

Part III

Administrative, Procedural, and Miscellaneous

Application Procedures for Withholding Foreign Partnership or Withholding Foreign Trust Status Under Section 1441; Proposed Withholding Foreign Partnership and Withholding Foreign Trust Agreements

Notice 2002-41

SECTION 1. PURPOSE

.01 Proposed Guidance to Simplify Partnership and Trust Withholding and Reporting Obligations. This notice contains proposed guidance for entering into a withholding foreign partnership (WP) or withholding foreign trust (WT) agreement with the Internal Revenue Service (IRS). Similar to the qualified intermediary (QI) withholding agreement,¹ the proposed WP and WT agreements are designed to simplify withholding and reporting obligations for payments of income made to partners of a WP and beneficiaries or owners of a WT. The IRS recognizes that foreign partnerships and trusts differ significantly from each other, as well as from foreign financial institutions that receive amounts subject to withholding as intermediaries for account holders. These proposed agreements attempt to address the unique features of partnerships and trusts by adopting tailored procedures for documentation, reporting and audit that facilitate compliance and reduce administrative and audit cost for the WP or WT. As discussed further in Section 7 of this notice, Treasury and the IRS request comments on these proposed agreements. Treasury and the IRS will review any comments received and intend thereafter to publish a revenue procedure containing the final text of the WP and WT agreements.

Under applicable Treasury regulations, a foreign partnership or foreign simple or grantor trust that is not a WP or WT is required to provide each withholding agent from whom it receives an amount subject to withholding under sections 1441 and 1442 of the Internal Revenue Code (Code) and the regulations thereunder with a Form W-8IMY, along with documentation from each of its partners, beneficiaries, or owners, and a withholding statement allocating the amount attributable to each partner, beneficiary, or owner. The withholding agent is required to withhold tax from payments to the partnership or trust and to report on Forms 1042-S and 1099 payments to, and tax withheld from, each partner, beneficiary, or owner.

Under the provisions of the WP and WT agreements, a WP or WT is permitted to provide the withholding agent with a Form W-8IMY as a WP or WT without attached documentation of partners, beneficiaries, or owners. The WP or WT receives payments

¹ See Rev. Proc. 2000-12, 2000-4 I.R.B. 387.

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 reports 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 is relieved of the requirement to disclose to a withholding agent any documentation and payment information for partners, beneficiaries or owners. A withholding agent is relieved of the responsibility for collecting documentation, withholding and reporting payment information for partners, beneficiaries and owners of a WP or WT.

.02 Key Provisions. The following key provisions, explained in greater detail in Section 4.02, are intended to work together to produce a simple and administrable agreement for withholding foreign partnerships and trusts.

Direct partners, beneficiaries or owners. A foreign partnership or simple or grantor trust that has entered into a WP or WT agreement may act as a WP or WT only with respect to amounts subject to withholding that are distributed to, or included in the distributive share of, direct partners, beneficiaries or owners. WP or WT must act as a nonwithholding foreign partnership or trust with respect to partners, beneficiaries or owners that hold through intermediaries or pass-through entities. The foreign partnership or foreign simple or grantor trust may, however, act as a WP or WT with respect to amounts distributed to, or included in the distributive share of, another WP or WT.

Forms W-8 and W-9. WP or WT is required to document each direct partner, beneficiary or owner with Forms W-8 or W-9.

Withholding and reporting - direct foreign partners, beneficiaries or owners. WP or WT is required to withhold and deposit tax, to file a tax return on Form 1042, and, absent a pooled reporting election, to report on Form 1042-S for each direct foreign partner, beneficiary or owner.

Reporting - pooled reporting election. WP or WT may elect to report on Form 1042-S on a pooled basis (using the recipient codes for QI pooling until such time that there are recipient codes for WPs and WTs that make an election to report on a pooled basis). Whether WP or WT elects pooled reporting will affect both the timing of audits and the term of the agreement.

Reporting - direct U.S. partners, beneficiaries or owners. WP or WT is not required to report on Form 1099 for U.S. partners, beneficiaries or owners. However, if WP has U.S. partners, WP generally is required to file Form 1065 with Schedules K-1 for each U.S. partner. If WT is a grantor trust with U.S. owners, WT is required to file Form 3520-A and to provide statements to each U.S. beneficiary or owner. If WT makes a distribution to a U.S. person, WT must provide an information statement to that U.S. person pursuant to section 6048(c) of the Code.

Audit. Unless 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. In that case, WP or WT will be subject to audit by an external auditor unless WP or WT requests an IRS audit. If WP or WT elects pooled reporting it must agree to have the external auditor conduct an audit after the close of every other calendar year, which will examine the two previous calendar years.

Term of the agreement. The WP or WT agreement will continue in force indefinitely unless WP or WT has elected to report on Form 1042-S on a pooled basis. In that case, the agreement will expire after a term of six years.

Automatic termination. If 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 WP or WT cures its failure, the agreement will automatically terminate effective December 31st of the year in which the failure is discovered.

SECTION 2. SCOPE

.01 Foreign Partnerships and Foreign Simple and Grantor Trusts. This Notice applies to a foreign partnership seeking to qualify as a withholding foreign partnership under Treas. Reg. §1.1441-5(c)(2)(ii).² The proposed withholding foreign partnership agreement applies to amounts subject to NRA withholding that the partnership distributes to, or includes in the distributive shares of, its direct partners.

This Notice also applies to a foreign trust seeking to qualify as a withholding foreign trust under Treas. Reg. §1.1441-5(e)(5)(v). The proposed withholding foreign trust agreement applies to amounts subject to NRA withholding that are required to be distributed to the beneficiaries of a simple trust or that are includable in the income of the owners of a grantor trust (“distributive shares” of beneficiaries or owners).

The IRS intends that the WP and WT agreements will be available in all circumstances in which a foreign entity acting on behalf of its partners, beneficiaries, or owners provides Form W-8IMY as proper documentation. For example, a WP or WT agreement would be available for an entity that is properly claiming treaty benefits for its owners under section 894 of the Code (notwithstanding that the entity may be treated as a corporation).

This Notice does not apply to intermediaries seeking to become QIs. Instead, see Rev. Proc. 2000-12, 2000-4 I.R.B. 387. The QI agreement applies to amounts subject to NRA withholding that are collected by an intermediary and paid to its account holders.

² All citations to income tax regulations in this revenue procedure are to the regulations as amended by T.D. 8734 (62 FR 53387), T.D. 8804 (63 FR 72183), and T.D. 8856 (64 FR 73408).

The QI agreement is not available to foreign partnerships or foreign trusts. As outlined below, the relationship of an intermediary and its account holders addressed in the QI agreement differs fundamentally from the relationship of a partnership and its partners and the relationship of a trust and its beneficiaries or owners.

.02 Notice 2001-4. Pending the development of these agreements, Notice 2001-4, 2001-2 I.R.B. 267, provided a transition rule for foreign partnerships for calendar year 2001. Under the transition rule, for calendar year 2001, partnerships were permitted to provide to withholding agents Form W-8IMY with partner documentation attached together with a withholding statement that furnished payment information on the basis of withholding rate pools. Because that relief is unavailable for payments after December 31, 2001, the IRS intends that subscribing partnerships will apply the WP agreement for calendar years after 2001.

Notice 2001-4 also permitted a QI to treat the beneficiaries of a foreign simple trust or the owners of a foreign grantor trust as direct account holders for purposes of the QI agreement if certain criteria were met. This rule will continue in effect after the WT agreement becomes available. Alternatively, foreign simple and grantor trusts, including those that meet the criteria set forth in Notice 2001-4, may choose to enter a WT agreement when the WT agreement is finalized.

SECTION 3. BACKGROUND

.01 Withholding and Reporting on Payments to Foreign Persons. Under sections 1441 and 1442 of the Internal Revenue Code (Code), a person that makes a payment of U.S. source interest, dividends, royalties, and certain other types of income to a foreign person generally must deduct and withhold 30 percent from the payment. A lower rate of withholding may apply under the Code (e.g., section 1443), the regulations, or an income tax treaty. Generally, a payor of these types of income also must report the payments on Forms 1042-S. See Treas. Reg. §1.1461-1(c).

Under sections 6041, 6042, 6045, 6049, and 6050N of the Code (the Form 1099 reporting provisions), payors of interest, dividends, royalties, gross proceeds from the sale of securities, and other fixed or determinable income must report payments on Form 1099 unless an exception applies. If a payment is reportable on Form 1099, a payor must generally obtain a Form W-9 from the payee. If the payor does not receive the Form W-9, it generally must backup withhold under section 3406 of the Code and report the payment on Form 1099.

An exception to the Form 1099 reporting provisions applies if the payee is a foreign person. A payor can treat a person as foreign if the payor can reliably associate the payment with a Form W-8 or other documentation that establishes that the person is the foreign beneficial owner of the income or a foreign payee. See Treas. Reg. §§1.1441-1, 1.6041-4(a), 1.6042-3(b)(1)(iii), 1.6045-1(g)(1)(i), 1.6049-5(b)(12), and 1.6050N-1(c)(1)(i). Moreover, a payor does not backup withhold on payments to foreign

beneficial owners or foreign payees because backup withholding applies only to amounts that the payor must report on Form 1099.

In general, the beneficial owners or payees of a payment to a person that is treated as a nonwithholding foreign partnership are the partners (looking through partners that are foreign intermediaries or flow-through entities). However, a payment to a withholding foreign partnership is treated as a payment to the partnership and not to the partners. See Treas. Reg. §1.1441-5(c). Similarly, the beneficial owners of a payment to a nonwithholding foreign simple or grantor trust are the beneficiaries or owners of the trust (looking through beneficiaries or owners that are foreign intermediaries or flow-through entities). However, a payment to a withholding foreign trust is treated as a payment to the trust and not to its beneficiaries or owners. See Treas. Reg. §1.1441-5(e).

A nonwithholding foreign partnership or nonwithholding foreign simple or grantor trust must forward documentation for each of its partners, beneficiaries or owners to each withholding agent making a payment to the partnership or trust so that the withholding agent can correctly withhold and report on Forms 1042-S and 1099, as appropriate. If a withholding agent does not receive that documentation, the withholding agent generally will withhold and report based on presumptions provided in the regulations. See Treas. Reg. §§1.1441-1, 1.1441-5 and 1.6049-5.

A foreign partnership or foreign trust is a withholding agent under sections 1441 and 1442 of the Code for amounts subject to withholding that it pays to foreign persons, including partners, beneficiaries and owners, and therefore must file Forms 1042 and 1042-S in the same manner as a U.S. withholding agent. However, a foreign partnership or foreign trust is not required to file Forms 1042 and 1042-S if another withholding agent has reported the same amount to the same recipient for which the foreign partnership or foreign trust would be required to file a return and the proper amount has been withheld. See Treas. Reg. §1.1461-1(b) and (c)(4).

Under section 6031 of the Code, a foreign partnership that has gross income that is effectively connected with the conduct of a trade or business within the United States (ECI) is required to file a partnership return on Form 1065 with Schedules K-1 (Statement of Partner's share of Income, Credit, Deduction, Etc.) for each partner. Also, a foreign partnership that has U.S. source gross income that is not ECI and that has U.S. partners is generally required to file Form 1065 and Schedules K-1 for each of its direct U.S. partners and for its passthrough partners through which U.S. partners hold an interest in the foreign partnership. See Treas. Reg. §1.6031(a)-1(b). A foreign trust generally is not engaged in any trade or business. However, if it has gross income that is treated as effectively connected with the conduct of a U.S. trade or business, it must file a return on Form 1040NR. Under section 6048(b), a foreign trust that has a U.S. owner must file Form 3520-A, Annual Information Return of a Foreign Trust with a U.S. Owner. Under section 6048(c), a U.S. person that receives a distribution from a foreign trust must file Form 3520. The trust must provide an information statement to

the U.S. distributee. See Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

SECTION 4. OVERVIEW OF PROPOSED AGREEMENTS

.01 Comparison with QI Agreement. The IRS recognizes that foreign partnerships and foreign simple and grantor trusts differ significantly from each other as well as from foreign financial institutions that act as intermediaries for their account holders. For instance, foreign partnerships and trusts generally (1) have unique governing provisions and allocations, (2) are not subject to any extensive government regulation and oversight (including know-your-customer laws), and (3) do not have staffing and systems comparable to financial institutions that are intermediaries. Thus, certain provisions in the QI agreement become problematic in the context of foreign partnerships and trusts, such as, the treatment of indirect account holders, collection and examination of documentary evidence, application of the presumption rules, and Form 1099 reporting. In addition, such entities often have special allocations that generally are not an issue with account holders of financial institutions.

.02 Simplified Requirements and Procedures. The proposed agreements attempt to minimize the difficulties unique to partnerships and trusts by adopting procedures that reduce the administrative and audit cost for the WP and WT, as well as the risk of error in performing under the agreements.

(i) Limitation to direct partners, beneficiaries, or owners. The WP and WT agreements apply only to payments from a WP or WT to its direct partners, beneficiaries, or owners. This limitation eliminates the need (1) for the WP or WT to apply the presumption rules on payments it makes to indirect partners, beneficiaries, or owners who failed to provide adequate documentation; (2) for the WP or WT to gather and review documentation and withholding information for indirect partners, beneficiaries, and owners; and (3) for the WP or WT to bear the expense of having an auditor review such documentation and withholding information for indirect partners. The presumption rules generally require a withholding agent to withhold at the highest rate, which often requires subsequent reimbursements or refunds, and also results in duplicative reporting. A WP or WT, nevertheless, may act as a WP or WT for payments it makes to a partner, beneficiary, or owner that is, itself, a WP or WT because, for payments to such entities, it is never necessary to apply the presumption rules, or review documentation for the partners, beneficiaries, or owners of such entities. Because the IRS and Treasury expect that many foreign partnerships and trusts will enter into WP and WT agreements with the IRS, it is expected that the number of WPs and WTs that have partners, beneficiaries, or owners that are nonwithholding foreign partnerships and nonwithholding foreign trusts will be relatively small.

(ii) Documentation. The agreements require a WT and WP to obtain Forms W-8 and W-9 from its direct partners, beneficiaries, or owners. Obtaining documentary evidence in lieu of Forms W-8 and W-9 is not permitted. Although this requirement is imposed primarily for simplicity, it is also necessary because a WP or WT generally is not subject to the know-your-customer (KYC) rules in its jurisdiction. Therefore, the IRS

is unable to rely on the regulators in that jurisdiction to ensure that a WP or WT is properly documenting its partners, beneficiaries, or owners. The IRS believes that this requirement should not unduly burden a WP or WT because, unlike a QI, which may have had large percentages of its account base already documented with KYC-type documentation for other regulatory purposes, a WP or WT generally will not.

(iii) Automatic termination. The agreements provide that, if on audit the IRS or external auditor discovers that the WP or WT was not in possession of a valid Form W-8 or W-9, as applicable, for any direct partner, beneficiary, or owner, the agreement will automatically terminate unless cured. This provision operates in conjunction with the documentation provisions described above to eliminate completely the application of the presumption rules by WP or WT. The extended date for withholding on undistributed income under the WP or WT agreements, as noted below, provides the WP or WT with more time to obtain documentation. Thus, it is expected that WP or WT will have ample time to comply with the documentation requirements to avoid automatic termination.

(iv) Withholding. Because information regarding special allocations among partners, beneficiaries, or owners often is unavailable at the time withholding is required, WP or WT may find it difficult to determine the correct amount of withholding at the time a payment is received by WP or WT. To address this concern, the agreements provide that, where an actual distribution has not been made, a WP or WT is not required to withhold until the earlier of the date that the statements required under section 6031 (for partnerships) or section 6048 (for simple and grantor trusts) are mailed or otherwise provided to the partner, beneficiary or owner, or the due date for furnishing such statements (whether or not WP or WT is required to prepare and furnish such statements). With this delay in the time for withholding on undistributed income, the foreign partnership or trust who enters into the WP or WT agreement should be able to withhold accurately, thereby avoiding the need to correct withholding errors. This provision also will ease the audit burden by eliminating the need for the auditor to review numerous setoffs or reimbursements.

(v) Pooled reporting. Under the regulations, a foreign partnership or trust is required to provide the U.S. withholding agent with sufficient information so that it can properly report, on Form 1042-S, for each foreign partner, beneficiary, or owner. Under the agreements, the WP or WT assumes the Form 1042-S reporting requirement for each direct foreign partner, beneficiary, or owner. The IRS understands, however, that reporting on a beneficial owner basis is a concern for some foreign partnerships and trusts. To accommodate this concern, the agreements allow a WP or WT to elect pooled-basis reporting for those amounts distributed to, or includible in the income of, its direct foreign partners, beneficiaries, or owners. If a WP or WT makes the pooled reporting election, the term of the agreement will be limited and the WP or WT will be subject to external audit every other year.

(vi) Elimination of Form 1099 reporting. To avoid duplication of reporting to a WP's or WT's direct U.S. partners, beneficiaries, or owners, (e.g., a Form 1099 and K-1 issued to the same U.S. partner of a foreign partnership for the same income), the agreements eliminate the requirement that a WP or WT file Form(s) 1099 for its direct

U.S. partners, beneficiaries, or owners. The WP or WT must file the necessary forms, schedules, and statements required by sections 6031 and 6048, as applicable.

(vii) Amendment and Termination of Agreement. The agreements may be amended by the IRS if the IRS determines that such amendment is needed for the sound administration of the applicable laws or regulations. For example, the IRS may amend the agreement as needed to address changes in law or administrative practice. The agreement also may be modified by mutual agreement of the parties. Either party can terminate the agreement prior to the end of its term by delivering a notice of termination. However, the IRS will terminate the agreement only in certain specified circumstances involving a “significant change in circumstances” or an “event of default” (as defined in the agreement).

SECTION 5. APPLICATION FOR WP or WT STATUS

.01 Where to Apply. To apply for WP or WT status, a foreign partnership or trust must submit the information required by this Section 3 to:

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

.02 Contents of the Application. A prospective WP or WT must submit an application to become a WP or WT. An application must include the information specified in this section 3.02, 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 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), the number (and percentage interest in partnership capital, partnership profits, and partnership losses (noting any special allocations or similar provisions)) 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 general description, as of the date the application is submitted, of U.S. assets by type (e.g., U.S. securities, U.S. real estate), including assets held by U.S. custodians, and their approximate aggregate value by type.

(7) 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.

(8) A completed WP or WT agreement, as set forth in Appendix 1 or 2, executed as provided in section 6.

SECTION 6. EXECUTING THE WP OR WT AGREEMENT

The text of the WP agreement is set forth in Appendix 1. The text of the WT agreement is set forth in Appendix 2. Upon receipt and review of an application to become a WP or WT, the IRS will complete the agreement based on the information provided by WP or WT (e.g., insertion of the WP's name, etc.). Therefore, a prospective WP or WT should ensure that it has provided to the IRS all of the information that is required to complete the agreement. It may be necessary for the IRS to contact the potential WP or WT, or its authorized representative, to obtain additional information. Once the IRS has obtained all the information required to complete the agreement, the IRS will send two unsigned copies of the agreement to the prospective WP or WT for signature. Both copies of the agreement should be signed by a person with the authority to sign the agreement and should be returned to the IRS at the address specified in section 5.01. The IRS will sign the agreement and return one of the originals to the WP or WT.

SECTION 7. REQUEST FOR COMMENTS

Treasury and the IRS request comments on the proposed withholding foreign partnership and withholding foreign trust agreements attached as appendices to this notice. After consideration of any comments received, Treasury and the IRS intend to publish a revenue procedure containing the final text of these agreements. In addition, the IRS may consider adapting the proposed withholding foreign partnership and withholding foreign trust agreements to the unique circumstances of certain classes of foreign partnerships and trusts. For instance, the IRS may consider incorporating documentation provisions similar to the provisions in the QI agreement in the case of certain foreign partnerships and trusts that are required by law in the jurisdiction of organization to comply with know-your customer rules for obtaining documentation

confirming the identity of partners, beneficiaries, or owners (or the interests in which are generally held through institutions that are subject to know-your-customer rules); and

(i) the offer and sale of interests in which are subject to securities regulation in that jurisdiction; or

(ii) the interests in which are publicly traded on an established securities exchange or continuously offered and sold to the general public (and the partnership is not classified as a corporation pursuant to section 7704).

In addition, the IRS understands that certain small partnerships or small family trusts may find the WP or WT agreement to be a desirable alternative to acting as a nonwithholding partnership or trust but may nevertheless require adaptations to the agreements as drafted.

The IRS specifically requests comments identifying such classes of foreign partnerships or trusts, suggesting possible adaptations of the agreements for such cases and analyzing the feasibility of any such suggestions.

Written comments must be received by [INSERT DATE 60 DAYS FROM PUBLICATION]. Send comments to CC:DOM:CORP:R (NOT-151112-01), Room 5228, Internal Revenue Service, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand delivered between the hours of 8:00 AM and 5:00 PM to: CC:DOM:CORP:R (NOT-151112-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW, Washington, DC.

SECTION 8. CONTACT INFORMATION

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

APPENDIX 1

Withholding Foreign Partnership Agreement

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SECTION 10. 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 "WP"), and the INTERNAL REVENUE SERVICE (the "IRS"):

WHEREAS, WP has submitted an application in accordance with **Revenue Procedure 2002-xx** to be a withholding foreign partnership for purposes of Treas. Reg. §1.1445-5(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. 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. In no event may WP act as a withholding foreign partnership for amounts subject to NRA withholding that are distributed to, or included in the distributive shares of, passthrough partners or indirect partners. For passthrough partners and indirect partners, WP must act as a nonwithholding foreign partnership.

Sec. 1.02. Parties to the Agreement. This Agreement applies to:

(A) WP, and

(B) 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, 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, “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. The terms “partnership” and “partner” is 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. 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. 2.20. 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. 2.21. Reporting Pool. A reporting pool is defined in section 5.03 of this Agreement.

Sec. 2.22. 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. 2.23. TIN. A "TIN" is a U.S. taxpayer identification number.

Sec. 2.24. Underwithholding. "Underwithholding" means the excess of the amount required to be withheld under chapter 3 of the Code over the amount actually withheld.

Sec. 2.25. 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. 2.26. 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. 2.27. 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. 2.28. 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. 2.29. Withholding Statement. The term "withholding statement" is defined in section 5.02 of this Agreement.

Sec. 2.30. 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. 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) (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. 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.

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 sections 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 From 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 from the partner 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 on which Part III of the form is 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 it obtains a Form W-8BEN from the partner 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 shall apply rather than the provisions of this section 4.06.

Sec. 4.07. Documentation for Passthrough Partners. 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. 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 for payments made to 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, a microfiche, or by electronic storage or similar means of record retention.

(B) Retention Period. WP shall retain a direct partner's Forms 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 must 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 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 3.03 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 subjected 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 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 External Audits: Special Rule for PR Election. If WP has made a PR election, 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 10.06 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 3.03 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 that withholding agents have provided WP;

(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 corrected 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 refund or credit.

(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 10.06 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 terminated under 9.03 or 9.04 of this Agreement.

Sec. 9.02. Term of Agreement: Special Rule for PR Election. If WP has made a PR election, this Agreement shall be in effect on _____ and shall expire on 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.

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 10.06 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. 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. This Agreement will be reinstated, effective the same date it was automatically terminated, if WP obtains appropriate Forms W-8 or W-9 (that relate to the time withholding or reporting was required) for each such partner before January 31 of the year following the year in which the agreement automatically terminated. In the event of automatic termination of this agreement, 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 partner specific Forms 1042-S for every foreign direct partner from the earliest time the Forms W-8 or W-9 were required for any undocumented direct partner through the date of 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 3.03 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 10.06 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. MISCELLANEOUS PROVISIONS

Sec. 10.01. 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. 10.02. 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. 10.03. 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. 10.04. 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. 10.05. WP's rights and responsibilities under this Agreement cannot be assigned to another person.

Sec. 10.06. 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. 10.07. 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)

PR Election Statement

By signing hereunder, WP makes the PR election under section 6.03 of this Agreement.

(name and title of person signing for WP)

Appendix

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

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

SECTION 2. DEFINITIONS

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- 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
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- Sec. 2.10. Form W-9
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- Sec. 2.12. Form 1042-S
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- Sec. 2.21. Reduced Rate of Withholding
- Sec. 2.22. Reportable Amount

- Sec. 2.23. Reporting Pool
- Sec. 2.24. TIN
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SECTION 9. EXPIRATION, TERMINATION AND DEFAULT

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- 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
- Sec. 9.06. Events of Default
- Sec. 9.07. Notice and Cure
- Sec. 9.08. Renewal

SECTION 10. 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 2002-xx** to be a withholding foreign trust for purposes of Treas. Reg. §1.1445-5(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. 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 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). In no event may WT act as a withholding 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. For passthrough beneficiaries or owners and indirect beneficiaries or owners, WT must act as a nonwithholding foreign trust.

Sec. 1.02. Parties to the Agreement. This Agreement applies to:

(A) WT, and

(B) 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. “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 includable 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, 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 “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. Trust, Beneficiary and 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. 2.20. 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. 2.21. 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 5.03 of this Agreement.

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 trust.

Sec. 2.28. 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. 2.29. 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. 2.30. 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. 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. 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. 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.

Sec. 4.03. Treaty Claims. WT may not reduce the rate of withholding based on a direct beneficiary 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 sections 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 has 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 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. 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 on which Part III of the form is 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 it 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. 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. WT must pass up 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 for payments made to 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, 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 Forms 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 must 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 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 3.03 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 sections 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 subjected 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 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 External Audits: Special Rule for PR Election. If WT has made a PR election, 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 10.06 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 3.03 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 that withholding agents have provided WT;
- (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 corrected 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 refund or credit.

(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 10.06 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 terminated under 9.03 or 9.04 of this Agreement.

Sec. 9.02. Term of Agreement: Special Rule for PR Election. If WT has made a PR election, this Agreement shall be in effect on _____ and shall expire on 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.

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 10.06 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. Notwithstanding Section 9.03 of this Agreement, this Agreement will terminate automatically in the event that the external auditor or the IRS 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 such discovery. This Agreement will be reinstated, effective the same date it was automatically terminated, if WT obtains appropriate Forms W-8 or W-9 (that relate to the time withholding or reporting was required) for each such partner before January 31 of the year following the year in which the agreement automatically terminated. In the event of automatic termination of this agreement, 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 beneficiary or owner specific Forms 1042-S for every foreign direct beneficiary or owner from the earliest time the Forms W-8 or W-9 were required for any undocumented direct beneficiary or owner through the date of 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 3.03 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 10.06 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. MISCELLANEOUS PROVISIONS

Sec. 10.01. 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. 10.02. 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. 10.03. 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. 10.04. 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. 10.05. WT's rights and responsibilities under this Agreement cannot be assigned to another person.

Sec. 10.06. 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. 10.07. 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

By signing hereunder, WT makes the PR election under section 6.03 of this Agreement.

(name and title of person signing for WT)

Appendix

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.]