

Part III

Administrative, Procedural, and Miscellaneous

Application Procedures and Final Agreement for Withholding Foreign Partnerships and Withholding Foreign Trusts; Additional Guidance for Qualified Intermediaries Regarding Withholding on Small or Related Foreign Partnerships and Trusts.

Rev. Proc. 2003-64

SECTION 1. PURPOSE AND SCOPE

.01. Guidance to Simplify Partnership and Trust Withholding and Reporting Obligations. The provisions of this revenue procedure are designed to simplify withholding and reporting obligations for payments of income made to foreign partnerships and foreign simple or grantor trusts. This revenue procedure contains the final withholding foreign partnership (WP) and withholding foreign trust (WT) agreements, described in Treasury Regulation §1.1441-5(c)(2)(ii) and (e)(5)(v), and the application procedures for entering into such agreements. This revenue procedure also amends the Qualified Intermediary (“QI”) withholding agreement (“QI agreement”), contained in Rev. Proc. 2000-12, 2000-1 C.B. 387, to add new section 4A. New Section 4A of the QI agreement provides additional rules for QIs regarding withholding and reporting on certain small or related foreign partnerships and foreign simple or grantor trusts that do not enter into WP or WT agreements. Similar rules are also incorporated into the final WP and WT agreements. A WP or WT agreement entered into during a calendar year may be made effective as of the first day of that calendar year. A QI may apply the provisions of section 4A as of the beginning of the 2003 calendar year.

.02 Extension of Transitional Relief in Notice 2001-4. Pending development of the WP agreement, the IRS and Treasury provided transitional relief for foreign partnerships for calendar year 2001. See Section IV of Notice 2001-4, 2001-1 C.B. 267. The IRS and Treasury extended the transitional relief through calendar year 2002. See Notice 2002-66, 2002-42 I.R.B. 715. The guidance provided in this revenue procedure makes further extensions of this transitional relief for foreign partnerships unnecessary. Section III.C of Notice 2001-4 provides documentation and reporting relief for foreign simple and grantor trusts. The rules of Section III.C. of Notice 2001-4 will no longer apply after 2003 because the more comprehensive guidance for trusts in this revenue procedure make those rules unnecessary. For the year 2003 a QI may apply the rules of Section III.C. of Notice 2001-4 or the rules of this revenue procedure.

SECTION 2. COMMENTS ON PROPOSED WP AND WT AGREEMENTS

.01 Proposed WP and WT Agreements. The IRS and Treasury issued proposed WP and WT agreements in Notice 2002-41, 2002-1 C.B. 1153. The proposed WP and WT agreements provided streamlined procedures designed to simplify documentation and reporting. Under the provisions of the proposed WP and WT agreements, a WP or WT would be permitted to provide the withholding agent with a Form W-8IMY as a WP or WT without attached documentation from partners, beneficiaries or owners. The WP or WT would receive payments from the withholding agent in gross and would withhold and deposit tax, if any, based on the Forms W-8 or W-9 that it receives from its partners, beneficiaries or owners. The WP or WT would report payments to, and tax withheld from, its direct foreign partners, beneficiaries or owners on Form 1042-S on an individual basis or, by election, on a pooled basis. Thus, a WP or WT would be relieved of the requirement to disclose to a withholding agent any documentation and payment information for partners, beneficiaries or owners. A withholding agent would be relieved of the responsibility for collecting documentation, withholding and reporting payment information for partners, beneficiaries or owners of a WP or WT.

The financial community generally responded favorably to the simplified procedures for documentation, reporting and audit provided under the proposed WP and WT agreements. The financial community provided some comments about specific provisions of the proposed agreements. The financial community also raised concerns that the WP and WT agreements may not be as appropriate for certain foreign partnerships and trusts and provided suggestions for modification. In response, the IRS and Treasury have amended several provisions of the WP and WT agreements. The IRS and Treasury have also developed a new set of provisions for certain smaller foreign partnerships and trusts and for certain foreign partnerships and trusts that are related to a QI, WP, or WT. Notwithstanding the new rules below for certain small or related partnerships and trusts, the IRS and Treasury intend that the WP and WT agreements may be entered into in all circumstances in which a foreign entity acting on behalf of its partners, beneficiaries or owners provides Form W-8IMY as proper documentation. It is anticipated that the majority of foreign partnerships and trusts with substantial reportable income will seek to enter into WP or WT agreements.

.02 Specific Provisions of the WP and WT Agreements. One category of comments from the financial community addressed specific provisions of the WP and WT agreements. The financial community recommended the following: (1) the term of the WP agreement should coincide with the term of the partnership if a partnership with a limited term elects pooled reporting; (2) the WP agreement should not terminate following a termination of the partnership under section 708(b)(1)(B) (termination of partnership upon sale or exchange of 50 percent or more of the total interest in partnership capital and profits); (3) ordering rules should be added to the WP and WT agreements to clarify the partnership's or trust's withholding obligations on distributions; and (4) the validity period of Form W-8BEN should be extended beyond three years. In addition, commentators suggested that, in certain circumstances, one or more of the

following provisions of the WP and WT agreements should be modified to more closely parallel the QI agreement: (1) documentation limited to Forms W-8 and W-9, (2) application only to direct partners, beneficiaries or owners, (3) frequency of audits when pooled reporting is elected, and (4) automatic termination.

The IRS and Treasury continue to believe that, in general, the simplified procedures contained in the WP and WT agreements are appropriate given the particular circumstances of partnerships and trusts, and that these simplified procedures will reduce administrative and audit costs as well as the risk of errors in performing under the agreements. Therefore, the final WP and WT agreements are substantially the same as originally proposed. For example, the WP and WT agreements continue to require partners, beneficiaries or owners to be documented solely with Forms W-8 and W-9 and do not permit reliance on the presumption rules. The IRS and Treasury do not believe it is appropriate to modify the documentation requirements to match those applicable to QIs given the significant differences between foreign partnerships and trusts and QIs. Unlike QIs, foreign partnerships and trusts generally are not subject to know-your-customer (KYC) rules. Therefore, the IRS is unable to rely on regulators to ensure that a WP or WT is properly documenting its partners, beneficiaries or owners.

Where appropriate, however, certain provisions of the WP and WT agreements have been modified to be more similar to provisions in the QI agreement. The WP and WT agreements have been modified as follows in response to comments by the financial community.

Term of the Agreement. The WP or WT agreement continues in force indefinitely unless the WP or WT has elected to report on Form 1042-S on a pooled basis. As originally proposed, the term of the agreement of a WP or WT that elected pooled reporting was six years and was renewable. The six year renewable term continues to be available. In addition, the WP or WT may elect to use a longer non-renewable term of up to fifteen years. This optional longer term was added in response to comments that investment partnerships or trusts are often formed with limited terms, usually ranging from ten to fifteen years and that having the term of the WP or WT agreement coincide with the term of the trust or partnership would facilitate compliance. See Sections 9.01 and 9.02 of the WP and WT agreements, Appendices 1 and 2.

Automatic Termination. If the WP or WT fails to document any partner, beneficiary or owner with Form W-8 or W-9 by the time withholding is required under the agreement, then, unless the WP or WT cures its failure, the agreement will automatically terminate effective December 31st of the year in which the failure is discovered. In response to comments, the final WP or WT agreements, first, extend the date for curing documentation failures from January 31 to March 15 and, second, add an alternative method for curing. Thus, the final WP and WT agreements allow reinstatement as of the date the agreement is terminated not only if the WP or WT is able to obtain documentation for undocumented partners, beneficiaries or

owners before March 15 of the year following the year in which the agreement automatically terminated, but, alternatively, if all undocumented partners have ceased to be partners in WP before March 15 of the year following the year in which the agreement automatically terminated. No change was made in response to the comment that the WP agreement should not terminate following a termination of the partnership under section 708(b)(1)(B). Consistent with the application of section 708(b)(1)(B) in numerous other areas, the WP agreement must terminate in this case because section 708(b)(1)(B) terminates the partnership for tax purposes.

Withholding on Distributions. The WP or WT receives payments from the withholding agent in gross and withholds and deposits tax, if any, based on the Forms W-8 or W-9 that it receives from its partners, beneficiaries or owners. The WP or WT must withhold on the date it makes a distribution to a direct foreign partner, beneficiary or owner that includes an amount subject to withholding. Comments suggested that ordering rules should be added to the WP and WT agreements to clarify the partnership's or trust's withholding obligations on distributions. Rather than developing a complex set of ordering rules, a provision has been added to the final WP and WT agreements that allows the WP or WT to determine the amount of withholding on a distribution based on a reasonable estimate of the partner, beneficiary or owner's distributive share of income subject to withholding for the year. See Section 3.03 of the WP and WT agreements, Appendices 1 and 2.

Application to Direct Partners, Beneficiaries or Owners. As originally proposed, the WP and WT agreements provided that a partnership or trust could act as a WP or WT only for its direct partners, beneficiaries or owners that were not intermediaries or flow-through entities. The WP or WT could elect to report on Forms 1042-S on a pooled basis for its direct partners, beneficiaries or owners. For all its indirect partners, beneficiaries or owners, however, the WP or WT was required to pass documentation up to the withholding agent. Thus individual Form 1042-S reporting was required for each indirect partner, beneficiary, or owner. The IRS and Treasury believe it is appropriate to modify these rules only in specific situations. Thus, the final WP and WT agreements contain two new provisions. As discussed in Section 3.03 of this revenue procedure, the first provision may be applied to indirect partners, beneficiaries or owners that are small partnerships and trusts. This provision contains streamlined rules similar to the U.S. rules for joint account holders. As discussed in Section 3.04 of this revenue procedure, the second provision may be applied to indirect partners, beneficiaries or owners that are partnerships or trusts that are related to the WP or WT. This provision contains rules similar to those for private arrangement intermediaries (PAIs) under the QI agreement. Under both provisions, the indirect account holders must be documented with Forms W-8 (and not any other documentation). See Section 10 of the WP and WT agreements, Appendices 1 and 2.

Frequency of Audit. Unless the WP or WT has elected to report on Form 1042-S on a pooled basis, it will be subject to audit only if selected for audit by the IRS. Under the proposed agreement if pooled reporting was elected, the external audit occurred every two

years and examined the two previous years. In response to comments that a WP's or WT's audit coverage should match that of a QI, the WP and WT agreements have been amended to conform the audit cycle for the six year agreement to the audit cycle under the QI agreement. Therefore, if the WP or WT elects pooled reporting and a six year term, it must agree to have the external auditor conduct an audit of the second and fifth full calendar year that the agreement is in effect. The two year audit cycle has been retained, however, for a WP or WT that elects pooled reporting and a non-renewable term of up to fifteen years. See Sections 8.03 and 8.04 of the WP and WT agreements, Appendices 1 and 2.

Validity Period of Form W-8. This revenue procedure does not include any modifications to address comments from the financial community regarding the extension of the validity period of Form W-8BEN. The IRS and Treasury will continue to study these comments.

.03 Certain Smaller Partnerships and Trusts. The financial community has suggested that the proposed WP and WT agreements are less suitable for smaller partnerships and family trusts. Commentators provided information indicating that a significant portion of foreign partnerships or trusts with accounts with QIs are small partnerships or trusts that receive minimal U.S. source income and may not have the resources to undertake documentation, withholding and reporting responsibilities at their own level. Commentators noted that the partners, beneficiaries or owners of these partnerships and trusts generally are foreign persons that are all from the same country or otherwise subject to the same rate of withholding on U.S. source income.

Commentators recommended that the IRS establish a threshold, below which a QI would be able to handle the documentation, reporting (including pooled reporting) and withholding obligations under simplified rules, subject to verification through additional documentation requirements. Commentators suggested that, to the extent all partners, beneficiaries or owners are not entitled to the same rate of withholding, the QI, WP, or WT could be required to withhold at the highest applicable rate without a withholding statement (or to obtain a withholding statement and apply the different rates), and to perform pooled reporting on Form 1042-S. Commentators noted that the QI could then be responsible for monitoring the account to ensure that documentation is received and, in the event the account holder received reportable amounts above a certain threshold, waivers of confidentiality could be obtained to allow the QI to report on Form 1042-S on an individual basis. Similar comments were also submitted for situations in which these smaller partnerships and trusts were partners, beneficiaries or owners of larger foreign partnerships or trusts that become WPs or WTs.

In response to these comments, the IRS and Treasury have developed a new provision that may be applied to a small foreign partnership or simple or grantor trust that is an account holder of a QI. This provision appears in new section 4A of the QI agreement. See Appendix 3. Similar rules, applicable to a foreign partnership or simple or grantor trust that is a partner,

beneficiary or owner of a WP or WT, are incorporated into the WP and WT agreements. See Section 10 of the WP and WT agreements, Appendices 1 and 2. This provision is not available to partnerships or trusts if any partner, beneficiary or owner is a U.S. person or a passthrough partner, beneficiary or owner. Below is a summary of the relevant rules.

Income Threshold. The QI, WP, or WT may apply this provision only to a foreign partnership or trust that receives from it less than \$200,000 of reportable amounts for a calendar year.

Written Agreement. The partnership or trust must agree in writing that it will make available to the QI's, WP's, or WT's auditor, if requested, records that establish that documentation was provided for all of its partners, beneficiaries or owners.

Documentation. A QI must obtain either Form W-8 or other documentation provided in its QI agreement from each partner, beneficiary or owner. A WP or WT must obtain a Form W-8 from each partner, beneficiary or owner. Additionally, the small partnership or trust must provide a Form W-8IMY with the required withholding statement. The withholding statement, however, need not provide any allocation information.

Withholding. Similar to the U.S. rules for joint account holders, a QI, WP, or WT must allocate payments to the partner, beneficiary or owner that is subject to the highest rate of withholding. The QI, WP, or WT may report the reportable amounts received during the calendar year by these small partnerships or trusts in its Form 1042-S reporting pools for direct account holders. Under the regulations that would otherwise apply, the partnership or trust must provide the QI, WP, or WT a withholding statement that, among other things, allocates the payment to each of the partners in the partnership. The withholding agent must withhold and report for each partner, beneficiary, or owner, separately to the IRS. The new provision simplifies these procedures by relieving the partnership or trust of the responsibility for providing allocation information and by allowing the QI, WP, or WT to allocate payments to the partner, beneficiary or owner that is subject to the highest rate of withholding.

Refunds. A QI, WP, or WT may not include any payments made to such small foreign partnership or trust in any collective refund claim pursuant to the general provisions of QI, WP, or WT agreements. Instead, if a partner, beneficiary, or owner is subject to a lower withholding rate than the other partners, beneficiaries or owners, that partner, beneficiary or owner may file a refund claim directly with the IRS if the time period has elapsed for the QI, WP, or WT to apply the reimbursement or set-off procedures. To apply for such a refund, the partner, beneficiary or owner must have an individual Form 1042-S. Upon request, a QI, WP, or WT may file a separate Form 1042-S for any partner, beneficiary or owner. A QI, WP, or WT may do so only if the partnership or trust has provided a withholding statement that includes allocation information for the requesting partner, beneficiary or owner and the partnership or trust has agreed to provide additional information requested by the QI's, WP's, or WT's auditor to substantiate the information.

Timing. A QI, WP, or WT may generally apply these special rules to a foreign partnership or trust on a year-by-year basis.

Failure to Provide Records. A QI, WP, or WT may not apply these rules to a partnership or trust if the partnership or trust has failed to make available to the QI's, WT's or WP's auditor requested records within 90 days after the request. Upon such failure, the QI, WP, or WT must treat such partnership or trust under the general rules, must correct its withholding and must file corrected Forms 1042 and 1042-S for the individual partners, beneficiaries or owners.

.04 Certain Related Partnerships and Trusts

Additionally, commentators suggested that the rules for indirect account holders should be modified for certain partnerships and trusts that are related to a QI, WP, or WT. Commentators suggested that these partnerships or trusts (such as sponsored funds) were able to determine allocations and withholding amounts in accordance with U.S. tax rules but that the QI, WP, or WT should retain the withholding and reporting responsibility.

In response to these comments, the IRS and Treasury have developed new rules that allow a foreign partnership or trust that is related to a QI, WP, or WT to provide the QI, WP, or WT the information necessary for the QI, WP, or WT to withhold and report on reportable amounts. The partnership or trust, however, retains the documentation identifying its partners, beneficiaries or owners. Under these rules, the partnership or trust acts as the QI's, WP's, or WT's agent in applying the QI, WP or WT agreement to its partners, beneficiaries or owners. The QI, WP or WT, however, must remain liable for the actions performed by the partnership or trust. These provisions appear in new section 4A.02 of the QI agreement (see Appendix 3) and in Section 10.02 of the WP and WT agreements (see Appendices 1 and 2). Below is a summary of these rules.

Related Partnership or Trust. To address compliance concerns, a QI, WP, or WT may apply these procedures to a foreign partnership or trust only if the QI, or an affiliate of the QI, or WP or WT is a general partner of the partnership or a trustee of the trust.

Written Agreement. The QI, WP or WT and the partnership or trust must agree, in writing, that the partnership or trust will act as agent of the QI, WP, or WT under the QI, WP or WT agreement and will make available, upon request, to the QI's, WP's, or WT's auditor records that establish compliance with the relevant provisions of the QI, WP, or WT agreement.

Documentation. The related foreign partnership or trust must provide the QI, WP, or WT with a Form W8-IMY together with a withholding statement providing information necessary for the QI, WP, or WT to fulfill its withholding, reporting and filing obligations. The

withholding statement may include pooled information for direct partners, beneficiaries or owners that are not intermediaries or flow-through entities. The partnership or trust need not provide to the QI, WP or WT the underlying documentation for such partners, beneficiaries or owners. However the partnership or trust must provide to the QI, WP or WT the underlying documentation for indirect partners, beneficiaries or owners of such partnerships or trusts, or for direct partners, beneficiaries or owners that are intermediaries, flow-through entities or U.S. nonexempt recipients.

Liability. By entering into the agreement with the related foreign partnership or trust, the QI, WP, or WT agrees that it is not assigning liability for performance of any of its obligations under its QI, WP, or WT agreement. Similar to the rules that apply to a PAI under a QI agreement, the QI, WP, or WT and the related foreign partnership or trust are jointly and severally liable for any tax, penalties, and interest for the partnership's or trust's failure to meet any obligations that arise out of its agreement with the QI, WP, or WT.

Withholding and Reporting. The related foreign partnership or trust must not assume withholding or reporting responsibility. Withholding and reporting responsibility remains with the QI, WP, or WT. The QI, WP, or WT must file separate Forms 1042-S for each related foreign partnership or trust to which it is applying these rules reflecting pooled basis information. The QI, WP, or WT must apply the specific payee reporting provisions of the regulations to indirect partners, beneficiaries or owners, and to direct partners, beneficiaries or owners that are U.S. non-exempt recipients. See Treas. Reg. §§ 1.1441-1 and 1.1441-5.

Timing. A QI, WP, or WT may generally apply these special rules to a related foreign partnership or trust on a year-by-year basis.

Failure to Provide Records. A QI, WP, or WT may not apply these rules to a partnership or trust if the partnership or trust has failed to make available to the QI's, WT's or WP's auditor requested records within 90 days after the request. Upon such failure, the QI, WP, or WT must treat such partnership or trust under the general rules, must correct its withholding and must file corrected Forms 1042 and 1042-S for the individual partners, beneficiaries or owners.

.04 Modifications. The IRS will consider modifications of the QI agreement and the WP or WT agreements only in rare and unusual circumstances. The IRS will not accept, however, any changes that it determines would provide a QI, partnership or trust with a competitive advantage over other similarly situated QI's, partnerships or trusts. In its sole discretion, the IRS may agree, or refuse, to adopt the suggested modifications for a particular case.

SECTION 3. APPLICATION PROCEDURES FOR FINAL WP OR WT AGREEMENTS

.01 Contents of the Application Package. A prospective WP or WT must submit an application to become a WP or WT. The application package must include the information specified in this Section 3.01 and any additional information and documentation requested by the IRS:

(1) A statement identifying what type of entity the applicant is (i.e., a foreign partnership or a foreign simple or grantor trust) and that it requests to enter into a WP or WT agreement with the IRS.

(2) The applicant=s name, address, and employer identification number(s) (EIN), if any.

(3) The country in which the applicant was created or organized and a description of the applicant=s business.

(4) A list of the titles of those persons who will be the responsible parties for performance under the WP or WT agreement and the names, addresses, and telephone numbers of those persons as of the date the application is submitted.

(5) A list describing, as of the date the application is submitted, the type of partners, beneficiaries or owners (e.g., U.S., foreign, treaty benefit claimant, or intermediary or flow-through entity), the number of partners, beneficiaries or owners within each type, and the estimated value of U.S. investments that the WP or WT agreement will cover.

(6) A completed Form SS-4 (Application for Employer Identification Number) to apply for a withholding foreign partnership or trust Employer Identification Number (WP-EIN, WT-EIN) to be used solely for WP or WT reporting and filing purposes. An applicant must apply for a WP-EIN or WT-EIN even if it already has another EIN. The WP-EIN or WT-EIN will be in addition to any EIN the WP or WT already has, which should be retained.

(7) Two copies of the completed WP or WT agreements, as set forth in Appendix 1 or 2 of this revenue procedure, executed as provided in Section 3.03.

.02 Requesting Modifications. A partnership or trust that seeks modifications to the WP or WT agreement must complete and execute an application in accordance with the instructions in Section 3.01 and 3.03. In addition to the information required under Section 3.01, the application must include (1) information describing the partnership's or trust's unique facts and circumstances, (2) suggested modifications to the agreement based on those unique facts and circumstances, and (3) an analysis of the feasibility of any such suggested modifications. In its sole discretion, the IRS may agree, or refuse, to modify the WP or WT agreement.

.03 Executing the WP or WT Agreement. To apply for WP or WT status, a foreign partnership or trust must submit a completed application package, as provided in Section

3.01 (and Section 3.02 if applicable), including the Form SS-4 and the two signed copies of the WP or WT agreement, to:

Internal Revenue Service
LMSB:FS:QI
290 Broadway
New York, NY 10007-1867
USA

Upon acceptance, the IRS will return one executed copy of the WP or WT agreement to the partnership or trust. The IRS may develop procedures to expedite processing of these applications.

SECTION 4. AMENDMENT TO QI AGREEMENT

This revenue procedure amends the QI agreement, contained in Rev. Proc. 2000-12, to add new section 4A, contained in Appendix 3 of this revenue procedure. Pursuant to Section 12.02 of the QI agreement, this amendment applies not only to QI agreements entered into on or after the effective date of this revenue procedure but also to all existing QI agreements. A QI may apply the provisions of section 4A as of the beginning of the 2003 calendar year.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Section III.C. of Notice 2001-4 is superseded for calendar year 2004 and subsequent calendar years. Rev. Proc. 2000-12 is modified to add to the QI Agreement a new section 4A, as set forth in Appendix 3 of this revenue procedure.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective July 10, 2003.

SECTION 7. CONTACT INFORMATION

For further information regarding this Notice, contact Carl Cooper and Valerie Mark Lippe of the Office of the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Mr. Cooper or Ms. Mark Lippe may be contacted by telephone at 202-622-3840 (not a toll-free call).

Appendices

- Appendix 1. Withholding Foreign Partnership Agreement
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APPENDIX 1

Withholding Foreign Partnership Agreement

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SECTION 11. MISCELLANEOUS PROVISIONS

THIS AGREEMENT is made in duplicate under and in pursuance of section 1441 of the Internal Revenue Code of 1986, as amended, (the “Code”) and Treasury Regulation ‘ 1.1441-5(c)(2) by and between _____, (referred to as AWP@), and the INTERNAL REVENUE SERVICE (the AIRS@):

WHEREAS, WP has submitted an application in accordance with Revenue Procedure 2003-64 to be a withholding foreign partnership for purposes of Treas. Reg. ‘ 1.1441-5(c)(2);

WHEREAS, WP and the IRS desire to enter into an agreement to establish WP=s rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposits, and adjustment procedures under sections 1441, 1442, 1443, 1461, 6031, 6302, 6402, and 6414 of the Code with respect to certain types of payments;

NOW, THEREFORE, in consideration of the following terms, representations, and conditions, the parties agree as follows:

SECTION 1. PURPOSE AND SCOPE

Sec. 1.01. General Obligations. Except as otherwise provided in this Agreement, WP=s obligations with respect to income distributed to, or included in the distributive shares of, its partners are governed by the Code and the regulations thereunder. Except as provided in Section 10 of this Agreement, WP may act in its capacity as a withholding foreign partnership pursuant to this Agreement only for payments of amounts subject to NRA withholding that are distributed to, or included in the distributive shares of, its direct partners. WP is required to act as a withholding foreign partnership for all such amounts paid to WP, or included in WP=s distributive share, by any withholding agent to which WP has provided a Form W-8IMY that represents that WP is acting as a withholding foreign partnership with respect to such amounts. WP must act as a withholding foreign partnership for any such amounts paid with respect to such a Form W-8IMY that are distributed to, or included in the distributive shares of, its direct foreign partners. WP may also act as a withholding foreign partnership for such amounts that are distributed to, or included in the distributive shares of, its direct partners that are U.S. persons. WP may not act as a withholding foreign partnership, but must act as a nonwithholding foreign partnership, for amounts subject to NRA withholding that are distributed to, or included in the distributive shares of, passthrough partners or indirect partners, except as provided under Section 10 of this Agreement.

Sec. 1.02. Parties to the Agreement. This Agreement applies to WP and the IRS.

SECTION 2. DEFINITIONS

For purposes of this Agreement, the terms listed below are defined as follows:

Sec. 2.01. Agreement. “Agreement” means this Agreement between WP and the IRS. All appendices to this Agreement and WP=s application to become a withholding foreign partnership are incorporated into this Agreement by reference.

Sec. 2.02. Amounts Subject to NRA Withholding. An “amount subject to NRA withholding” is an amount described in Treas. Reg. ' 1.1441-2(a). An amount subject to NRA withholding shall not include interest paid as part of the purchase price of an obligation sold between interest payment dates or original issue discount paid as part of the purchase price of an obligation sold in a transaction other than the redemption of such obligation, unless the sale is part of a plan the principal purpose of which is to avoid tax and WP has actual knowledge or reason to know of such plan.

Sec. 2.03. Chapter 3 of the Code. Any reference to "chapter 3 of the Code" means sections 1441, 1442, 1443, 1461, 1463, and 1464 of the Code.

Sec. 2.04. Chapter 61 of the Code. Any reference to "chapter 61 of the Code" means sections 6031, 6041, 6042, 6045, 6049, and 6050N of the Code.

Sec. 2.05. External Auditor. An "external auditor" is any approved auditor listed in Appendix A of this Agreement that WP engages to perform the audits required by Section 8 of this Agreement.

Sec. 2.06. Flow-Through Entity. A flow-through entity is a foreign partnership described in Treas. Reg. ' 301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust that is described in section 651(a) of the Code (other than a withholding foreign trust), or a foreign trust all or a portion of which is treated as owned by the grantor or other person under sections 671 through 679 of the Code (other than a withholding foreign trust). For an item of income for which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

Sec. 2.07. Foreign Person. A "foreign person" is any person that is not a "United States person" and includes a "nonresident alien individual," a "foreign corporation," a "foreign partnership," a "foreign trust," and a "foreign estate," as those terms are defined in section 7701 of the Code.

Sec. 2.08. Form W-8. "Form W-8" means a valid IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding; IRS Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Governments and Other Foreign Organizations for United States Tax Withholding; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Partnership, and Certain U.S. Branches for United States Tax Withholding, as appropriate. It also includes any acceptable substitute form.

Sec. 2.09. Form W-9. "Form W-9" means a valid IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute.

Sec. 2.10. Form 1042. "Form 1042" means an IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

Sec. 2.11. Form 1042-S. "Form 1042-S" means an IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

Sec. 2.12. Form 1065. "Form 1065" means an IRS Form 1065, U.S. Return of Partnership Income, and the Schedules K-1 associated with that form.

Sec. 2.13. Intermediary. An "intermediary" means any person that acts on behalf of another person, such as a custodian, broker, nominee, or other agent.

Sec. 2.14. Nonwithholding Foreign Partnership. A “nonwithholding foreign partnership” is any foreign partnership that is not acting as a withholding foreign partnership.

Sec. 2.15. NRA Withholding. For purposes of this Agreement, a nonresident alien (NRA) withholding@ is any withholding required under chapter 3 of the Code (other than sections 1445 or 1446), whether the payment subject to withholding is made to an individual or to an entity.

Sec. 2.16. Overwithholding. The term “overwithholding” means the excess of the amount actually withheld over the amount required to be withheld under chapter 3 of the Code.

Sec. 2.17. Partnership and Partner; Direct Partner; Indirect Partner; Passthrough Partner. The terms “partnership” and “partner” are defined in section 7701(a)(2) of the Code and the regulations thereunder. A direct partner is a partner, other than an intermediary or flow-through entity that is not itself a withholding foreign partnership or withholding foreign trust, for which WP acts as a withholding foreign partnership. An indirect partner is a person that owns a partnership interest in WP through one or more passthrough partners. A passthrough partner is a direct or indirect partner in WP that is an intermediary or flow-through entity. As provided in Section 2.06 of this Agreement, a withholding foreign partnership or withholding foreign trust is not a flow-through entity and thus is not a passthrough partner.

Sec. 2.18. Payment. A “payment” is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See Treas. Reg. § 1.1441-2(e).

Sec. 2.19. Pooled Reporting (PR) Election. A “pooled reporting (PR) election” is defined in Section 6.03.

Sec. 2.20. Reduced Rate of Withholding. A “reduced rate of withholding” means a rate of withholding that is less than 30 percent, either as a result of a reduction in withholding under the Code or as a result of a reduction in withholding under an income tax treaty.

Sec. 2.21. Reportable Amount. A “reportable amount” means an amount subject to NRA withholding (as defined in Section 2.02 of this Agreement); U.S. source deposit interest; and U.S. source interest or original issue discount paid on the redemption of short-term obligations. The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in Treas. Reg. § 1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

Sec. 2.22. Reporting Pool. A reporting pool is defined in Section 6.03 of this Agreement.

Sec. 2.23. Schedule K-1. “Schedule K-1” or “K-1” is the schedule associated with the Form 1065 that itemizes an individual Partner=s Share of Income, Credits, Deductions, etc.

Sec. 2.24. TIN. A “TIN” is a U.S. taxpayer identification number.

Sec. 2.25. Underwithholding. “Underwithholding” means the excess of the amount required to be withheld under chapter 3 of the Code over the amount actually withheld.

Sec. 2.26. U.S. Person. A “United States (or U.S.) person” is a person described in section 7701(a)(30) of the Code, the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

Sec. 2.27. Withholding Agent. A “withholding agent” has the same meaning as set forth in Treas. Reg. ' 1.1441-7(a) and includes a payor. As used in this Agreement, the term generally refers to the person making a payment to a withholding foreign partnership.

Sec. 2.28. Withholding Foreign Partnership (or WP). A “withholding foreign partnership” is a person, described in Treas. Reg. ' 1.1441-5(c)(2), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign partnership and is acting in its capacity as a withholding foreign partnership.

Sec. 2.29. Withholding Foreign Partnership (or WP) EIN. A “withholding foreign partnership EIN” or “WP-EIN” means the employer identification number assigned by the IRS to a withholding foreign partnership. WP=s WP-EIN is only to be used when WP is acting as a withholding foreign partnership. For example, WP must give a withholding agent its non-WP EIN, if any, rather than its WP-EIN, if it is not acting as a withholding foreign partnership and a taxpayer identification number is required.

Sec. 2.30. Withholding Statement. The term “withholding statement” is defined in Section 5.02 of this Agreement.

Sec. 2.31. Other Terms. Any term not defined in this section has the same meaning that it has under the Code, the income tax regulations under the Code, or any applicable income tax treaty.

SECTION 3. WITHHOLDING RESPONSIBILITY

Sec. 3.01. NRA Withholding Responsibility. WP is subject to the withholding and reporting provisions applicable to withholding agents under chapter 3 of the Code. Under

chapter 3, a withholding agent must withhold 30 percent of any payment of an amount subject to NRA withholding made to a partner that is a foreign person unless the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. When it is acting as a withholding foreign partnership, WP must assume NRA withholding responsibility for amounts subject to NRA withholding that are distributed to, or included in the distributive share of, any direct partner, and WP must withhold the amount required to be withheld under chapter 3 of the Code. WP must provide a Form W-8IMY that certifies to a withholding agent that makes a payment of such amounts that WP is acting as a withholding foreign partnership, and WP must identify such amounts on the withholding statement associated with that Form W-8IMY. WP is not required to withhold when it pays such amounts to another withholding foreign partnership or withholding foreign trust that has certified to WP on Form W-8IMY that it is acting as a withholding foreign partnership or withholding foreign trust with respect to such identified amounts. WP is not required to act as a withholding foreign partnership for all amounts that it receives from a withholding agent. Except as provided in Section 10 of this Agreement, WP may not act as a withholding foreign partnership for amounts distributed to, or included in the distributive share of, passthrough partners or indirect partners. WP must act as a nonwithholding foreign partnership for such amounts. When WP is not acting as a withholding foreign partnership, WP must: 1) provide to the withholding agent a Form W-8IMY with Part VI completed; 2) identify such amounts on the withholding statement associated with that Form W-8IMY; and 3) provide the documentation and information required by Treas. Reg. ' 1.1441-5(c)(3)(iii) and (iv).

Sec. 3.02. Timing of Withholding. WP must withhold on the date it makes a distribution to a direct foreign partner that includes an amount subject to NRA withholding. To the extent a direct foreign partner=s distributive share of income subject to withholding has not actually been distributed to the direct foreign partner, WP must withhold on the direct foreign partner=s distributive share on the earlier of the date that the statement required under section 6031(b) of the Code (schedule K-1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not WP is required to prepare and furnish the statement).

Sec. 3.03. Withholding on Distributions. WP may determine the amount of withholding on a distribution based on a reasonable estimate of the partner=s distributive share of income subject to withholding for the year. WP must correct the estimated withholding to reflect the partner=s actual distributive share on the earlier of the date that the statement required under section 6031(b) of the Code (schedule K-1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not WP is required to furnish the statement). If that date is after the due date for the WP=s Forms 1042 and 1042-S (including extensions) for the calendar year, WP may withhold and report any adjustments required by the corrected information in the following calendar year.

Sec. 3.04. Deposit Requirements. WP must deposit amounts withheld under chapter 3 of the Code with a Federal Reserve bank or authorized financial institution at the time and in the manner provided under section 6302 of the Code (see Treas. Reg. ' 1.6302-2(a) or ' 31.6302-1(h)).

SECTION 4. DOCUMENTATION REQUIREMENTS

Sec. 4.01. Documentation Requirements. WP agrees to obtain, review, and maintain Forms W-8 and W-9 in accordance with this Section 4. WP must obtain a Form W-8 or W-9 from every direct partner prior to the time that withholding is required. WP agrees to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by WP=s external auditor. WP represents that none of the laws to which it is subject prohibits disclosure of the identity of any partner or corresponding partner information to WP=s external auditor. WP may rely on the Forms W-8 and W-9 it obtains under this Section 4 as the basis for determining its withholding and reporting obligations.

Sec. 4.02. Documentation for Foreign Partners. WP may treat a direct partner as a foreign beneficial owner if the direct partner provides a Form W-8 that supports such status. WP may treat a direct partner that has provided a Form W-8 as entitled to a reduced rate of NRA withholding if all the requirements for a reduced rate are met and the Form W-8 provided by the direct partner supports entitlement to a reduced rate. Sections 4.03 through 4.06 of this Agreement describe the specific documentation requirements necessary for obtaining a reduced rate of withholding in certain circumstances.

Sec. 4.03. Treaty Claims. WP may not reduce the rate of withholding based on a direct partner=s claim of treaty benefits unless WP obtains from the partner a Form W-8BEN with Part II of the form properly completed, including the appropriate limitation on benefits and section 894 certifications.

Sec. 4.04. Documentation for International Organizations. WP may not treat a direct partner as an international organization entitled to an exemption from withholding under section 892 of the Code unless WP obtains a Form W-8EXP from the international organization and the name provided on the Form W-8EXP is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f). If an international organization is not claiming benefits under section 892 of the Code but under another Code exception, the provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.04.

Sec. 4.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.

(A) Documentation For a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption From Withholding Under Section 892 or Section 895. WP may not treat a direct partner as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 of the Code unless—

(1) WP receives from the direct partner a Form W-8EXP establishing that the direct partner is a foreign government or foreign central bank of issue;

(2) The income distributed to, or included in the distributive share of, the direct partner is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

(3) WP does not know, or have reason to know, that the direct partner is a controlled commercial entity, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

(B) Treaty Exemption. WP may not treat a direct partner as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty unless it obtains a Form W-8BEN that, under Section 4.03 of this Agreement, is sufficient to obtain a reduced rate of withholding under a treaty.

(C) Other Code Exception. If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or section 895 of the Code but under another Code exception (e.g., the portfolio interest exception under sections 871(h) or 881(c) of the Code), the provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.05.

Sec. 4.06. Documentation for Foreign Tax-Exempt Organizations.

(A) Reduced Rate of Withholding Under Section 501. WP may not treat a direct partner as a foreign organization described under section 501(c) of the Code, and therefore exempt from withholding (or, if the direct partner is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b) of the Code) unless WP obtains a valid Form W-8EXP with Part III of the form properly completed.

(B) Treaty Exemption. WP may not treat a direct partner as a foreign organization that is tax exempt or entitled to a reduced rate of withholding under an income tax treaty unless WP obtains a Form W-8BEN that, under Section 4.03 of this Agreement, is sufficient to obtain a reduced rate of withholding under a treaty.

(C) Other Exceptions. If a tax-exempt entity is not claiming a reduced rate of withholding because it is an organization described under section 501(c) of the Code or under an income tax treaty, but is claiming a reduced rate of withholding under another Code exception, the

provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.06.

Sec. 4.07. Documentation for Passthrough Partners. Except as provided in Section 10 of this Agreement, WP shall not act as a withholding foreign partnership with respect to an amount subject to withholding distributed to, or included in the distributive share of, a passthrough partner, as defined in Section 2.17 of this Agreement. WP must forward that passthrough partner=s documentation (and associated withholding statement and documentation of indirect partners) to the withholding agent from whom WP receives the amount subject to withholding. WP may act as a withholding foreign partnership with respect to amounts subject to withholding distributed to, or included in the distributive share of, partners that are themselves withholding foreign partnerships or withholding foreign trusts.

Sec. 4.08. Documentation for U.S. Exempt Recipients. WP shall not treat a partner as a U.S. exempt recipient unless WP obtains a Form W-9 from the partner on which the partner writes “Exempt” in Part II of the form.

Sec. 4.09. Documentation for U.S. Non-Exempt Recipients. WP shall not treat a partner as a U.S. non-exempt recipient unless WP obtains a Form W-9 from the partner.

Sec. 4.10. Documentation Validity. WP may not rely on Forms W-8 or W-9 if WP has actual knowledge or reason to know that the information or statements contained in the forms are unreliable or incorrect. Once WP knows, or has reason to know, that a Form W-8 or W-9 provided by a direct partner is unreliable or incorrect, WP must obtain a new Form W-8 or W-9 prior to the time withholding is required.

Sec. 4.11. Documentation Validity Period.

(A) Form W-8. WP may rely on a properly completed Form W-8 until its validity expires under Treas. Reg. 1.1441-1(e)(4)(ii).

(B) Form W-9. WP may rely on a properly completed Form W-9 as long as it has not been informed by the IRS or another withholding agent that the form is unreliable.

Sec. 4.12. Maintenance and Retention of Documentation.

(A) Maintaining Documentation. WP shall maintain Forms W-8 and W-9 by retaining the original documentation, a certified copy, a photocopy or a microfiche, or by electronic storage or similar means of record retention.

(B) Retention Period. WP shall retain a direct partner=s Form W-8 or W-9 obtained under this Section 4 for as long as it may be relevant to the determination of WP=s tax liability under this Agreement.

SECTION 5. WITHHOLDING FOREIGN PARTNERSHIP WITHHOLDING CERTIFICATE

Sec. 5.01. WP Withholding Certificate. WP agrees to furnish a withholding foreign partnership withholding certificate to each withholding agent from which it receives amounts subject to NRA withholding as a withholding foreign partnership. The withholding foreign partnership withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that WP is acting as a withholding foreign partnership, contains WP=s WP-EIN, and provides all other information required by the form. WP is not required to disclose, as part of that Form W-8IMY or its withholding statement, any information regarding the identity of a direct partner.

Sec. 5.02. Withholding Statement. WP agrees to provide to each withholding agent from which WP receives amounts subject to NRA withholding as a withholding foreign partnership a written statement (the “withholding statement”) identifying the amounts for which WP acts as a withholding foreign partnership. The statement forms an integral part of the Form W-8IMY. The withholding statement may be provided in any manner, and in any form, to which WP and the withholding agent mutually agree.

Sec. 5.03. Withholding Rate Pools. When it is acting as a withholding foreign partnership, WP must assume withholding responsibility for amounts subject to withholding that are distributed to, or included in the distributive shares of, its direct partners. Accordingly, withholding rate pool information is not required as part of WP=s withholding statement.

SECTION 6. TAX RETURN OBLIGATIONS

Sec. 6.01. Form 1042 Filing Requirement.

(A) In General. WP shall file a return on Form 1042, whether or not WP withheld any amounts under chapter 3 of the Code, on or before March 15 of the year following any calendar year in which WP acts as a withholding foreign partnership. In addition to the information specifically requested on Form 1042 and the accompanying instructions, WP shall attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments made under Treas. Reg. 1.1461-2 and Sections 7.01 and 7.03 of this Agreement, and an explanation of the circumstances that resulted in the over- or under- withholding.

(B) Extensions for Filing Returns. WP may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns, on or before the due date of the return. The application shall be in writing, properly signed by a duly authorized agent of WP, and shall clearly set forth the following:

(1) The calendar year for which the extension is requested; and

(2) A full explanation of the reason(s) for requesting the extension, to assist the IRS in determining the period of extension, if any, that will be granted.

Sec. 6.02. Form 1042-S Reporting: General Rule. Unless WP has made a pooled reporting (PR) election pursuant to Section 6.03 of this Agreement, WP is required to file separate Forms 1042-S for each direct partner to whom WP distributes, or in whose distributive share is included, an amount subject to NRA withholding. WP must file separate Forms 1042-S by income code, exemption code, recipient code, and withholding rate. WP must file its Forms 1042-S in the manner required by the regulations under chapter 3 of the Code and the instructions to the form, including any requirement to file the forms magnetically or electronically. Any Form 1042-S required by this section 6 shall be filed on or before March 15 following the calendar year in which withholding, if any, was required under Section 3.02 of this Agreement. WP may request an extension of time to file Forms 1042-S by submitting Form 8809, Request for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by Form 8809.

Sec. 6.03. Form 1042-S Reporting: Special Rule for PR Election. If WP has made the PR election pursuant to this Section 6.03, WP is not required to file Forms 1042-S for amounts distributed to, or included in the distributive share of, each separate direct partner for whom such reporting would otherwise be required. Instead, WP shall file a separate Form 1042-S for each reporting pool. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, and recipient code as determined on Form 1042-S. WP may use a single recipient code for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate recipient code must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to NRA withholding and is not liable to tax in its country of residence because it is a charitable organization, a pension fund, or a foreign government. WP must make the PR election at the time this Agreement is executed by signing the election statement on the signature page of this Agreement. Once made, the PR election remains in effect for the entire term of this Agreement beginning on the date the Agreement becomes effective and ending on the date of its expiration or termination under Section 9 of the Agreement. WP must make a new election for each renewal term of this Agreement. If WP makes the PR election, WP cannot revoke it prior to the end of the term for which WP has made the PR election. If WP did not make the PR election at the time this Agreement was executed, then WP may make a PR election only by terminating this Agreement pursuant to Section 9.03 and requesting to enter into a new withholding foreign partnership agreement.

Sec. 6.04. Form 1065 Filing Requirement. If WP is required to file Form 1065 and Schedules K-1 under Treas. Reg. 1.6031(a)-1, then WP shall file Form 1065 and Schedules K-1 in accordance with the regulations and the instructions for the form.

Sec. 6.05. Retention of Returns. WP shall retain Forms 1065 and 1042 for the period of the applicable statute of limitations on assessments and collection under the Code.

SECTION 7. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS

Sec. 7.01. Adjustments for NRA Overwithholding by WP. WP may make an adjustment for amounts paid to its direct partners that it has overwithheld under chapter 3 of the Code by applying either the reimbursement or set-off procedures described in this section within the time period prescribed for those procedures.

(A) Reimbursement Procedure. WP may repay its partners for an amount overwithheld and reimburse itself by reducing, by the amount of tax actually repaid to the partners, the amount of any subsequent deposit of tax required to be made by WP under Section 3.04 of this Agreement. For purposes of this Section 7.01(A), an amount that is overwithheld shall be applied in order of time to each of WP=s subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if—

(1) WP states on a Form 1042-S filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

(2) WP states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with Treas. Reg. ' 1.6414-1.

(B) Set-Off Procedure. WP may repay its partners by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code to be withheld by WP before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code.

Sec. 7.02. Collective Credit or Refund Procedures for NRA Overwithholding. If WP has made a PR election and it has overwithheld under chapter 3 of the Code on amounts subject to NRA withholding paid to WP=s direct partners during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures under Sections 7.01 of this Agreement, WP may request a credit or refund of the total amount overwithheld by following the procedures of this Section 7.02. WP shall follow the procedures set forth under sections 6402 and 6414 of the Code, and the regulations thereunder, to claim

the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511 of the Code. WP may use the collective refund procedures under this Section 7.02 only if the following conditions are met:

(A) WP must not have issued Forms 1042-S to the direct partners who were subject to overwithholding;

(B) WP must submit, together with its amended return on which it claims a credit or refund, a statement of the reason for the overwithholding;

(C) WP must submit, together with its amended return on which it claims a credit or refund, a statement that it has repaid the amount of overwithholding to the appropriate direct partners prior to filing the claim for credit or refund; and

(D) WP must retain a record showing that it repaid the direct partners the amount of the overwithholding.

Sec. 7.03. Adjustments for NRA Underwithholding. If WP knows that an amount should have been withheld under chapter 3 of the Code from a previous payment to a direct partner but was not withheld, WP may either withhold from future payments made to the same direct partner or satisfy the tax from the direct partner=s proportionate share of assets over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the underwithholding occurred.

Sec. 7.04. NRA Underwithholding after Form 1042 Filed. If, after a Form 1042 has been filed for a calendar year, WP, WP=s external auditor, or the IRS determines that, due to WP=s failure to carry out its obligations under this Agreement, WP has underwithheld tax for such year, WP shall file an amended Form 1042 to report and pay the underwithheld tax. WP shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If WP fails to file an amended return, the IRS shall make such return under section 6020 of the Code.

Sec. 7.05. Special Rule Regarding Failure to Deposit Penalties. Solely for purposes of applying section 6656 of the Code (failure to make deposit of taxes), WP will not be considered to have made an underpayment of a deposit of NRA withholding taxes if the conditions of this paragraph are met. The conditions of this paragraph are that—

(A) WP makes its deposits within the time (deposit period) required by section 6302 of the Code;

(B) The deposit is not less than 90 percent of the aggregate amount of the tax required to be withheld under chapter 3 of the Code during the deposit period applicable to WP; and

(C) WP determines the difference between the total amount required to be deposited and the amount actually deposited as of the end of the 3rd, 6th, 9th, and 12th months of the calendar year and the difference is deposited no later than the 15th day of the second following month (i.e., May 15, August 15, November 15 and February 15, respectively). In determining whether there has been an underpayment, reimbursements and set-offs shall be taken into account.

SECTION 8. EXTERNAL AUDIT PROCEDURES

Sec. 8.01. In General. Unless WP requests an IRS audit in lieu of an external audit, the IRS agrees not to conduct an on-site audit of WP with respect to withholding and reporting obligations covered by this Agreement provided that an external auditor designated in Appendix A of this Agreement conducts an audit of WP in accordance with this Section 8. WP shall permit the external auditor to have access to all relevant records of WP for purposes of performing the external audit, including information regarding specific partners. WP shall permit the IRS to communicate directly with the external auditor and to review the audit procedures followed by the external auditor. WP represents that there are no legal prohibitions that prevent the external auditor from examining any information relevant to the external audit to be performed under this Section 8 and that there are no legal prohibitions that prevent the IRS from communicating directly with the auditor. WP shall permit the IRS to examine the external auditor's work papers and reports.

Sec. 8.02. Designation of External Auditor. WP's external auditor must be one of the auditors listed in Appendix A of this Agreement, unless WP and the IRS agree, prior to the audit, to substitute another auditor. WP shall not propose an external auditor unless it has a reasonable belief that the auditor is subject to laws, regulations, or rules that impose sanctions for failure to exercise its independence and to perform the audit competently. The IRS has the right to reject a proposed external auditor, or to revoke its acceptance of an external auditor, if the IRS, in its sole discretion, reasonably believes that the auditor is not independent or cannot perform an effective audit under this Agreement.

Sec. 8.03. Timing of External Audits: General Rule. Unless WP has made a PR election, WP shall have the external auditor conduct an external audit only at such time and only for such calendar years as the IRS directs.

Sec. 8.04. Timing of External Audits: Special Rule for PR Election.

(A) If WP has made a PR election and the term of this Agreement is determined under Section 9.02(A), WP shall have the external auditor conduct an audit of the second full calendar year and the fifth full calendar year that this Agreement is in effect.

(B) If WP has made a PR election and the term of this Agreement is determined under Section 9.02(B), WP shall have the external auditor conduct an audit after the close of every other

calendar year that this Agreement is in effect. The auditor shall examine the two previous calendar years. For example, the first audit will occur in the third calendar year that the Agreement is in effect and the external auditor will examine calendar years one and two.

Sec. 8.05. Scope of External Audit. The external auditor shall verify whether WP is in compliance with this Agreement by conducting an audit that meets the requirements of this Section 8.05. The report, described in Section 8.06 of this Agreement, must disclose that the external auditor has, at a minimum, performed the following checks listed in this Section 8.05, and set forth how each of those checks was performed and the results of the checks. WP=s external auditor is encouraged to contact the IRS at the address set forth in Section 11.06 of this Agreement and submit an audit plan (which includes, if relevant, the extent to which the external auditor proposes to rely on WP=s internal audit procedures) prior to performing the audit so that the audit may be conducted in the most efficient and least costly manner possible.

(A) Documentation. The external auditor must review information contained in partner files to determine whether the documentation requirements of Section 4 of this Agreement are being met.

(B) Withholding Responsibilities. The external auditor must—

- (1) Perform test checks of direct partners, to verify that WP is withholding the proper amounts.
- (2) Verify that amounts withheld were timely deposited in accordance with Section 3.04 of this Agreement.

(C) Return Filing and Information Reporting. The external auditor must—

(1) Obtain copies of original and amended Forms 1042, and any schedules, statements, or attachments required to be filed with those forms, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

- (i) Reviewing work papers;
- (ii) Reviewing Forms W-8IMY, together with the associated withholding statements, that WP has provided to withholding agents;
- (iii) Reviewing copies of Forms 1042-S received from withholding agents;
- (iv) Reviewing account statements from withholding agents;
- (v) Reviewing correspondence between WP and withholding agents; and

(vi) Interviewing personnel responsible for preparing the Form 1042 and the work papers used to prepare those forms.

(2) Obtain copies of original and amended Forms 1042-S and Schedules K-1 together with the work papers used to prepare those forms and determine whether the amounts reported on those forms are accurate by—

(i) Reviewing the Forms 1042-S received from withholding agents;

(ii) Reviewing the Form 1065, if required;

(iii) Reviewing a valid sample of earnings statements issued by WP to direct partners, if any.

(3) Thoroughly review the statements attached to amended Forms 1042 filed to claim a refund, ascertain their veracity, and determine the causes of any overwithholding reported and ensure WP did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund.

(4) Determine, in the case of collective credits or refunds, that WP repaid the appropriate partners prior to requesting a collective credit or refund.

(E) Change in Circumstances. The external auditor must verify that in the course of the audit it has not discovered any significant change in circumstances, as described in Section 9.05 (A) or (D) of this Agreement.

Sec. 8.06. External Auditor=s Report. Upon completion of the audit of WP, the external auditor shall issue a report, or reports, of audit findings directly to the IRS by sending the original report to the IRS at the address set forth in Section 11.06 of this Agreement. This report is due by December 31 following the calendar year being audited, or if that date falls on a Saturday or Sunday, the next U.S. business day. The IRS may, however, upon request by the external auditor, extend the due date of the audit report upon good cause. The report must be in writing, in English, and currency amounts must be stated in U.S. dollars. The report must fully describe the scope of the audit, the methodologies (including sampling techniques) used to determine whether WP is in compliance with the provisions of this Agreement, and the result of each such determination. The report must also specifically address each of the items in Section 8.05 of this Agreement.

Sec. 8.07. Expanding Scope and Timing of External Audit. Upon review of the external auditor=s report, the IRS may request, and WP must permit, the external auditor to perform additional audit procedures.

SECTION 9. EXPIRATION, TERMINATION AND DEFAULT

Sec. 9.01. Term of Agreement: General Rule. If WP has not made a PR election, this Agreement shall be in effect on _____ and shall continue in force until the earlier of the date WP terminates under its partnership agreement or the date WP is terminated under 9.03 or 9.04 of this Agreement.

Sec. 9.02. Term of Agreement: Special Rule for PR Election.

(A) If WP has made a PR election, unless WP elects the special term pursuant to Section 9.02(B), this Agreement shall be in effect on _____ and shall expire upon the earlier of the date WP terminates under its partnership agreement or December 31 of the fifth full calendar year after the year in which this Agreement first takes effect. This Agreement may be renewed for additional terms as provided in Section 9.08 of this Agreement.

(B) If WP has made a PR election, and WP elects the special term pursuant to this Section 9.02(B), this Agreement shall be in effect on _____ and shall expire upon the earlier of the date WP terminates under its partnership agreement or December 31 of the fourteenth full calendar year after the year in which this Agreement first takes effect. If WP elects the special term, this Agreement is not renewable. WP must make the special term election under this Section 9.02(B) at the time this Agreement is executed by signing the election statement on the signature page of this Agreement.

Sec. 9.03. Termination of Agreement. This Agreement may be terminated by either the IRS or WP prior to the end of its term by delivery of a notice of termination to the other party in accordance with Section 11.06 of this Agreement. The IRS, however, shall not terminate the Agreement unless there has been a significant change in circumstances, as defined in Section 9.05 of this Agreement, or an event of default has occurred, as defined in Section 9.06 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. In addition, the IRS shall not terminate this Agreement in the event of default if WP can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify WP, in accordance with Section 9.07 of this Agreement, that an event of default has occurred and that the IRS intends to terminate the Agreement unless WP cures the default. A notice of termination sent by either party shall take effect on the date specified in the notice.

Sec 9.04. Automatic Termination of Agreement.

(A) Automatic Termination. Notwithstanding Section 9.03 of this Agreement, this Agreement will terminate automatically in the event that the external auditor or the IRS on audit discovers that WP was not in possession of Forms W-8 or W-9, as applicable, for any direct partner at any time that withholding or reporting was required under Section 3.02 of this Agreement. The automatic termination will be effective as of December 31 of the year in which the external auditor or the IRS makes that discovery. The automatic termination rules of

this Section 9.04(A) shall not apply in the case of indirect partners that are treated as direct partners of WP under Section 10 of this Agreement.

(B) Cure and Reinstatement. This Agreement will be reinstated, effective the same date it automatically terminated under Section 9.04(A) of this Agreement, if—

(1) WP obtains appropriate Forms W-8 or W-9 (that relate to the time withholding or reporting was required) for each such undocumented partner before March 15 of the year following the year in which the Agreement automatically terminated, or

(2) All such undocumented partners have ceased to be partners in WP before March 15 of the year following the year in which the Agreement automatically terminated.

(C) Payment of Underwithholding and Reporting upon Termination. In the event of automatic termination of this Agreement under this Section 9.04, WP must pay any underwithholding of tax, interest, and penalties that the IRS determines is attributable to each undocumented direct partner for the period during which the partner was undocumented, and, if WP has made a PR election, WP must file Forms 1099, or partner specific Forms 1042-S reporting the names and addresses and other required information, as appropriate, for every undocumented direct partner from the earliest time the Form W-8 or W-9 was required for that undocumented direct partner through the date of termination. WP may, however, continue to report on a pooled basis for documented foreign direct partners through this period.

(D) Reinstatement after Termination. After the date of automatic termination of this Agreement, WP may not act as a withholding foreign partnership, and must so notify any persons to which WP has furnished a withholding foreign partnership certificate. After the date of automatic termination of this Agreement, the IRS may reinstate this Agreement (or the IRS may require WP to enter into a new withholding foreign partnership agreement) on such terms and conditions and with such modifications as the IRS may determine.

Sec. 9.05. Significant Change in Circumstances. For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

(A) any merger, consolidation or division of WP or any change in circumstances that would result in a termination of WP under section 708 of the Code;

(B) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects WP=s ability to perform its obligations under this Agreement;

(C) A ruling of any court that affects the validity of any provision of this Agreement; or

(D) A significant change in WP=s business practices that affects WP=s ability to meet its obligations under this Agreement.

Sec. 9.06. Events of Default. For purposes of this Agreement, an event of default occurs if WP fails to perform any material duty or obligation required under this Agreement, and includes, but is not limited to, the occurrence of any of the following:

(A) WP fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;

(B) WP underwithholds an amount that WP is required to withhold under chapter 3 of the Code and fails to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;

(C) WP makes excessive refund claims;

(D) WP fails to file Forms 1042, 1042-S, 1065 (if required), or Schedules K-1 (if required) by the due date specified on such forms or files forms that are materially incorrect or fraudulent;

(E) WP fails to have an external audit performed when required, WP=s external auditor fails to provide its report directly to the IRS on a timely basis, WP fails to cooperate with the external auditor, or WP or its external auditor fails to cooperate with the IRS;

(F) WP fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WP=s obligations under this Agreement;

(G) WP fails to cure a default identified by the IRS or by an external auditor;

(H) WP makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or WP=s external auditor;

(I) The IRS determines that WP=s external auditor is not sufficiently independent to adequately perform its audit function or the external auditor fails to provide an audit report that complies with Section 8 of this Agreement;

(J) WP is prohibited by any law from disclosing the identity of a partner or partner information to WP=s external auditor;

(K) WP fails to make deposits in the time and manner required by Section 3.04 of this Agreement or fails to make adequate deposits, taking into account the procedures of 7.05 of this Agreement; or

(L) WP fails to permit the external auditor to perform additional audit procedures under the provisions of Section 8.07 of this Agreement.

Sec. 9.07. Notice and Cure. Upon the occurrence of an event of default, the IRS may deliver to WP a notice of default specifying the event of default that has occurred. WP shall respond to the notice of default within 60 days (60-day response) from the date of the notice of default. The 60-day response shall contain an offer to cure the event of default and the time period in which the cure will be accomplished or shall state the reasons why WP does not agree that an event of default has occurred. If WP does not provide a 60-day response, the IRS may deliver a notice of termination as provided in Section 9.03 of this Agreement. If WP provides a 60-day response, the IRS shall either accept or reject WP=s statement that no default has occurred or accept or reject WP=s proposal to cure an event of default. If the IRS rejects WP=s contention that no default has occurred or rejects WP=s proposal to cure a default, the IRS will offer a counter-proposal to cure the event of default. Within 30 days of receiving the IRS=s counter-proposal, WP shall notify the IRS (30-day response) whether it continues to maintain that no default has occurred or whether it rejects the IRS=s counter-proposal to cure an event of default. If WP=s 30-day response states that no default has occurred or it rejects the IRS=s counter-proposal to cure, the parties shall seek to resolve their disagreement within 30 days of the IRS=s receipt of WP=s 30-day response. If a satisfactory resolution has not been achieved at the end of this latter 30-day period, or if WP fails to provide a 30-day response, the IRS may terminate this Agreement by providing a notice of termination in accordance with Section 9.03 of this Agreement. If WP receives a notice of termination from the IRS, it may appeal the determination within 30 days of the date of the notice of termination by sending a written notice to the address specified in Section 11.06 of this Agreement. If WP appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of an external audit, the WP may cure the default, without following the procedures of this Section 9.07, if the external auditor=s report describes the default and the actions that WP took to cure the default and the IRS determines that the cure procedures followed by WP were sufficient. If the IRS determines that WP=s actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this Section 9.07 shall be followed.

Sec. 9.08. Renewal. If WP has made the PR election under Section 6.03 of this Agreement and intends to renew this Agreement for an additional term, it shall submit an application for renewal to the IRS no earlier than one year and no later than six months prior to the expiration of this Agreement. Any such application for renewal must contain an update of the information provided by WP to the IRS in connection with the application to enter into this Agreement, and any other information the IRS may request in connection with the renewal process. This Agreement shall be renewed only upon the signatures of both WP and the IRS. Either the IRS or WP may seek to negotiate a new withholding foreign partnership agreement rather than renew this Agreement.

SECTION 10. CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 10.01. Certain Smaller Partnerships and Trusts. WP cannot apply the rules of this Section 10.01 unless it has made a PR election under Section 6.03 of this Agreement. WP may apply the rules of this Section 10.01 only to a partnership or trust that meets the following conditions: (i) the partnership or trust is a foreign partnership or foreign simple or grantor trust, (ii) the partnership or trust is a direct partner of WP, (iii) none of the partners, beneficiaries or owners of the partnership or trust is a U.S. person or a passthrough partner, beneficiary or owner, and (iv) the total reportable amounts distributed to, and included in the distributive share of, the partnership or trust for the calendar year do not exceed \$200,000. In applying this Section 10.01, WP must treat the partners of such a partnership or the beneficiaries or owners of such a trust as direct partners of WP under this Agreement. To apply this Section 10.01, WP and the partnership or trust must comply with all of the rules listed below.

(1) WP and the partnership or trust must agree in writing that the partnership or trust will make available to WP's auditor for purposes of WP's audit under Section 8 of this Agreement records that establish that the partnership or trust has provided WP with documentation for all of its partners, beneficiaries or owners.

(2) The partnership or trust must provide to WP a Form W-8IMY, together with Forms W-8 from each partner, beneficiary or owner, and a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that provides information for all partners, beneficiaries or owners. The withholding statement, however, need not provide any allocation information.

(3) WP must treat amounts distributed to, or included in the distributive share of, the partnership or trust as allocated solely to any partner, beneficiary or owner that is subject to the highest rate of withholding and must withhold at that rate.

(4) WP may include amounts distributed to, or included in the distributive share of, a partnership or trust under Section 10.01(3) in its Form 1042-S reporting pools for direct account holders under Section 6.03 of this Agreement.

(5) After WP has withheld in accordance with Section 10.01(3) above, it may file a separate Form 1042-S for any partner, beneficiary or owner who requests that it do so. WP may do so only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary or owner and only if the partnership or trust has agreed in writing under Section 10.01(1) to make available to WP's external auditor records that substantiate the allocation information included in its withholding statement.

(6) WP may not include any amounts distributed to, or included in the distributive share of, a partnership or trust to which WP is applying the rules of this Section 10.01 in any collective refund claim made under Section 7.02 of this Agreement.

(7) WP and a partnership or trust that apply this Section 10.01 to any calendar year are not required to apply this Section 10.01 to subsequent calendar years. WP and a partnership or trust that apply this Section 10.01 to any calendar year must apply these rules to the calendar year in its entirety.

(8) WP and the partnership or trust may not apply this Section 10.01 to any calendar year for which the partnership or trust has failed to make available to WP's auditor the records described in Section 10.01(1) within 90 days after these records are requested. If the partnership or trust has failed to make these records available within the 90-day period, or if WP and the partnership or trust fail to comply with any other requirement of this Section 10.01, WP must apply Treas. Reg. §§ 1.1441-1 and 1.1441-5 to the partnership or trust, correct its withholding, and must file corrected Forms 1042 and 1042-S.

Sec. 10.02. Certain Related Partnerships and Trusts. WP may not apply the rules of this Section 10.02 unless it has made a PR election under Section 6.03 of this Agreement. WP may apply the rules of this Section 10.02 only to a partnership or trust that meets the following conditions: (1) the partnership or trust is a foreign partnership or foreign simple or grantor trust; (2) the partnership or trust is either (i) a direct partner of WP or (ii) the partnership or trust is an indirect partner of WP that is a partner, beneficiary or owner of a partnership or trust to which WP has also applied this Section 10.02; and (3) the WP is a general partner of the partnership or a trustee of the trust. WP may not apply this Section 10.02 to indirect partners, beneficiaries or owners of such partnerships or trusts, or to direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients. See 10.02(5) of this Agreement. To apply this Section 10.02, WP and the partnership or trust must comply with all of the rules listed below.

(1) WP and the partnership or trust must enter into a written agreement under which the partnership or trust agrees:

(a) To act as an agent of WP with respect to its partners, beneficiaries or owners, and, as WP's agent, to apply the provisions of the WP Agreement to its partners, beneficiaries or owners,

(b) To treat its direct partners, beneficiaries or owners as direct partners of WP under the WP Agreement and to treat its indirect partners, beneficiaries or owners as indirect partners of WP under the WP Agreement, and

(c) To make available, upon request, to WP's auditor for purposes of WP's audit under Section 8 of the WP Agreement, records that establish its compliance with all of the rules listed under this Section 10.02.

(2) By entering into an agreement with a partnership or trust under paragraph (1) of this section, WP is not assigning its liability for the performance of any of its obligations under this

Agreement. WP and the partnership or trust to which WP applies the rules of this Section 10.02, are jointly and severally liable for any tax, penalties and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with WP.

(3) The partnership or trust must provide to WP a Form W-8IMY together with a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that includes all information necessary for WP to fulfill its withholding, reporting and filing obligations under this Agreement. The withholding statement may include pooled basis information regarding direct partners, beneficiaries or owners that are not intermediaries, flow-through entities or U.S. non-exempt recipients. The partnership or trust need not provide to WP documentation for partners, beneficiaries or owners, except as provided under section 10.02(1)(c).

(4) WP must withhold on the date an amount is distributed to or included in the distributive share of a foreign partnership or trust based on the withholding statement provided by the partnership or trust. The amount allocated to each partner, beneficiary or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's or owner's actual distributive share and must provide this corrected information to WP, on the earlier of the date that the statement required under section 6031(b) of the Code (schedule K-1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date for WP's Forms 1042 and 1042-S (without regard to extensions) for the calendar year, WP may withhold and report any adjustments required by the corrected information in the following calendar year.

(5) WP must file separate Forms 1042-S reflecting pooled basis information for each partnership or trust that has provided pooled basis information in its withholding statement. WP shall apply the provisions of Treas. Reg. §§1.1441-1 and 1.1441-5 to partners, beneficiaries or owners of such partnerships or trusts that are indirect partners, beneficiaries or owners, and to direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients.

(6) A partnership or trust to which WP applies this Section 10.02 may not assume primary NRA withholding responsibility, or primary Form 1099 reporting and backup withholding responsibility.

(7) WP and a partnership or trust that apply this Section 10.02 to any calendar year must apply these rules to the calendar year in its entirety. Generally, WP and a partnership or trust that apply this Section 10.02 to any calendar year are not required to apply this Section 10.02 to subsequent calendar years. If, however, WP withholds and reports any adjustments

required by corrected information in a subsequent calendar year under Section 10.02(4), WP must apply this Section 10.02 to that calendar year in its entirety.

(8) WP and a partnership or trust may not apply this Section 10.02 to any calendar year for which the partnership or trust has failed to make available to WP's auditor the records described in Section 10.02(1)(c) within 90 days after these records are requested. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if WP and the partnership or trust fail to comply with any other requirement of this Section 10.02, WP must apply Treas. Reg. §§1.1441-1 and 1.1441-5 to the partnership or trust, must correct its withholding, and must file corrected Forms 1042 and 1042-S for the calendar year.

SECTION 11. MISCELLANEOUS PROVISIONS

Sec. 11.01. WP=s application to become a withholding foreign partnership and the Appendix to this Agreement are hereby incorporated into and made an integral part of this Agreement. This Agreement, WP=s application, and the Appendix to this Agreement constitute the complete agreement between the parties.

Sec. 11.02. This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. The Agreement may also be modified by either WP or the IRS upon mutual agreement. Such amendments or modifications shall be in writing.

Sec. 11.03. Any waiver of a provision of this Agreement by the IRS is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

Sec. 11.04. This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a U.S. court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, WP agrees to submit to the jurisdiction of such U.S. court.

Sec. 11.05. WP=s rights and responsibilities under this Agreement cannot be assigned to another person.

Sec. 11.06. Notices provided under this Agreement shall be mailed registered, first class airmail. Notice shall be directed as follows:

To the IRS

Internal Revenue Service
LMSB:FS:QI

290 Broadway
New York, NY 10007-1867
USA

All notices sent to the IRS must include the WP=s WP-EIN.

To WP:

Sec. 11.07. WP, acting in its capacity as a withholding foreign partnership or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in duplicate.

Signed this day of ,

(name and title of person signing for WP)

(name and title of person signing for IRS)

By signing hereunder, WP makes the PR election with a term of six years or until WP terminates, whichever is earlier, under Sections 6.03 and 9.02 (A) of this Agreement.

(name and title of person signing for WP)

PR Election Statement – Fifteen Year Term

By signing hereunder, WP makes the PR election with a term of 15 years or until WP terminates, whichever is earlier, under Sections 6.03 and 9.02 (B) of this Agreement.

(name and title of person signing for WP)

Appendix A

WP and the IRS agree that any of the following auditors may be used by WP to perform the external audits required by Section 8 of this Agreement.

[Names, addresses, telephone and fax numbers of external auditors.]

APPENDIX 2

Withholding Foreign Trust Agreement

SECTION 1. PURPOSE AND SCOPE

- Sec. 1.01. General Obligations
- Sec. 1.02. Parties to the Agreement

SECTION 2. DEFINITIONS

- Sec. 2.01. Agreement
- Sec. 2.02. Amounts Subject to NRA Withholding
- Sec. 2.03. Chapter 3 of the Code
- Sec. 2.04. Chapter 61 of the Code
- Sec. 2.05. Distributive Share

- Sec. 2.06. External Auditor
- Sec. 2.07. Flow -Through Entity
- Sec. 2.08. Foreign Person
- Sec. 2.09. Form W-8
- Sec. 2.10. Form W-9
- Sec. 2.11. Form 1042
- Sec. 2.12. Form 1042-S
- Sec. 2.13. Form 3520
- Sec. 2.14. Form 3520-A
- Sec. 2.15. Intermediary
- Sec. 2.16. Nonwithholding Foreign Trust
- Sec. 2.17. NRA Withholding
- Sec. 2.18. Overwithholding
- Sec. 2.19. Payment
- Sec. 2.20. Pooled Reporting (PR) Election
- Sec. 2.21. Reduced Rate of Withholding
- Sec. 2.22. Reportable Amount
- Sec. 2.23. Reporting Pool
- Sec. 2.24. TIN
- Sec. 2.25. Trust and Beneficiary or Owner; Direct, Indirect or Passthrough Beneficiary or Owner
- Sec. 2.26. Underwithholding
- Sec. 2.27. U.S. Person
- Sec. 2.28. Withholding Agent
- Sec. 2.29. Withholding Foreign Trust (or WT)
- Sec. 2.30. Withholding Foreign Trust (or WT) EIN
- Sec. 2.31. Withholding Statement
- Sec. 2.32. Other Terms

SECTION 3. WITHHOLDING RESPONSIBILITY

- Sec. 3.01. NRA Withholding Responsibility
- Sec. 3.02. Timing of Withholding
- Sec. 3.03. Withholding on Distributions
- Sec. 3.04. Deposit Requirements

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- Sec. 4.01. Documentation Requirements
- Sec. 4.02. Documentation for Foreign Beneficiaries or Owners
- Sec. 4.03. Treaty Claims
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- Sec. 4.06. Documentation for Foreign Tax-Exempt Organizations

- Sec. 4.07. Documentation From Passthrough Beneficiaries or Owners
- Sec. 4.08. Documentation for U.S. Exempt Recipients
- Sec. 4.09. Documentation for U.S. Non-Exempt Recipients
- Sec. 4.10. Documentation Validity
- Sec. 4.11. Documentation Validity Period
- Sec. 4.12. Maintenance and Retention of Documentation

SECTION 5. WITHHOLDING FOREIGN TRUST WITHHOLDING CERTIFICATE

- Sec. 5.01. WT Withholding Certificate
- Sec. 5.02. Withholding Statement
- Sec. 5.03. Withholding Rate Pools

SECTION 6. TAX RETURN OBLIGATIONS

- Sec. 6.01. Form 1042 Filing Requirement
- Sec. 6.02. Form 1042-S Reporting: General Rule
- Sec. 6.03. Form 1042-S Reporting: Special Rule for PR Election
- Sec. 6.04. Form 3520-A Filing Requirement
- Sec. 6.05. Retention of Returns

SECTION 7. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS

- Sec. 7.01. Adjustments for NRA Overwithholding by WT
- Sec. 7.02. Collective Credit or Refund Procedures for NRA Overwithholding
- Sec. 7.03. Adjustments for NRA Underwithholding
- Sec. 7.04. NRA Underwithholding after Form 1042 Filed
- Sec. 7.05. Special Rule Regarding Failure to Deposit Penalties

SECTION 8. EXTERNAL AUDIT PROCEDURES

- Sec. 8.01. In General
- Sec. 8.02. Designation of External Auditor
- Sec. 8.03. Timing of External Audits: General Rule
- Sec. 8.04. Timing of External Audits: Special Rule for PR Election
- Sec. 8.05. Scope of External Audit
- Sec. 8.06. External Auditor=s Report
- Sec. 8.07. Expanding Scope and Timing of External Audit

SECTION 9. EXPIRATION, TERMINATION AND DEFAULT

- Sec. 9.01. Term of Agreement: General Rule
- Sec. 9.02. Term of Agreement: Special Rule for PR Election
- Sec. 9.03. Termination of Agreement
- Sec. 9.04. Automatic Termination of Agreement
- Sec. 9.05. Significant Change in Circumstances
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- Sec. 9.07. Notice and Cure

Sec. 9.08. Renewal

SECTION 10. CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 10.01. Certain Smaller Partnerships and Trusts

Sec. 10.02. Certain Related Partnerships and Trusts

SECTION 11. MISCELLANEOUS PROVISIONS

THIS AGREEMENT is made in duplicate under and in pursuance of section 1441 of the Internal Revenue Code of 1986, as amended, (the **Code**) and Treasury Regulation ' 1.1441-5(e)(5)(v) by and between _____, (referred to as **WT**), and the INTERNAL REVENUE SERVICE (the **IRS**):

WHEREAS, **WT** has submitted an application in accordance with Revenue Procedure 2003-64 to be a withholding foreign trust for purposes of Treas. Reg. ' 1.1441-5(e)(5)(v);

WHEREAS, **WT** and the **IRS** desire to enter into an agreement to establish **WT's** rights and obligations regarding documentation, withholding, information reporting, tax return filing, deposits, and adjustment procedures under sections 1441, 1442, 1443, 1461, 6048, 6302, 6402, and 6414 of the Code with respect to certain types of payments;

NOW, THEREFORE, in consideration of the following terms, representations, and conditions, the parties agree as follows:

SECTION 1. PURPOSE AND SCOPE

Sec. 1.01. General Obligations. Except as otherwise provided in this Agreement, **WT's** obligations with respect to income distributed to, or included in the distributive shares of, its beneficiaries or owners are governed by the Code and the regulations thereunder. Except as provided in Section 10 of this Agreement, **WT** may act in its capacity as a withholding foreign trust pursuant to this Agreement only for payments of amounts subject to NRA withholding that are distributed to, or included in the distributive shares of, its direct beneficiaries or owners. **WT** is required to act as a withholding foreign trust for all such amounts paid to **WT**, or included in **WT's** distributive share, by any withholding agent to which **WT** has provided a Form W-8IMY that represents that **WT** is acting as a withholding foreign trust with respect to such amounts. **WT** must act as a withholding foreign trust for any such amounts paid with respect to such a Form W-8IMY that are distributed to, or included in the distributive shares of, its direct foreign beneficiaries or owners. **WT** may act as a withholding foreign trust for such amounts that are distributed to, or included in the distributive shares of, its direct beneficiaries or owners that are U.S. persons. **WT** may also act as a withholding foreign trust and may treat itself as a direct foreign beneficiary if (i) **WT** is a trust the terms of which are described in section 651(a)(1) and (2) of the Code and (ii) in any taxable year, **WT** distributes amounts

other than amounts of income described in section 651(a)(1). WT may not act as a withholding foreign trust, but must act as a nonwithholding foreign trust, for amounts subject to NRA withholding that are distributed to, or included in the distributive shares of, passthrough beneficiaries or owners or indirect beneficiaries or owners, except as provided under Section 10 of this Agreement.

Sec. 1.02. Parties to the Agreement. This Agreement applies to WT and the IRS.

SECTION 2. DEFINITIONS

For purposes of this Agreement, the terms listed below are defined as follows:

Sec. 2.01. Agreement. "Agreement" means this Agreement between WT and the IRS. All appendices to this Agreement and WT=s application to become a withholding foreign trust are incorporated into this Agreement by reference.

Sec. 2.02. Amounts Subject to NRA Withholding. An amount subject to NRA withholding is an amount described in Treas. Reg. ' 1.1441-2(a). An amount subject to NRA withholding shall not include interest paid as part of the purchase price of an obligation sold between interest payment dates or original issue discount paid as part of the purchase price of an obligation sold in a transaction other than the redemption of such obligation, unless the sale is part of a plan the principal purpose of which is to avoid tax and WT has actual knowledge or reason to know of such plan.

Sec. 2.03. Chapter 3 of the Code. Any reference to "chapter 3 of the Code" means sections 1441, 1442, 1443, 1461, 1463, and 1464 of the Code.

Sec. 2.04. Chapter 61 of the Code. Any reference to "chapter 61 of the Code" means sections 6041, 6042, 6045, 6048, 6049, and 6050N of the Code.

Sec. 2.05. Distributive share. A Distributive share means an amount subject to withholding that is required to be distributed to the beneficiaries of a simple trust and an amount subject to withholding that is includible in the income of the owners of a grantor trust.

Sec. 2.06. External Auditor. An external auditor is any approved auditor listed in Appendix A of this Agreement that WT engages to perform the audits required by Section 8 of this Agreement.

Sec. 2.07. Flow-Through Entity. A flow-through entity is a foreign partnership described in Treas. Reg. ' 301.7701-2 or 3 (other than a withholding foreign partnership), a foreign trust that is described in section 651(a) of the Code (other than a withholding foreign trust), or a foreign trust all or a portion of which is treated as owned by the grantor or other person under sections 671 through 679 of the Code (other than a withholding foreign trust). For an item of income for

which a treaty benefit is claimed, an entity is also a flow-through entity to the extent it is treated as fiscally transparent under section 894 and the regulations thereunder.

Sec. 2.08. Foreign Person. A "foreign person" is any person that is not a "United States person" and includes a "nonresident alien individual," a "foreign corporation," a "foreign partnership," a "foreign trust," and a "foreign estate," as those terms are defined in section 7701 of the Code.

Sec. 2.09. Form W-8. "Form W-8" means a valid IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding; IRS Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States; IRS Form W-8EXP, Certificate of Foreign Governments and Other Foreign Organizations for United States Tax Withholding; and IRS Form W-8IMY, Certificate of Foreign Intermediary, Foreign Partnership, and Certain U.S. Branches for United States Tax Withholding, as appropriate. It also includes any acceptable substitute form.

Sec. 2.10. Form W-9. "Form W-9" means a valid IRS Form W-9, Request for Taxpayer Identification Number and Certification, or any acceptable substitute.

Sec. 2.11. Form 1042. "Form 1042" means an IRS Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

Sec. 2.12. Form 1042-S. "Form 1042-S" means an IRS Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.

Sec. 2.13. Form 3520. "Form 3520" means an IRS Form 3520, Annual Return to Report Transaction with Foreign Trust and Receipt of Certain Foreign Gifts.

Sec. 2.14. Form 3520-A. "Form 3520-A" means an IRS Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner.

Sec. 2.15. Intermediary. An "intermediary" means any person that acts on behalf of another person, such as a custodian, broker, nominee, or other agent.

Sec. 2.16. Nonwithholding Foreign Trust. A "nonwithholding foreign trust" is any foreign trust that is not acting as a withholding foreign trust.

Sec. 2.17. NRA Withholding. For purposes of this Agreement a "nonresident alien (NRA) withholding" is any withholding required under chapter 3 of the Code (other than sections 1445 or 1446), whether the payment subject to withholding is made to an individual or to an entity.

Sec. 2.18. Overwithholding. The term **Overwithholding** means the excess of the amount actually withheld over the amount required to be withheld under chapter 3 of the Code.

Sec. 2.19. Payment. A **Payment** is considered made to a person if that person realizes income whether or not such income results from an actual transfer of cash or other property. See Treas. Reg. ' 1.1441-2(e).

Sec. 2.20. Pooled Reporting (PR) Election. A **pooled reporting (PR) election** is defined in Section 6.03 of this Agreement.

Sec. 2.21. Reduced Rate of Withholding. A **reduced rate of withholding** means a rate of withholding that is less than 30 percent, either as a result of a reduction in withholding under the Code or as a result of a reduction in withholding under an income tax treaty.

Sec. 2.22. Reportable Amount. A "reportable amount" means an amount subject to NRA withholding (as defined in Section 2.02 of this Agreement); U.S. source deposit interest; and U.S. source interest or original issue discount paid on the redemption of short-term obligations. The term does not include payments on deposits with banks and other financial institutions that remain on deposit for two weeks or less. It also does not include amounts of original issue discount arising from a sale and repurchase transaction completed within a period of two weeks or less, or amounts described in Treas. Reg. ' 1.6049-5(b)(7), (10), or (11) (relating to certain foreign targeted registered obligations and certain obligations issued in bearer form).

Sec. 2.23. Reporting Pool. A reporting pool is defined in Section 6.03 of this Agreement.

Sec. 2.24. TIN. A **TIN** is a U.S. taxpayer identification number.

Sec. 2.25. Trust, Beneficiary and Owner; Direct, Indirect or Passthrough Beneficiary or Owner. The term **trust** is defined in Treas. Reg. ' 301.7701-4. The term **beneficiary** is defined in section 643(c) of the Code and the regulations thereunder. An **owner** is a person treated as a grantor or owner under Subpart C of Subchapter J of the Code. A direct beneficiary or owner is a beneficiary or owner, other than an intermediary or flow-through entity that is not itself a withholding foreign trust or withholding foreign partnership, for which WT acts as a withholding foreign trust. An indirect beneficiary or owner is a person that owns a trust interest in WT through one or more passthrough beneficiaries or owners. A passthrough beneficiary or owner is a direct or indirect beneficiary or owner in WT that is an intermediary or flow-through entity. As provided in Section 2.07 of this Agreement, a withholding foreign partnership or withholding foreign trust is not a flow-through entity and thus is not a passthrough beneficiary or owner.

Sec. 2.26. Underwithholding. **Underwithholding** means the excess of the amount required to be withheld under chapter 3 of the Code over the amount actually withheld.

Sec. 2.27. U.S. Person. A "United States (or U.S.) person" is a person described in section 7701(a)(30) of the Code, the U.S. government (including an agency or instrumentality thereof), a State of the United States (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

Sec. 2.28. Withholding Agent. A "withholding agent" has the same meaning as set forth in Treas. Reg. ' 1.1441-7(a) and includes a payor. As used in this Agreement, the term generally refers to the person making a payment to a withholding foreign trust.

Sec. 2.29. Withholding Foreign Trust (or WT). A "withholding foreign trust" is a person, described in Treas. Reg. ' 1.1441-5(e)(5)(v), that has entered into a withholding agreement with the IRS to be treated as a withholding foreign trust and is acting in its capacity as a withholding foreign trust.

Sec. 2.30. Withholding Foreign Trust (or WT) EIN. A "withholding foreign trust EIN" or "WT-EIN" means the employer identification number assigned by the IRS to a withholding foreign trust. WT's WT-EIN is only to be used when WT is acting as a withholding foreign trust. For example, WT must give a withholding agent its non-WT EIN, if any, rather than its WT-EIN, if it is not acting as a withholding foreign trust and a taxpayer identification number is required.

Sec. 2.31. Withholding Statement. The term "withholding statement" is defined in Section 5.02 of this Agreement.

Sec. 2.32. Other Terms. Any term not defined in this section has the same meaning that it has under the Code, the income tax regulations under the Code, or any applicable income tax treaty.

SECTION 3. WITHHOLDING RESPONSIBILITY

Sec. 3.01. NRA Withholding Responsibility. WT is subject to the withholding and reporting provisions applicable to withholding agents under chapter 3 of the Code. Under chapter 3, a withholding agent must withhold 30 percent of any payment of an amount subject to NRA withholding made to a beneficiary or owner that is a foreign person unless the withholding agent can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. When it is acting as a withholding foreign trust, WT must assume NRA withholding responsibility for amounts subject to NRA withholding that are distributed to, or included in the distributive share of, any direct beneficiary or owner, and WT must withhold the amount required to be withheld under chapter 3 of the Code. WT must provide a Form W-8IMY that certifies to a withholding agent that makes a payment of such amounts that WT is acting as a withholding foreign trust, and WT must identify

such amounts on the withholding statement associated with that Form W-8IMY. WT is not required to withhold when it pays such amounts to another withholding foreign trust or withholding foreign partnership that has certified to WT on Form W-8IMY that it is acting as a withholding foreign trust or withholding foreign partnership with respect to such identified amounts. WT is not required to act as a withholding foreign trust for all amounts that it receives from a withholding agent. Except as provided in Section 10 of this Agreement, WT may not act as a withholding foreign trust for amounts distributed to, or included in the distributive share of, passthrough beneficiaries or owners or indirect beneficiaries or owners. WT must act as a nonwithholding foreign trust for such amounts. When WT is not acting as a withholding foreign trust, WT must: 1) provide to the withholding agent a Form W-8IMY with Part VI completed; 2) identify such amounts on the withholding statement associated with that Form W-8IMY; and 3) provide the documentation and information required by Treas. Reg. ' 1.1441-5(e)(5)(iii) and (iv).

Sec. 3.02. Timing of Withholding. WT must withhold on the date it makes a distribution to a direct foreign beneficiary or owner that includes an amount subject to NRA withholding. To the extent a direct foreign beneficiary=s or owner=s distributive share of income subject to withholding has not actually been distributed to the direct foreign beneficiary or owner, WT must withhold on the direct beneficiary=s or owner=s distributive share on the earlier of the date the statement required under section 6048 is mailed or otherwise provided to the beneficiary or owner or the due date for furnishing the statement (whether or not WT is required to prepare and furnish the statement).

Sec. 3.03. Withholding on Distributions. WT may determine the amount of withholding on a distribution based on a reasonable estimate of the beneficiary's or owner's distributive share of income subject to withholding for the year. WT must correct the estimated withholding to reflect the beneficiary's or owner's actual distributive share on the earlier of the date that the statement required under section 6048 is mailed or otherwise provided to the beneficiary or owner or the due date for furnishing the statement (whether or not WT is required to prepare and furnish the statement). If that date is after the due date for the WT's Forms 1042 and 1042-S (including extensions) for the calendar year, WT may withhold and report any adjustments required by the corrected information in the following calendar year.

Sec. 3.04. Deposit Requirements. WT must deposit amounts withheld under chapter 3 of the Code with a Federal Reserve bank or authorized financial institution at the time and in the manner provided under section 6302 of the Code (see Treas. Reg. ' 1.6302-2(a) or §31.6302-1(h)).

SECTION 4. DOCUMENTATION REQUIREMENTS

Sec. 4.01. Documentation Requirements. WT agrees to obtain, review, and maintain Forms W-8 and W-9 in accordance with this Section 4. WT must obtain a Form W-8 or W-9 from every direct beneficiary or owner prior to the time that withholding is required. WT agrees

to make documentation (together with any associated withholding statements and other documents or information) available upon request for inspection by WT=s external auditor. WT represents that none of the laws to which it is subject prohibits disclosure of the identity of any beneficiary or owner or corresponding beneficiary or owner information to WT=s external auditor. WT may rely on the Forms W-8 and W-9 it obtains under this Section 4 as the basis for determining its withholding and reporting obligations.

Sec. 4.02. Documentation for Foreign Beneficiaries or Owners. WT may treat a direct beneficiary or owner as a foreign beneficial owner if the direct beneficiary or owner provides a Form W-8 that supports such status. WT may treat a direct beneficiary or owner that has provided a Form W-8 as entitled to a reduced rate of NRA withholding if all the requirements for a reduced rate are met and the Form W-8 provided by the direct beneficiary or owner supports entitlement to a reduced rate. Sections 4.03 through 4.06 of this Agreement describe the specific documentation requirements necessary for obtaining a reduced rate of withholding in certain circumstances.

Sec. 4.03. Treaty Claims. WT may not reduce the rate of withholding based on a direct beneficiary=s or owner=s claim of treaty benefits unless WT obtains from the beneficiary or owner a Form W-8BEN with Part II of the form properly completed, including the appropriate limitation on benefits and section 894 certifications.

Sec. 4.04. Documentation for International Organizations. WT may not treat a direct beneficiary or owner as an international organization entitled to an exemption from withholding under section 892 of the Code unless WT obtains a Form W-8EXP from the international organization and the name provided on the Form W-8EXP is the name of an entity designated as an international organization by executive order pursuant to 22 United States Code 288 through 288(f). If an international organization is not claiming benefits under section 892 of the Code but under another Code exception, the provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.04.

Sec. 4.05. Documentation for Foreign Governments and Foreign Central Banks of Issue.

(A) Documentation for a Foreign Government or Foreign Central Bank of Issue Claiming an Exemption from Withholding Under Section 892 or Section 895. WT may not treat a direct beneficiary or owner as a foreign government or foreign central bank of issue exempt from withholding under section 892 or 895 of the Code unless—

(1) WT receives from the direct beneficiary or owner a Form W-8EXP establishing that the direct beneficiary or owner is a foreign government or foreign central bank of issue;

(2) The income distributed to, or included in the distributive share of, the direct beneficiary or owner is the type of income that qualifies for an exemption from withholding under section 892 or 895; and

(3) WT does not know, or have reason to know, that the direct beneficiary or owner is a controlled commercial entity, that the income owned by the foreign government or foreign central bank of issue is being received from a controlled commercial entity, or that the income is from the disposition of an interest in a controlled commercial entity.

(B) Treaty Exemption. WT may not treat a direct beneficiary or owner as a foreign government or foreign central bank of issue entitled to a reduced rate of withholding under an income tax treaty unless it obtains a Form W-8BEN that, under Section 4.03 of this Agreement, is sufficient to obtain a reduced rate of withholding under a treaty.

(C) Other Code Exception. If a foreign government or foreign central bank of issue is not claiming benefits under section 892 or 895 of the Code but under another Code exception (e.g., the portfolio interest exception under sections 871(h) or 881(c) of the Code), the provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.05.

Sec. 4.06. Documentation for Foreign Tax-Exempt Organizations.

(A) Reduced Rate of Withholding Under Section 501. WT may not treat a direct beneficiary or owner as a foreign organization described under section 501(c) of the Code, and therefore exempt from withholding (or, if the direct beneficiary or owner is a foreign private foundation, subject to withholding at a 4-percent rate under section 1443(b) of the Code) unless WT obtains a valid Form W-8EXP with Part III of the form properly completed.

B) Treaty Exemption. WT may not treat a direct beneficiary or owner as a foreign organization that is tax exempt, or entitled to a reduced rate of withholding under an income tax treaty unless WT obtains a Form W-8BEN from the beneficiary or owner that, under Section 4.03 of this Agreement, is sufficient to obtain a reduced rate of withholding under a treaty.

(C) Other Exceptions. If a tax-exempt entity is not claiming a reduced rate of withholding because it is an organization described under section 501(c) of the Code or under an income tax treaty, but is claiming a reduced rate of withholding under another Code exception, the provisions of Section 4.02 of this Agreement apply rather than the provisions of this Section 4.06.

Sec. 4.07. Documentation for Passthrough Beneficiaries or Owners. Except as provided in Section 10 of this Agreement, WT shall not act as a withholding foreign trust with respect to an amount subject to withholding distributed to, or included in the distributive share of, a passthrough beneficiary or owner, as defined in Section 2.25 of this Agreement. WT must

forward that passthrough beneficiary=s or owner=s documentation (and associated withholding statement and documentation of indirect beneficiaries or owners) to the withholding agent from whom WT receives the amount subject to withholding. WT may act as a withholding foreign trust with respect to amounts subject to withholding distributed to, or included in the distributive share of, beneficiaries or owners that are themselves withholding foreign trusts or withholding foreign partnerships.

Sec. 4.08. Documentation for U.S. Exempt Recipients. WT shall not treat a beneficiary or owner as a U.S. exempt recipient unless WT obtains from the beneficiary or owner a Form W-9 on which the beneficiary or owner writes “Exempt” in Part II of the form.

Sec. 4.09. Documentation for U.S. Non-Exempt Recipients. WT shall not treat a beneficiary or owner as a U.S. non-exempt recipient unless WT obtains a Form W-9 from the beneficiary or owner.

Sec. 4.10. Documentation Validity. WT may not rely on Forms W-8 or W-9 if WT has actual knowledge or reason to know that the information or statements contained in the forms are unreliable or incorrect. Once WT knows, or has reason to know, that a Form W-8 or W-9 provided by a direct beneficiary or owner is unreliable or incorrect, WT must obtain a new Form W-8 or W-9 prior to the time withholding is required.

Sec. 4.11. Documentation Validity Period.

(A) Form W-8. WT may rely on a properly completed Form W-8 until its validity expires under Treas. Reg. 1.1441-1(e)(4)(ii).

(B) Form W-9. WT may rely on a properly completed Form W-9 as long as it has not been informed by the IRS or another withholding agent that the form is unreliable.

Sec. 4.12. Maintenance and Retention of Documentation.

(A) Maintaining Documentation. WT shall maintain Forms W-8 and W-9 by retaining the original documentation, a certified copy, a photocopy or a microfiche, or by electronic storage or similar means of record retention.

(B) Retention Period. WT shall retain a direct beneficiary=s or owner=s Form W-8 or W-9 obtained under this Section 4 for as long as it may be relevant to the determination of WT=s tax liability under this Agreement.

SECTION 5. WITHHOLDING FOREIGN TRUST WITHHOLDING CERTIFICATE

Sec. 5.01. WT Withholding Certificate. WT agrees to furnish a withholding foreign trust withholding certificate to each withholding agent from which it receives amounts subject to

NRA withholding as a withholding foreign trust. The withholding foreign trust withholding certificate is a Form W-8IMY (or acceptable substitute form) that certifies that WT is acting as a withholding foreign trust, contains WT=s WT-EIN, and provides all other information required by the form. WT is not required to disclose, as part of that Form W-8IMY or its withholding statement, any information regarding the identity of a direct beneficiary or owner.

Sec. 5.02. Withholding Statement. WT agrees to provide to each withholding agent from which WT receives amounts subject to NRA withholding as a withholding foreign trust a written statement (the withholding statement) identifying the amounts for which WT acts as a withholding foreign trust. The statement forms an integral part of the Form W-8IMY. The withholding statement may be provided in any manner, and in any form, to which WT and the withholding agent mutually agree.

Sec. 5.03. Withholding Rate Pools. When it is acting as a withholding foreign trust, WT must assume withholding responsibility for amounts subject to withholding that are distributed to, or included in the distributive shares of, its direct beneficiaries or owners. Accordingly, withholding rate pool information is not required as part of WT=s withholding statement.

SECTION 6. TAX RETURN OBLIGATIONS

Sec. 6.01. Form 1042 Filing Requirement.

(A) In General. WT shall file a return on Form 1042, whether or not WT withheld any amounts under chapter 3 of the Code, on or before March 15 of the year following any calendar year in which WT acts as a withholding foreign trust. In addition to the information specifically requested on Form 1042 and the accompanying instructions, WT shall attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments made under Treas. Reg. 1.1461-2 and Sections 7.01 and 7.03 of this Agreement, and an explanation of the circumstances that resulted in the over- or under- withholding.

(B) Extensions for Filing Returns. WT may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns, on or before the due date of the return. The application shall be in writing, properly signed by a duly authorized agent of WT, and shall clearly set forth the following:

- (1) The calendar year for which the extension is requested; and
- (2) A full explanation of the reason(s) for requesting the extension, to assist the IRS in determining the period of extension, if any, that will be granted.

Sec. 6.02. Form 1042-S Reporting: General Rule. Unless WT has made a pooled reporting (PR) election pursuant to Section 6.03 of this Agreement, WT is required to file

separate Forms 1042-S for each direct beneficiary or owner to whom WT distributes, or in whose distributive share is included, an amount subject to NRA withholding. WT must file separate Forms 1042-S by income code, exemption code, recipient code, and withholding rate. WT must file its Forms 1042-S in the manner required by the regulations under chapter 3 of the Code and the instructions to the form, including any requirement to file the forms magnetically or electronically. Any Form 1042-S required by this Section 6 shall be filed on or before March 15 following the calendar year in which withholding, if any, was required under Section 3.02 of this Agreement. WT may request an extension of time to file Forms 1042-S by submitting Form 8809, Request for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by Form 8809.

Sec. 6.03. Form 1042-S Reporting: Special Rule for PR Election. If WT has made the PR election pursuant to this Section 6.03, WT is not required to file Forms 1042-S for amounts distributed to, or included in the distributive share of, each separate direct beneficiary or owner for whom such reporting would otherwise be required. Instead, WT shall file a separate Form 1042-S for each reporting pool. A reporting pool consists of income that falls within a particular withholding rate and within a particular income code, exemption code, and recipient code as determined on Form 1042-S. WT may use a single recipient code for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate recipient code must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to NRA withholding and is not liable to tax in its country of residence because it is a charitable organization, a pension fund, or a foreign government. WT must make the PR election at the time this Agreement is executed by signing the election statement on the signature page of this Agreement. Once made, the PR election remains in effect for the entire term of this Agreement beginning on the date the Agreement becomes effective and ending on the date of its expiration or termination under Section 9 of this Agreement. WT must make a new election for each renewal term of this Agreement. If WT makes the PR election, WT cannot revoke it prior to the end of the term for which WT has made the PR election. If WT did not make the PR election at the time this Agreement was executed, then WT may make a PR election only by terminating this Agreement pursuant to Section 9.03 and requesting to enter into a new withholding foreign trust agreement.

Sec. 6.04. Form 3520-A Filing Requirement. If WT is required to file Form 3520-A under section 6048 of the Code, then WT shall file Form 3520-A and furnish any required statements to U.S. beneficiaries or owners in accordance with the instructions for the form.

Sec. 6.05. Retention of Returns. WT shall retain 1042 and Form 3520-A, if required, for the period of the applicable statute of limitations on assessments and collection under the Code.

SECTION 7. ADJUSTMENTS FOR OVER- AND UNDER- WITHHOLDING; REFUNDS

Sec. 7.01. Adjustments for NRA Overwithholding by WT. WT may make an adjustment for amounts paid to its direct beneficiaries or owners that it has overwithheld under chapter 3

of the Code by applying either the reimbursement or set-off procedures described in this section within the time period prescribed for those procedures.

(A) Reimbursement Procedure. WT may repay its beneficiaries or owners for an amount overwithheld and reimburse itself by reducing, by the amount of tax actually repaid to the beneficiaries or owners, the amount of any subsequent deposit of tax required to be made by WT under Section 3.04 of this Agreement. For purposes of this Section 7.01(A), an amount that is overwithheld shall be applied in order of time to each of WT=s subsequent deposit periods in the same calendar year to the extent that the withholding taxes required to be deposited for a subsequent deposit period exceed the amount actually deposited. An amount overwithheld in a calendar year may be applied to deposit periods in the calendar year following the calendar year of overwithholding only if—

(1) WT states on a Form 1042-S, filed by March 15 of the calendar year following the calendar year of overwithholding, the amount of tax withheld and the amount of any actual repayments; and

(2) WT states on a Form 1042, filed by March 15 of the calendar year following the calendar year of overwithholding, that the filing of the Form 1042 constitutes a claim for credit in accordance with Treas. Reg. ' 1.6414-1.

(B) Set-Off Procedure. WT may repay its beneficiaries or owners by applying the amount overwithheld against any amount which otherwise would be required under chapter 3 of the Code to be withheld by WT before the earlier of March 15 of the calendar year following the calendar year of overwithholding or the date that the Form 1042-S is actually filed with the IRS. For purposes of making a return on Form 1042 or 1042-S for the calendar year of overwithholding, and for purposes of making a deposit of the amount withheld, the reduced amount shall be considered the amount required to be withheld from such income under chapter 3 of the Code.

Sec. 7.02. Collective Credit or Refund Procedures for NRA Overwithholding. If WT has made a PR election and it has overwithheld under chapter 3 of the Code on amounts subject to NRA withholding paid to WT=s direct beneficiaries or owners during a calendar year and the amount has not been recovered under the reimbursement or set-off procedures under Section 7.01 of this Agreement, WT may request a credit or refund of the total amount overwithheld by following the procedures of this Section 7.02. WT shall follow the procedures set forth under sections 6402 and 6414 of the Code, and the regulations thereunder, to claim the credit or refund. No credit or refund will be allowed after the expiration of the statutory period of limitation for refunds under section 6511 of the Code. WT may use the collective refund procedures under this Section 7.02 only if the following conditions are met:

(A) WT must not have issued Forms 1042-S to the direct beneficiaries or owners who were subject to overwithholding;

(B) WT must submit, together with its amended return on which it claims a credit or refund, a statement of the reason for the overwithholding;

(C) WT must submit, together with its amended return on which it claims a credit or refund, a statement that it has repaid the amount of overwithholding to the appropriate direct beneficiaries or owners prior to filing the claim for credit or refund; and

(D) WT must retain a record showing that it repaid the direct beneficiaries or owners the amount of the overwithholding.

Sec. 7.03. Adjustments for NRA Underwithholding. If WT knows that an amount should have been withheld under chapter 3 of the Code from a previous payment to a direct beneficiary or owner but was not withheld, WT may either withhold from future payments made to the same direct beneficiary or owner or satisfy the tax from the direct beneficiary=s or owner=s proportionate share of assets over which it has control. The additional withholding or satisfaction of the tax owed may only be made before the due date of the Form 1042 (not including extensions) for the calendar year in which the underwithholding occurred.

Sec. 7.04. NRA Underwithholding after Form 1042 Filed. If, after a Form 1042 has been filed for a calendar year, WT, WT=s external auditor, or the IRS determines that, due to WT=s failure to carry out its obligations under this Agreement, WT has underwithheld tax for such year, WT shall file an amended Form 1042 to report and pay the underwithheld tax. WT shall pay the underwithheld tax, the interest due on the underwithheld tax, and any applicable penalties, at the time of filing the amended Form 1042. If WT fails to file an amended return, the IRS shall make such return under section 6020 of the Code.

Sec. 7.05. Special Rule Regarding Failure to Deposit Penalties. Solely for purposes of applying section 6656 of the Code (failure to make deposit of taxes), WT will not be considered to have made an underpayment of a deposit of NRA withholding taxes if the conditions of this paragraph are met. The conditions of this paragraph are that—

(A) WT makes its deposits within the time (deposit period) required by section 6302 of the Code;

(B) The deposit is not less than 90 percent of the aggregate amount of the tax required to be withheld under chapter 3 of the Code during the deposit period applicable to WT; and

(C) WT determines the difference between the total amount required to be deposited and the amount actually deposited as of the end of the 3rd, 6th, 9th, and 12th months of the calendar year and the difference is deposited no later than the 15th day of the second following month (i.e., May 15, August 15, November 15 and February 15, respectively). In determining whether there has been an underpayment, reimbursements and set-offs shall be taken into account.

SECTION 8. EXTERNAL AUDIT PROCEDURES

Sec. 8.01. In General. Unless WT requests an IRS audit in lieu of an external audit, the IRS agrees not to conduct an on-site audit of WT with respect to withholding and reporting obligations covered by this Agreement provided that an external auditor designated in Appendix A of this Agreement conducts an audit of WT in accordance with this Section 8. WT shall permit the external auditor to have access to all relevant records of WT for purposes of performing the external audit, including information regarding specific beneficiaries or owners.

WT shall permit the IRS to communicate directly with the external auditor and to review the audit procedures followed by the external auditor. WT represents that there are no legal prohibitions that prevent the external auditor from examining any information relevant to the external audit to be performed under this Section 8 and that there are no legal prohibitions that prevent the IRS from communicating directly with the auditor. WT shall permit the IRS to examine the external auditor's work papers and reports.

Sec. 8.02. Designation of External Auditor. WT's external auditor must be one of the auditors listed in Appendix A of this Agreement, unless WT and the IRS agree, prior to the audit, to substitute another auditor. WT shall not propose an external auditor unless it has a reasonable belief that the auditor is subject to laws, regulations, or rules that impose sanctions for failure to exercise its independence and to perform the audit competently. The IRS has the right to reject a proposed external auditor, or to revoke its acceptance of an external auditor, if the IRS, in its sole discretion, reasonably believes that the auditor is not independent or cannot perform an effective audit under this Agreement.

Sec. 8.03. Timing of External Audits: General Rule. Unless WT has made a PR election, WT shall have the external auditor conduct an external audit only at such time and only for such calendar years as the IRS directs.

Sec. 8.04. Timing of External Audits: Special Rule for PR Election.

(A) If WT has made a PR election and the term of this Agreement is determined under Section 9.02(A), WT shall have the external auditor conduct an audit of the second full calendar year and the fifth full calendar year that this Agreement is in effect.

(B) If WT has made a PR election and the term of this Agreement is determined under Section 9.02(B), WT shall have the external auditor conduct an audit after the close of every other calendar year that this Agreement is in effect. The auditor shall examine the two previous calendar years. For example, the first audit will occur in the third calendar year that the Agreement is in effect and the external auditor will examine calendar years one and two.

Sec. 8.05. Scope of External Audit. The external auditor shall verify whether WT is in compliance with this Agreement by conducting an audit that meets the requirements of this

Section 8.05. The report, described in Section 8.06 of this Agreement, must disclose that the external auditor has, at a minimum, performed the following checks listed in this Section 8.05, and set forth how each of those checks was performed and the results of the checks. WT=s external auditor is encouraged to contact the IRS at the address set forth in Section 11.06 of this Agreement and submit an audit plan (which includes, if relevant, the extent to which the external auditor proposes to rely on WT=s internal audit procedures) prior to performing the audit so that the audit may be conducted in the most efficient and least costly manner possible.

(A) Documentation. The external auditor must review information contained in beneficiary or owner files to determine whether the documentation requirements of Section 4 of this Agreement are being met.

(B) Withholding Responsibilities. The external auditor must—

(1) Perform test checks of direct beneficiaries or owners, to verify that WT is withholding the proper amounts.

(2) Verify that amounts withheld were timely deposited in accordance with Section 3.04 of this Agreement.

(C) Return Filing and Information Reporting. The external auditor must—

(1) Obtain copies of original and amended Forms 1042, and any schedules, statements, or attachments required to be filed with those forms, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by—

(i) Reviewing work papers;

(ii) Reviewing Forms W-8IMY, together with the associated withholding statements, that WT has provided to withholding agents;

(iii) Reviewing copies of Forms 1042-S received from withholding agents;

(iv) Reviewing account statements from withholding agents;

(v) Reviewing correspondence between WT and withholding agents; and

(vi) Interviewing personnel responsible for preparing the Form 1042 and the work papers used to prepare those forms.

(2) Obtain copies of original and amended Forms 1042-S and Forms 3520-A together with the work papers used to prepare those forms and determine whether the amounts reported on those forms are accurate by—

(i) Reviewing the Forms 1042-S received from withholding agents;

(ii) Reviewing a valid sample of earnings statements issued by WT to direct beneficiaries or owners, if any.

(3) Thoroughly review the statements attached to amended Forms 1042 filed to claim a refund, ascertain their veracity, and determine the causes of any overwithholding reported and ensure WT did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund.

(4) Determine, in the case of collective credits or refunds, that WT repaid the appropriate beneficiaries or owners prior to requesting a collective credit or refund.

(E) Change in Circumstances. The external auditor must verify that in the course of the audit it has not discovered any significant change in circumstances, as described in Section 9.05 (A) or (D) of this Agreement.

Sec. 8.06. External Auditor=s Report. Upon completion of the audit of WT, the external auditor shall issue a report, or reports, of audit findings directly to the IRS by sending the original report to the IRS at the address set forth in Section 11.06 of this Agreement. This report is due by December 31 following the calendar year being audited, or if that date falls on a Saturday or Sunday, the next U.S. business day. The IRS may, however, upon request by the external auditor, extend the due date of the audit report upon good cause. The report must be in writing, in English, and currency amounts must be stated in U.S. dollars. The report must fully describe the scope of the audit, the methodologies (including sampling techniques) used to determine whether WT is in compliance with the provisions of this Agreement, and the result of each such determination. The report must also specifically address each of the items in Section 8.05 of this Agreement.

Sec. 8.07. Expanding Scope and Timing of External Audit. Upon review of the external auditor=s report, the IRS may request, and WT must permit, the external auditor to perform additional audit procedures.

SECTION 9. EXPIRATION, TERMINATION AND DEFAULT

Sec. 9.01. Term of Agreement: General Rule. If WT has not made a PR election, this Agreement shall be in effect on _____ and shall continue in force until the earlier of the date WT terminates under the trust instrument or the date WT is terminated under 9.03 or 9.04 of this Agreement.

Sec. 9.02. Term of Agreement: Special Rule for PR Election.

(A) If WT has made a PR election, unless WT elects the special term pursuant to Section 9.02(B), this Agreement shall be in effect on _____ and shall expire on the earlier of the date WT terminates under the trust instrument or December 31 of the fifth full calendar year after the year in which this Agreement first takes effect. This Agreement may be renewed for additional terms as provided in Section 9.08 of this Agreement.

(B) If WT has made a PR election, and WT elects the special term pursuant to this Section 9.02(B), this Agreement shall be in effect on _____ and shall expire on the earlier of the date WT terminates under the trust instrument or December 31 of the fourteenth full calendar year after the year in which this Agreement first takes effect. If WT elects the special term, this Agreement is not renewable. WT must make the special term election under this Section 9.02(B) at the time this Agreement is executed by signing the election statement on the signature page of this Agreement.

Sec. 9.03. Termination of Agreement. This Agreement may be terminated by either the IRS or WT prior to the end of its term by delivery of a notice of termination to the other party in accordance with Section 11.06 of this Agreement. The IRS, however, shall not terminate the Agreement unless there has been a significant change in circumstances, as defined in Section 9.05 of this Agreement, or an event of default has occurred, as defined in Section 9.06 of this Agreement, and the IRS determines, in its sole discretion, that the significant change in circumstances or the event of default warrants termination of this Agreement. In addition, the IRS shall not terminate this Agreement in the event of default if WT can establish to the satisfaction of the IRS that all events of default for which it has received notice have been cured within the time period agreed upon. The IRS shall notify WT, in accordance with Section 9.07 of this Agreement, that an event of default has occurred and that the IRS intends to terminate the Agreement unless WT cures the default. A notice of termination sent by either party shall take effect on the date specified in the notice.

Sec 9.04. Automatic Termination of Agreement.

(A) Automatic Termination. Notwithstanding Section 9.03 of this Agreement, this Agreement will terminate automatically in the event that the external auditor or the IRS on audit discovers that WT was not in possession of Forms W-8 or W-9, as applicable, for any direct beneficiary or owner at any time that withholding or reporting was required under Section 3.02 of this Agreement. The automatic termination will be effective as of December 31 of the year in which the external auditor or the IRS makes that discovery. The automatic termination rules of this Section 9.04(A) shall not apply in the case of indirect beneficiaries or owners that are treated as direct beneficiaries or owners of WT under Section 10 of this Agreement.

(B) Cure and Reinstatement . This Agreement will be reinstated, effective the same date it automatically terminated under Section 9.04(A) of this Agreement, if—

(1) WT obtains appropriate Forms W-8 or W-9 (that relate to the time withholding or reporting was required) for each such undocumented beneficiary or owner before March 15 of the year following the year in which the Agreement automatically terminated, or

(2) All such undocumented beneficiaries or owners have ceased to be beneficiaries or owners in WT before March 15 of the year following the year in which the Agreement automatically terminated.

(C) Payment of Underwithholding and Reporting upon Termination. In the event of automatic termination of this Agreement under this Section 9.04, WT must pay any underwithholding of tax, interest, and penalties that the IRS determines is attributable to each undocumented direct beneficiary or owner for the period during which the beneficiary or owner was undocumented, and, if WT has made a PR election, WT must file Forms 1099, or beneficiary or owner specific Forms 1042-S reporting the names and addresses and other required information, as appropriate, for every undocumented direct beneficiary or owner from the earliest time the Form W-8 or W-9 was required for that undocumented direct beneficiary or owner through the date of termination. WT may, however, continue to report on a pooled basis for documented foreign direct beneficiaries or owners through this period.

(D) Reinstatement after Termination. After the date of automatic termination of this Agreement, WT may not act as a withholding foreign trust, and must so notify any persons to which WT has furnished a withholding foreign trust certificate. After the date of automatic termination of this Agreement, the IRS may reinstate this Agreement (or the IRS may require WT to enter into a new withholding foreign trust agreement) on such terms and conditions and with such modifications as the IRS may determine.

Sec. 9.05. Significant Change in Circumstances. For purposes of this Agreement, a significant change in circumstances includes, but is not limited to—

(A) A change in U.S. federal law or policy, or applicable foreign law or policy, that affects the validity of any provision of this Agreement, materially affects the procedures contained in this Agreement, or affects WT=s ability to perform its obligations under this Agreement;

(B) A ruling of any court that affects the validity of any provision of this Agreement; or

(C) A significant change in WT=s business practices that affects WT=s ability to meet its obligations under this Agreement.

Sec. 9.06. Events of Default. For purposes of this Agreement, an event of default occurs if WT fails to perform any material duty or obligation required under this Agreement, and includes, but is not limited to, the occurrence of any of the following:

- (A)** WT fails to implement adequate procedures, accounting systems, and internal controls to ensure compliance with this Agreement;
- (B)** WT underwithholds an amount that WT is required to withhold under chapter 3 of the Code and fails to correct the underwithholding or to file an amended Form 1042 reporting, and paying, the appropriate tax;
- (C)** WT makes excessive refund claims;
- (D)** WT fails to file Forms 1042, 1042-S, 3520-A (if required), 1041 (if required), and Schedules K-1 (if required) by the due date specified on such forms or files forms or schedules that are materially incorrect or fraudulent;
- (E)** WT fails to have an external audit performed when required, WT=s external auditor fails to provide its report directly to the IRS on a timely basis, WT fails to cooperate with the external auditor, or WT or its external auditor fails to cooperate with the IRS;
- (F)** WT fails to inform the IRS within 90 days of any significant change in its business practices to the extent that change affects WT=s obligations under this Agreement;
- (G)** WT fails to cure a default identified by the IRS or by an external auditor;
- (H)** WT makes any fraudulent statement or a misrepresentation of material fact with regard to this Agreement to the IRS, a withholding agent, or WT=s external auditor;
- (I)** The IRS determines that WT=s external auditor is not sufficiently independent to adequately perform its audit function or the external auditor fails to provide an audit report that complies with Section 8 of this Agreement;
- (J)** WT is prohibited by any law from disclosing the identity of a beneficiary or owner or beneficiary or owner information to WT=s external auditor;
- (K)** WT fails to make deposits in the time and manner required by Section 3.04 of this Agreement or fails to make adequate deposits, taking into account the procedures of 7.05 of this Agreement; or
- (L)** WT fails to permit the external auditor to perform additional audit procedures under the provisions of Section 8.07 of this Agreement.

Sec. 9.07. Notice and Cure. Upon the occurrence of an event of default, the IRS may deliver to WT a notice of default specifying the event of default that has occurred. WT shall respond to the notice of default within 60 days (60-day response) from the date of the notice of default.

The 60-day response shall contain an offer to cure the event of default and the time period in which the cure will be accomplished or shall state the reasons why WT does not agree that an event of default has occurred. If WT does not provide a 60-day response, the IRS may deliver a notice of termination as provided in Section 9.03 of this Agreement. If WT provides a 60-day response, the IRS shall either accept or reject WT=s statement that no default has occurred or accept or reject WT=s proposal to cure an event of default. If the IRS rejects WT=s contention that no default has occurred or rejects WT=s proposal to cure a default, the IRS will offer a counter-proposal to cure the event of default. Within 30 days of receiving the IRS=s counter-proposal, WT shall notify the IRS (30-day response) whether it continues to maintain that no default has occurred or whether it rejects the IRS=s counter-proposal to cure an event of default. If WT=s 30-day response states that no default has occurred or it rejects the IRS=s counter-proposal to cure, the parties shall seek to resolve their disagreement within 30 days of the IRS=s receipt of WT=s 30-day response. If a satisfactory resolution has not been achieved at the end of this latter 30-day period, or if WT fails to provide a 30-day response, the IRS may terminate this Agreement by providing a notice of termination in accordance with Section 9.03 of this Agreement. If WT receives a notice of termination from the IRS, it may appeal the determination within 30 days of the date of the notice of termination by sending a written notice to the address specified in Section 11.06 of this Agreement. If WT appeals the notice of termination, this Agreement shall not terminate until the appeal has been decided. If an event of default is discovered in the course of an external audit, the WT may cure the default, without following the procedures of this Section 9.07, if the external auditor=s report describes the default and the actions that WT took to cure the default and the IRS determines that the cure procedures followed by WT were sufficient. If the IRS determines that WT=s actions to cure the default were not sufficient, the IRS shall issue a notice of default and the procedures described in this Section 9.07 shall be followed.

Sec. 9.08. Renewal. If WT has made the PR election under Section 6.03 of this Agreement and intends to renew this Agreement for an additional term, it shall submit an application for renewal to the IRS no earlier than one year and no later than six months prior to the expiration of this Agreement. Any such application for renewal must contain an update of the information provided by WT to the IRS in connection with the application to enter into this Agreement, and any other information the IRS may request in connection with the renewal process. This Agreement shall be renewed only upon the signatures of both WT and the IRS. Either the IRS or WT may seek to negotiate a new withholding foreign trust agreement rather than renew this Agreement.

SECTION 10. CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 10.01. Certain Smaller Partnerships and Trusts. WT may not apply the rules of this Section 10.01 unless it has made a PR election under Section 6.03 of this Agreement. WT may apply the rules of this Section 10.01 only to a partnership or trust that meets the following conditions: (i) the partnership or trust is a foreign partnership or foreign simple or grantor trust, (ii) the partnership or trust is a direct partner, beneficiary or owner of WT, (iii) none of the

partners, beneficiaries or owners of the partnership or trust is a U.S. person or a passthrough partner, beneficiary or owner, and (iv) the total reportable amounts distributed to, and included in the distributive share of, the partnership or trust for the calendar year do not exceed \$200,000. In applying this Section 10.01, WT must treat the partners of such a partnership or the beneficiaries or owners of such a trust as direct beneficiaries or owners of WT under this Agreement. To apply this Section 10.01, WT and the partnership or trust must comply with all of the rules listed below.

(1) WT and the partnership or trust must agree in writing that the partnership or trust will make available to WT's auditor for purposes of WT's audit under Section 8 of this Agreement records that establish that the partnership or trust has provided WT with documentation for all of its partners, beneficiaries or owners.

(2) The partnership or trust must provide to WT a Form W-8IMY, together with Forms W-8 from each partner, beneficiary or owner, and a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that provides information for all partners, beneficiaries or owners. The withholding statement, however, need not provide any allocation information.

(3) WT must treat amounts distributed to, or included in the distributive share of, the partnership or trust as allocated solely to any partner, beneficiary or owner that is subject to the highest rate of withholding and must withhold at that rate.

(4) WT may include amounts distributed to, or included in the distributive share of, a partnership or trust under Section 10.01(3) in its Form 1042-S reporting pools for direct account holders under Section 6.03 of this Agreement.

(5) After WT has withheld in accordance with Section 10.01(3) above, it may file a separate Form 1042-S for any partner, beneficiary or owner who requests that it do so. WT may do so only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner, beneficiary or owner and only if the partnership or trust has agreed in writing under Section 10.01(1) to make available to WT's external auditor records that substantiate the allocation information included in its withholding statement.

(6) WT may not include any amounts distributed to, or included in the distributive share of, a partnership or trust to which the WT is applying the rules of this Section 10.01 in any collective refund claim made under Section 7.02 of this Agreement.

(7) WT and a partnership or trust that apply this Section 10.01 to any calendar year are not required to apply this Section 10.01 to subsequent calendar years. WT and a partnership or trust that apply this Section 10.01 to any calendar year must apply these rules to the calendar year in its entirety.

(8) WT and the partnership or trust may not apply this Section 10.01 to any calendar year for which the partnership or trust has failed to make available to WT's auditor the records described in Section 10.01(1) within 90 days after these records are requested. If the partnership or trust has failed to make these records available within the 90-day period, or if WT and the partnership or trust fail to comply with any other requirement of this Section 10.01, WT must apply Treas. Reg. §§ 1.1441-1 and 1.1441-5 to the partnership or trust, must correct its withholding, and must file corrected Forms 1042 and 1042-S.

Sec. 10.02. Certain Related Partnerships and Trusts. WT may not apply the rules of this Section 10.02 unless it has made a PR election under Section 6.03 of this Agreement. WT may apply the rules of this Section 10.02 only to a partnership or trust that meets the following conditions: (1) the partnership or trust is a foreign partnership or foreign simple or grantor trust; (2) the partnership or trust is either (i) a direct beneficiary or owner of WT or (ii) an indirect beneficiary or owner of WT that is a partner, beneficiary or owner of a partnership or trust to which WT has also applied this Section 10.02; and (3) the WT is a general partner of the partnership or a trustee of the trust. WT may not apply this Section 10.02 to indirect partners, beneficiaries or owners of such partnerships or trusts, or to direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients. See Section 10.02(5) of this Agreement. To apply this Section 10.02, WT and the partnership or trust must comply with all of the rules listed below.

(1) WT and the partnership or trust must enter into a written agreement under which the partnership or trust agrees:

(a) To act as an agent of WT with respect to its partners, beneficiaries or owners, and, as WT's agent, to apply the provisions of the WT Agreement to its partners, beneficiaries or owners,

(b) To treat its direct partners, beneficiaries or owners as direct beneficiaries or owners of WT under the WT Agreement and to treat its indirect partners, beneficiaries or owners as indirect beneficiaries or owners of WT under the WT Agreement, and

(c) To make available, upon request, to WT's auditor, for purposes of WT's audit under Section 8 of the WT Agreement, records that establish its compliance with all of the rules listed under this Section 10.02.

(2) By entering into an agreement with a partnership or trust under paragraph (1) of this Section 10.02, WT is not assigning its liability for the performance of any of its obligations under this Agreement. WT and the partnership or trust to which WT applies the rules of this Section 10.02, are jointly and severally liable for any tax, penalties and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with WT.

(3) The partnership or trust must provide to WT a Form W-8IMY together with a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that includes all information necessary for WT to fulfill its withholding, reporting and filing obligations under this Agreement. The withholding statement may include pooled basis information regarding direct partners, beneficiaries or owners that are not intermediaries, flow-through entities or U.S. non-exempt recipients. The partnership or trust need not provide to WT documentation for partners, beneficiaries or owners, except as provided under Section 10.02(1)(c).

(4) WT must withhold on the date an amount is distributed to or included in the distributive share of a foreign partnership or trust based on the withholding statement provided by the partnership or trust. The amount allocated to each partner, beneficiary or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partner's, beneficiary's or owner's actual distributive share and must provide this corrected information to WT on the earlier of the date that the statement required under section 6031(b) of the Code (schedule K-1) is mailed or otherwise provided to the partner or the due date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date for WT's Forms 1042 and 1042-S (without regard to extensions) for the calendar year, WT may withhold and report any adjustments required by the corrected information in the following calendar year.

(5) WT must file separate Forms 1042-S reflecting pooled basis information for each partnership or trust that has provided pooled basis information in its withholding statement. WT must apply the provisions of Treas. Reg. §§1.1441-1 and 1.1441-5 to partners, beneficiaries or owners of such partnerships or trusts that are indirect partners, beneficiaries or owners, and to direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients.

(6) A partnership or trust to which WT applies this Section 10.02 may not assume primary NRA withholding responsibility, or primary Form 1099 reporting and backup withholding responsibility.

(7) WT and a partnership or trust that apply this Section 10.02 to any calendar year must apply these rules to the calendar year in its entirety. Generally, WT and a partnership or trust that apply this Section 10.02 to any calendar year are not required to apply this Section 10.02 to subsequent calendar years. If, however, WT withholds and reports any adjustments required by corrected information in a subsequent calendar year under Section 10.02(4), WT must apply this Section 10.02 to that calendar year in its entirety.

(8) WT and a partnership or trust may not apply this Section 10.02 to any calendar year for which the partnership or trust has failed to make available to WT's auditor the records described in Section 10.02(1)(c) within 90 days after these records are requested. If, for any

calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if WT and the partnership or trust fail to comply with any other requirement of this Section 10.02, WT must apply Treas. Reg. §§1.1441-1 and 1.1441-5 to the partnership or trust, must correct its withholding, and must file corrected Forms 1042 and 1042-S for the calendar year.

SECTION 11. MISCELLANEOUS PROVISIONS

Sec. 11.01. WT=s application to become a withholding foreign trust and the Appendix to this Agreement are hereby incorporated into and made an integral part of this Agreement. This Agreement, WT=s application, and the Appendix to this Agreement constitute the complete agreement between the parties.

Sec. 11.02. This Agreement may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the internal revenue laws or internal revenue regulations. The Agreement may also be modified by either WT or the IRS upon mutual agreement. Such amendments or modifications shall be in writing.

Sec. 11.03. Any waiver of a provision of this Agreement is a waiver solely of that provision. The waiver does not obligate the IRS to waive other provisions of this Agreement or the same provision at a later date.

Sec. 11.04. This Agreement shall be governed by the laws of the United States. Any legal action brought under this Agreement shall be brought only in a U.S. court with jurisdiction to hear and resolve matters under the internal revenue laws of the United States. For this purpose, WT agrees to submit to the jurisdiction of such U.S. court.

Sec. 11.05. WT=s rights and responsibilities under this Agreement cannot be assigned to another person.

Sec. 11.06. Notices provided under this Agreement shall be mailed registered, first class airmail. Notice shall be directed as follows:

To the IRS

Internal Revenue Service
LMSB:FS:QI
290 Broadway
New York, NY 10007-1867
USA

All notices sent to the IRS must include the WT=s WT-EIN.

To WT:

Sec. 11.07. WT, acting in its capacity as a withholding foreign trust or in any other capacity, does not act as an agent of the IRS, nor does it have the authority to hold itself out as an agent of the IRS.

IN WITNESS WHEREOF, the above parties have subscribed their names to these presents, in duplicate.

Signed this day of ,

(name and title of person signing for WT)

(name and title of person signing for IRS)

PR Election Statement – Six Year Term

By signing hereunder, WT makes the PR election with a term of six years or until WT terminates, whichever is earlier, under Sections 6.03 and 9.02 (A) of this Agreement.

(name and title of person signing for WT)

PR Election Statement – Fifteen Year Term

By signing hereunder, WT makes the PR election with a term of 15 years or until WT terminates, whichever is earlier, under Sections 6.03 and 9.02 (B) of this Agreement.

(name and title of person signing for WT)

Appendix A

WT and the IRS agree that any of the following auditors may be used by WT to perform the external audits required by Section 8 of this Agreement.

[Names, addresses, telephone and fax numbers of external auditors.]

APPENDIX 3

Amendment to Qualified Intermediary Withholding Agreement

SECTION 4A. CERTAIN PARTNERSHIPS AND TRUSTS

Sec. 4A.01. Certain Smaller Partnerships and Trusts. QI may apply the rules of this Section 4A.01 to a partnership or trust only if (i) it is a foreign partnership or foreign simple or grantor trust, (ii) it is a direct account holder of QI, (iii) none of its partners, beneficiaries or owners is a U.S. person or a passthrough partner, beneficiary or owner, as defined in Section 2.17 of the WP agreement and Section 2.25 of the WT agreement, provided in Revenue Procedure 2003-64, and (iv) the total reportable amounts that QI has paid to accounts of the partnership or trust that are covered by the QI Agreement do not exceed \$200,000 for the calendar year. To apply this Section 4A.01, QI and the partnership or trust must comply with all of the rules listed below.

(1) QI and the partnership or trust must agree in writing that the partnership or trust, upon request, will make available to QI's auditor for purposes of QI's second and fifth year audits under Section 10 of the QI Agreement records that establish that the partnership or trust has provided QI with documentation all of its partners, beneficiaries or owners.

(2) The partnership or trust must provide to QI a Form W-8IMY, together with Forms W-8 or documentary evidence listed in the know-your-customer (KYC) attachment to the QI Agreement from each partner, beneficiary or owner, and a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that provides information for all partners, beneficiaries or owners. The withholding statement, however, need not provide any allocation information.

(3) QI must treat payments to the partnership or trust as allocated solely to any partner, beneficiary or owner that is subject to the highest rate of withholding and must withhold at that rate.

(4) QI may include payments made to a partnership or trust under section 4A.01(3) in its Form 1042-S reporting pools for direct account holders under Section 8.03 of the QI Agreement.

(5) After QI has withheld in accordance with Section 4A.01(3) above, it may file a separate Form 1042-S for any partner, beneficiary or owner who requests that it do so. QI may do so only if the partnership or trust provides a withholding statement that includes allocation information for the requesting partner beneficiary or owner and only if the partnership or trust has agreed in writing under Section 4A.01(1) to make available to QI's external auditor records that substantiate that the allocation information included in its withholding statement.

(6) QI may not include any payments made to a partnership or trust to which QI is applying the rules of this Section 4A.01 in any collective refund claim made under section 9.04 of the QI Agreement.

(7) QI and a partnership or trust that apply this Section 4A.01 to any calendar year are not required to apply this Section 4A.01 to subsequent calendar years. QI and a partnership or trust that apply this Section 4A.01 to any calendar year must apply these rules to the calendar year in its entirety.

(8) QI and the partnership or trust may not apply this Section 4A.01 to any calendar year for which the partnership or trust has failed to make available to QI's auditor the records described in Section 4A.01(1) within 90 days after these records are requested. If the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirements of this Section 4A.01, QI must apply the provisions of Treas. Reg. §§1.1441-1 and 1.1441-5 to the partnership or trust, must correct its withholding, and must file corrected Forms 1042 and 1042-S.

Sec. 4A.02. Certain Related Partnerships and Trusts. QI may apply the rules of this Section 4A.02 only to a partnership or trust that is (1) a foreign partnership or foreign simple or grantor trust; (2) either (i) a direct account holder of QI or (ii) an indirect account holder of QI that is a direct partner, beneficiary or owner of a partnership or trust to which QI has also applied this Section 4A.02; and (3) the QI, or an affiliate of the QI, is a general partner of the

partnership or a trustee of the trust. QI may not apply the rules of this Section 4A.02 to indirect partners, beneficiaries or owners of such a partnership or trust, or to direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients. See Section 4A.02(5) of this Agreement. To apply this Section 4A.02, QI and the partnership or trust must comply with all of the rules listed below.

(1) QI and the partnership or trust must enter into a written agreement under which the partnership or trust agrees:

(a) To act as an agent of QI with respect to its partners, beneficiaries or owners, and, as QI's agent, to apply the provisions of the QI Agreement to the partners, beneficiaries or owners,

(b) To treat its direct partners, beneficiaries or owners as direct account holders of QI under the QI Agreement and to treat its indirect partners, beneficiaries or owners as indirect account holders of QI under the QI Agreement,

(c) To make available, upon request, to QI's auditor, for purposes of QI's audit under Section 10 of the QI Agreement, records that establish its compliance with all of the rules listed under this Section 4A.02.

(2) By entering into an agreement with a partnership or trust under paragraph (1) of this section, QI is not assigning its liability for the performance of any of its obligations under the QI Agreement. QI and the partnership or trust to which QI applies the rules of this Section 4A.02, are jointly and severally liable for any tax, penalties and interest that may result from the failure of the partnership or trust to meet any of the obligations imposed by its agreement with QI.

(3) The partnership or trust must provide to QI a Form W-8IMY together with a withholding statement, under Treas. Reg. §1.1441-5(c)(3)(iv) or (e)(5)(iv), that includes all information necessary for QI to fulfill its withholding, reporting and filing obligations under the QI Agreement. The withholding statement may include pooled basis information regarding direct partners, beneficiaries or owners that are not intermediaries, flow-through entities or U.S. non-exempt recipients. The partnership or trust need not provide to QI documentation for partners, beneficiaries or owners, except as provided under paragraph (1)(c) of this section.

(4) QI must withhold on the date it makes a payment to a foreign partnership or trust based on the withholding statement provided by the partnership or trust. The amount allocated to each partner, beneficiary or owner in the withholding statement may be based on a reasonable estimate of the partner's, beneficiary's or owner's distributive share of income subject to withholding for the year. The partnership or trust must correct the estimated allocations to reflect the partners', beneficiaries' or owners' actual distributive share, and must provide this corrected information to QI, on the earlier of the date that the statement required under section 6031(b) (schedule K-1) is mailed or otherwise provided to the partner or the due

date for furnishing the statement (whether or not the partnership or trust is required to prepare and furnish the statement). If that date is after the due date for QI's Forms 1042 and 1042-S (without regard to extensions) for the calendar year, QI may withhold and report any adjustments required by the corrected information in the following calendar year.

(5) QI must file separate Forms 1042-S reflecting pooled basis information for each partnership or trust that has provided pooled basis information in its withholding statement. QI must file Forms 1042-S and 1099, as provided in the QI Agreement, for partners, beneficiaries or owners of such partnerships or trusts that are indirect partners, beneficiaries or owners, and for direct partners, beneficiaries or owners of such partnerships or trusts that are intermediaries, flow-through entities or U.S. nonexempt recipients.

(6) The partnership or trust may not assume primary NRA withholding responsibility, or primary Form 1099 reporting and backup withholding responsibility.

(7) QI and a partnership or trust that apply this Section 4A.02 to any calendar year must apply these rules to the calendar year in its entirety. Generally, QI and a partnership or trust that apply this Section 4A.02 to any calendar year are not required to apply this Section 4A.02 to subsequent calendar years. If, however, QI withholds and reports any adjustments required by corrected information in a subsequent calendar year under Section 4A.02(4), QI must apply this Section 4A.02 to that calendar year in its entirety.

(8) QI and a partnership or trust may not apply this Section 4A.02 to any calendar year for which the partnership or trust has failed to make available to QI's auditor the records described in paragraph (1)(c) of this section within 90 days after these records are requested. If, for any calendar year, the partnership or trust has failed to make these records available within the 90-day period, or if QI and the partnership or trust fail to comply with any other requirement of this Section 4A.02, QI must apply Treas. Reg. §§1.1441-1 and 1.1441-5 to the partnership or trust, must correct its withholding, and must file corrected Forms 1042 and 1042-S for the calendar year.