all accrued and unpaid post-petition interest consistent with the Plan and all Disputed Claims have been resolved (the "GUC Payment Certification"). Equity Holders will only be deemed "Beneficiaries" under this Agreement upon the filing of a GUC Payment Certification with the Bankruptcy Court, at which time the Contingent Trust Interests will vest and be deemed "Equity Trust Interests." The Equity Trust Interests shall be subordinated in right and priority to Subordinated Trust Interests, and distributions on account thereof shall only be made if and when Subordinated Beneficiaries have been repaid in full on account of such Subordinated Beneficiary's Allowed Subordinated Claim, in accordance with the terms of the Plan, the Confirmation Order, and this Agreement. The Equity Trust Interests distributed to Allowed Holders of Class A Limited Partnership Interests shall be subordinated to the Equity Trust Interests distributed to Allowed Holders of Class B/C Limited Partnership Interests.

5.2 Interests Beneficial Only. The ownership of the beneficial interests in the Claimant Trust shall not entitle the Claimant Trust Beneficiaries to any title in or to the Claimant Trust Assets (which title shall be vested in the Claimant Trust) or to any right to call for a partition or division of the Claimant Trust Assets or to require an accounting. No Claimant Trust Beneficiary shall have any governance right or other wright to direct Claimant Trust activities.

5.3 Transferability of Trust Interests. No transfer, assignment, pledge, hypothecation, or other disposition of a Trust Interest may be effected until (i) such action is unanimously approved by the Oversight Board, (ii) the Claimant Trustee and Oversight Board have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary to assure that any such disposition shall not cause the Claimant Trust to be subject to entity-level taxation for U.S. federal income tax purposes, and (iii) either (x) the Claimant Trustee and Oversight Board, acting unanimously, have received such legal advice or other information that they, in their sole and absolute discretion, deem necessary or appropriate to assure that any such disposition shall not (a) require the Claimant Trust to comply with the registration and/or

reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act or (b) cause any adverse effect under the Investment Advisers Act, or (y) the Oversight Board, acting unanimously, has determined, in its sole and absolute discretion, to cause the Claimant Trust to become a public reporting company and/or make periodic reports under the Exchange Act (provided that it is not required to register under the Investment Company Act or register its securities under the Securities Act) to enable such disposition to be made. In the event that any such disposition is allowed, the Oversight Board and the Claimant Trustee may add such restrictions upon such disposition and other terms of this Agreement as are deemed necessary or appropriate by the Claimant Trustee, with the advice of counsel, to permit or facilitate such disposition under applicable securities and other laws.

5.4 Registry of Trust Interests.

(a) Registrar. The Claimant Trustee shall appoint a registrar, which may be the Claimant Trustee (the "Registrar"), for the purpose of recording ownership of the Trust Interests as provided herein. The Registrar, if other than the Claimant Trustee, shall be an institution or person acceptable to the Oversight Board. For its services hereunder, the Registrar, unless it is the Claimant Trustee, shall be entitled to receive reasonable compensation from the Claimant Trust as a Claimant Trust Expense.

(b) Trust Register. The Claimant Trustee shall cause to be kept at the office of the Registrar, or at such other place or places as shall be designated by the Registrar from time to time, a registry of the Claimant Trust Beneficiaries and the Equity Holders (the "Trust Register"), which shall be maintained pursuant to such reasonable regulations as the Claimant Trustee and the Registrar may prescribe.

(c) Access to Register by Beneficiaries. The Claimant Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Claimant Trustee, and in accordance with reasonable regulations prescribed by the Claimant Trustee, to inspect and, at the expense of the Claimant Trust Beneficiary make copies of the Trust Register, in each case for a purpose reasonable and related to such Claimant Trust Beneficiary's Trust Interest.

5.5 Exemption from Registration. The Parties hereto intend that the rights of the Claimant Trust Beneficiaries arising under this Claimant Trust shall not be "securities" under applicable laws, but none of the Parties represent or warrant that such rights shall not be securities or shall not be entitled to exemption from registration under the applicable securities laws. The Oversight Board, acting unanimously, and Claimant Trustee may amend this Agreement in accordance with Article IX hereof to make such changes as are deemed necessary or appropriate with the advice of counsel, to ensure that the Claimant Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the TIA, or the Investment Company Act. The Trust Interests shall not have consent or voting rights or otherwise confer on the Claimant Trust Beneficiaries any rights similar to the rights of a shareholder of a corporation in respect of any actions taken or to be taken, or decisions made or to be made, by the Oversight Board and/or the Claimant Trustee under this Agreement.

5.6 Absolute Owners. The Claimant Trustee may deem and treat the Claimant Trust Beneficiary of record as determined pursuant to this Article 5 as the absolute owner of such Trust Interests for the purpose of receiving distributions and payment thereon or on account thereof and for all other purposes whatsoever.

5.7 Effect of Death, Incapacity, or Bankruptcy. The death, incapacity, or bankruptcy of any Claimant Trust Beneficiary during the term of the Claimant Trust shall not (i) entitle the representatives or creditors of the deceased Beneficiary to any additional rights under this Agreement, or (ii) otherwise affect the rights and obligations of any of other Claimant Trust Beneficiary under this Agreement.

5.8 Change of Address. Any Claimant Trust Beneficiary may, after the Effective Date, select an alternative distribution address by providing notice to the Claimant Trustee identifying such alternative distribution address. Such notification shall be effective only upon receipt by the Claimant Trustee. Absent actual receipt of such notice by the Claimant Trustee, the Claimant Trustee shall not recognize any such change of distribution address.

5.9 Standing. No Claimant Trust Beneficiary shall have standing to direct the Claimant Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the Claimant Trust Assets. No Claimant Trust Beneficiary shall have any direct interest in or to any of the Claimant Trust Assets.

5.10 Limitations on Rights of Claimant Trust Beneficiaries.

(a) The Claimant Trust Beneficiaries shall have no rights other than those set forth in this Agreement, the Confirmation Order, or the Plan (including any Plan Supplement documents incorporated therein).

(b) In any action taken by a Claimant Trust Beneficiary against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, the prevailing party will be entitled to reimbursement of attorneys' fees and other costs; provided, however, that any fees and costs shall be borne by the Claimant Trust on behalf of any such Trustee or Member, as set forth herein.

(c) A Claimant Trust Beneficiary who brings any action against the Claimant Trust, a current or former Trustee, or a current or former Member, in their capacity as such, may be required by order of the Bankruptcy Court to post a bond ensuring that the full costs of a legal defense can be reimbursed. A request for such bond can be made by the Claimant Trust or by Claimant Trust Beneficiaries constituting in the aggregate at least 50% of the most senior class of Claimant Trust Interests.

(d) Any action brought by a Claimant Trust Beneficiary must be brought in the United States Bankruptcy Court for the Northern District of Texas. Claimant Trust Beneficiaries are deemed to have waived any right to a trial by jury

(e) The rights of Claimant Trust Beneficiaries to bring any action against the Claimant Trust, a current or former Trustee, or current or former Member, in their capacity as such, shall not survive the final distribution by the Claimant Trust.

ARTICLE VI.
DISTRIBUTIONS

6.1 Distributions.

(a) Notwithstanding anything to the contrary contained herein, the Claimant Trustee shall distribute to holders of Trust Interests at least annually the Cash on hand net of any amounts that (a) are reasonably necessary to maintain the value of the Claimant Trust Assets pending their monetization or other disposition during the term of the Claimant Trust, (b) are necessary to pay or reserve for reasonably incurred or anticipated Claimant Trust Expenses and any other expenses incurred by the Claimant Trust (including, but not limited to, any taxes imposed on or payable by the Claimant Trustee with respect to the Claimant Trust Assets), (c) are necessary to pay or reserve for the anticipated costs and expenses of the Litigation Sub-Trust, (d) are necessary to satisfy or reserve for other liabilities incurred or anticipated by the Claimant Trustee in accordance with the Plan and this Agreement (including, but not limited to, indemnification obligations and similar expenses in such amounts and for such period of time as the Claimant Trustee determines, in good faith, may be necessary and appropriate, which determination shall not be subject to consent of the Oversight Board, may not be modified without the express written consent of the Claimant Trustee, and shall survive termination of the Claimant Trustee), (e) are necessary to maintain the Disputed Claims Reserve, and (f) are necessary to pay Allowed Claims in Class 1 through Class 7. Notwithstanding anything to the contrary contained in this paragraph, the Claimant Trustee shall exercise reasonable efforts to make initial distributions within six months of the Effective Date, and the Oversight Board may not prevent such initial distributions unless upon a unanimous vote of the Oversight Board. The Claimant Trustee may otherwise distribute all Claimant Trust Assets on behalf of the Claimant Trust in accordance with this Agreement and the Plan at such time or times as the Claimant Trustee is directed by the Oversight Board.

(b) At the request of the Reorganized Debtor, subject in all respects to the provisions of this Agreement, the Claimant Trustee shall distribute Cash to the Reorganized Debtor, as Distribution Agent with respect to Claims in Class 1 through 7, sufficient to satisfy Allowed Claims in Class 1 through Class 7.

(c) All proceeds of Claimant Trust Assets shall be distributed in accordance with the Plan and this Agreement.

6.2 Manner of Payment or Distribution. All distributions made by the Claimant Trustee on behalf of the Claimant Trust to the Claimant Trust Beneficiaries shall be payable by the Claimant Trustee directly to the Claimant Trust Beneficiaries of record as of the twentieth (20th) day prior to the date scheduled for the distribution, unless such day is not a Business Day, then such date or the distribution shall be the following Business Day, but such distribution shall be deemed to have been completed as of the required date.

6.3 Delivery of Distributions. All distributions under this Agreement to any Claimant Trust Beneficiary shall be made, as applicable, at the address of such Claimant Trust Beneficiary (a) as set forth on the Schedules filed with the Bankruptcy Court or (b) on the books and records

of the Debtor or their agents, as applicable, unless the Claimant Trustee has been notified in writing of a change of address pursuant to Section 5.6 hereof.

6.4 Disputed Claims Reserves. There will be no distributions under this Agreement or the Plan on account of Disputed Claims pending Allowance. The Claimant Trustee will maintain a Disputed Claims Reserve as set forth in the Plan and will make distributions from the Disputed Claims Reserve as set forth in the Plan.

6.5 Undeliverable Distributions and Unclaimed Property. All undeliverable distributions and unclaimed property shall be treated in the manner set forth in the Plan.

6.6 *De Minimis* Distributions. Distributions with a value of less than $100 will be treated in accordance with the Plan.

6.7 United States Claimant Trustee Fees and Reports. **After the Effective Date, the Claimant Trust shall pay as a Claimant Trust Expense, all fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Claimant Trust's disbursements until the Chapter 11 Case is closed. After the Effective Date, the Claimant Trust shall prepare and serve on the Office of the United States Trustee such quarterly disbursement reports for the Claimant Trust as required by the Office of the United States Trustee Office for as long as the Chapter 11 Case remains open.**

ARTICLE VII.
TAX MATTERS

7.1 Tax Treatment and Tax Returns.

(a) It is intended for the initial transfer of the Claimant Trust Assets to the Claimant Trust to be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable) as if the Debtor transferred the Claimant Trust Assets (other than the amounts set aside in the Disputed Claim Reserve, if the Claimant Trustee makes the election described below) to the Claimant Trust Beneficiaries and then, immediately thereafter, the Claimant Trust Beneficiaries transferred the Claimant Trust Assets to the Claimant Trust. Consistent with such treatment, (i) it is intended that the Claimant Trust will be treated as a grantor trust for federal income tax purposes (and foreign, state, and local income tax purposes where applicable), (ii) it is intended that the Claimant Trust Beneficiaries will be treated as the grantors of the Claimant Trust and owners of their respective share of the Claimant Trust Assets for federal income tax purposes (and foreign, state, and local income tax purposes where applicable). The Claimant Trustee shall file all federal income tax returns (and foreign, state, and local income tax returns where applicable) for the Claimant Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

(b) The Claimant Trustee shall determine the fair market value of the Claimant Trust Assets as of the Effective Date and notify the applicable Beneficiaries of such valuation, and such valuation shall be used consistently by all parties for all federal income tax purposes.

(c) The Claimant Trustee may file an election pursuant to Treasury Regulation 1.468B-9(c) to treat the Disputed Claims Reserve as a disputed ownership fund, in which case the

Claimant Trustee will file federal income tax returns and pay taxes for the Disputed Claim Reserve as a separate taxable entity.

7.2 Withholding. The Claimant Trustee may withhold from any amount distributed from the Claimant Trust to any Claimant Trust Beneficiary such sum or sums as are required to be withheld under the income tax laws of the United States or of any state or political subdivision thereof. Any amounts withheld pursuant hereto shall be deemed to have been distributed to and received by the applicable Beneficiary. As a condition to receiving any distribution from the Claimant Trust, the Claimant Trustee may require that the Beneficiary provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary for the Claimant Trustee to comply with applicable tax reporting and withholding laws. If a Beneficiary fails to comply with such a request within one year, such distribution shall be deemed an unclaimed distribution and treated in accordance with Section 6.5(b) of this Agreement.

ARTICLE VIII.
STANDARD OF CARE AND INDEMNIFICATION

8.1 Standard of Care. None of the Claimant Trustee, acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan, the Delaware Trustee, acting in its capacity as Delaware Trustee, the Oversight Board, or any current or any individual Member, solely in their capacity as Members of the Oversight Board, shall be personally liable to the Claimant Trust or to any Person (including any Claimant Trust Beneficiary) in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the acts or omissions of any such Claimant Trustee, Delaware Trustee, Oversight Board, or Member constituted fraud, willful misconduct, or gross negligence. The employees, agents and professionals retained by the Claimant Trust, the Claimant Trustee, Delaware Trustee, Oversight Board, or individual Member shall not be personally liable to the Claimant Trust or any other Person in connection with the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that such acts or omissions by such employee, agent, or professional constituted willful fraud, willful misconduct or gross negligence. None of the Claimant Trustee, Delaware Trustee, Oversight Board, or any Member shall be personally liable to the Claimant Trust or to any Person for the acts or omissions of any employee, agent or professional of the Claimant Trust or Claimant Trustee taken or not taken in good faith reliance on the advice of professionals or, as applicable, with the approval of the Bankruptcy Court, unless it is ultimately determined by order of the Bankruptcy Court or, if the Bankruptcy Court either declines to exercise jurisdiction over such action, or cannot exercise jurisdiction over such action, such other court of competent jurisdiction that the Claimant Trustee, Delaware Trustee, Oversight Board, or Member acted with gross negligence or willful misconduct in the selection, retention, or supervision of such employee, agent or professional of the Claimant Trust.

8.2 Indemnification. The Claimant Trustee (including each former Claimant Trustee), WTNA in its individual capacity and as Delaware Trustee, the Oversight Board, and all past and present Members (collectively, in their capacities as such, the "Indemnified Parties") shall be

indemnified by the Claimant Trust against and held harmless by the Claimant Trust from any losses, claims, damages, liabilities or expenses (including, without limitation, attorneys' fees, disbursements, and related expenses) to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought or threatened against any of the Indemnified Parties in their capacity as Claimant Trustee, Delaware Trustee, Oversight Board, or Member, or in connection with any matter arising out of or related to the Plan, this Agreement, or the affairs of the Claimant Trust, unless it is ultimately determined by order of the Bankruptcy Court or other court of competent jurisdiction that the Indemnified Party's acts or omissions constituted willful fraud, willful misconduct, or gross negligence. If the Indemnified Party becomes involved in any action, proceeding, or investigation in connection with any matter arising out of or in connection with the Plan, this Agreement or the affairs of the Claimant Trust for which an indemnification obligation could arise, the Indemnified Party shall promptly notify the Claimant Trustee and/or Oversight Board, as applicable; provided, however, that the failure of an Indemnified Party to promptly notify the Claimant Trustee and/or Oversight Board of an indemnification obligation will not excuse the Claimant Trust from indemnifying the Indemnified Party unless such delay has caused the Claimant Trust material harm. The Claimant Trust shall pay, advance or otherwise reimburse on demand of an Indemnified Party the Indemnified Party's reasonable legal and other defense expenses (including, without limitation, the cost of any investigation and preparation and attorney fees, disbursements, and other expenses related to any claim that has been brought or threatened to be brought) incurred in connection therewith or in connection with enforcing his or her rights under this Section 8.2 as a Claimant Trust Expense, and the Claimant Trust shall not refuse to make any payments to the Indemnified Party on the assertion that the Indemnified Party engaged in willful misconduct or acted in bad faith; provided that the Indemnified Party shall be required to repay promptly to the Claimant Trust the amount of any such advanced or reimbursed expenses paid to the Indemnified Party to the extent that it shall be ultimately determined by Final Order that the Indemnified Party engaged in willful fraud, willful misconduct, or gross negligence in connection with the affairs of the Claimant Trust with respect to which such expenses were paid; provided, further, that any such repayment obligation shall be unsecured and interest free. The Claimant Trust shall indemnify and hold harmless the employees, agents and professionals of the Claimant Trust and Indemnified Parties to the same extent as provided in this Section 8.2 for the Indemnified Parties. For the avoidance of doubt, the provisions of this Section 8.2 shall remain available to any former Claimant Trustee, WTNA in its individual capacity and as Delaware Trustee, or Member or the estate of any decedent Claimant Trustee or Member, solely in their capacities as such. The indemnification provided hereby shall be a Claimant Trust Expense and shall not be deemed exclusive of any other rights to which the Indemnified Party may now or in the future be entitled to under the Plan or any applicable insurance policy. The failure of the Claimant Trust to pay or reimburse an Indemnified Party as required under this Section 8.2 shall constitute irreparable harm to the Indemnified Party and such Indemnified Party shall be entitled to specific performance of the obligations herein. The terms of this Section 8.2 shall survive the termination of this Agreement and the resignation or removal of any Indemnified Party.

8.3 No Personal Liability. Except as otherwise provided herein, neither of the Trustees nor Members of the Oversight Board shall be subject to any personal liability whatsoever, whether in tort, contract, or otherwise, to any Person in connection with the affairs of the Claimant Trust to the fullest extent provided under Section 3803 of the Delaware Statutory Trust Act, and all Persons asserting claims against the Claimant Trustee, Litigation Trustee, or any Members, or

otherwise asserting claims of any nature in connection with the affairs of the Claimant Trust, shall look solely to the Claimant Trust Assets for satisfaction of any such claims.

8.4 Other Protections. To the extent applicable and not otherwise addressed herein, the provisions and protections set forth in Article IX of the Plan will apply to the Claimant Trust, the Claimant Trustee, the Litigation Trustee, and the Members.

ARTICLE IX.
TERMINATION

9.1 Duration. The Trustees, the Claimant Trust, and the Oversight Board shall be discharged or dissolved, as the case may be, at such time as: (a) the Litigation Trustee determines that the pursuit of Estate Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Estate Claims, (b) the Claimant Trustee determines that the pursuit of Causes of Action (other than Estate Claims) is not likely to yield sufficient additional proceeds to justify further pursuit of such Causes of Action, (c) the Clamant Trustee determines that the pursuit of sales of other Claimant Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit of such sales of Claimant Trust Assets, (d) all objections to Disputed Claims and Equity Interests are fully resolved, (e) the Reorganized Debtor is dissolved, and (f) all Distributions required to be made by the Claimant Trustee to the Claimant Trust Beneficiaries under the Plan have been made, but in no event shall the Claimant Trust be dissolved later than three years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such third anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed two years, together with any prior extensions) is necessary to facilitate or complete the recovery on, and liquidation of, the Claimant Trust Assets.

9.2 Distributions in Kind. Upon dissolution of the Claimant Trust, any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan will be transferred (in the sole discretion of the Claimant Trustee) in Cash or in-kind to the Holders of the Claimant Trust Interests as provided in the Claimant Trust Agreement.

9.3 Continuance of the Claimant Trustee for Winding Up. After dissolution of the Claimant Trust and for purpose of liquidating and winding up the affairs of the Claimant Trust, the Claimant Trustee shall continue to act as such until the Claimant Trustee's duties have been fully performed. Prior to the final distribution of all remaining Claimant Trust Assets, the Claimant Trustee shall be entitled to reserve from such assets any and all amounts required to provide for the Claimant Trustee's own costs and expenses, including a reserve to fund any potential indemnification or similar obligations of the Claimant Trust, until such time as the winding up of the Claimant Trust is completed. Upon the dissolution of the Claimant Trust and completion of the winding up of the assets, liabilities and affairs of the Claimant Trust pursuant to the Delaware Statutory Trust Act, the Claimant Trustee shall prepare, execute and file a certificate of cancellation with the State of Delaware to terminate the Claimant Trust pursuant to Section 3810 of the Delaware Statutory Trust Act (such date upon which the certificate of cancellation is filed shall be referred to as the "Termination Date"). If the Delaware Trustee's signature is required for purposes of filing such certificate of cancellation, the Claimant Trustee shall provide the Delaware

Trustee with written direction to execute such certificate of cancellation, and the Delaware Trustee shall be entitled to conclusively and exclusively rely upon such written direction without further inquiry. Upon the Termination date, the Claimant Trustee shall retain for a period of two (2) years, as a Claimant Trust Expense, the books, records, Claimant Trust Beneficiary lists, and certificated and other documents and files that have been delivered to or created by the Claimant Trustee. At the Claimant Trustee's discretion, all of such records and documents may, but need not, be destroyed at any time after two (2) years from the Termination Date.

9.4 Termination of Duties. Except as otherwise specifically provided herein, upon the Termination Date of the Claimant Trust, the Claimant Trustee, the Oversight Board and its Members shall have no further duties or obligations hereunder.

9.5 No Survival. The rights of Claimant Trust Beneficiaries hereunder shall not survive the Termination Date, provided that such Claimant Trust Beneficiaries are provided with notice of such Termination Date.

ARTICLE X.
AMENDMENTS AND WAIVER

The Claimant Trustee, with the consent of a simple majority of the Oversight Board, may amend this Agreement to correct or clarify any non-material provisions. This Agreement may not otherwise be amended, supplemented, otherwise modified, or waived in any respect except by an instrument in writing signed by the Claimant Trustee and with the unanimous approval of the Oversight Board, and the approval of the Bankruptcy Court, after notice and a hearing; provided that the Claimant Trustee must provide the Oversight Board with prior written notice of any non-material amendments, supplements, modifications, or waivers of this Agreement. No amendment or waiver of this Agreement that adversely affects the Delaware Trustee shall be effective unless the Delaware Trustee has consented thereto in writing in its sole and absolute discretion.

ARTICLE XI.
MISCELLANEOUS

11.1 Trust Irrevocable. Except as set forth in this Agreement, establishment of the Claimant Trust by this Agreement shall be irrevocable and shall not be subject to revocation, cancellation or rescission by the Claimant Trust Beneficiaries.

11.2 Bankruptcy of Claimant Trust Beneficiaries. The dissolution, termination, bankruptcy, insolvency or other similar incapacity of any Claimant Trust Beneficiary shall not permit any creditor, trustee, or any other Claimant Trust Beneficiary to obtain possession of, or exercise legal or equitable remedies with respect to, the Claimant Trust Assets.

11.3 Claimant Trust Beneficiaries have No Legal Title to Claimant Trust Assets. No Claimant Trust Beneficiary shall have legal title to any part of the Claimant Trust Assets.

11.4 Agreement for Benefit of Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any Person other than the Claimant Trustee, Oversight Board, and the Claimant Trust Beneficiaries any legal or equitable right, remedy or claim under or in

respect of this Agreement. The Claimant Trust Assets shall be held for the sole and exclusive benefit of the Claimant Trust Beneficiaries.

11.5 Notices. All notices, directions, instructions, confirmations, consents and requests required or permitted by the terms hereof shall, unless otherwise specifically provided herein, be in writing and shall be sent by first class mail, facsimile, overnight mail or in the case of mailing to a non-United States address, air mail, postage prepaid, addressed to:

(a) If to the Claimant Trustee:

Claimant Trustee
c/o Highland Capital Management, L.P.
100 Crescent Court, Suite 1850
Dallas, Texas 75201

With a copy to:

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Blvd, 13th Floor
Los Angeles, CA 90067
Attn: Jeffrey Pomerantz (jpomerantz@pszjlaw.com)
Ira Kharasch (ikharasch@pszjlaw.com)
Gregory Demo (gdemo@pszjlaw.com)

(b) If to the Delaware Trustee:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, DE 19890
Attn: Corporate Trust Administration/David Young
Email: nmarlett@wilmingtontrust.com
Phone: (302) 636-6728
Fax: (302) 636-4145

Notice mailed shall be effective on the date mailed or sent. Any Person may change the address at which it is to receive notices under this Agreement by furnishing written notice pursuant to the provisions of this Section 11.5 to the entity to be charged with knowledge of such change.

11.6 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in another jurisdiction.

11.7 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.8 Binding Effect, etc. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Claimant Trust, the Claimant Trustee, and the Claimant Trust Beneficiaries, and their respective successors and assigns. Any notice, direction, consent, waiver or other instrument or action by any Claimant Trust Beneficiary shall bind its successors and assigns.

11.9 Headings; References. The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.10 Governing Law. This Agreement shall in all respects be governed by, and construed in accordance with the laws of the State of Delaware, including all matters of constructions, validity and performance.

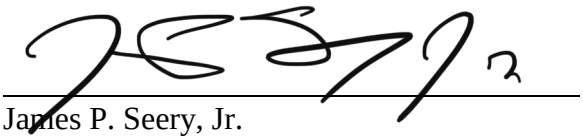
11.11 Consent to Jurisdiction. Each of the parties hereto, each Member (solely in their capacity as Members of the Oversight Board), and each Claimant Trust Beneficiary consents and submits to the exclusive jurisdiction of the Bankruptcy Court for any action or proceeding instituted for the enforcement and construction of any right, remedy, obligation, or liability arising under or by reason of this Agreement, the Plan or any act or omission of the Claimant Trustee (acting in his capacity as the Claimant Trustee or in any other capacity contemplated by this Agreement or the Plan), Litigation Trustee (acting in his capacity as the Litigation Trustee or in any other capacity contemplated by this Agreement or the Plan), the Oversight Board. or any individual Member (solely in their capacity as Members of the Oversight Board); *provided, however*, that if the Bankruptcy Court either declines to exercise jurisdiction over such action or cannot exercise jurisdiction over such action, such action may be brought in the state or federal courts located in the Northern District of Texas.

11.12 Transferee Liabilities. The Claimant Trust shall have no liability for, and the Claimant Trust Assets shall not be subject to, any claim arising by, through or under the Debtor except as expressly set forth in the Plan or in this Agreement. In no event shall the Claimant Trustee or the Claimant Trust Beneficiaries have any personal liability for such claims. If any liability shall be asserted against the Claimant Trust or the Claimant Trustee as the transferee of the Claimant Trust Assets on account of any claimed liability of, through or under the Debtor or Reorganized Debtor, the Claimant Trustee may use such part of the Claimant Trust Assets as may be necessary to contest any such claimed liability and to pay, compromise, settle or discharge same on terms reasonably satisfactory to the Claimant Trustee as a Claimant Trust Expense.

[Remainder of Page Intentionally Blank]

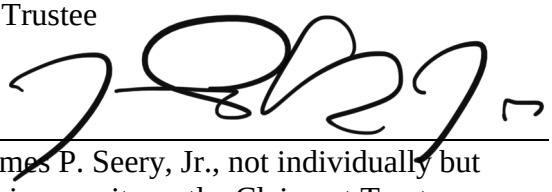
IN WITNESS HEREOF, the parties hereto have caused this Claimant Trust Agreement to be duly executed by their respective officers thereunto duly authorized on the day and year first written above.

Highland Capital Management, L.P.

By: 

James P. Seery, Jr.
Chief Executive Officer and
Chief Restructuring Officer

Claimant Trustee

By: 

James P. Seery, Jr., not individually but solely in his capacity as the Claimant Trustee

Wilmington Trust, National Association,
as Delaware Trustee

By:_____
Name: Neumann Marlett
Title: Bank Officer

EXHIBIT 50

From: "John A. Morris" <jmorris@pszjlaw.com>
Date: March 10, 2022 at 6:29:37 PM GMT
To: jpseeryjr@gmail.com, Thomas Surgent <TSurgent@highlandcapital.com>, David Klos <DKlos@highlandcapital.com>
Cc: Jeff Pomerantz <jpomerantz@pszjlaw.com>, "Gregory V. Demo" <GDemo@pszjlaw.com>
Subject: FW: Highland: Daugherty Settlement (RCP Track Record)

FYI

From: John A. Morris
Sent: Thursday, March 10, 2022 1:23 PM
To: 'Drew K. York' <dyork@grayreed.com>; Thomas Uebler <tuebler@mdsulaw.com>
Cc: Gregory V. Demo (GDemo@pszjlaw.com) <GDemo@pszjlaw.com>
Subject: Highland: Daugherty Settlement (RCP Track Record)

Drew and Tom,

In accordance with paragraph 4 of the settlement, attached is data and information constituting investment performance track record of RCP during Pat's tenure at HCMLP (the "Track Record Data").

The Track Record Data is being provided solely in accordance with the Settlement Agreement between the parties, and no representation or warranty is made regarding the content of such Data. HCMLP has no duty, responsibility, or obligation to determine whether any use of such information by Pat complies with applicable law, including applicable securities laws, rules and regulations. Past Performance does not guarantee future results. Performance during time periods shown is limited to those periods and do not reflect the performance in subsequent periods, including any impacts of different economic or market cycles. There can be no assurance that similar performance will be experienced. More complete information regarding the RCP fund, including any fees charged by the fund, are contained in the offering documents for the Fund.

Please let me know if you have any questions.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

<image002.png>

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

<RCP - Historical Returns (Quarterly) through 10.31.11.xlsx>
<Highland RCP Offshore Dec 31 2009 Signed Opinion.pdf>
<Highland RCP Onshore Dec 31 2009 signed opinion.pdf>
<Highland Restoration Capital 12-31-08.pdf>
<Highland Restoration Offshore 12-31-08 Final.pdf>
<RCP Offshore 12.31.10 AFS.pdf>
<RCP Onshore 12.31.10 AFS.pdf>
<Highland Restoration Capital Partners LP 2011 AFS_FINAL.pdf>
<Highland Restoration Capital Partners Offshore LP 2011 FINAL.pdf>

EXHIBIT 51

From: James Romey <jromey@dsiconsulting.com>
Date: October 24, 2022 at 11:49:30 PM GMT+1
To: James Seery <jpseeryjr@gmail.com>, Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: Thomas Uebler <tuebler@mdsulaw.com>, pdaugherty <pdaugherty@newhighlandcapital.com>, David Klos <DKlos@highlandcapital.com>, Thomas Surgent <TSurgent@highlandcapital.com>, "James Seery Jr." <jseery@highlandcapital.com>
Subject: RE: Daugherty Settlement Agreement Follow-Up

Patrick and Thomas,

You should receive an email from Sharefile with your access shortly. Let me know if you're still having trouble or don't receive the e-mail.

James

James Romey
Director
Development Specialists, Inc.
10 S. LaSalle Street, Suite 3300
Chicago, IL 60603
+1.312.263.4141 | office
+1.415.517.5502 | direct
www.DSIConsulting.com

This e-mail message may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

From: James Seery <jpseeryjr@gmail.com>
Sent: Monday, October 24, 2022 5:42 PM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: Thomas Uebler <tuebler@mdsulaw.com>; pdaugherty <pdaugherty@newhighlandcapital.com>; David Klos <DKlos@highlandcapital.com>; Thomas Surgent <TSurgent@highlandcapital.com>; James Seery Jr. <jseery@highlandcapital.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

DSI will send an email with an invite link. We will use the new email below.

Thanks.

Jim

Sent from my iPhone

On Oct 24, 2022, at 6:36 PM, Patrick Daugherty <pdaugherty@glacierlakecap.com> wrote:

Also, please use my pdaugherty@newhighlandcapital.com address for access purposes.

thanks

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Sent: Monday, October 24, 2022 5:31 PM
To: James Seery <jpseeryjr@gmail.com>; Thomas Uebler <tuebler@mdsulaw.com>
Cc: David Klos <dklos@highlandcapital.com>; Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

Sorry if I missed it but is there a link for me to access this data?

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Sent: Monday, October 24, 2022 5:26 PM
To: James Seery <jpseeryjr@gmail.com>; Thomas Uebler <tuebler@mdsulaw.com>
Cc: David Klos <dklos@highlandcapital.com>; Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

Thanks Jim. Please add Tom Huebler (copied) for access to the HERA data site.

Best - Pat

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Monday, October 24, 2022 11:57 AM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: David Klos <dklos@highlandcapital.com>; Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

Pat:

Following up on the distribution below.

We took the liberty of setting up the distribution through developmentspecialists.sharefile.com using your Glacier Lake Capital email address (pdaugherty@glacierlakecap.com). Please let us know if you would prefer to use another email or you want anyone else added to the site. You should be receiving any email to Glacier Lake that will provide you with access to the site.

We propose to keep the site open until the close of business on October 31, 2022. That should give you and any of your lawyers or accountants (that you advise us to provision with their email addresses) plenty of time to download the information.

Please let me know if this works for you.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: James Seery <jpseeryjr@gmail.com>
Date: Wednesday, October 19, 2022 at 1:23 PM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: David Klos <dklos@highlandcapital.com>, Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Daugherty Settlement Agreement Follow-Up

Pat,

To follow-up on your recent request for additional information pertaining to the HERA/ERA entities, members of the Highland team have worked to gather further

documentation for you. We previously provided corporate documents to you as well as the Quickbooks accounting file to your accountants using their file sharing system.

If acceptable to you, we propose to deliver this new large document delivery (400+ files) via DSI's Sharefile system. Use is straight forward and allows you to download all of the files in an orderly manner. Otherwise, please let me know if there is a different way you would prefer to receive these additional electronic files.

Under our settlement agreement, HCMLP agreed to "transfer its interests in HERA and ERA" to you, and that transfer "include[s] the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system." The transfers are without any liability or material cost to HCMLP. HCMLP also agreed to provide reasonable assistance to you in the preparation of HERA K-1s for 2021.

HCMLP previously made these entity and record transfers and provided books and records information through summarized financial statements and general ledger detail in excel spreadsheets, historical tax returns, governing documents, the raw Quickbooks file containing the historical accounting data, and a spreadsheet detailing the amounts charged by HCMLP to HERA down to the invoice level. HCMLP also prepared and signed the 2021 HERA tax returns with your (and your accountants) input and approval.

While we believe the information already provided satisfied HCMLP's undertakings under the settlement agreement, we nevertheless understand your request for additional HERA and ERA information and have been able to gather the further documentation broken down as follows (some of which may be duplicative to certain documents you've already received, but we are re-including regardless):

HERA

1. Governing documents
2. Amendments
3. Assignments
4. Correspondence
5. Director resignations
6. Expense allocations (resolutions + allocation agreement)
    1. Actual copies of invoices (330+ individual invoices across 36 different vendors or law firms tracked down and will be transmitted; <10% couldn't be located and are therefore not included)
7. Other resolutions
8. Transfer agreements

ERA

1. Governing documents

There is less documentation regarding ERA because it was solely a management entity. It did not have any economic activity, did not generate financials, and was a disregarded entity for tax purposes.

At your request, we also included excel tracking spreadsheets summarizing the assets of HERA from 2009 to May 2012 as well as the individual unit holder's respective interests in HERA. This file was maintained by HCMLP and appears to be an HCMLP business record tracking "The Vessel" (as HERA was sometimes known) and the interests of HCMLP employees in The Vessel.

We have also included certain additional HERA records that we have found relating to HERA assets and distributions to vested HERA participants. These records include: (i) miscellaneous spreadsheets reflecting various items, including actual cash distributions to vested participants; (ii) Smith Barney statements reflecting cash of HERA and ownership of NHF; and (iii) RCP Statements reflecting HERA interests.

Upon transmission of the information described above, HCMLP will have satisfied all of its obligations under the settlement agreement, and our involvement in HERA/ERA (your entities) will be complete. Of course, to the extent one-off questions come up, you're always welcome to contact me. Best of luck with these entities.

And again, as requested above please let us know how you would like us to deliver these files.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

EXHIBIT 52

From:	John A. Morris <jmorris@pszjlaw.com>
Sent:	Friday, April 1, 2022 11:42 AM
To:	Jim Seery; Thomas Surgent; David Klos
Cc:	Jeff Pomerantz; Gregory V. Demo
Subject:	FW: Highland: HERA and ERA Transfer Documents (execution versions)
Attachments:	Receipt_2022-04-01_113009.pdf; Daugherty Joinder Gray 3-29-22.pdf

For your records.

From: John A. Morris
Sent: Friday, April 01, 2022 11:40 AM
To: 'Thomas Uebler'
Cc: James O'Neill ; Gregory V. Demo (GDemo@pszjlaw.com) ; 'Drew K. York'
Subject: Highland: HERA and ERA Transfer Documents (execution versions)

Tom:

Attached are fully executed copies of the HERA and ERA transfer documents.

Please (a) work with my partner, Jamie O'Neill, to file the dismissals of the Delaware cases against HCMLP and Mr. Surgent, and (b) release from escrow the *Limited Joinder* I sent to you on March 23 (also attached is the signature of Matthew Gray).

With that, I believe everything required under the Settlement will have been completed but please let me know if I'm overlooking anything.

And thank you, and Drew, for your cooperation throughout this process.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | San Francisco | Wilmington, DE | New York | Houston

TRANSFER AGREEMENT

This Transfer Agreement (this "***Agreement***") is entered into by and between Highland Capital Management, L.P. ("***Transferor***") and Patrick Hagaman Daugherty ("***Transferee***"). Each of Transferor and Transferee are individually referred to as a "***Party***" and together, collectively referred to as the "***Parties.***"

WHEREAS, Transferor is the sole member of Highland ERA Management, LLC, a Delaware limited liability company ("***ERA***", and such membership interest, the "***Interest***");

WHEREAS, Transferor and Transferee are parties to that certain Settlement Agreement dated November 21, 2021 (the "***Settlement***");

WHEREAS, Section 8 of the Settlement requires Transferor to transfer its interest in ERA to Transferee as contemplated more fully in the Settlement;

WHEREAS, in satisfaction of its obligations under Section 8 of the Settlement, Transferor desires to transfer the Interest to Transferee, as provided more fully below.

NOW, THEREFORE AND IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration, the parties intending to be legally bound hereby agree as follows:

1. Transfer of Interest. Transferor hereby sells, transfers, assigns, sets over and otherwise conveys to Transferee, and Transferee hereby receives and takes from Transferor, all right, title and interest of Transferor in, to and under the Interest.

2. Applicable Law. It is also understood and agreed that this Agreement shall be governed by and construed in accordance with Delaware law, without regard to its conflict of laws rules.

3. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified, or otherwise changed in any respect or particular whatsoever, except in writing, which writing must be signed by authorized representatives of each Party.

4. Execution of Agreement. It is understood and agreed that this Agreement may be executed in any number of identical counterparts, each of which shall be deemed original for all purposes.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement.

TRANSFEROR:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:
Name:
Title: CEO/CRO

Dated: 4/1/22

TRANSFEREE:

Patrick Haganman Daugherty

Date: 4/1/22

TRANSFER AGREEMENT

This Transfer Agreement (this "***Agreement***") is entered into by and between Highland Capital Management, L.P. ("***Transferor***") and Patrick Hagaman Daugherty ("***Transferee***"). Each of Transferor and Transferee are individually referred to as a "***Party***" and together, collectively referred to as the "***Parties***."

WHEREAS, Transferor purports to be the sole Member of Highland Employee Retention Assets LLC, a Delaware limited liability company ("***HERA***"), and Transferor and Transferee are the only holders of HERA's outstanding Common Units and Series A Preferred Units (such Common Units and Series A Preferred Units collectively, the "***Interests***");

WHEREAS, Transferor and Transferee are parties to that certain Settlement Agreement dated November 21, 2021 (the "***Settlement***"); and

WHEREAS, Section 8 of the Settlement requires Transferor to transfer its interests in HERA to Transferee as contemplated more fully in the Settlement.

NOW, THEREFORE AND IN CONSIDERATION of the mutual covenants contained herein, and other good and valuable consideration as set forth in the Settlement, the parties intending to be legally bound hereby agree as follows:

1. Transfer of Interests. Transferor hereby sells, transfers, assigns, sets over and otherwise conveys to the Transferee, and the Transferee Designee hereby receives and takes from Transferor, all right, title and interest in and to the Transferor's Interests.

2. Applicable Law. It is also understood and agreed that this Agreement shall be governed by and construed in accordance with Delaware law, without regard to its conflict of laws rules.

3. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified, or otherwise changed in any respect or particular whatsoever, except in writing, which writing must be signed by authorized representatives of each Party.

4. Execution of Agreement. It is understood and agreed that this Agreement may be executed in any number of identical counterparts, each of which shall be deemed original for all purposes.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date appearing next to each Party's signature and this Agreement shall be effective on the date the last signature has been signed upon this Agreement.

TRANSFEROR:

HIGHLAND CAPITAL MANAGEMENT, L.P.

By:
Name:
Title: CEO/CRO

Dated: 4/1/22

TRANSFEREE:

By: Patrick Hagaman Daugherty

Date: 4/1/22

The undersigned consents and agrees to the Transfers and each of the provisions hereof applicable to the undersigned:

HIGHLAND ERA MANAGEMENT, LLC

By:
Name: Patrick H. Daugherty
Title: President and Chief Investment Officer
Date: 4/1/22

IN WITNESS WHEREOF, each of the undersigned, intending to be legally bound, have executed this Limited Joinder Agreement as of the respective dates set forth below:

Date: _____ _____
James P. Seery, Jr.

Date: _____ _____
Cameron Baynard

Date: _____ _____
Nathan Burns

Date: _____ _____
Timothy Cournoyer

Date: _____ _____
Naomi Chisum

Date: _____ _____
Stetson Clark

Date: _____ _____
Sean Fox

Date: 3/29/22 _____
Matthew Gray

Date: _____ _____
Kristin Hendrix

Date: _____ _____
David Klos

Date: _____ _____
Vishal Patel

Date: _____ _____
Thomas Surgent

Date: _____ _____
Michael Throckmorton

EXHIBIT 53

PDADV_008361-PDADV_008362

GRAY REED

ANDREW K. YORK
DIRECT DIAL: (469) 320-6114
EMAIL: dyork@grayreed.com

1601 ELM STREET, SUITE 4600
DALLAS, TEXAS 75201
www.grayreed.com

January 30, 2024

VIA EMAIL: jmorris@pszjlaw.com

Mr. John Morris
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024

Re: Highland Capital Management, L.P. and Patrick Daugherty Settlement Agreement

Dear John:

As you know, Gray Reed represents Patrick Daugherty and Highland Employee Retention Assets, LLC ("HERA" or the "Vessel"). Pursuant to the November 22, 2021 settlement agreement between Highland Capital Management, L.P. ("Highland") and Mr. Daugherty, Highland transferred its interests in HERA to Mr. Daugherty and his affiliates. The transfer included the HERA books and records maintained on Highland's system.

As Mr. Daugherty and Mr. Seery discussed last summer, Mr. Daugherty and HERA appreciate the documents Highland has provided to date. However, HERA continues to seek the remaining source documents, emails, governance actions, and other activity of HERA since its inception. For example, HERA has not received any email correspondence between HERA's in-house counsel (Scott Ellington, Isaac Leventon, Thomas Surgent, Eric Girard, and others) and HERA's outside legal counsel at Gruber Hurst, Andrews Kurth, DLA Piper, and Abrams and Bayliss, among others. Other email exchanges regarding the transfer of assets, allocation of expenses, creation of governance documents, solicitation of preferred unit holder signatures, board member communication, and anyone directing the operations of HERA is all important to the continuing operations of HERA. Additionally, HERA has received only a few documents in native format. Those documents were Microsoft Excel files. Highland has not produced any Microsoft Word or Powerpoint documents in native format (with corresponding metadata) despite the production of numerous PDF documents that indicate they were originally created using Word or Powerpoint. The metadata associated with both the native files and PDF versions are of critical importance to HERA.

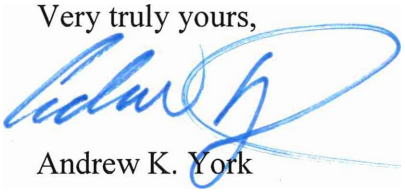
Accordingly, HERA requests Highland supplement its production of the transferred books and records with at least the following categories:

- All original Word, Excel and Powerpoint documents concerning HERA or the Vessel. This request include originally created documents and drafts, as well as modified or amended versions of the same.
- All email correspondence concerning HERA or the Vessel.
- All documents related to the transfer of HERA or the Vessel assets.
- All documents related to expenses of HERA or Vessel assets.
- All email and documents concerning HERA or Vessel assets, legal communications, tax issues, or unit holder communications.

All of these requested documents, files and communications should include the corresponding metadata. I am happy to discuss with you what metadata should be included with the load file for the production. Finally, I recommend Highland utilize an outside vendor to collect and produce these requested documents, files and communications due to the sensitive nature of the information, as well as any potential for a conflict of interest among any existing Highland employees that are asked to participate in the collection and production efforts.

Again, my clients appreciate Highland's efforts on this matter to date, and its attention to these additional requests. Please feel free to reach out to me if you have any questions.

Very truly yours,



Andrew K. York

AKY/sll

cc: Patrick Daugherty (via email)

EXHIBIT 54

PDADV_008363-PDADV_008365

From: "John A. Morris" <jmorris@pszjlaw.com>
To: "dyork@grayreed.com" <dyork@grayreed.com>
CC: Jeff Pomerantz <jpomerantz@pszjlaw.com>, "Gregory V. Demo" <GDemo@pszjlaw.com>
Subject: [EXTERNAL] Highland Capital/HERA
Date: Tue, 5 Mar 2024 22:54:58 +0000
Inline-Images: logo_2ae552f4-f7fd-481b-9e82-8e233ab81b9e.jpg; image001.jpg

---

Drew,

On March 8, 2022, the court entered an order approving the settlement between Highland and Mr. Daugherty. Docket No. 3299. Since that time, HCMLP has provided an enormous number of documents and information to Mr. Daugherty as required by the settlement. HCMLP believes that after these exhaustive, good faith efforts it has fully complied with all of its obligation under the Settlement Agreement.

To summarize:

- on March 10, 2022, we sent an e-mail to you with certain books and records,
- on May 5, 2022, we sent three separate e-mails to Mr. Uebler with more books and records,
- last year, HCMLP made available to Mr. Daugherty and his accountant a share site file depository with 180 MBs of data including (a) corporate and related documents from the legal filing system; (b) 11 years' worth of financial statements exported from QuickBooks (which include detailed, entry-level financials for each year encapsulating all recorded accounting entries for HERA); (c) approximately 320 invoices from 35 different vendors (nearly all of which were law firms); (d) nearly 30 other statements and spreadsheets; and (e) nine years of tax returns.
- In addition—with no obligation to do so—the HCMLP team helped in the filing of the HERA tax returns during the transition year and provided historical RCP return information.

Under the circumstances, HCMLP stands by its prior statement that it has fulfilled its obligations under the Settlement Agreement.

For completeness, and to avoid any misunderstanding, we strongly disagree with your suggestion that emails constitute "books and records." Even if they did, (a) HERA and ERA had no employees, (b) no person used an e-mail address with a "HERA" or "ERA" URL, (c) neither HERA nor ERA ever had a shared services agreement with HCMLP, and (d) HCMLP's e-mails are not now, and never were, HERA and ERA's property.

HCMLP reserves all rights under the Court's order and with respect to any further request for "books and records." We consider this matter closed.

Please let me know if you have any questions.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777

jmorris@pszjlaw.com
vCard | Bio | LinkedIn

Los Angeles | New York | Wilmington, DE | Houston | San Francisco

From: Drew K. York <dyork@grayreed.com>
Sent: Friday, March 1, 2024 6:48 PM
To: John A. Morris <jmorris@pszjlaw.com>
Subject: FW: Highland Capital/HERA

Hi John,

I never received a response to the attached letter I sent a month ago. Additionally, please see the attached complaint filed yesterday in the Northern District of Texas. To the extent any of the individuals named in the complaint would otherwise be involved in the collection and review process associated with the requests in my letter, I once again ask that those individuals be excluded from that process to ensure that all responsive materials are not modified or destroyed.

I look forward to hearing from you.

Regards,
Drew

From: Drew K. York <dyork@grayreed.com>
Sent: Tuesday, January 30, 2024 6:38 PM
To: jmorris@pszjlaw.com
Subject: Highland Capital/HERA

Hi John,

I hope you are doing well. Please see the attached letter. I look forward to hearing from you.

Regards,
Drew

Drew K. York
Partner
Tel 469.320.6114 | Fax 469.320.6883 | dyork@grayreed.com
1601 Elm St., Suite 4600 | Dallas, TX 75201
grayreed.com | Connect with me on LinkedIn

GRAY REED

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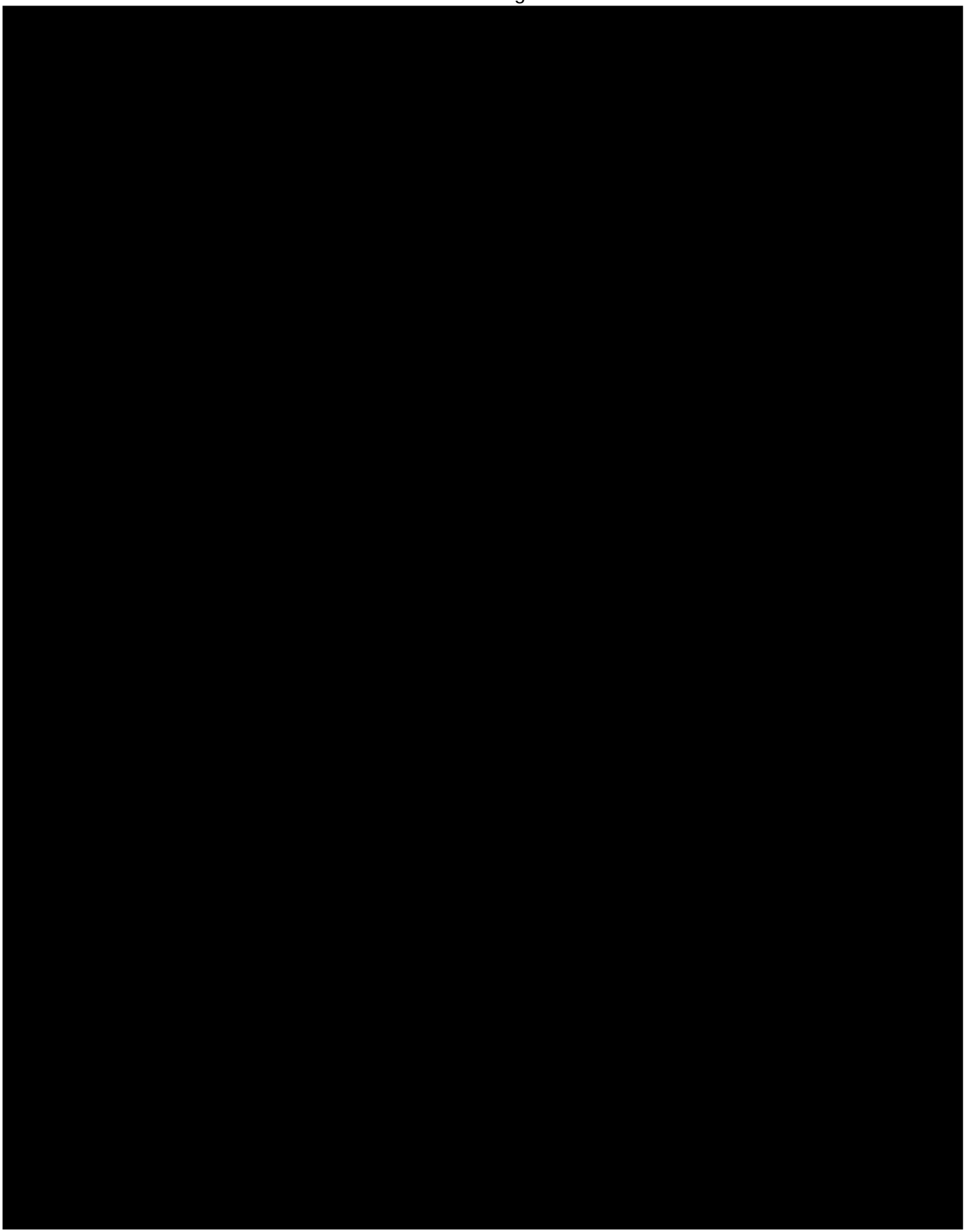
EXHIBIT 55

PDADV_010229-PDADV_010232



[redacted]

From: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Sent: Wednesday, November 2, 2022 12:16 PM
To: James Seery <jpseeryjr@gmail.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

Hi Jim,

Thanks for sending us the HERA data last week. We are reviewing the large files and will get back to you with comments or questions after we cross-reference to the sample data that was provided from the Texas litigation (Exhibit examples from pervious emails).

As discussed last week, we simply were not in a position to sign and file K-1 partnership tax returns on behalf on HERA. We have made a clear record since the initial filings of the Delaware Case #1 in 2017 that the historical HERA filings were erroneous. In addition, I was not able to sign a 2021 return on behalf of HERA because I was not given the information or time necessary to evaluate such information to make such a filing. Accordingly, we approved of the good faith efforts by your team to develop what we agree was a reasonable solution to a situation not of our making. As I understand it, your team was relying on the advice of the Skyview Team (formerly Highland Capital's in-house tax experts led by Rick Swadley). Importantly, the Skyview Team includes many of the same people who were involved in the dubious allocations of expenses between Highland Capital and HCRE related to the SE Multifamily transaction (refer to yesterday's hearing and the comments about tax shields). I appreciate the efforts of you and your team but I feel it necessary to clarify that we did not direct the filing of the 2021 tax return nor did Highland employees serve as our agents for the preparation of the return. We simply approved the treatment of the Daugherty capital account pursuant to the recommendations for the overall return during this transition period.

Thanks again for your cooperation and we look forward to continuing our dialogue in that spirit.

Best,
-Pat

Patrick H Daugherty, Esq.
President and Chief Investment Officer

Glacier Lake Capital Advisors
(t) +1 214.932.9140 **(m)** +1 972.679.7487
(e) pdaugherty@glacierlakecap.com

From: James Seery <jpseeryjr@gmail.com>
Sent: Wednesday, October 19, 2022 12:23 PM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: David Klos <dklos@highlandcapital.com>; Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Daugherty Settlement Agreement Follow-Up

Pat,

To follow-up on your recent request for additional information pertaining to the HERA/ERA entities, members of the Highland team have worked to gather further documentation for you. We previously provided corporate documents to you as well as the Quickbooks accounting file to your accountants using their file sharing system.

If acceptable to you, we propose to deliver this new large document delivery (400+ files) via DSI's Sharefile system. Use is straight forward and allows you to download all of the files in an orderly manner. Otherwise, please let me know if there is a different way you would prefer to receive these additional electronic files.

Under our settlement agreement, HCMLP agreed to "transfer its interests in HERA and ERA" to you, and that transfer "include[s] the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system." The transfers are without any liability or material cost to HCMLP. HCMLP also agreed to provide reasonable assistance to you in the preparation of HERA K-1s for 2021.

HCMLP previously made these entity and record transfers and provided books and records information through summarized financial statements and general ledger detail in excel spreadsheets, historical tax returns, governing documents, the raw Quickbooks file containing the historical accounting data, and a spreadsheet detailing the amounts charged by HCMLP to HERA down to the invoice level. HCMLP also prepared and signed the 2021 HERA tax returns with your (and your accountants) input and approval.

While we believe the information already provided satisfied HCMLP's undertakings under the settlement agreement, we nevertheless understand your request for additional HERA and ERA information and have been able to gather the further documentation broken down as follows (some of which may be duplicative to certain documents you've already received, but we are re-including regardless):

HERA

- Governing documents
- Amendments
- Assignments
- Correspondence
- Director resignations
- Expense allocations (resolutions + allocation agreement)

- Actual copies of invoices (330+ individual invoices across 36 different vendors or law firms tracked down and will be transmitted; <10% couldn't be located and are therefore not included)
- Other resolutions
- Transfer agreements

ERA

- Governing documents

There is less documentation regarding ERA because it was solely a management entity. It did not have any economic activity, did not generate financials, and was a disregarded entity for tax purposes.

At your request, we also included excel tracking spreadsheets summarizing the assets of HERA from 2009 to May 2012 as well as the individual unit holder's respective interests in HERA. This file was maintained by HCMLP and appears to be an HCMLP business record tracking "The Vessel" (as HERA was sometimes known) and the interests of HCMLP employees in The Vessel.

We have also included certain additional HERA records that we have found relating to HERA assets and distributions to vested HERA participants. These records include: (i) miscellaneous spreadsheets reflecting various items, including actual cash distributions to vested participants; (ii) Smith Barney statements reflecting cash of HERA and ownership of NHF; and (iii) RCP Statements reflecting HERA interests.

Upon transmission of the information described above, HCMLP will have satisfied all of its obligations under the settlement agreement, and our involvement in HERA/ERA (your entities) will be complete. Of course, to the extent one-off questions come up, you're always welcome to contact me. Best of luck with these entities.

And again, as requested above please let us know how you would like us to deliver these files.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

EXHIBIT 56

PDADV_010999-PDADV_011000

Department of the Treasury
Internal Revenue Service
Mail Stop 4420
Ogden, UT 84401

April 10, 2018

PATRICK H & KIMBERLY A DAUGHERTY
[redacted]

Taxpayer Identification Number: [redacted]
Partnership Name: Highland Capital Management LP
Tax Period(s): 2008

Dear Mr. and Mrs. Daugherty:

The partnership you have invested in, identified above, is subject to possible tax adjustments from a Tax Equity and Fiscal Responsibility Act (TEFRA) examination for the tax period(s) shown. Any tax adjustment resulting from this examination may result in a corresponding adjustment to your personal return as well.

We unfortunately have exhausted all efforts to find your amended tax return copies in our records; therefore, we are asking you to send us a copy of your amended tax return for 2008 that is under examination, so we can make any necessary adjustments accurately. Please include all schedules, documents and statements filed with your amended return.

The normal statute of limitations (to adjust a tax return) is three years from the due date of the return or three years from the date of the return's filing, whichever is later. The statute of limitations for a return from a taxpayer who is an investor in a TEFRA partnership under examination, however, does not expire until one year after the partnership's flow-through tax issue is resolved.

Please mail or fax your documentation to us within 30 days from this letter's date. Our Fax number is (855) 244-9676. Please include your phone number, convenient hours during which we may reach you, and a copy of this letter with your response. Please write "COPY DO NOT PROCESS" in red on the top of each return. If you no longer have tax return copies, please respond to us anyway so we may continue to process your account as quickly as possible.

Confidential

PDADV_010999

Unless you send us your documentation, we will have to adjust your account using only the information we have available. Should we do this, you likely will receive a higher tax assessment than if you had sent us a copy of your return.

In most cases, you will not need to file an amended federal tax return for tax adjustments from a partnership return. We usually make the necessary adjustments to your personal tax account.

Please call Ms. Permar at (801) 620-2427 between the hours of 4 p.m. - 7 p.m. with questions you may have about this matter. This person is best qualified to answer any general questions you may have about this matter. If you prefer, you can call us also at the telephone number listed in your local telephone directory.

Please contact your Tax Matters Partner, who is responsible for providing investors with tax information about the partnership, if you have questions about specific tax matters involving the partnership.

We apologize for any inconvenience we may have caused you.

Sincerely,

Ms. Permar

Ms. Permar

Enclosures:
Copy of this letter
Envelope
Notice 609

Confidential

PDADV_011000

Exhibit 57 Slipsheet

(Subject to Motion to Seal and Protective Order)

EXHIBIT 58

T.J. Liles-Tims

Partner, Financial Advisory
Forensics, Litigation & Valuation Services
“We are all ignorant; just about different things.” - Will Rogers
Featured

Contact

Office

Dallas, Texas
Oklahoma City, Oklahoma

Phone

405-608-8805 (OKC)
972-674-1863 (Dallas)

tj.liles-tims@weaver.com

LinkedIn

We're ready to help

Reach out to our team and we’ll start a conversation.

Connect with us

T.J. Liles-Tims, MBA, CVA, CFE, MAFF, has over 20 years of experience in business valuations, fraud examination and quantifying commercial damages. His work has primarily focused on valuation and commercial disputes in civil litigation, as well as valuation disputes related to gift and estate tax matters. T.J. has provided expert testimony in both federal and state courts as well as in arbitration proceedings.

T.J. is an instructor, contributor and author for the National Association of Certified Valuators and Analysts (NACVA) in the areas of business valuation, litigation consulting and financial forensics. His experience in financial forensics includes litigation, detection and quantification of various forms of financial fraud, divorce-related matters, embezzlement, criminal tax fraud and the quantification of commercial damages. He has also taught numerous continuing education classes in the areas of business valuations and financial forensics and has been an adjunct professor at Oklahoma City University in forensic economics and the University of Central Oklahoma in fraud examination.

T.J. is a certified fraud examiner (CFE), a certified valuation analyst (CVA) and a master analyst in financial forensics (MAFF). He earned a Masters of Business Administration and a Bachelor of Business Administration in finance from the University of Central Oklahoma.

Services

- Valuation Disputes
- Commercial Disputes
- Family Law

Exhibit
1
Liles-Tims 3/23/2026 G.W.

- Estate and Gift Tax
- Corporate Forensic Accounting

Memberships & Affiliations

- Member, Association of Certified Fraud Examiners (ACFE)
- Member and Former Chair of Business Valuation Credentialing, National Association of Certified Valuators and Analysts (NACVA)

Education

- Masters of Business Administration, finance, University of Central Oklahoma
- Bachelor of Business Administration, finance, University of Central Oklahoma

Designations/Certifications

- Certified Valuation Analyst (CVA)
- Certified Fraud Examiner (CFE)
- Master Analyst in Financial Forensics (MAFF)

Additional Information

T.J. has testified in state and federal courts. He is an instructor, contributor and author for the National Association of Certified Valuators and Analysts (NACVA) in the areas of business valuation, litigation consulting, financial forensics and was awarded NACVA's "2020 Circle of Light Award," "2018/2019 Instructor of the Year" and former chair of NACVA's "Business Valuation Credentialing Board." He has taught numerous continuing education classes in the areas of business valuations and financial forensics. T. J. is an adjunct professor at Oklahoma City University in the field of forensic economics.

EXHIBIT 59

Expert Report of T.J. Liles-Tims

Highland Capital Management, LP v. Patrick Hagaman Daugherty; AdvAdv. Proc. 2525-03055-bwobwo

Prepared By: T.J. Liles-Tims and Gary McIntosh
February 13, 2026

weaver
Assurance · Tax · Advisory

Exhibit
2
Liles-Tims 3/23/2026 G.W.

Contents

I. Introduction 3

II. Qualifications 3

III. Compensation 3

IV. Documents And Information Relied Upon 3

V. Background 4

VI. Opinions and Findings 7

VII. Conclusion 14

VIII. Appendices 15

I. Introduction

1. I am a Partner with Weaver and Tidwell, L.L.P. ("Weaver"). Weaver is a professional services firm devoted to Assurance, Tax and Advisory. The partners have been serving the corporate, legal and professional communities for over seventy years and regularly assist clients in pending litigation and disputes by providing valuation, consulting and expert witness services.

2. I have been retained by Gray Reed, L.L.P., as counsel for Patrick Hagaman Daugherty, to provide consulting and litigation support services in relation to matter styled *Highland Capital Management, LP v. Patrick Hagaman Daugherty*, Adv. Proc. 25-03055-bwo.

3. Certain aspects of our review are ongoing. The opinions expressed in this report are subject to amendment or supplementation as a result of developments prior to or at the time of trial including further discovery, findings of facts, additional analyses, or the testimony of other witnesses in deposition or at trial. This report is intended to be used solely in this litigation and should not be relied upon for any other purpose.

II. Qualifications

4. Our background, experience, and qualifications, including a list of all authored publications and previous testimony, are outlined in our Curriculum Vitae attached to this Report as **Appendix A**.

III. Compensation

5. Weaver is billing time for professional services in this matter at the rate of $595 per hour. Weaver will be compensated at the same hourly rate if I am asked to testify in deposition or during the final hearing. In addition, other professionals at our firm acting under our direct supervision have assisted on this matter. Our firm's fee is not contingent upon the outcome of this litigation or upon us reaching any particular conclusions or opinions.

IV. Documents And Information Relied Upon

6. In preparing this report, I have relied upon information from a variety of sources, each of which is of a type reasonably relied upon by experts in our field. The opinions and

conclusions contained in this report are based on our independent and objective review of documents and other information produced thus far by the parties, pleadings generated as part of this case, as well as independent research I have conducted. In developing this report, I have considered the documents and information listed in **Appendix B.** I may review additional information as it becomes available and reserve the right to supplement or amend this report based on this information as necessary. I have also relied upon our own professional judgment and expertise gathered in almost twenty years of consulting with businesses and individuals including the preparation and evaluation of damages claims in litigation matters.

V. Background

A. Parties

a. Highland Capital Management, L.P.

7. Highland Capital Management, L.P. ("Highland") is the reorganized debtor in a Chapter 11 bankruptcy case and the plaintiff in the related adversary proceeding, where it seeks relief concerning the allowance and treatment of a filed claim.

b. Patrick Hagaman Daugherty

8. Patrick Hagaman Daugherty ("Mr. Daugherty") is a former senior employee and profits-interest partner (via a profits interest holder) of Highland, who filed a claim asserting, among other things, a contingent and unliquidated obligation related to potential IRS action concerning a prior tax refund.

B. Timeline of Events

9. On or around February 27, 2009, Highland provided Mr. Daugherty with the Comprehensive Compensation and Benefits Statement for calendar year 2008 (the "2009 Statement"), which included an estimated 2008 tax refund of $1,475,816.[1]

10. On or around October 31, 2011, Mr. Daugherty terminated his employment with Highland.[2]

---

[1] PDADV_010520.

[2] Based on conversations with Mr. Daugherty.

11. On or around December 8, 2017, Internal Revenue Service ("IRS") field examiners concluded an audit of Highland's 2008 partnership tax return (the "IRS Audit") and issued a summary report proposing adjustments ("IRS Proposed Adjustments").[3]

12. On or around February 3, 2018, Highland sent Mr. Daugherty a letter enclosing IRS Forms 886-Z and 870-PT, confirming the audit's completion and scheduling a March 2, 2018 closing conference.[4]

13. On or around July 3, 2018, Highland notified Mr. Daugherty that a 60-Day Letter had been issued and that Highland would timely appeal the proposed adjustments to the IRS Independent Office of Appeals ("IRS Office of Appeals").[5]

14. On or around October 16, 2019, Highland filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, thereby commencing its bankruptcy case.[6]

15. On or around December 9, 2019, Highland informed Mr. Daugherty that the matter had been transferred from the Tax Equity and Fiscal Responsibility Act ("TEFRA") unit to the IRS Office of Appeals, which had no stated timeline for review.[7]

16. On or around April 1, 2020, Mr. Daugherty filed Proof of Claim No. 67.[8]

17. On or around April 6, 2020, Mr. Daugherty filed Proof of Claim No. 77, superseding Claim No. 67 in its entirety.[9]

18. On or around November 17, 2020, during bankruptcy proceedings, it was noted that the IRS Audit remained ongoing and could result in a clawback.[10]

19. On or around December 23, 2020, Mr. Daugherty filed Proof of Claim No. 205, superseding Claim No. 77 in its entirety.[11]

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3 PDADV_004856.

4 Daugherty ROGs00003740.

5 PDADV_004687.

6 PDADV_010182.

7 PDADV_004856.

8 PDADV_010185.

9 PDADV_010185.

10 2020.11.18 – Hearing Transcript (hearing of November 17, 2020).

11 PDADV_010186.

20. On or around February 22, 2021, the Court entered an order confirming Highland's Fifth Amended Plan of Reorganization.[12]

21. On or around July 13, 2021, Strand Advisors, Inc, the Tax Matters Partner for Highland Capital Management, L.P. at the time, notified Mr. Daugherty that After the IRS issued its audit report in May 2018, Highland protested and appealed each of the IRS's proposed adjustments to the IRS Appeals Office. It further informed Mr. Daugherty that after delays in IRS Exam's processing of the appeal and further delays because of COVID-19 and scheduling conflicts, the IRS Appeals Office had scheduled an Appeals hearing for September 14-16, 2021, 10:00 AM CDT.[13]

22. On or around November 21, 2021, Highland and Mr. Daughtery executed a Settlement Agreement (the "Settlement Agreement").[14]

23. On or around March 8, 2022, the Court entered the Settlement Agreement, resolving all of Claim No. 205 except Mr. Daugherty's remaining claim relating to the IRS Audit.[15]

24. On or around May 31, 2024, Highland's Tax Matters Partner submitted a counteroffer to IRS Office of Appeals as part of mediation procedures, confirming continued active dispute of the IRS Audit.[16]

25. On or around June 26, 2024, Highland's Tax Matters Partner met with the IRS Office of Appeals team to further discuss settlement positions and narrow outstanding issues.[17]

26. On or around February 28, 2025, Highland's Tax Matter Partner's counsel submitted a revised settlement counteroffer to IRS Office of Appeals and renewed its request for post-Appeals mediation, confirming that no final IRS determination had yet been made.[18]

27. On or around May 2, 2025, Highland filed the present Adversary Complaint seeking (1) disallowance of the remainder of Claim No. 205, (2) estimation of any portion of the

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12 PDADV_010182.

13 PDADV_004971.

14 Settlement Agreement, by and between Highland Capital Management, L.P. and Patrick Hagaman Daugherty, dated November 21, 2021

15 Highland Capital Management, LP Complaint, filed May 2, 2025.

16 HUNTON_001107.

17 HUNTON_001107.

18 HUNTON_001105–HUNTON_001108

remainder of Claim No. 205, or (3) subordination of any allowed portion of the remainder of Claim No. 205.[19]

VI. Opinions and Findings

A. Opinion No. 1

28. Courts and professional standards require economic damage analysis must be presented with reasonable certainty. As such, an analysis must rely on verifiable data and established facts, ensuring that the testimony meets accepted standards for reliability.

a. Basis for Opinion No. 1

29. An expert witness calculating economic damages must base any opinion on sufficient, reliable, and verifiable inputs. This requirement is grounded in Federal Rule of Evidence ("FRE") 702, which mandates expert testimony be "based on sufficient facts or data" and reflect a "reliable application of the principles and methods to the facts of the case."[20] Courts have excluded expert opinions when the underlying assumptions or data are incomplete, untested, speculative, or otherwise unreliable.[21]

30. Authoritative guidance reinforces the same principle. Damages must be proven with reasonable certainty, meaning the calculation must have a "*sufficient foundation exists to support a rational conclusion.*"[22],[23] Courts emphasize that, "*damages calculation must be 'capable of measurement based upon reliable factors without undue speculation'*[24]."[25]

31. To further illustrate the necessity of experts relying on reasonable inputs *Compania Embotelladora Del Pacifico, S.A. v. Pepsi Cola Co.*, states:

> *"…an expert's testimony must be excluded if it is 'speculative or conjectural' or if it is 'based on assumptions that are so unrealistic and contradictory' that the testimony*

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19 Highland Capital Management, LP Complaint, filed May 2, 2025.

20 Federal Rule of Evidence 702.

21 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

22 *Albert v. Warner-Lambert Co.*, 234 F.Supp.2d 101, 103 (D. Mass. 2002). See also *W.W. Gay Mechanical Contractor, Inc. v. Wharfside Two, Ltd.*, 545 So.2d 1348, 1351 (Fla. 1989) .

23 Fannon, Nancy J. and Dunitz, Jonathan M. The Comprehensive Guide to Economic Damages. Volume 1. Business Valuation Resources, LLC. p. 232.

24 See, e.g. *Ashland Management Inc. v. Janien*, 82 N.Y.2d, 103 (1993).

25 Fannon, p. 232.

amounts, in essence, to an 'apples and oranges comparison.' Similarly, 'when an expert opinion is based on data, a methodology, or studies that are simply inadequate to support the conclusions reached, Daubert and Rule 702 mandate the exclusion of that unreliable opinion testimony.' Moreover, an expert's analysis must be 'reliable at every step'…"[26]

32. Furthermore, courts require experts to evaluate and test inputs, particularly material assumptions, that drive their damage calculations. Reliance on inputs that are untested, contradictory, or incomplete may result in an exclusion under the Daubert precedent.[27] The NACVA's professional standards also require experts to obtain "sufficient relevant data" and to confirm the reliability of assumptions and inputs used in any damages model.[28]

33. It is our understanding at the date of this Report, the outcome of the IRS Audit is still pending. Given that the IRS Audit has not been resolved (i.e., that there has not been a final determination), the core inputs needed for a reasonable and reliable damages calculation do not yet exist. Any model attempting to calculate damages with the current information would be forced to rely on assumed and unknown variables, in contrast with expert witness guidelines outlined in FRE 702.

B. Opinion No. 2

34. The IRS Audit has not been finalized and the timeline for conclusion is unknown. The sequence of a typical IRS audit under TEFRA is outlined below. Milestones highlighted in green have been completed, while steps in blue indicate outstanding stages of the process:[29]

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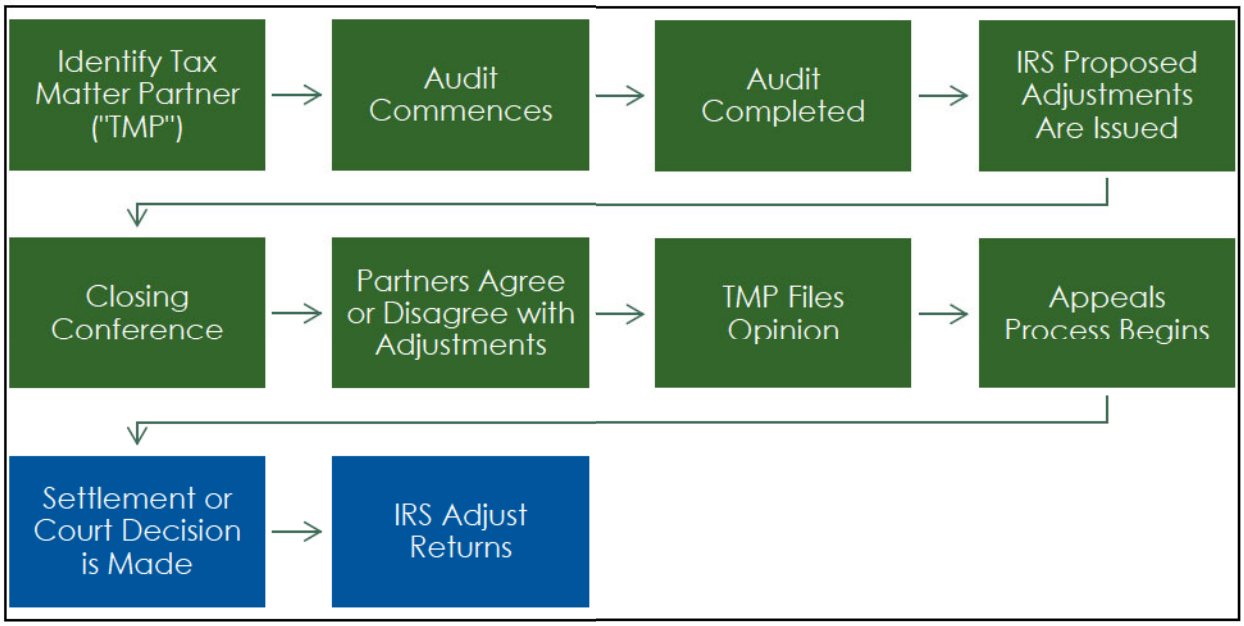
[26] *Compania Embotelladora del Pacífico, S.A. v. Pepsi Cola Co.*, No. 00 Civ. 7677 (JSR) (S.D.N.Y. Sept. 4, 2009).

[27] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

[28] National Association of Certified Valuators and Analysts (NACVA), Professional Standards, Rev. Nov. 22, 2024

[29] Internal Revenue Service, Internal Revenue Manual (IRM) 4.31.2, TEFRA Examinations – Field Office Procedures, Part 4, Chapter 31, Section 2 (Apr. 22, 2025).



35. It is our understanding the IRS Audit has not been finalized, and the timeline of conclusion is unknown. The chart above outlines no final agreement, or settlement has been reached with the IRS. Therefore, since the IRS Audit is unresolved and there is no expected completion date, it would be not be reasonable or reliable for a financial expert to assess damages, at this point.

b. Basis for Opinion No. 2

36. As of the date of this Report, the IRS Audit has not yet resulted in a final determination. In December 2017, IRS field examiners completed their examination of the 2008 return and issued a summary report proposing adjustments.[30]

37. A letter dated February 3, 2018 from Highland's Director of Human Resources, Brian Collins ("Mr. Collins"), states, "[Highland] scheduled a closing conference on March 2, 2018. You do not need to attend the closing conference…Highland will handle the closing conference…and appeal the proposed adjustment to the IRS Appeals Office after the conference."[31] It was clear Highland intended to appeal the IRS Proposed Adjustments

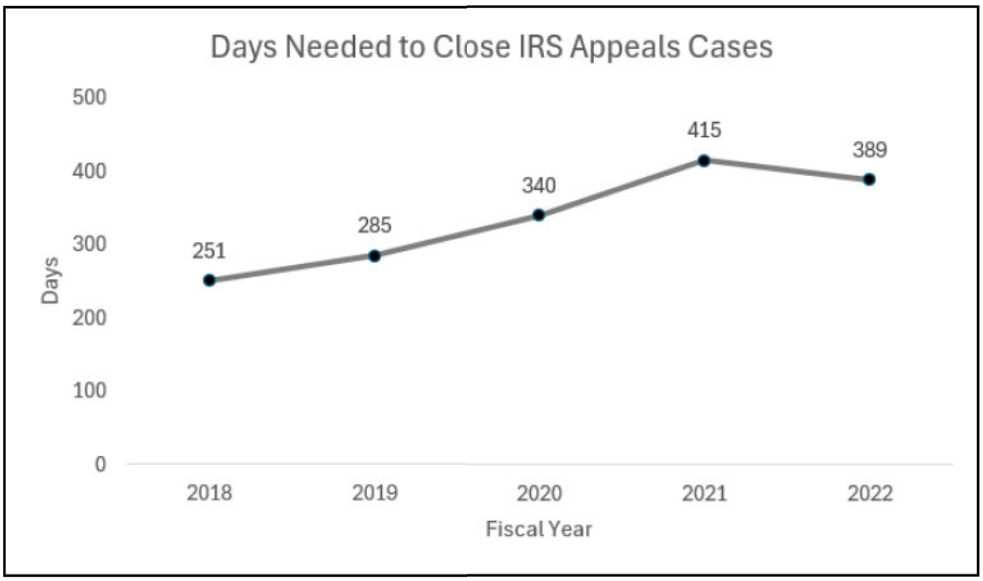
[30] Based on IRS correspondence in a December 9, 2019, email from Highland's Director of Human Resources, Brian Collins, which states that "By letter dated December 8, 2017, Exam indicated that they had concluded their audit and provided a summary report proposing certain adjustments." [PDADV_004856]

[31] Daugherty_ROGs00003740.

soon after receiving the results, which would indicate reliance on the December 2017 results would not be reasonable or reliable.

38. Almost two years later, in an apparent update email to Mr. Daughtery on December 9, 2019, Mr. Collins states, "the matter recently was transferred to the IRS Office of Appeals."[32] Approximately two years apart, Mr. Collins indicates the appeals process was "recently" started, while still maintaining the position the IRS Proposed Adjustments are not reliable. Later in the letter, Mr. Collins further cast doubt on the IRS Proposed Adjustments when he states, "Highland will continue to defend against the proposed adjustments by Exam and prosecute the appeal of those adjustments in the Appeals Office."[33] The sentiment expressed from a Highland representative, until this point, has been the results of the IRS Audit are not final and are, therefore, not reliable.

39. According to Government Accountability Office ("GAO"), the average time to close an appeal with the IRS Office of Appeals in 2019 was 282 days, trending upward from 251 the previous year.[34] The number of days to resolve a case with the IRS Office of Appeals would continue to rise in the following years as seen in the chart below.[35]



32 PDADV_004856.

33 PDADV_004856.

34 U.S. Government Accountability Office, Tax Enforcement: IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits, GAO-23-105552 (May 2023, rev. June 7, 2023).

35 GAO-23-105552.

40. Although, the IRS Office of Appeals had received the case by December 2019, no timetable existed for when the IRS Office of Appeals would conduct its review or issue any decision. Mr. Collins emphasized this point when states, "we have no further information regarding when the Appeals Office will review Highland's appeal or when a resolution may be made."[36] In connection, this information shows that while the IRS examination was completed in 2017 and a summary report was issued, it did not constitute a final determination of tax liability as Highland has not exhausted its efforts in an appeal.

41. Highland's Tax Partner As outlined above, Highland continues to dispute the proposed adjustments before the IRS Office of Appeals. The most recent communication dated February 28, 2025, indicates Highland's Tax Partner submitted a revised settlement counteroffer and again requested post-Appeals mediation.[37]

42. These actions confirm that, at least by February 28, 2025, no final partnership-level adjustment had been reached and the Appeals review was still ongoing. As of the date of this report, Mr. Daugherty has received no notice settlement. As such, it is clear Highland's Tax Partner is actively negotiating with the IRS on settlement offers.

43. With no expected timeline for completion and the ongoing dispute of the IRS Audit, it would not be reasonable or reliable for a financial expert to opine on damages. As such, it is our opinion a damage calculation cannot be made until Highland's Tax Matters Partner resolves the IRS Audit.

C. Opinion No. 3

44. If or when Highland's Tax Partner reaches a final agreement with the IRS, the tax impact to Mr. Daugherty should be calculated using the following process:

Step 0: Identify adjustment type (income, deductions, etc.);
Step 1: Total partnership adjustment for that item (IRS proposed change);
Step 2: Partner allocation % for that item (from K-1 / agreement);
Step 3: Partner's share = (Step 2) × (Step 3);
Step 4: Calculate tax effect = (Step 4) × partner's marginal rate;

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36 PDADV_004856.

37 HUNTON_001105- HUNTON _001108.

Step 5: Calculate partnership basis impact;[38]

Step 6: Assess if there is any underpayment. If no, process ends here.

Step 7: If necessary, assess penalties;[39]

Step 8: Compute interest (Interest = Underpayment x Rate x Time Outstanding);[40]

Step 9: Calculate total partner-level exposure (Tax + Penalties + Interest).

c. Basis for Opinion No. 3

45. If Highland's Tax Partner reaches a final partnership-level agreement with the IRS, the resulting tax impact to Mr. Daugherty must be computed at the partner level. The partnership-level adjustment itself is the first step; the ultimate economic consequence to any individual partner necessarily depends on the partner's allocable share of the adjustment, federal and state tax rates, basis consequences, and any penalties or interest that may be imposed.

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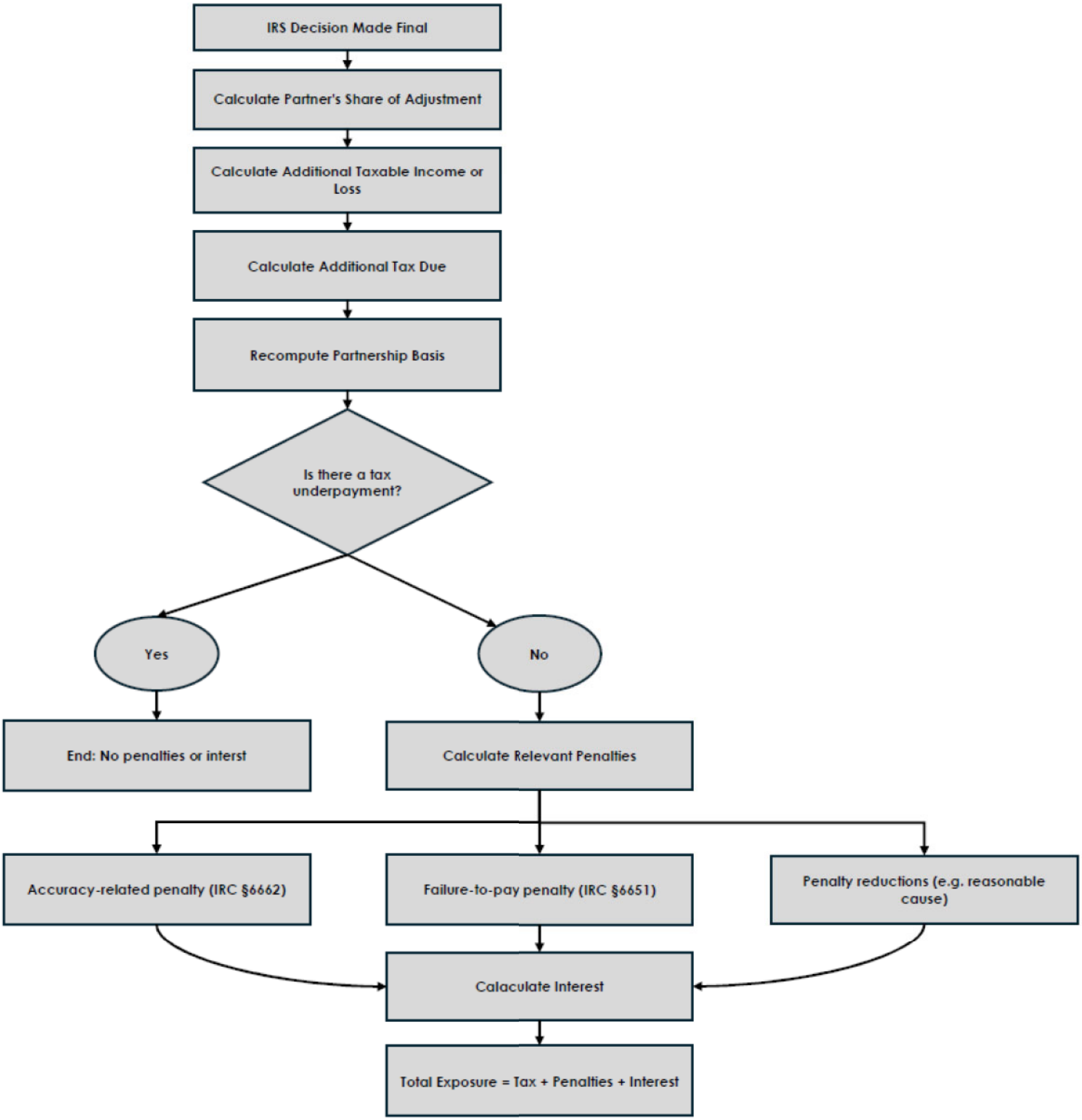
[38] 26 C.F.R. § 1.705-1, *Determination of basis of partner's interest* (as amended)

[39] 26 U.S.C. § 6651; 26 U.S.C. § 6662.

[40] 26 U.S.C. § 6601; 26 U.S.C. § 6621.

46. The chart below illustrates the steps that occur ***after*** the IRS's determination becomes final.



47. However, this process cannot begin until the IRS issues a final determination. As shown in the record, the IRS examination concluded in 2017 with "proposed" adjustments, not final ones, and Highland formally disagreed and appealed those adjustments. Subsequent correspondence confirms:[41]

- Highland did **not** accept the IRS Proposed Adjustments;
- Highland intended to and did appeal;
- The case entered the IRS Office of Appeals, where no timeline existed for resolution; and
- As of 2025, Highland continued to negotiate, submit revised counter offers, and request post-Appeals mediation.

48. Because no final partnership-level adjustment exists, any damage calculation today would not be reasonable or reliable. Once the IRS issues a final determination, however, the calculation of partner-level impact should follow the nine steps outlined above.

VII. Conclusion

49. As discussed throughout this report, due to Highland ongoing IRS Audit it would not be reasonable or reliable to opine on any economic damages to Mr. Daugherty. Our analysis, conclusions and opinions are based on the data and information that was available as of the date of this report. We reserve the right to revise the opinions, assumptions and calculations set forth herein upon consideration of the reports of any other testifying expert, the testimony of or new documents produced by any witness, any information or documents that any testifying expert produces or upon which he or she relies, and other material that may be presented to me prior to or at the time of trial that we may properly consider under the governing rules or guidelines set by the Court.

Dated: February 13, 2026

By: T.J. Liles-Tims

By: Gary McIntosh CPA, CFF

Gary McIntosh

[41] Daugherty ROGs00003740; PDADV_004856; HUNTON_001105–HUNTON_001108.

VIII. Appendices

T.J. Liles-Tims, MBA, CVA, CFE, MAFF

Partner – Forensics, Litigation, and Valuation Services

T. J. Liles-Tims is a Partner in Weaver's Forensics, Litigation, and Valuation Services practice and serves as the Firm's Leader for Valuation Disputes and Family Law service lines. His expertise lies in business valuations, fraud examination, and quantification of commercial damages. T. J. has more than 20 years of experience in business valuations, fraud examination, and the quantification of commercial and personal damages. T. J. regularly conducts business valuations for a variety of industries and for matters involving litigation, estate and gift tax, and ownership transfers. Experience in financial forensics includes litigation, detection and quantification of various forms of financial fraud, divorce-related matters, embezzlement, criminal tax fraud, and the quantification of commercial damages. Testimony experience includes cases in federal and state court, as well as arbitrations.

T. J. previously served as a Co-Founding Partner at BVFF Partners, LLC which was a business valuation and financial forensics advisory firm. Prior to BVFF Partners, T. J. managed his own firm LilesTims, Inc. where he also conducted business valuations and financial forensics. T. J. received a B.B.A and an M.B.A in Finance from the University of Central Oklahoma, where his field of graduate study was finance. Additionally, he has earned his designation as a Certified Valuation Analyst (CVA), Certified Fraud Examiner (CFE), and Master Analyst in Financial Forensics (MAFF). He is an Instructor, Contributor, and Author for the National Association of Certified Valuators and Analysts (NACVA) in the areas of business valuation, litigation consulting, and financial forensics and was awarded NACVA's "2020 Circle of Light Award," "2018/2019 Instructor of the Year," and former Chair of NACVA's "Business Valuation Credentialing Board," and currently serves as Chair for the NACVA "Leadership Initiatives Board." He has taught numerous continuing education classes in the areas of business valuations and financial forensics.

Professional History

October 2023 to Present: Partner, Weaver & Tidwell, L.L.P.

- Public accounting firm providing assurance, tax, and advisory services.

July 2015 to October 2023: Co-Founding Partner, BVFF Partners, L.L.C.

- Acquired by Weaver & Tidwell, L.L.P. as of October 2023
- Professional services firm specializing in valuation, dispute advisory and forensics.

August 2007 to October 2023: President, LilesTims, Inc.

- Owner of BVFF Partners, LLC.
- Professional services firm specializing in valuation, dispute advisory and forensics.

Education and Certifications

- Certified Fraud Examiner (CFE) – Association of Certified Fraud Examiners
- Certified Valuation Analyst (CVA) – National Association of Certified Valuators and Analysts
- Master Analyst in Financial Forensics (MAFF)
- Master (M.B.A.) and Bachelor (B.B.A.) of Business Administration in finance from the University of Central Oklahoma

Representative Presentations and Publications

- "NACVA: Foundations of Financial Forensics" – (Co-Author) Training curriculum for NACVA's Master Analyst in Financial Forensics (MAFF) designation.

- "NACVA: Special Purpose Valuations – Mergers and Acquisitions, Forensic Accounting, Litigation" – (Co-Author) Training materials for Certified Valuation Analyst training center and exam.
- "NACVA & IBA: Business Valuation Certification and Training Center On-Demand Video Series" – (Co-Author)

Professional Seminars Taught

- *"M&A: Top Disputes and When They Arise."* National Business Institute. August 2024
- *"Understanding Market Forces in Value Appreciation for Marital Dissolution."* Oklahoma County Bar Association. March 2024.
- *"Building the Clock v. Telling the Time: Drafting an Effective Litigation Report."* National Association of Certified Valuators and Analysts Financial Forensics 2022 Super Conference. December 2022.
- *"A Sock & A Sock or A Sock & A Shoe? How Not to be Hidebound in Valuation and Financial Forensics."* National Association of Certified Valuators and Analysts Financial Forensics 2022 Super Conference. December 2022.
- *"Valuation and Vows: We Still Have to Play by the Rules."* American Academy of Matrimonial Lawyers – Oklahoma Chapter. October 21, 2022. (Also authored a white paper titled the same)
- *"Valuing Assets in Divorce and Presentation to the Court."* Oklahoma Bar Association – Family Law Section. October 22, 2021.
- *"Beyond the Numbers: Using Psychology Hacks to Influence Outcomes."* National Association Certified Valuators and Analysts' Financial Forensics 2020 Super Conference. November 17, 2020.
- *"Foundations of Financial Forensics"* Five-day certification training for Master Analyst in Financial Forensics. Taught multiple times annually since 2016
- *"Commercial Damages and Lost Profits: An Overview for Attorneys & Judges" An* OBA/CLE Webcast, September 2016
- *"Business Valuation: What an Attorney Needs to Know"* National Business Institute CLE, July 2016
- *"Commercial Damages and Lost Profits"* Master Analyst in Financial Forensics certification training for the National Association of Certified Valuators and Analysts. October 2014; February 2015; October 2015; May 2016
- *"Art with Numbers: Appealing to the Triers of Fact"* National Association of Certified Valuators and Analysts' Financial Forensics Conference. October 20, 2015
- *"Business Valuations: Reports, Standards, and Analysis"* Risk Management Association – Oklahoma Chapter. February 26, 2015
- *"The Expert's Role in Financial Forensics: Real-World Guidance for Managing the Engagement"* continuing education presentation for the National Association of Certified Valuators and Analysts. June 25, 2015.
- *"Navigating Expert Deposition and Trial Testimony"* continuing education presentation for the National Association of Certified Valuators and Analysts. June 26, 2015.
- *"Business Valuation for Attorneys"* continuing education presentation for the Oklahoma Bar Association, November 20-21, 2014.
- *"Valuing Family Limited Partnerships"* continuing education and workshop for the National Association of Certified Valuators and Analysts. August 12th & 13th, 2014
- *"Business Valuations in Litigation Matters"* continuing education presentation for the Oklahoma Bar Association. May 28, 2014.
- *"Examining the Business Valuation Report"* continuing education presentation for the Oklahoma Bar Association. March 27, 2013.

Expert Report / Testimony

Fix My Phones Plus Franchise, LLC v. Fix My Phone 63rd & May, LLC, 5924, LLC, and Damon Wooten
American Arbitration Association, Case No. 01-23-0003-9884 – Deposition Testimony on June 16, 2025
Provided testimony as to the Respondents' lost profits and lost business value with respect to a retail cellular repair service franchise.

Drannon Moss, Atlas Termite and Pest Controls, Inc, and Atlas Termite and Pest Controls, LLC v. Jimmie Moss and Jacquelyn Sue Moss
Cleveland County, Oklahoma Case No. CJ-2022-730 – Deposition Testimony on April 4, 2025 and Trial Testimony, April 9, 2025
Provided testimony as to the fair market value of a termite and pest control company. Additionally, provided testimony as to the misappropriation of company assets and the additional benefits paid to the Defendant above and beyond those paid to the Plaintiff.

Rebecca Ellithorp v. Brian Ellithorp
Oklahoma County, Oklahoma Case No. FD-2023-1057 – Deposition Testimony on April 2, 2025 and Trial Testimony, April 7, 2025
Provided testimony as to the fair market value of a manufacturer of gas separators within the oil and gas industry, as well as an oil and gas consulting firm.

Proposed Rules Change - Treasury Department Circular No. 230
Internal Revenue Service, Washington D.C. Testimony, March 6, 2025
Provided testimony to IRS and Department of Treasury Senior Counsel, on behalf of the NACVA Leadership Initiatives Board and the collective NACVA membership, in regards to the proposed changes to Circular 230 as it relates to business valuation/appraisers and the regulations governing practice before the Internal Revenue Service.

Jacob Brown v. Anna Connor Brown
Oklahoma County, Oklahoma Case No. FD-2023-1769. Testimony, December 6, 2024.
Provided expert testimony as to the fair market value of a veterinarian clinic.

Derek Allen Wilson v. Stevie Lynell Wilson
Cleveland County, Oklahoma Case No. FD-2023-53. Testimony, July 10, 2024.
Provided expert testimony as to the fair market value of a commercial real estate agency.

Maria Lopez-Almarez, et. al. v. Evelyn Lopez, et. al..
U. S District Court: Western District of Oklahoma. Case No. CIV-22-501-HE. Deposition, April 16, 2024.
Provided rebuttal testimony to the Plaintiff's expert report (business valuation) for four (4) different Mexican food restaurants. Additionally, provided testimony regarding the Plaintiff's expert reports claims to economic damages.

Mira Suvedi v. Kiriti Suvedi.
Oklahoma County, Oklahoma Case No. FD-2021-3174. Testimony, March 25, 2024.
Provided expert testimony as to the fair market value of seven (7) different businesses consisting of construction, land development, residential duplexes, fast food franchises, and trading post/C-Store.

Lacy J. Greene v. Charles Greene.
Logan County, Oklahoma Case No. FD-2022-210. Testimony, February 20, 2024.
Provided expert testimony as to the marital versus separate property of Petitioner's retirement funds, as well as restricted and unrestricted stock options.

Jeffrey R. Hartwig v. Rebecca A. Hartwig.
Oklahoma County, Oklahoma Case No. FD-2023-254. Testimony, January 17 & 18, 2024.
Provided expert testimony to the fair market value of Wife's Staffing Agency and Husband's Landman business. Additionally, provided opinions regarding *Thielenhaus* calculations and personal goodwill issues for both businesses.

Keating Poteet v. Vicki Poteet.
Woodward County, Oklahoma Case No. FD-2021-00082. Deposition Testimony, December 15, 2023.
Provided expert testimony as to asset tracing for funds brought into the marriage versus those collected during the marriage. Also, provided opinions regarding *Thielenhaus* calculations.

T. Sage v. K. Sage.
Tulsa County, Oklahoma Case No. FD-2020-1720. Testimony, November 6 & 9, 2023.
Provided expert testimony as to the fair market value of the Respondent's multiple businesses including a lawn and landscape company, pest control company, and recreational land holding company.

Amy Lorraine Chen v. Ting Kon Chen.
Oklahoma County, Oklahoma Case No. FD-2019-3403. Testimony, October 27, 2023.
Provided testimony as to the fair market value of a medical anesthesiology practice and additional testimony regarding the 'disposable' income of the parties for purposes of the Court's determination of alimony.

Heidi Vaughn v. Clay Vaughn.
McClain County, Oklahoma Case No. FD-2022-11. Testimony, July 24, 2023.
Provided testimony regarding the fair market value of the Respondent's carpentry trim business and rebuttal testimony to the Petitioner's experts business valuation "review" and its lack of adherence to professional standards.

Brian K. Cook v. Sarah E. Cook.
Lincoln County, Oklahoma Case No. FD-2020-140. Testimony, April 28, 2023.
Provided testimony as to the appreciation in fair market value of the Petitioner's trucking company and the inability to establish a starting fair market value due to the lack of documentation and data available.

Michael Lyles v. Darlene Lyles.
Oklahoma County, Oklahoma Case No. FD-2020-3025. Testimony, April 24, 2023.
Provided testimony regarding the appreciation in the fair market value of the Petitioner's Section 8(a) information technology company from date of marriage to the date of filing the petition.

Colette Lynn Lesh v. Joel Alvin Lesh.
Love County, Oklahoma Case No. FD-2022-00009. Testimony, February 28, 2023.
Provided testimony as to the accounting of the Petitioner's horse training and breeding facility, as well as the Respondent's horse training facility. Also, provided testimony, based on the Court's questions, as to the preliminary fair market value of the businesses held by the marital estate.

Stacie Nichole Currie v. Jeffrey Don Currie.
Flathead County, Montana Cause No. DR-22-63(D). Testimony, January 12, 2023.
Provided testimony regarding the fair market value of the Respondent's insurance agency and bail bonds company.

Gina Leigh Heald v. Ronald Erick Heald.
Oklahoma County, Oklahoma Case No. FD-2019-2089. Testimony, April 13, 2022; April 14, 2022; April 19, 2022; and April 26, 2022.
Provided testimony as to the fair market value of the Respondent's metal fabrication business, as well as the Respondent's tornado shelter manufacturing business.

Brenda Sasnett Cummings v. Luther Gregory Cummings.
Oklahoma County, Oklahoma Case No. FD-2009-855. Testimony, November 5, 2021.
Provided testimony of the present value of the Respondent's pension benefits and rebuttal testimony as to the appropriate interest factor related to the pension benefits.

Mark Sheets v. Sarah Sheets.
Oklahoma County, Oklahoma Case No. FD-2018-3112. Testimony, December 9, 2020.
Provided testimony of the fair market value of an ownership interest in the Claimant's accounting firm and the impact of a buy-sell agreement on the firm's fair market value.

Amy L. Darter v. James M. Darter.
Oklahoma County, Oklahoma Case No. FD-2018-3642. Testimony, September 28 & 29, 2020
Provided testimony regarding the fair market value, primarily, of the Petitioner's medical practice and associated personal goodwill and the Respondent's legal and financial protection business for firearm owners. The testimony included a fair market value opinion of a real estate holding company, as well.

Citizens State Bank and American Southwest Mortgage Funding Corp v. Heard, McElroy & Vestal.
United States District Court for the Western District of Oklahoma, Case No. CIV-2018-360-G. Deposition, July 15, 2020.
Provided deposition testimony regarding the commercial damages sustained by the Plaintiff due to the alleged improper audits performed by the Defendant.

Randi Michele Wilkins v. Jeremy Dale Wilkins.
Murray County, Oklahoma Case No. FD-2018-00032. Deposition, April 8, 2020.
Provided deposition testimony regarding the fair market value of the Respondent's lawn and landscaping business.

Clayton Bruner v. Hillery Bruner.
Custer County, Oklahoma Case No. FD-2019-00077. Testimony, March 4, 2020.
Provided testimony regarding the fair market value of the Claimant's law practice and the personal goodwill of the Claimant, as well as rebuttal testimony as to the available income of the marital estate for the Court's calculation of permanent alimony.

State of Oklahoma, et. al. v. Wildcat BDP, Inc., et. al.
Pottawatomie County, Oklahoma Case No. CJ-2015-124. Testimony, January 30, 2020.
Provided rebuttal testimony as to the fair market value of the Defendant's convenience store for purposes of eminent domain.

Paul Snowden, et. al. v. Stellar Construction, Inc., et. al.
Cleveland County, Oklahoma Case No. CJ-2016-255. Testimony, November 19, 2019. Deposition, January 14, 2019.
Provided trial and deposition testimony regarding a forensic accounting of the cost and billings of a new home construction, specifically, the alleged misrepresentation of the amounts reported to the Petitioner during, and throughout, the build.

Myers, et. al. v. Myers, et. al.
Oklahoma County, Oklahoma Case No. CJ-2015-189. Testimony, February 6, 2019, and Deposition, November 9, 2017.
Provided deposition and trial testimony regarding the alleged mismanagement of assets held in trust by the trustee and the trustee's advisors.

McKayla Leann Doty v. Patrick Cowan, et. al.
Beckham County Case No. CJ-2016-00028. Testimony, April 9, 2018
Provided testimony as to the proper documents needed to determine a trust accounting. More specifically, what documents and reports would be necessary to conduct a forensic accounting for purposes of determining the source and use of funds held in trust.

Carla Denita Nievar v. Steven Welsey Nievar.
Cleveland County Case No. FD-2017-884. Testimony, January 22 & 23, 2018
Provided testimony as to the Respondent's needs for temporary alimony and the profitability of the Respondent's start-up heating and air conditioning business. Additionally, provided an opinion of the fair market value of the heating and air conditioning business owned during the marriage.

John Cockerell, Jr. v. Howell Amirald Gee, IV, et. al.
Oklahoma County Case No. CJ-2017-4469. Testimony, August 21, 2017
Provided testimony on behalf of the Defendant for allegations of hiding assets. The analysis included a forensic accounting for the source of funds and, more specifically, the use of those funds.

Audrey Brown v. Steve Brown.
Cleveland County Case No. FD-2016-1154. Testimony, March 15, 2018, and Deposition, July 31, 2017
Provided both trial and deposition testimony as to the fair market value of the Respondent's engineering company, as well as the value of the patents owned by the Respondent.

Jana D. Eldridge v. Kent Eldridge.
Oklahoma County Case No. FD-2016-420. Testimony, August 23, 2016
Provided testimony based on a needs analysis of the Petitioner for purposes of the Court determining alimony. Also provided consulting opinions to Petitioner's counsel as to the fair market value of the Respondent's law practice, as well as Respondent's personal goodwill.

Scott D. Sachs v. Chesapeake Energy Corporation.
American Arbitration Association. Case No. 01-15-0002-8356. Testimony, October 26, 2015
Provided deposition testimony regarding the amount of employment benefits due to the Claimant. The employment benefits included wages, stock options, and other ancillary benefits.

Bryan Butler v. Tanya L. O'Connell and O'Connell's Roofing, LLC.
Cleveland County Docket No. CJ-2011-961. Testimony, June 29, 2015
Provided testimony on the fair market value of the Respondent's roofing company.

United States of America v. Teddy Dryden Mitchell.
U.S. District Court: Western District of Oklahoma, Case No. CR – 12-00216-R. Testimony, January 17, 2014.
Provided testimony regarding the allegations of the Defendant's lack of reporting income in certain businesses of the Defendant. This testimony included a forensic accounting to trace funds from the sources to its use.

Glynis Suzanne Andrews Koester v. Glenn Alan Koester.
Oklahoma County Docket No. FD-2010-1523. Testimony, June 18, 2012
Provided testimony regarding the fair market value of the Respondent's dermatology practice and offered additional testimony as to the personal goodwill of the Respondent.

Lawanda Padgett v. Capital West Securities, Inc.
FINRA Arbitration, File No. 09-02953. Testimony, February 2, 2011.
Provided testimony to opine on the losses sustained in a stock portfolio. The analysis included calculating the net out of pocket losses and the performance of a stock portfolio invested in a model portfolio.

Gary D McIntosh, CPA, CFF

Managing Director, Forensics and Litigation Services

Retired Partner, Of Counsel –Tax Services

Gary D McIntosh, CPA, CFF, is a Managing Director in Weaver's Forensics and Litigation Services practice. Gary has 54 plus years of public accounting experience, and has been assisting clients with the financial aspects of disputes, investigations and analysis, and turnaround and restructuring services as a part of his practice for over 40 years. He has served as an expert witness in state and federal court, including bankruptcy court, as well as in arbitration. Gary's experience includes developing and analyzing damage claims, conducting fraud and financial forensics investigations, assisting businesses in the analysis of governance, restructure, and turnaround needs, valuing business and intangible assets, evaluating complex data sets resulting from allegations of breach of contract, financial misrepresentation, fraud, director, officer and employee misconduct, misuse of corporate or partnership funds, breach of fiduciary duty, compliance with partnership agreements or corporate bylaws and operating agreements, assessing operational deficiencies and ways to efficiently operate the business in times of economic downturns, or business distress, family law division of property, tracing of assets, community and separate property including claims for reimbursement, including the tax impact of transactions in various family law, partnership, corporate and individual settings, estate, gift and probate disputes, and other related disputes. His clients have included law firms, general counsels, Boards of Directors, stockholders, and partners spanning construction, real estate investment and development, high-tech, restaurant and hospitality, manufacturing and distribution, service industry, oil and gas operators, energy, mortgage lending, title companies, professional services, automobile dealerships, estates and trusts, and related industries, among others.

Gary previously served as a Partner in the firm, prior to the required retirement date, as well as leading his own firm and two other large local/regional firms in the Austin area during his career. He graduated from the University of Texas at Austin in 1970 with a Bachelor of Business Administration degree in Accounting, and became a CPA in February 1972. He became certified in Financial Forensics by the American Institute of Certified Public Accountants (AICPA) in 2009, the first year such a certification became recognized. He is past Chairman of the Texas Society of Certified Public Accountants, past member of the 23 member Board of Directors of the AICPA (now over 400,000 members) for 3 years, was a member of the Uniform Accountancy Act Committee of the AICPA and NASBA for several years including its Co-Chair for 2 years, and has served on numerous committees of the Texas State Board of Accountancy (TSBPA), including as a member or advisory member of the TSBPA Rules Committee for over 25 years.

See attached detail resume for professional work history and community service.

General Commercial Contract Disputes, Family Law Disputes and Probate Disputes

Embezzlement of Assets Using False Contractual Documentation and Fictitious Invoices

Engaged by plaintiff counsel for forensics examination and report regarding $8.5 million embezzlement scheme for factored invoices, using false documentation and fictitious invoices; obtained settlement with various parties and conviction of financial officer who masterminded the scheme.

Probate Dispute Among Co-Executors of Estate With Assets in Multiple States

Engaged by counsel for one Co-Executor to determine validity of tax filings in estate and negotiate settlement of issues for asset distributions

Partnership Contract Dispute-Real Estate Entities

Real estate partnership disputes-Engaged by counsel to negotiate settlements with parties and dissolution of partnership including substantial tax impact of transactions

Testifying Expert in Probate Disputes Among Beneficiaries and Prior Executor and Agents

Engaged by Court in Probate Court disputes. Prepared multiple reports regarding forensics examination of the Estate and entities owned by the Estate, and prepared the estate and gift tax returns for the Estate and Decedent. Represented the multi-million dollar estate in the examination of the returns by the Estate and Gift Division Agent Attorney with a resolution of a very minimal amount of additional taxes. Testified multiple times from 2014 to 2021 relative to the forensics examination and the estate and gift tax issues. Provided information and documentation for claims against agents of the estate and the decedent.

Testifying Expert Regarding Mismanagement of Estate and Estate Assets

Engaged by plaintiff counsel in multi-year litigation relative to mismanagement claims against executors and other parties. Prepared reports and testified multiple times relative to tax reporting issues, failure to properly account for assets, failure to distribute to beneficiaries. Assistance with settlement of estate with substantial real estate assets and obtaining settlement of claims producing over $35 million to clients.

Testifying Expert Regarding Real Estate and Contractual Disputes

Engaged by counsel in dispute and forensics examination relative to various contractual disputes regarding leases of commercial building and related matters. Conducted examination and prepared report relative to the disputes, including commitments, contracts, remodeling of structures and costs relative thereto. Case settled during final deposition stage shortly before trial.

Consulting Expert Regarding Estate Disposition

Engaged by plaintiff counsel to assist in protecting assets of spouse in partnership and estate dispute regarding wealthy Bexar County decedent

Consulting Expert Regarding IRS Special Agent Investigation

Engaged by counsel for third party witness regarding IRS Special Agent investigation into potentially illegal structuring of partnership entities to avoid self-employment and payroll taxes

Testifying Expert Regarding Retirement Plan Structure and Income Tax Reporting

Engaged by defense counsel regarding structure of retirement plan, tax effects of the plan's implementation on the parties, subsequent IRS examination. Testified as to these matters, and client won the verdict of the jury

Testifying Expert Regarding Tax Issues Relative to US Bankruptcy Court Case

Engaged by plaintiff counsel to analyze tax issues relative to substantial claims in excess of $58 million judgment in US Bankruptcy Court in Connecticut. Prepared analysis of various tax issues and related issues regarding accounting for assets of marital estate, partnerships, corporations, trusts and related entities. Attended depositions of other experts relative to these issues.

Testifying Expert Regarding Probate Issues, Related Tax Issues and Distribution of Assets of Estates

Engaged by counsel for two of three beneficiaries in dispute over estate assets, and tax reporting for such estates. Both spouse died in the same year. Testified relative to the issues and the forensics examination, including alternative tax reporting alternatives to minimize impact of estate and gift tax filings. Successfully achieved transfer of over $35 million in assets without any estate tax to either estate. Assisted in negotiations to settle disputes among beneficiaries, and achieve distribution of the assets in accordance with such settlement.

Consulting Expert Regarding Partnership Dispute and Defalcations

Engaged by counsel re partnership agreements, forensic examination for potential defalcations and failure to comply with partnership agreement. Helped to negotiate settlement of the disputes

Consulting Expert Regarding Embezzlement of Cash Collections in Food Manufacturing Operation

Engaged by plaintiff counsel in forensics examination of embezzlement case relative to theft of cash from business operations. Issued extensive report to counsel and submitted to District Attorney.

Consulting Expert Regarding IRS Reporting Issues

Engaged by defense counsel regarding IRS investigation relative to potential unreported income from medical labs and testing facilities. Negotiated settlement with IRS relative to the findings of the forensics examination.

Consulting Expert Regarding Settlement of Estate

Engaged by counsel for a beneficiary of estate relative to dispute among the beneficiaries and preparation of analysis of assets and liabilities for settlement of estate.

Testifying Expert in Family Law Dispute

Represented spouse in family law dispute regarding assets from sale of business and division of said assets. Client counsel died during the case. Brought new attorney up to speed and helped to negotiate settlement of case and ensure assets were distributed in accordance with the decree and property settlement.

Consulting Expert in Medical Practice Dissolution Dispute

Engaged by counsel for a physician partner in a medical practice that was dissolving. Prepared analysis of capital accounts for settlement of dispute re buy-sell agreements and resolution of financial aspects of the agreements.

Testifying Expert in Family Law Dispute

Engaged by counsel for spouse in family law dispute over hiding of assets by spouse. Forensics examination conducted, report issued. Deposition and court testimony regarding the attempts at hiding assets, the property owned by the marital estate, and proposed distribution of assets. Findings were upheld by the Court in the distribution of assets mandated in the decree.

Testifying Expert in Family Law Dispute

Represented spouse in family law dispute regarding separate and community property issues, division of assets; prepared valuation of auto dealerships; prepared report relative to medical practice assets of physician spouse, and helped to negotiate settlement of the multiple assets and multiple businesses of the parties.

Testifying Expert in Probate Dispute

Engaged by counsel relative to probate dispute and related IRS reporting issues. Issued report analyzing findings and assisted in resolution and settlement of case.

Consulting Expert in Family Law Dispute

Engaged by counsel regarding oil and gas interests owned by client. Prepared analysis of the assets and tracing of separate versus community property. Assisted in negotiation of settlement of division of assets.

Testifying Expert in Defalcations by Agent of Business

Engaged by plaintiff counsel relative to analyzing and preparing report relative defalcations by manager of properties and funds of plaintiff, and failure of bank personnel to prevent the defalcations. Issued report and assisted in resolution of the case after deposition testimony by other parties to the case, which was resolved in favor of plaintiff.

Testifying Expert in Business Dispute Regarding Ownership of Assets and Defalcations

Engaged by counsel to prepare forensics analysis regarding assets of restaurant and related real estate, including defalcations by officer of the business. Analyzed financial documents re dispute as to ownership of the business and prepared report relative thereto. Assisted in negotiating settlement re buyout of the officer and offsetting those claims with the proof of defalcations and diversions of assets by the officer.

Consulting Expert Regarding Shareholder Dispute Relative to Contract Compliance

Engaged by counsel in shareholder dispute to prepare analysis of contract requirements and generate report relative to distributions required by agreements versus distributions actually made.

Consulting Expert Regarding Insurance Contract Terms and Lack of Compliance

Engaged by plaintiff counsel to analyzed proposals for sale of insurance policy and represented terms and projections versus actual terms and policy issued. Prepared analysis and report on issues, leading to eventual settlement with insurance agent, broker and insurance company.

Consulting Expert Regarding Lost Profits and Failure to Comply With Contract Terms

Engaged by counsel in dispute regarding compliance with contractual terms regarding sale of business interests and failure to pay party to the contract according to the terms of the contract. Generated settlement of claims substantially in excess of original payment by potential defendant.

Consulting Expert Regarding Potential Sale of Oil and Gas Operating Entity

Engaged by counsel to assist in potential sale of entity providing services in oil and gas industry. Prepared analysis of operations and assets and assisted in negotiations relative to the sale of the business.

Testifying Expert Regarding IRS Examination Relative to Purported Unreported Income of Retail Entity

Engaged by defense counsel relative to intensive investigation into purported unreported income by a retail entity relative to its cash collections and Paypal accounts. Prepared analysis, met with Internal Revenue Service on multiple occasions and provided documentation allowing counsel to settle case with the Internal Revenue Service.

Consulting Expert Regarding Contract Disputes for Art Museum

Engaged to prepare analysis of transactions and resolution of contract disputes. Assisted in negotiation settlement of disputed amounts.

Consulting Expert Regarding Contract Disputes for Construction of Commercial Building

Engaged by counsel regarding contract dispute in real estate transaction relative to building construction. Prepared analysis of costs and documented claims of client regarding expenditures in accordance with terms of contract.

Testifying Expert in Probate Court Relative to Substantial Contractual Disputes

Engaged by the District Court, in a case transferred to the Probate Court, regarding substantial disputes relative to terms of agreements, disposition of assets, accounting for assets, distributions to partners and related transactions. Prepared analysis and testified relative to findings. Court decision relative to the findings of the forensics analysis upheld by appellate court.

Testifying Expert in Minority Shareholder Oppression

Engaged by counsel for minority shareholder in dispute relative to buyout terms. Issued report and testified in deposition relative to defendant attempts to oppress and manipulate terms to minority shareholder.

<u>Other Cases Not Listed</u>

Have testified over many years in at least forty family law cases, relative to proposed equitable distribution of assets and liabilities, valuations of assets, tax impact on settlements, alimony, child support calculations and related matters.

Have participated in many analyses and structures of sales or acquisitions of businesses, including followup analyses of compliance with contracts, resulting in disputes to be mediated or arbitrated.

Have analyzed lost profits, damages claims and related matters for several disputes relative to contract disputes where I was not hired by counsel, but by an entity or person party to the dispute.

Expert Witness Testimony in Prior Four Years

In the Matter of The Estate of Roy Orey Lindsay, Sr, Deceased

Civil Action Cause No 13-12-20542 CVR, District Court, Reeves Co, Texas, 143rd Judicial District, Sitting in Matters of Probate

Engaged by the Estate, under specific Order of the Court. Provided reports and testimony relative to analysis, tax issues, forensics examination of estate assets and liabilities and tracing of assets, some of which were transferred outside the estate. Testified as to tax liabilities and claims of estate against outside parties.

***

Eugene L Watkins, Jr vs Anthony R Bertucci, American Affordable Homes, LP and American Affordable Homes & Properties, Inc

Probate Action Cause No C-1-PB-17-00937, related to Cause No C-1-PB-000577, Probate Court One, Travis County, Texas

Provided deposition testimony and testimony in hearings regarding substantial disputes relative to terms of agreements, disposition of assets, accounting for assets, distributions to partners and related transactions.

***

Daniel Measurement and Control, Inc and Micro Motion, Inc vs Angus Measurement Services, LP and Angus Operations, LLC

Civil Action Cause No B-18-01-0086 CV, in the District Court of Ector County, Texas, 161st Judicial District

Case settled. Provided deposition testimony as to claims of plaintiffs for lost profits and breach of contract in contractual disputes among the parties.

***

In the Matter of the Marriage of Tabatha Brown and Cameron Brown, et al

Family Law Matter, Cause # D-1-FM-22-000776, in the 261st Judicial District of Travis County, Texas

Testified as to federal income tax liability and associated interest and penalties, through date of divorce; testified as to tax-effected present values of retirement benefits

***

In Re: Joseph Paul Beninati, Debtor
United States Bankruptcy Court, Western District of Texas, Chapter 7, Case No 20-10096-TMD

Provided deposition testimony regarding substantial disputes relative to terms of agreements, US

federal and state income taxes relative to the debtor and related entities, trusts, coporations, LLCs and partnerships, taxability of certain transactions, conflicting information on tax returns and related matters

***

In the Matter of the Marriage of Tamara Marie Rezler and Steven Bryan Warner, the 353rd Judicial District Court of Travis County, Texas; Cause No D-1-FM 23-003516

Testified in deposition and court proceedings regarding separate and community property characterization and tracing issues, income tax issues and related property settlement discussions

***

In Re: J Craig Walter, individually and as beneficiary of the Walter Bypass Trust, the Walter Marital Trust, the J Craig Walter Children's Trust and the J Craig Walter Children's Exempt Trust, Plaintiff v J Brian Walter, individually, and as Trustee of the Walter Bypass Trust, the Walter Marital Trust, the J Brian Walter Trust; J Blake Walter, individually and as Trustee of the J Craig Walter Children's Trust. the J Craig Walter Children's Exempt Trust, and the J Blake Walter Trust; High Tines Ranch LP and JVW, Inc, Defendants; Cause No DC-22-04675 in the District Court, 192nd Judicial District of Dallas County, Texas

Testified in court proceedings regarding the accountings prepared of the trusts on behalf of the Trustees and various tax issues relative to the trusts, their principal and income as reported in said accountings

BIBLIOGRAPHY RELATED TO CASE

1. **Vernon's Texas Statutes and Codes Annotated, Subtitle B Texas Trust Code, Chapter 113 Administration, Subchapter E, Accounting by Trustee**
   a. **Property Code Section 113.151 Demand for Accounting**
   b. **Property Code Section 113.152 Contents of Accounting**
   c. **Property Code Section 114 Liabilities, Rights and Remedies of Trustees, Beneficiaries and Third Persons**
   d. **Property Code Section 116 Uniform Principal and Income Act**
   e. **Property Code Section 117 Uniform Prudent Investor Act**
2. **Vernon's Texas Statutes and Codes Annotated, Estates Code, Title 2, Subtitle I. Independent Administration**
   a. **Chapter 351 Powers and Duties of Personal Representative**
   b. **Chapter 404.001 Accounting**

Appendix B

Documents Reviewed

Bates Start	Bates End	Document
N/A	N/A	2024 Tax Return Robert & Brandi Ylla.pdf
N/A	N/A	Client's Financial Docs 2.18.25.pdf
N/A	N/A	Daugherty Settlement Agreement.pdf
N/A	N/A	Doc No. 1 - Adv. Complaint.pdf
N/A	N/A	Doc. No. 1-1 - Adv. Complaint (Exhibit A).pdf
RNY(ATI)_0001	RNY(ATI)_0326	Respondent's ATI docs- Bates nos. RNY(ATI)_0001-326 ATI Docs (02099851x7A25A).PDF
000637	000726	2020.11.18 - Hearing Transcript.pdf
N/A	N/A	2022.05.04 - Discussion with Jim Seery.pdf
N/A	N/A	2025.09.04 - Hearing Transcript - Motion to Dismiss.pdf
N/A	N/A	RE Daugherty v. HCMLP.eml
Daugherty ROGs00003729	Daugherty ROGs00003729	Highland 2008 - Form 4605-A Daugherty ROGs00003729.pdf
HUNTON_000004	HUNTON_000008	HUNTON_000004.pdf
HUNTON_001131	HUNTON_001162	HUNTON_001131.pdf
HUNTON_001163	HUNTON_001169	HUNTON_001163.pdf
HUNTON_001170	HUNTON_001181	HUNTON_001170.pdf
PDADV_010244	PDADV_010261	PDADV_010244.pdf
PDADV_010262	PDADV_010267	PDADV_010262.pdf
PDADV_010268	PDADV_010339	PDADV_010268.pdf
PDADV_010346	PDADV_010346	PDADV_010346.pdf
PDADV_010520	PDADV_010520	PDADV_010520 - 2008 Comp statement dated Feb 09.pdf
PDADV_011013	PDADV_011017	PDADV_011013.pdf
N/A	N/A	Tab 01--Dkt 39 Answer to HCMLPs complaint and original counterclaim.pdf
Daugherty ROGs00016700	Daugherty ROGs00016702	Tab 02--Email from JAM to Uebler 5.5.2022-Daugherty ROGs00016700-5.5.2022.pdf
Daugherty ROGs00022527	Daugherty ROGs00022528	Tab 03--Email from Seery to Daugherty 10.19.2022 Daugherty ROGs00022527.pdf
N/A	N/A	Tab 04--Email from JAM to Bobo 5.24.2024.pdf
PDADV_010182	PDADV_010210	Tab 05--Settlement Agreement PDADV_010182.pdf
N/A	N/A	Tab 06--2025.12.12 Daugherty's Amended Responses to Highland's RFA.pdf
N/A	N/A	Tab 07--2025.12.12 Daugherty's Amended Resp to Highland's Interr.pdf
PDADV_004267	PDADV_004449	Tab 08--2nd A&R LP Agreement PDADV_004267.pdf
DAUGHERTY ROGS01407735	DAUGHERTY ROGS01407742	Tab 09--First Amend to 2nd Amend LP Agmt DAUGHERTY ROGS01407735.pdf
DAUGHERTY ROGS01407743	DAUGHERTY ROGS01407749	Tab 10--Second Amend to 2nd Amend LP Agmt DAUGHERTY ROGS01407743.pdf
DAUGHERTY ROGS00336187	DAUGHERTY ROGS00336201	Tab 11--DAUGHERTY ROGS00336187-Amend Empl Agmt.pdf
PDADV_000019	PDADV_000019	Tab 12--PDADV_000019 - Resignation 2011.pdf
PDADV_010520	PDADV_010520	Tab 13--PDADV_010520 - 2008 Comp statement dated Feb 09.pdf
PDADV_004224	PDADV_004225	Tab 14--PDADV_004224 - JD and PD email exchange 9-27-11.pdf
N/A	N/A	Tab 15--PN-0007_PATRICK DAUGHERTY - FINAL 2008 K1.pdf
Daugherty ROGs00003729	Daugherty ROGs00003729	Tab 16--Highland 2008 - Form 4605-A Daugherty ROGs00003729.pdf
Daugherty ROGs00003740	Daugherty ROGs00003740	Tab 17--2.3.18 Letter from Collins to Daugherty Daugherty ROGs00003740.pdf
Daugherty ROGs00003730	Daugherty ROGs00003733	Tab 18-- Form 886-Z - Daugherty ROGs00003730.pdf
Daugherty ROGs00003734	Daugherty ROGs00003736	Tab 19-- Form 870-PT Daugherty ROGs00003734.pdf
PDADV_004687	PDADV_004687	Tab 20-- PDADV_004687 - Collins 7.2018 email to PD re 60 day lr and appeal.pdf
PDADV_004856	PDADV_004856	Tab 21-PDADV_004856 - Collins Dec 2019 email to PD re appeal of adjustments.pdf
HUNTON_001105	HUNTON_001108	Tab 22--2.28.25 Ltr to IRS Appeals HUNTON_001105.pdf
PDADV_004971	PDADV_004971	PDADV_004971.pdf

EXHIBIT 60

PDADV_004224-PDADV_004225

Pat Daugherty

From: Jim Dondero
Sent: Tuesday, September 27, 2011 5:54 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.

Its not a retrade, we were clarifying a general understanding. You will trust or you will leave; you will get no agreement in writing. You will stop pushing and wasting my time. You will contribute and be rewarded and when u feel unfairly treated you can go elsewhere but I won't deal with this much distraction, disrespect or disruption.

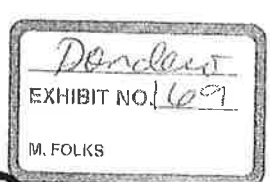
From: Pat Daugherty
Sent: Tuesday, September 27, 2011 02:04 PM
To: Jim Dondero
Subject: RE: What do you stand for? This retrade is unfair and unjust.

You are the one who told me to "f@ck myself", not the other way around. For the record, the agreement always expressly noted that I would have to be employed at Highland in order to get any payment of bonus (as has always been the case). As for Tunstall, we had already negotiated that agreement which clearly states the nature of my interest and your interest. The nature of the Restoration economic interest will be as agreed subject to investor approval as they are going to have their own views of how my, yours and the teams comp should be structured. I have never tried to skim you and I am not trying to now. That said, it is reasonable to get the nature of my compensation in writing so that everyone is clear. Every other Company in the universe commits their economic relationships with their managers to writing so that there can be no confusion down the road. To insist that I do otherwise is flat out wrong and you know it.

If you don't want me to give a damn about you personally then I guess I'll do my best to comply. That said, I have been by your side thru a whole lot of sh@t and it is so refreshing to get your boot up my a$$ now that you are back on your feet. I'm glad to see you are back to the point where you can tell those closest to you to "f@ck themselves".

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
13455 Noel Road, Suite 800
Dallas, TX 75240
972-628-4100 (phone)
972-628-4147 (fax)
pdaugherty@hcmlp.com

From: Jim Dondero
Sent: Tuesday, September 27, 2011 1:27 PM
To: Pat Daugherty
Cc: Patrick Boyce
Subject: Re: What do you stand for? This retrade is unfair and unjust.



I won't take you speaking with me like that. "Big brother u never wanted" doesn't allow u to be that disrespectful. I'm not willing to make that indicative letter a contract. There are things that need to be corrected such as bonus amounts of 750k feb aug need to both be described as retention, in-good-standing to receive. 25% interest in Tunstall and RCP need to be described as LP interests not a fee skim. Re REIT you will be treated fairly re a transaction that may or may not happen and if the anticipated deal occurs as expected you can expect approx 15% but its too lose to define and you will have to trust me. You have been treated more than fair in a value proposition that is always shift. If you believe I have been untrustworthy you should move on.
Re my personal life, its not relevant except to say I will tolerate the individual, passions and peculiarities, to a point. Beyond that point it becomes too unpleasant and I'd rather start over alone. You need to stop pushing me.

From: Pat Daugherty
Sent: Tuesday, September 27, 2011 09:48 AM
To: Jim Dondero
Subject: What do you stand for? This retrade is unfair and unjust.

Patrick H. Daugherty, Esq.
Partner, Head of Distressed, Special Situations and Private Equity
Highland Capital Management, L.P.
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Dallas, TX 75240
972-628-4100 (phone)
972-628-4147 (fax)
pdaugherty@hcmlp.com

Exhibit 61 Slipsheet

(Subject to Motion to Seal and Protective Order)

Exhibit 62 Slipsheet

(Subject to Motion to Seal and Protective Order)

EXHIBIT 63

PDADV_018426-PDADV_018426

Delete | Archive | Report | Move to | Reply | Reply all | Forward | Share to Teams | Zoom | Quick steps | Read / Unread | Categorize | Flag / Unflag | Pin / Unpin | Print

Re: Daugherty Settlement Agreement Follow-Up

JS

James Seery<jpseeryjr@gmail.com>

Reply | Reply all | Forward

To: Patrick Daugherty

Mon 10/24/2022 1:30 PM

Cc: David Klos <dklos@highlandcapital.com>; Thomas Surgent <tsurgent@highlandcapital.com>

Start reply with: Okay, thank you! | Ok, thanks. | Got it, thanks!

Pat:

So you are prepared, its 446 files totaling 178MB. Thanks

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: James Seery <jpseeryjr@gmail.com>
Date: Monday, October 24, 2022 at 12:57 PM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: David Klos <dklos@highlandcapital.com>, Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Re: Daugherty Settlement Agreement Follow-Up

Pat:

Following up on the distribution below.

We took the liberty of setting up the distribution through developmentspecialists.sharefile.com using your Glacier Lake Capital email address (pdaugherty@glacierlakecap.com). Please let us know if you would prefer to use another email or you want anyone else added to the site. You should be receiving any email to Glacier Lake that will provide you with access to the site.

We propose to keep the site open until the close of business on October 31, 2022. That should give you and any of your lawyers or accountants (that you advise us to provision with their email addresses) plenty of time to download the information.

Please let me know if this works for you.

Best. Jim

Jim Seery
631-804-2049
jpseeryjr@gmail.com

From: James Seery <jpseeryjr@gmail.com>
Date: Wednesday, October 19, 2022 at 1:23 PM
To: Patrick Daugherty <pdaugherty@glacierlakecap.com>
Cc: David Klos <dklos@highlandcapital.com>, Thomas Surgent <tsurgent@highlandcapital.com>
Subject: Daugherty Settlement Agreement Follow-Up

EXHIBIT 64

Internal Revenue Service
Large & Mid-Size Business
4050 Alpha Road
MC: 4515 NDAL
Dallas, TX 75244

Department of the Treasury

Date:
03/03/2010

Taxpayer Identification Number:
(Not used on TMP Letter)

Name of Partnership:
Highland Capital Management, L.P.

Partnership ID Number:
75-2716725

Tax Year Ended:
200812

Person to Contact:
Brent A Masters

Employee Identification Number:
02-29461

Contact Hours:
M-F 7:00-4:30

Telephone Number:
(Not a toll-free number)
972-308-1576

THE TAX MATTERS PARTNER
Highland Capital Management, L.P.
Two Galleria Tower
13455 Noel Rd, Suite 800
Dallas, TX 75240

NOTICE OF BEGINNING OF ADMINISTRATIVE PROCEEDING

We are required by law to send you this notice. This is your notice that we are starting an administrative proceeding at the partnership level with respect to partnership items related to the partnership return identified above. This means our office is beginning an examination (audit) of your partnership's federal tax return. You have been identified as a partner. Our audit will be conducted at the partnership level through your Tax Matters Partner, who will officially represent the partnership in its dealings with the IRS. Please contact your Tax Matters Partner if you would like to participate in the proceedings. If applicable, we will mail you a notice of proposed changes upon completion of the audit.

Please be advised - We will be sending most communications, including document requests and conference notifications, only to the Tax Matters Partner who is responsible for keeping all partners apprised of scheduled events and the status of the proceedings. We urge you to maintain regular communications with your Tax Matters Partner regarding the progress of this examination. Any adjustment we make to the partnership's return may affect your personal tax liability. This proceeding may present the only opportunity to challenge our findings. The results of our audit will apply to all partners even if your representative fails to keep you informed. Our records indicate that the most recent address of the partnership is:

"Pass-thru" Partners (estate, trust, S corporation, partnership, or nominee of another person) are required to forward a copy of this notice and all notices received from the IRS to all persons holding an interest in the above-named partnership. *For example, if you are a partnership, you are required to send copies of this notice to your partners*. You must do so within 30 days of receipt of the notice. The responsibilities of pass-thru partners are set forth in Treasury Regulation (26 C.F.R.) §301.6223(h)-1.

Tax Matters Partners are required to keep each partner informed of all IRS proceedings and any court case that may follow. You must furnish the IRS with the name, address, profits interest, and taxpayer identification number of each person who was a partner at any time during the year under examination. If you did not submit this information with the partnership return, or if the information that you submitted needs to be updated, please send the most current information to the IRS address shown in this letter. The responsibilities of the Tax Matters Partner are set forth in Treasury Regulation (26 C.F.R.) §301.6223(g)-1.

Your rights as a taxpayer are set forth in IRS Publication 1, *Your Rights as a Taxpayer*. Please refer to Publication 541, *Partnerships*, for information about partnership taxation.

If you have questions, you may write or call the IRS contact person whose name, address and telephone number are listed in the heading of this letter. If you write, please enclose a copy of this letter, and include your telephone number with the most convenient time for us to call you. If our number is outside of your local calling area, there will be a long distance charge to you.

Thank you for your cooperation.

Sincerely,

Brent Masters, International Examiner

Enclosures:
Copy of this letter

EXHIBIT 65

	Case:	I		II		III		IV		V	
		MIN ESTIMATION AMT.		TMP ACCEPTED AMT.		MID-POINT AMT.		IRS OFFER AMT.		MAX 2018 AUDIT AMT.	
	Reference/formula	Complete reversal of 2018 audit		Tax Matters Partner offer to IRS [6]		Hypothetical complete 50/50 split [7]		IRS settlement offer [8]		2018 adjustments from the IRS audit team [9]	
IRS income adjustment to HCMLP	**A**	**$ -**		**See note [6]**		**$ 83,166,357**		**$ 129,528,079**		**$ 166,332,713**	
Daugherty's % of partnership [1]	B	0.7403%		0.7403%		0.7403%		0.7403%		0.7403%	
Daugherty share of IRS income adjustment	C = A x B	$ -		See note [6]		$ 615,681		$ 958,896		$ 1,231,361	
2008 applicable tax rate - 35%	D	35%		35%		35%		35%		35%	
Tax underpayment – Daugherty	**E = C x D**	**$ -**		**$ 59,224**		**$ 215,488**		**$ 335,614**		**$ 430,976**	
Statutory penalty [2]	**F = E x [penalty %]**	**$ -**		**$ -**	**0%**	**$ 21,549**	**10%**	**$ -**	**0%**	**$ 86,195**	**20%**
Potential interest:											
Applicable statutory blended rate [3]	G	4.59%		4.59%		4.59%		4.59%		4.59%	
Time outstanding (years) [4]	H	10.51		10.51		10.51		10.51		10.51	
Interest accrued	**I = E x G x H**	**$ -**		**$ -**		**$ 103,860**		**$ 161,758**		**$ 207,720**	
Maximum theoretical amount (underpayment + penalty + interest)	J = E + F + I	$ -		$ 59,224		$ 340,897		$ 497,371		$ 724,892	
Income on previous refund [5]	K	$ -		$ (59,224)		$ (125,409)		$ (161,758)		$ (293,915)	
Estimation amount	**L = J - K**	**$ -**		**$ -**		**$ 215,488**		**$ 335,614**		**$ 430,976**	

IMPORTANT: SEE NOTES ON THE SUCCEEDING PAGE

Notes:
[1] Ex. 17 – Form 886-Z

[2] Ex. 30 – Imposition of penalties. 20% applied to the V case (based on the 2018 adjustments); 0% applied in the II and IV case (based on the contents of those offers); 10% applied in the III case as a 50% concession.

[3] Statutory rate is short term federal rate, plus 3%, rounded to the nearest whole percent, updated quarterly, and compounding daily. The amount described herein is the blended simple rate resulting from the application of the actual statutory, daily compounding rate. Average applicable statutory rate over the period was approximately 3.8%, and the effect of daily compounding added approximately 0.8%. See Ex's: 29, 31, 32, 33.

[4] April 15, 2009 to October 16, 2019

[5] Mr. Daugherty received cash IRS refund amounts of $493,629 and $780,301 in 2009 on account of 2008 Forms 1040 and 1045, respectively (see Ex.'s 35 and 36) for a total of $1,273,930. Had Mr. Daugherty invested this refund and earned just 4%, compounding annually (an easily obtained rate of return in the 2009-2019 period), he would have earned in excess of $600,000 as of October 16, 2019. This amount dwarfs any potential penalty or interest that is potentially assessable to Mr. Daugherty in any of the five cases described herein. However, for the sake of conservatism, Highland has assumed that Mr. Daugherty's use of the $1,273,930 of refund only generated returns equal to the penalty and interest assessed in cases III, IV, and V (in other words, Highland is assuming a rate of return of substantially below 4% compounding annually in those cases). In case I, there's simply nothing owed by Daugherty to the IRS, so no income has been calculated. And in case II, there is no penalty or interest, so it is merely assumed that Mr. Daugherty would have generated at least his underpayment amount ($59,224) of income based on investing the $1,273,930 refund over the course of over ten years – a rate of return substantially below 1% annually.

[6] Ex. 22 – HUNTON_001105. Tax matters partner's offer was for a single payment of $8M in resolution of all liability for all partners. Calculation of Daugherty's share is simply $8M x his partnership share (0.7403%). It is unclear from the offer whether the tax matters partner would or could allocate the liability amongst the partners, including Daugherty, but for the sake of conservatism, it is assumed that Daugherty would have to pay a ratable share.

[7] Assumes 50% of all adjustments and penalties in the V column as a hypothetical middle of the road resolution that sits between the current known settlement offers.

[8] Ex. 21 – HUNTON_000079; Ex. 26 – HUNTON_001120. Assumes 50% concession by the IRS on adjustment FP-01, 0% concession by the IRS on adjustment FP-02, 100% concession by the IRS on adjustment FP-03. The letter description of the FP-02 adjustment is less than crystal clear, but for purposes of this calculation, the maximum adjustment is applied.

[9] Ex. 15 – Form 4605-A; $166M of adjustment to HCMLP, plus statutory penalty