

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): January 1, 2008

**Icahn Enterprises L.P.**

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(Exact name of registrant as specified in its charter)

<b>Delaware</b>	<b>1-9516</b>	<b>13-3398766</b>
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

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767 Fifth Avenue, Suite 4700, New York, NY 10153

(Address of Principal Executive Offices) (Zip Code)

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Registrant's Telephone Number, Including Area Code: **(212) 702-4300**

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(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## Item 5.02 Departure of Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

Effective January 1, 2008, the management agreements (the “Management Agreements”) between Icahn Capital Management LP (“Icahn Capital Management”) and Icahn Partners LP, Icahn Master Fund LP and other private funds to which Icahn Capital Management provided administrative and back office services (the “Funds”) were terminated, as were the Funds’ obligations to pay management fees (the “Management Fees”) thereunder to Icahn Capital Management. In addition, the limited partnership agreements of certain of the Funds (the “Fund LPAs”) were amended to provide that, as of January 1, 2008, the general partners of the Funds (Icahn Onshore LP and Icahn Offshore LP, the “Fund GPs”) will provide or cause their affiliates to provide such administrative and back office services to the Funds formerly provided by Icahn Capital Management (the “Services”) and the Fund GPs will therefore receive special profits interest allocations (“Special Profits Interest Allocations”) from the applicable Funds.

As a result of the amendments to the Management Agreements and the Fund LPAs, effective January 1, 2008, Icahn Enterprises L.P. (the “Company”) amended the previously reported Contribution and Exchange Agreement (as defined below) and certain employment agreements to which it is a party to reflect the termination of the Management Agreements, the Funds’ obligations to pay the Management Fees, the Services to be provided by the Fund GPs and the Special Profits Interest Allocations the Fund GPs will now receive. The amendments to the Contribution and Exchange Agreement and the employment agreements to which the Company is a party are described as follows:

(1) Effective January 1, 2008, the Company entered into an agreement (the “Icahn Amendment Agreement”) with Carl C. Icahn (“Carl Icahn”), CCI Onshore Corp. (“CCI Onshore”), CCI Offshore Corp. (“CCI Offshore”), Icahn Management LP (“Icahn Management”) and Icahn Capital Management. The Icahn Amendment Agreement amends certain provisions of (A) the Contribution and Exchange Agreement, dated as of August 8, 2007 (the “Contribution and Exchange Agreement”), by and among CCI Offshore, CCI Onshore, Icahn Management, Carl Icahn and the Company and (B) the Employment Agreement, dated as of August 8, 2007 (the “Icahn Employment Agreement”), by and among the Company, Icahn Capital Management and Carl Icahn. Pursuant to the Icahn Amendment Agreement, in the definition of “Hedge Fund Earnings” in the Contribution and Exchange Agreement, the reference to “(i) management fees payable to Icahn Capital Management with respect to the Funds pursuant to the Management Agreements” was deleted and replaced with “(i) Special Profits Interest Allocation made to the Onshore GP and the Offshore GP with respect to the Master Funds pursuant to the limited partnership agreement of each Master Fund in effect from time to time.” Pursuant to the Icahn Amendment Agreement, the references in the Icahn Employment Agreement in Section 1(a) and Section 2(a) in Exhibit A to “management fee” were deleted and replaced with “Special Profits Interest Allocation.” Furthermore, in the Icahn Amendment Agreement, the parties thereto that are also parties to the Icahn Employment Agreement agreed that, notwithstanding the fact that the management fees payable to Icahn Capital Management were terminated effective as of January 1, 2008 (with no payment of such fees being due on such date or any date thereafter), the obligation of Carl Icahn to pay a 2% management fee in the circumstances set forth in Section 6 of the Icahn Employment Agreement and in Section 3 in Exhibit A to the Icahn Employment Agreement shall remain in effect as an obligation to pay a 2% fee.

(2) Effective January 1, 2008, Keith Meister entered into an amendment (the “Meister Amendment Agreement”) with Icahn Capital Management, Icahn Management, Icahn Capital LP (“Icahn Capital”), the Fund GPs, the Company and the Related Entities (as defined therein) amending his Agreement, dated December 31, 2004 with (among others) Icahn Management, the Fund GPs and the Related Entities (as amended, the “Amended Meister Employment Agreement”). The Amended Meister Employment Agreement provides that Mr. Meister’s former right to receive 4.0% of the Management Fees earned by Icahn Capital Management (net of its expenses incurred to provide the Services) is terminated, and for all periods from and after January 1, 2008, Mr. Meister is entitled to receive (i) from Icahn Capital as additional Cash Compensation (as defined in the Meister Amendment Agreement) on the first day of each quarter during the term of Mr. Meister’s employment, commencing with January 1, 2008, 1.5% of the “Target Special Profits Amounts” of the limited partners of the Funds net of the Fund GPs’ expenses incurred in providing the Services to the Funds (which term is defined such that the 1.5% Mr. Meister will receive is computed in the same manner as the 1.5% interest in the net Management Fees Mr. Meister was entitled to receive under the Management Agreements) and, (ii) from the Fund GPs, 2.5% of their Special Profits Interest Allocations, if any, net of the Fund GPs’ and/or their affiliates’ expenses incurred in providing the Services to the Funds.

(3) On January 1, 2008, Vince J. Intrieri entered into an amendment (the “Intrieri Amendment Agreement”) with Icahn Capital Management, Icahn Management, Icahn Capital, the Fund GPs, the Company and the Related Entities (as defined therein) amending his Agreement, dated December 31, 2004 with (among others) Icahn Management, the Fund GPs and the Related Entities (as amended, the “Amended Intrieri Employment Agreement”). The Amended Intrieri Employment Agreement provides that Mr. Intrieri’s former right to receive 2.5% of the gross Management Fees earned by Icahn Capital Management is terminated and, for all periods from and after January 1, 2008, Mr. Intrieri is entitled to receive from the Fund GPs 2.5% of their Special Profits Interest Allocations, if any.

The Icahn Amendment Agreement is filed herewith as Exhibit 10.1 and is incorporated by reference in this Item 5.02(e).

The following agreements are filed herewith as Exhibits 10.2, 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10 and 10.11, and are incorporated by reference in this Item 5.02(e): the Amended Meister Employment Agreement, the Letter Agreement, dated June 1, 2005 (the “June 1, 2005 Meister Amendment”), Amendment No. 1 of Agreement made as of December 31, 2004, dated January 1, 2006 (the “January 1, 2006 Meister Amendment”), the Letter Agreement, dated March 14, 2006 (the “March 14, 2006 Meister Amendment”), the Letter Agreement, dated April 11, 2006 (the “April 11, 2006 Meister Amendment”), the Letter Agreement, dated February 1, 2007 (the “February 1, 2007 Meister Amendment”), the Memorandum, dated April 19, 2007 (the “April 19, 2007 Meister Amendment”), the Amendment, dated August 8, 2007 (the “1<sup>st</sup> August 8, 2007 Meister Amendment”), the Amendment in Relation to Management Fee Participation, dated August 8, 2007 (the “2<sup>nd</sup> August 8, 2007 Meister Amendment”) and the Meister Amendment Agreement.

The following agreements are filed herewith as Exhibits 10.12, 10.13, 10.14, 10.15, 10.16 and 10.17, and are incorporated by reference in this Item 5.02(e): the Amended Intrieri Employment Agreement, the Letter Agreement, dated February 1, 2007 (the “February 1, 2007 Intrieri Amendment”), the Memorandum, dated April 19, 2007 (the “April 19, 2007 Intrieri Amendment”), the Amendment, dated August 8, 2007 (the “1<sup>st</sup> August 8, 2007 Intrieri Amendment”), the Amendment in Relation to Management Fee Participation, dated August 8, 2007 (the “2<sup>nd</sup> August 8, 2007 Intrieri Amendment”) and the Intrieri Amendment Agreement.

**Item 9.01. Financial Statements and Exhibits**

(d)

Exhibit 10.1 - Icahn Amendment Agreement  
Exhibit 10.2 - Amended Meister Employment Agreement  
Exhibit 10.3 - June 1, 2005 Meister Amendment  
Exhibit 10.4 - January 1, 2006 Meister Amendment  
Exhibit 10.5 - March 14, 2006 Meister Amendment  
Exhibit 10.6 - April 11, 2006 Meister Amendment  
Exhibit 10.7 - February 1, 2007 Meister Amendment  
Exhibit 10.8 - April 19, 2007 Meister Amendment  
Exhibit 10.9 - 1<sup>st</sup> August 8, 2007 Meister Amendment  
Exhibit 10.10 - 2<sup>nd</sup> August 8, 2007 Meister Amendment  
Exhibit 10.11 - Meister Amendment Agreement  
Exhibit 10.12 - Amended Intrieri Employment Agreement  
Exhibit 10.13 - February 1, 2007 Intrieri Amendment  
Exhibit 10.14 - April 19, 2007 Intrieri Amendment  
Exhibit 10.15 - 1<sup>st</sup> August 8, 2007 Intrieri Amendment  
Exhibit 10.16 - 2<sup>nd</sup> August 8, 2007 Intrieri Amendment  
Exhibit 10.17 - Intrieri Amendment Agreement

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ICAHN ENTERPRISES L.P.  
(Registrant)

By: Icahn Enterprises G.P. Inc.  
its General Partner

By: /s/ Keith A. Meister

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Keith A. Meister  
Principal Executive Officer

Date: January 7, 2008

January 1, 2008

Reference is made to (i) the Contribution and Exchange Agreement ("Contribution Agreement") made as of the 8th day of August, 2007, by and among CCI Offshore Corp., a Delaware corporation, CCI Onshore Corp., a Delaware corporation, Icahn Management LP, a Delaware limited partnership, Carl C. Icahn, an individual ("Icahn"), and Icahn Enterprises LP (f/k/a American Real Estate Partners, L.P.), a Delaware limited partnership ("Icahn Enterprises") and (ii) the Employment Agreement (the "Employment Agreement") made as of the 8<sup>th</sup> day of August, 2007, by and between Icahn Enterprises, Icahn' and Icahn Capital Management LP, a Delaware limited partnership ("Icahn Capital Management"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Contribution Agreement.

Effective as of January 1, 2008, the Master Funds and the Feeder Funds are terminating the Management Agreements, pursuant to which Agreements the management fees are payable to Icahn Capital Management. The termination will have the effect of terminating the management fees. Pursuant to the amended and restated limited partnership agreement of each Master Fund, a "Special Profits Interest Allocation" (as such term is defined therein) will be made to the managing general partner of each Master Fund.

In furtherance thereof, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree, effective as of January 1, 2008, as follows:

1. The parties hereto that are parties to the Contribution Agreement agree that in the definition of "Hedge Fund Earnings" in the Contribution Agreement, the reference to "(i) management fees payable to Icahn Capital Management with respect to the Funds pursuant to the Management Agreements" shall be deleted and replaced with "(i) Special Profits Interest Allocation made to the Onshore GP and the Offshore GP with respect to the Master Funds pursuant to the limited partnership agreement of each Master Fund in effect from time to time." For purposes of clarity, this change will become effective on January 1, 2008 and the management fees paid to Icahn Capital Management prior to such date shall continue to be counted in Hedge Fund Earnings.

2. The parties hereto that are parties to the Employment Agreement agree that the references to "management fee" in section 1(a) and section 2(a) in Exhibit A therein shall be deleted and replaced with "Special Profits Interest Allocation."

3. The parties hereto that are parties to the Employment Agreement acknowledge and agree that notwithstanding the fact that the management fee is being terminated, the obligation to pay a 2% management fee as set forth in Section 6 of the Employment Agreement and in Section 3 in Exhibit A therein shall remain in effect as an obligation to pay a 2% fee.

4. Except as specifically provided herein, the Employment Agreement and the Contribution Agreement remain in full force and effect. This instrument may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

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IN WITNESS WHEREOF, this instrument has been duly executed and delivered by the parties hereto as of the date first above written.

**ICAHN ENTERPRISES L.P.**

By: Icahn Enterprises G.P. Inc., its general partner

By: /s/ Andrew Skobe

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Name: Andrew Skobe  
Title: Chief Financial Officer

**CCI ONSHORE CORP.**

By: /s/ Edward Mattner

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Name: Edward Mattner  
Title: Authorized Signatory

**CCI OFFSHORE CORP.**

By: /s/ Edward Mattner

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Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN MANAGEMENT LP**

By: CCI Manager LLC, its general partner

By: /s/ Edward Mattner

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Name: Edward Mattner  
Title: Authorized Signatory

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**ICAHN CAPITAL MANAGEMENT LP**

By: Icahn Capital LP, its general partner

By: IPH GP LLC, its general partner

By: Icahn Enterprises Holding L.P., its sole member

By: Icahn Enterprises G.P. Inc., its general partner

By: /s/ Andrew Skobe

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Name: Andrew Skobe

Title: Chief Financial Officer

/s/ Carl C. Icahn

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Carl C. Icahn

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## AGREEMENT

Agreement made as of the 31st day of December 2004 by and between Icahn Management LP (the "Management Company" or "Employer"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), Icahn Associates Corp. ("IAC"), High River Limited Partnership ("High River") and any entity beneficially owned 100% by Carl C. Icahn which has its offices at 767 Fifth Avenue, New York, New York 10153, for so long as it remains beneficially owned 100% by Carl C. Icahn (the "Icahn Entities") (IAC, High River and the Icahn Entities together being the "Icahn Related Entities"), and Keith Meister residing at 525 West 22<sup>nd</sup> Street, New York, NY 10011 ("Employee" or "you").

### RECITALS:

The purpose of this agreement (the "Agreement") is to set forth the terms and conditions of Employee's admission as a limited partner of the Fund GPs and of his employment with the Management Company and the Icahn Related Entities. Employee is an officer of American Real Estate Partners, L.P. ("AREP") and this Agreement shall not govern his activities with respect to AREP or its general partner.

The Fund GPs provide investment management and certain administrative services to Icahn Partners LP, a Delaware limited partnership (the "Domestic Fund" or "Onshore Fund"), and Icahn Partners Master Fund LP, a Cayman Islands exempted limited partnership (the "Master Fund") that serves as the master fund into which substantially all of the assets of Icahn Fund Ltd., a Cayman Islands company (the "Offshore Fund" and together with the Domestic Fund and the Master Fund, the "Funds") are invested. The Management Company provides certain administrative and management services to the Funds.

Pursuant to the terms of separate management agreements (each a "Management Agreement") with each of the Domestic Fund and the Offshore Fund the Management Company is entitled to receive management fees on a quarterly basis (the "Management Fees"). Pursuant to the partnership agreements for each of the Domestic Fund and the Master Fund, the Onshore GP and the Offshore GP, may receive "Incentive Allocations" (as defined in those partnership agreements).

Employee executed an employment agreement referencing IAC which provided for a term commencing on June 10, 2002 and an agreement with the parties hereto dated as of December 30, 2004 (both such employment agreements, together the "Prior Agreement").

The parties hereto desire to enter into this Agreement dated as of the date hereof, which shall and hereby does, terminate and supersede the Prior Agreement. Their relationship shall hereafter be governed exclusively by this Agreement.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Employment:** Subject to the terms of this Agreement, each of Employer and the Icahn Related Entities hereby employs Employee to perform the duties described in Section 3 below, and Employee hereby accepts such employment. Employee's title shall be Senior Investment Analyst.
2. **Admission as Limited Partner.** Employee will be and, hereby is, admitted as a limited partner of each of the Fund GPs as of November 3, 2004. The rights of the Employee as a limited partner shall be limited to those expressly set forth in Sections 2 and 9 and in Sections 11 through 16 below and Employee shall have no other rights as a limited partner of the Fund GPs, whether by virtue of applicable statutory law or otherwise. The duties of the Fund GPs and their respective partners to Employee, as a limited partner of the Fund GPs, shall be limited to those expressly set forth in this Agreement. Employee expressly waives and disclaims any other rights or obligations in favor of Employee. As a condition of such admission, Employee agrees to execute and deliver to the Fund GPs the limited partnership agreement of each Fund GP and all amendments, restatements, supplements or modifications (each limited partnership agreement, as amended, restated, supplemented or modified from time to time, a "Partnership Agreement" and together, the "Partnership Agreements") and all other agreements, documents and certificates related thereto, as may be requested of Employee from time to time. Those agreements, documents and certificates shall include such terms as shall be determined by Carl C. Icahn and his Affiliates in their sole discretion, so long as they are not inconsistent with the rights of Employee expressly set forth in this Agreement. At any time following the expiration of the Term (as defined herein) the partnership interests of the Employee in each Fund GP may be terminated by each Fund GP by the giving of written notice thereof to Employee. Such termination shall be effective upon the payment to the Employee of an amount (the "Payment") equal to the Maximum Available Amount (as defined in Section 13 below) as of the date of such notice or \$1.00 (one dollar) if the Maximum Available Amount as of that date is \$0 or less than \$0; provided that if the Employee is 100% vested (as provided in Section 11 hereof) at such time then the Payment shall be equal to the balance of the Employee Capital Account in such Fund GP. The partnership interests of the Employee in the Fund GPs may not, without the consent of the general partner thereof (which may be granted or withheld in its sole and absolute discretion), be directly or indirectly pledged, assigned, hypothecated, transferred or otherwise disposed of. In no event will the Employee be entitled to receive or participate in any distribution from or being made by the Fund GPs except as expressly set forth herein. The Employee shall perform those duties for the Fund GPs contemplated in Section 3 below. Employee will make a capital contribution of \$5,000 to each of the Fund GPs.
3. **Duties.** Employee shall be employed to act as a senior executive officer to provide the types of services he has previously provided during his employment with Carl C. Icahn ("Icahn") and his Affiliates, and to perform credit analysis, research, and transaction analysis and such other investment analysis and to perform such other duties, for Employer, the Fund GPs, the Icahn Related Entities or other Affiliates of Icahn as Employer or the Icahn Related Entities shall request from time to time. Employee agrees (subject to time spent on his activities as an officer of AREP) to devote his full business time and reasonable best efforts to such duties.

4. **Benefits.** During the Term (as defined herein) Employee shall be entitled to 3 weeks of paid vacation annually and shall participate in all benefit programs and plans for which he is eligible, which are made available to all senior executive employees of Icahn Related Entities. Additionally, during the Term, Employee shall have the opportunity to invest his personal funds in the Domestic Fund and the Offshore Fund in accordance with the terms of such funds at such time as such Funds are accepting additional funds. Neither such investment, Employee's Management Fee Participation nor Employee's Capital Account (as such terms are defined herein) shall be assessed any management fee, incentive allocation, exit fee, entrance fee or similar fee.

5. **Prior Agreement.** Effective on December 31, 2004 (the "Effective Date"), the Prior Agreement shall terminate and no further obligations and/or entitlements under the Prior Agreement shall exist, provided that Employee shall remain liable for any breach thereof occurring on or prior to the Effective Date.

6. **Term.** The term of employment under this Agreement shall be for a period of seven years commencing on January 1, 2005 and ending on December 31, 2011 unless such employment ceases earlier for any reason (see Section 8 below) (whether: (i) terminated for Cause; (ii) terminated without Cause; (iii) due to death or disability; or (iv) by the action of Employee such as resignation or retirement). For all purposes under this Agreement "Term" shall mean the period from January 1, 2005 through the last day of Employee's employment hereunder.

7. **Cash Compensation.** During the Term, the Icahn Related Entities agree to pay to Employee and Employee agrees to accept, as his cash compensation for all services to be rendered under this Agreement, a base salary at the rate of \$500,000 per annum, which shall be earned and payable every two weeks, plus a bonus ("Bonus") (such base salary and Bonus together "Cash Compensation") in respect of each calendar year during the Term. The amount of the Bonus paid or payable under this Section 7 shall be \$1,000,000 per annum to be paid on June 10 of each calendar year during the Term. All payments of base salary and Bonus shall be made in cash and shall be subject to applicable deductions, and to payroll and withholding taxes as required by law.

8. **Cash Compensation/Early Termination.**

i) **Power of Termination.** The Employer or the Icahn Related Entities, or any or all of such entities, may terminate the employment of Employee under this Agreement on behalf of and in respect of all persons employing Employee hereunder, at any time, with Cause, or in the sole and absolute discretion of Employer or the Icahn Related Entities, without Cause. "Cause" shall mean (a) conviction of any crime (other than traffic violations and similar minor infractions of law); (b) failure to come to work on a full-time basis, subject to time spent on his activities as an officer of AREP and to our normal procedures regarding vacation, sick days and the like and (c) impairment due to alcoholism, drug addiction or similar matters. Prior to termination for "Cause" as a result of failure as contemplated in clause (b) above, Employee shall be given notice of his activity giving rise to such failure and will have 2 business days to correct such activity;

provided that Employer shall only be required to provide notice under this sentence one time during any calendar year.

ii) Termination for Cause/Resignation. In the event that Employee's employment is terminated for Cause or by the action of Employee such as by resignation or retirement, then the entire amount of the Cash Compensation earned through the date of termination but not yet paid shall be paid to Employee (without limiting the other rights of Employee under this Agreement, it is understood and agreed that Employee shall not be entitled to any pro rated Bonus, any Bonus being deemed to be earned only on June 10, of the applicable year of employment if the Employee is still employed hereunder on that date).

iii) Without Cause. In the event that the employment of Employee hereunder is terminated by the Employer or the Icahn Related Entities without Cause, then, unless the provisions of clause (iv) below apply, Employer shall pay to Employee the entire amount of Cash Compensation earned through that date and not yet paid and a pro rata portion of one, \$1,000,000 Bonus (based upon the number of days elapsed in the period beginning on the June 10 prior to such termination to the date of termination, divided by 365).

iv) Death or Disability. In the event of Employee's death or disability during the Term, Employee's employment hereunder shall cease upon such death or disability and Employer shall pay to Employee's estate the entire amount of base salary earned through the date of Employee's death or disability and any Bonus payment determined by the Icahn Related Entities to be due to Employee but not yet paid (without limiting the rights of Employee under this Agreement, it is understood and agreed that Employee shall not be entitled to any pro rated Bonus, any Bonus being deemed to be earned only on June 10 of the applicable year of employment if the Employee is still employed on that date). For purposes of this Agreement (unless otherwise stated herein) disability shall be deemed to occur if, due to illness or injury, Employee is unable to perform his duties at the offices of the Icahn Related Entities for a period of 30 consecutive business days or for 45 business days during any 60 business-day period and Employer provides written notice thereof to Employee.

v) No Other Rights of Employee. In the event of the cessation of the employment of the Employee for any reason or no reason whether as contemplated in clauses (i)-(iv) above or otherwise, the Employee shall cease to have any right to Cash Compensation other than as expressly set forth in this Section 8. This clause (v) shall not limit the rights of Employee under this Agreement other than the right to receive Cash Compensation pursuant to Section 7 and this Section 8.

#### 9. Profit Participation.

i) Subject to all of the terms and provisions of this Agreement (including, without limitation, those relating to vesting and forfeiture), the Employee shall be entitled to receive 2.5% of the Management Fees and 2.5% of the Incentive Allocations earned by the Management Company or the Fund GPs, respectively, during the period from November 3, 2004 through the last day of the Term (subject to clauses 9(ii) below); provided that if, due to any miscalculations or due to the fact that Management Fees are

paid in advance, the Management Company or the Fund GP's are at any time required to return or otherwise pay over any portion of such amount to any of the Funds or their investors then the Employee shall be required to return to the Management Company or the Fund GP's, as applicable, its pro rata share of the amounts so returned or paid over. Employer's participation in the Management Fee is a contractual right, as set forth in Section 21(ix) of this Agreement. Employee's participation in the Incentive Allocation shall be reflected by the establishment of a capital account (the "Employee Capital Account") in the name of Employee, as a limited partner, under the Partnership Agreements. All amounts credited to each Employee Capital Account will be invested by the Onshore GP in the Onshore Fund and by the Offshore GP in the Offshore Fund, in each case for the benefit of the Employee Capital Account established in the Onshore GP or Offshore GP, as the case may be. The right of the Employee to participate in each of the Management Fees (the "Management Fee Participation") and the Incentive Allocations (the "Incentive Allocation Participation"), subject to and in accordance with the terms of this Agreement, and in any investment made in respect thereof in accordance with the terms of this Agreement and all returns, earnings and profits thereon, are referred to collectively herein as the "Profit Participation".

ii) Notwithstanding the other provisions of this Agreement, the Employee shall receive a payment on February 3, 2005 of \$79,943.00 in cash in satisfaction of its rights in respect of the Management Fees accruing from November 3, 2004 through December 31, 2004 (such amount being paid in respect of the Management Fees paid by the Domestic Fund on November 29 and December 21, 2004 and by the Offshore Fund on January 10, 2005).

iii) Subject to the final sentence of this paragraph, Employee acknowledges and agrees that pursuant to the terms of this Agreement, Employee will only participate in Management Fees and Incentive Allocations earned and allocated from November 3, 2004 until he ceases to be employed hereunder and that if such employment ceases for any reason he will not accrue any further benefit in respect of Management Fees or Incentive Allocations earned or allocated thereafter, nor will he have any ongoing rights or interest in respect of Management Fees or Incentive Allocations earned or allocated on or prior to the date such employment ceases; other than the right to Vested Amounts (as defined below) in respect of Management Fees and Incentive Allocations earned or allocated on or prior to the date such employment ceases (and any investment made in respect thereof, and all returns, earnings and profits thereon, made in accordance with the terms of this Agreement). Because Incentive Allocations are made as of year end (other than in the event of dissolution, partner withdrawal or other events specified in the partnership agreements of the Master Fund and the Domestic Fund, in which event such allocations are made as of the date prior to year end specified in such agreement (the periods in respect of which such allocations are made, each a "Short Period")), in the event that the employment of Employee hereunder ceases, his Incentive Allocation Participation under this Agreement will include a pro rated portion of 2.5% of the immediately following Incentive Allocation (based upon the number of days elapsed in the one year period beginning on January 1 of the year in which such employment ceases, divided by 365 (and in the case of a Short Period during which such employment ceases,

the number of days elapsed from January 1 of the Short Period until such employment ceases, divided by the total number of days in the Short Period).

10. **Deferral of Management Fee Participation.** To the extent that Employer determines that a deferral of the payment of Management Fee Participation as contemplated herein will not constitute current income of such deferred amount to Employee under applicable federal income tax laws, rules and regulations and Employer is able to engage in such deferral under such laws, rules and regulations, Employee's participation in the Management Fees for each calendar year during the Term and all payments in respect thereof shall be deferred, until at least January 30, 2012 or such later date as shall be set forth in an annual election made by the Employee made no later than December 31<sup>st</sup> of the preceding calendar year (no such election to exceed 10 years). So long as the Management Agreement with the Offshore Fund is in effect, an amount equal to all amounts of Employee's Management Fee Participation deferred hereunder will, to the extent that Management Company deems such to be possible, also be deferred by Management Company under its Deferral Fee Agreement (as defined below) with the Offshore Fund in accordance with the election of the Employee and the terms of this Agreement. Management Company will direct the Offshore Fund to invest the amount deferred under this Section 10 in the Master Fund to the extent that it is able to do so and if not able to do so, will invest such funds in US Treasury obligations.

Employee has previously elected to defer his entire Management Fee Participation for the period January 1, 2005 through December 31, 2005 until January 30, 2012.

To the extent that Employer determines that a deferral of the payment of Management Fee Participation as contemplated herein for any period from and after January 1, 2006 will or may constitute current income of such deferred amount to Employee under applicable federal law, rules or regulations, or that Employer is not or may not be, able to engage in such deferral under such laws, rules or regulations: (i) the Employee's right to the Management Fee Participation shall be treated in the same manner (but in respect of the Management Company and Employee) as the Incentive Allocation Participation is treated in respect of the Fund GPs and the Employee, including, without limitation, pursuant to Sections 2, 9, 11, 12(ii), 13, 14, 15 and 16 of this Agreement and all of the provisions of such sections shall apply to Employee and the Management Company in the same manner that such provisions apply to the Employee and the Fund GPs and the Employee shall, in such event, be admitted as a limited partner of the Management Company; provided that the capital account so established on behalf of Employee in the Management Company will not be allocated any portion of the cost or expense of operating the Management Company; or (ii) at the election of the Fund GPs, all such rights shall be reflected by the Fund GPs providing Employee with additional rights in the Fund GPs that provide the same economic interest for Employee as contemplated in clause (i) above.

11. **Vesting.** The right of Employee to receive any amounts or payments in respect of the Profit Participation shall be subject to and limited by, all of the terms and provisions of this Agreement. Employee shall have no rights to receive any amounts or payments in respect of the Profit Participation unless, and then only to the extent that, Employee is

vested therein in accordance with the terms of this Agreement (such amounts so vested, the "Vested Amount"). During the Term, the Employee's rights in the Profit Participation shall vest at the rate of 14.285% per annum, vesting ratably on a monthly basis so that on December 31, 2011 the entire Profit Participation shall be fully vested. Vesting of the Profit Participation shall accelerate such that the Profit Participation shall be 100% vested upon the occurrence of any of the following events during the Term:

- A) the employment of Employee is terminated by Employer or any Icahn Related Entity, without Cause;
- B) neither the Management Company, the Fund GP's nor their respective successors are engaged in the ongoing management of the Funds;
- C) Mr. Icahn sells all or substantially all of his beneficial interests in the Fund GPs and Management Company to an unrelated third party; or
- D) Failure to pay any Cash Compensation due hereunder within 5 business days following written demand by Employee.

Except as provided in the final sentence of the paragraph immediately prior hereto (including clauses (A) through (D) above), Employee will only vest in Profit Participation during such periods as he continues to be an employee under this Agreement during the Term, and no acceleration of vesting will occur. All unvested amounts will be forfeited in all respects by Employee on any cessation of his employment under this Agreement.

## 12. Withdrawal.

i) Management Fee Participation. The then current value (calculated in accordance with the methodology set forth in the Deferred Management Fee Agreement (the "Deferred Fee Agreement") dated December 29, 2004 between the Offshore Fund and the Management Company) of the amounts deferred and invested as contemplated herein in respect of the Vested Amounts of the Management Fee Participation (the "Applicable Amounts") shall be paid to Employee in cash (subject to clause (iv) below):

- A) following the last day of the respective deferral period thereof as follows: (i) 95% of the Management Company estimate of the amount due shall be paid promptly (but not more than 10 days) after the last date of such deferral period; and (ii) the balance shall be paid promptly (but not more than 10 days) after the completion of: (x) if the last day of such deferral occurs in the month of January, the preparation of the prior year's audited financial statement of the Offshore Fund; and (y) if the last day of such deferral occurs in any other month, the preparation of the current year's audited financial statement of the Offshore Fund; and
- B) as set forth in Schedule A hereto in respect of any Terminating Event (as contemplated in Schedule A) to the extent permissible under applicable law including, without limitation, the New Law (as defined in Section 21(xi) below).



Employee acknowledges that payments are to be made to Employee under this Section 12(i) or otherwise in respect of the Management Fee Participation only with respect to Vested Amounts of the Management Fee Participation and that the term "Applicable Amounts" used herein includes only Vested Amounts of the Management Fee Participation.

ii) Incentive Allocation Participation. Subject to Section 13 below, the then current balance (calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP) of the Employee Capital Account, may be withdrawn by the Employee in cash, subject to clause (iv) below (and without payment of any withdrawal fee) upon 90 days prior written notice. Withdrawals are subject to provision by the Fund GPs for all liabilities of the Fund GP in accordance with applicable laws and regulations and holdbacks for estimated accrued expenses, liabilities and contingencies as determined by the Fund GPs (or their applicable general partner) in good faith.

iii) Fees. Payments to Employee pursuant to Section 12(i) or (ii) shall not be diminished by any withdrawal fee.

iv) Segregated Investments. To the extent that any amount to be withdrawn hereunder has been invested in a Segregated Investment (as defined in the partnership agreement of the Master Fund or the Onshore Fund), then any such amount properly to be withdrawn hereunder will be paid as soon as practicable after the Segregated Investment is realized.

13. Restrictions on Withdrawal. In no event shall the Employee be entitled to make or receive any withdrawal or distribution from a Fund GP if, and no withdrawal or distribution shall be permitted to be made to Employee to the extent that, after taking such withdrawal or distribution into account, the aggregate distributions and withdrawals to Employee from an Employee Capital Account at any time exceed, the Maximum Withdrawal Amount. The maximum amount that, at the time of determination, Employee is permitted to receive by withdrawal or distribution (other than by Tax Distribution) pursuant to the preceding sentence in respect of any Fund GP, is referred to herein as the "Maximum Available Amount". The term "Maximum Withdrawal Amount" shall mean, with respect to any Employee Capital Account, the aggregate percentage of vesting that has occurred pursuant to Section 11 multiplied by the Hypothetical Account. The term "Hypothetical Account" shall mean the sum of (i) the amount of the applicable Employee Capital Account as of the applicable date of calculation (calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP); plus (ii) an amount equal to all prior withdrawals and distributions from such account.

This Section 13, which limits the right of Employee to make withdrawals or receive distributions, does not, and shall not be deemed to, limit his right to receive Tax Distributions as contemplated in Sections 15 and 16 below.



14. **Clawback.** Employee agrees that, if prior to the time that the Profit Participation is 100% vested (i) he has received a Tax Distribution and (ii) he has ceased to be employed under this Agreement, then Employee shall pay upon demand to each Fund GP, an amount equal to the Difference. The "Difference" means, with respect to any Fund GP, the amount by which the aggregate distributions and withdrawals made to Employee by such Fund GP exceeds the Maximum Withdrawal Amount on the last day of Employee's employment hereunder provided that in no event shall the Difference be deemed to exceed the aggregate Tax Distributions made to Employee by such Fund GP. The Fund GPs and the Icahn Related Entities shall be entitled to set off the payment of the Difference from the Employee Capital Accounts or any other assets held or payments owed by any such persons, to Employee (so that, for example, amounts payable by Management Company to Employee can be applied to the payment of the Difference). If the Employee's employment has been terminated by Employer for any reason, the sole recourse of a Fund GP in respect of the Difference shall be through such set-offs and the Employee shall not otherwise be obligated to pay the Difference.

15. **Special Distributions.** Employee shall have the right to receive, with respect to each fiscal year of each Fund GP, a distribution from each of his Employee Capital Accounts in an amount equal to his Presumed Tax Liability (as defined below), as determined by the general partner of the applicable Fund GP, arising from allocations in respect to his Employee Capital Account (a "Tax Distribution"). The Fund GP shall distribute to the Employee, if practicable, on February 15<sup>th</sup> or as soon as practicable thereafter but not later than March 30, after the end of a fiscal year, an amount of cash equal to the Employee's Tax Distribution with respect to such fiscal year.

16. **Presumed Tax Liability.** For purposes of Section 15, "Presumed Tax Liability" with respect to each Employee Capital Account for any fiscal year means the regular U.S. federal, state and local income tax liability, as determined by the general partner of the applicable Fund GP, that would have been imposed on the Employee in respect of allocations arising from such capital account for such fiscal year had such income tax liability for all fiscal years been calculated solely by reference to the items (the "Partnership Items") of income, gain, loss and deduction recognized for income tax purposes and allocated to the Employee with respect to his Employee Capital Account. The Presumed Tax Liability shall be computed using the highest marginal personal income tax rates for such year applicable to the character or type of recognized income or gain (for example, ordinary income, long-term capital gains and dividends) allocated to the Employee, and shall take into account any capital loss or net operating loss carryovers from prior fiscal years which would have been utilizable by the Employee for income tax purposes calculated solely by reference to the Partnership Items. For purposes of this Section 16, any net capital loss or net operating loss calculated for any fiscal year by reference to the Partnership Items shall be carried forward (other than any such loss which is applied pursuant to the following sentence). At the election and in the discretion of the general partner of each Fund GP, if for any fiscal year the Employee has a taxable loss computed by reference to the Partnership Items of an Employee Capital Account and taxable income computed by reference to the Partnership Items of another Employee Capital Account, the Presumed Tax Liability of the account which generated net taxable income shall be computed by taking into account all the Partnership Items of the capital

account which generated a net taxable loss. Unless otherwise notified by Employee, it shall be assumed that the Employee is a resident of New York City for income tax purposes.

17. **Representations and Warranties.** Employee represents as follows:

- i) To the best of his knowledge, except as known to Employer, he is not a party to, or involved in, or under investigation in, any pending or threatened litigation, proceeding or investigation of any governmental body or authority or any private person, corporation or other entity.
- ii) Employee has never been suspended, censured or otherwise subjected to any disciplinary action or other proceeding by any State, other governmental entities, agencies or self-regulatory organizations.
- iii) Employee is not subject to any restriction whatsoever which would cause him to not be able fully to fulfill his duties under this Agreement.

18. **Confidential Information.** During the term of this Agreement and at all times thereafter, Employee shall hold in a fiduciary capacity for the benefit of the Funds, Employer, the Fund GPs and Icahn Related Entities and their respective Affiliates all secret or confidential information, knowledge or data, including without limitation trade secrets, investments, contemplated investments, business opportunities, valuation models and methodologies, relating to the business of the Funds, Employer, the Fund GPs and Icahn Related Entities or their respective Affiliates, and their respective businesses: (i) obtained by Employee during Employee's employment hereunder and (ii) not otherwise in the public domain. Employee shall not, without prior written consent of Employer and Icahn Related Entities (which may be granted or withheld in their sole and absolute discretion), communicate or divulge any of the types of information described in the two previous sentences, knowledge or data to anyone other than Employer and Icahn Related Entities and those designated by Employer and Icahn Related Entities, except to the extent compelled pursuant to the order of a court or other body having jurisdiction over such matter or based upon the advice of his counsel that such disclosure is legally required; provided, however, that Employee will assist Employer and Icahn Related Entities, at Employer and Icahn Related Entities' expense, in obtaining a protective order, other appropriate remedy or other reliable assurance that confidential treatment will be accorded such information so disclosed pursuant to the terms of this Agreement.

All processes, technologies, investments, contemplated investments, business opportunities, valuation models and methodologies, and inventions (collectively, "Inventions"), including without limitation new contributions, improvements, ideas, business plans, discoveries, trademarks and trade names, conceived, developed, invented, made or found by Employee, alone or with others, during the Term, whether or not patentable and whether or not on the Employer's, the Fund GPs or the Icahn Related Entities' or their respective Affiliates time or with the use of their facilities or materials, shall be the property of Employer, the Fund GPs, the Icahn Related Entities or their respective Affiliates, as applicable, and shall be promptly and fully disclosed by

Employee to Employer and the Icahn Related Entities. Employee shall perform all necessary acts (including, without limitation, executing and delivering any confirmatory assignments, documents, or instruments requested by Employer and Icahn Related Entities) to vest title to any such Invention in any such person and to enable such person Employer and Icahn Related Entities, at its expense, to secure and maintain domestic and/or foreign patents or any other rights for such Inventions.

Without limiting anything contained above, Employee agrees and acknowledges that all personal and not otherwise public information about Employer, the Fund GPs and Icahn Related Entities and their respective Affiliates, including, without limitation, their respective investments, investors, transactions, historical performance, or otherwise regarding or concerning Carl Icahn, Mr. Icahn's family and employees of Employer and Icahn Related Entities, shall constitute confidential information for purposes of this Agreement. In no event shall Employee during or after his employment hereunder, disparage Employer, the Fund GPs, the Icahn Related Entities, their respective Affiliates or any of their respective officers, directors or employees.

19. **Competitive Services.** During the Term and for a period of one (1) year after Employee ceases to be employed under this Agreement for any reason, including, but not limited to, the expiration of the term of employment hereunder, Employee will not:

i) With respect to any person, entity or corporation (each a "Covered Business") or group of Affiliated Covered Businesses in any part of the United States with total assets under management (including therein assets of the Covered Business and assets managed for others either individually or on a pooled basis) of less than \$1.5 billion engaged primarily in the business of investing or pooling of assets for investment in the public market, engage for his own account with such entity, enter into the employ of such Covered Business, render any services to such Covered Business, raise capital for such Covered Business, or become interested in such Covered Business, whether as an individual, agent, trustee, consultant, advisor, manager, franchisee or in any other relationship or capacity; provided, however, that the provisions in this Section 19 shall not be deemed to preclude Employee, after the end of the Term, from acquiring securities of any Covered Business which may be engaged in activities competitive with the investment or investment management business of the Funds or their Affiliates so long as such securities do not, in the aggregate, constitute more than one percent (1%) of any class or series of outstanding securities of such corporation or entity and the securities of such entity are registered under Section 12 of the Securities Exchange Act of 1934; and provided further, however, that nothing in this Section 19 shall prevent Employee, after the end of the Term from acquiring a totally passive interest, whether as stockholder or limited partner or otherwise, in a pool of securities and other assets and which are invested by third parties without Employee providing, directly or indirectly, such third parties with investment advice with regard thereto; or

ii) Employ or entice away or attempt to employ or entice away from Employer, the Funds, the Fund GPs or any Icahn Related Entities or any of their respective Affiliates, any person, known by Employee, after reasonable inquiry made by Employee, to be an employee of any such person within the prior 90 days.

20. **Remedy for Breach.** Employee hereby acknowledges that the provisions of Sections 18 and 19 of this Agreement are reasonable and necessary for the protection of the other parties hereto (the "Other Parties") and their Affiliates and are not unduly burdensome to Employee and that Employee acknowledges such obligations under such covenants. Employee further acknowledges that the Other Parties and their respective Affiliates will be irreparably harmed if such covenants are not specifically enforced. Accordingly, Employee agrees that, in addition to any other relief to which the Other Parties may be entitled, including claims for damages, the Other Parties shall be entitled to seek and obtain injunctive relief (without the requirement of any bond) from a court of competent jurisdiction for the purpose of restraining Employee from an actual or threatened breach of such covenants.

21. **Miscellaneous.**

i) **Affiliate.** For purposes of this Agreement the term "Affiliate" (or a person or entity "Affiliated" with another person or entity) and "control" (including the terms "controlling," "controlled by" and "under common control with") shall have the meanings set forth in Rule 405 of Regulation C of the Securities Act of 1933, as amended.

ii) **Entire Agreement.** This Agreement supersedes any and all existing agreements, oral or written, between Employee and any of the Other Parties relating to the subject matter hereof, including, without limitation, the terms and conditions of his employment with the Management Company and his admission as a limited partner of each of the Fund GPs or any participation in any of the economic benefits arising from or relating to, the Funds. Employee is not entitled to any other payments or benefits from any of the Other Parties except as expressly provided for herein. Employee is an officer of AREP and this Agreement shall not govern his activities with respect to AREP or its general partner.

iii) **Amendments and Waivers.** No provisions of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by Employee and the Other Parties. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement. Notwithstanding anything herein to the contrary, the Other Parties may amend this Agreement (and such amendment shall be binding upon Employee) at any time, retroactively or otherwise, without Employee's consent, to comply with Section 409A of the Code and the Regulations thereunder. Employer will take such actions as Employer considers reasonable (without any obligation to pay money) in order to help mitigate the adverse effect of any such amendment.

iv) **Deferred Fee Agreement.** Nothing under the Deferred Fee Agreement will change the rights of Employee under this Agreement.

v) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Agreement.

vi) Severability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect.

vii) Judicial Modification. If any court or arbitrator determines that any of the covenants in Sections 18 or 19, or any part of any of them, is invalid or unenforceable, the remainder of such covenants and parts thereof shall not thereby be affected and shall be given full effect, without regard to the invalid portion. If any court or arbitrator determines that any of such covenants, or any part thereof, is invalid or unenforceable because of the geographic or temporal scope of such provision, such court or arbitrator shall reduce such scope to the extent necessary to make such covenants valid and enforceable.

viii) Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and assign of the Other Parties. Employee may not sell, convey, assign, transfer or otherwise dispose of, directly or indirectly, any of the rights, claims, powers or interest established hereunder (including, without limitation, any Profit Participation or partnership or membership interest) other than with the prior written consent (which may be granted or withheld in their sole and absolute discretion) of the Management Company and Carl C. Icahn, provided that the same may, upon the death of Employee, be transferred by will or intestate succession, to his estate, executors, administrators or heirs, whose rights therein shall for all purposes be deemed subject to the terms of this Agreement.

ix) Title to Deferred Amounts. This Agreement constitutes a contractual obligation to make payments in the future in respect of the deferred Management Fees. Title to and beneficial ownership of any assets, whether cash or investments, in respect of each Management Fee shall at all times remain in the Management Company, and the Employee shall not have any property interest whatsoever in any of such assets. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between any Employer and the Employee. Any amount of Management Fee which may be invested under the provisions of this Agreement shall continue for all purposes to be a part of the general assets of the Management Company and subject to the claims of its general creditors, and no person other than the Management Company shall by virtue of the provisions of this Agreement have any interest in such amount. To the extent Employee acquires a right to receive all or a portion of any Management Fee under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Management Company.

Notwithstanding any provision to the contrary herein, no provision in this Agreement shall create or be construed to create any claim, right or cause of action against the Management Company or its Affiliates or their respective officers, directors, owners, managers, or advisors arising from any diminution in value in connection with the investment of such Management Fee or the Incentive Allocation in accordance with this Agreement.

x) No Assignment of Management Fee. The right of the Employee to the payment of all or a portion of any Management Fee under this Agreement (and any right of the Management Company to any portion of such fee invested in any subaccount with the Master Fund in respect of that portion of such fees in which Employee is entitled to participate hereunder) shall in no event be assigned, transferred, pledged or encumbered, either by Employee or Management Company, and any attempted assignment, transfer, pledge or encumbrance shall be null and void.

xi) New Law. Employee agrees to (and will enter into any agreement that the Fund GP determines is appropriate to reflect) any changes made by any of the Other Parties to the terms hereof and of any related or associated document or agreement if such Other Party determines, in its sole discretion, that such changes are necessary to comply with Section 409A (the "New Law") of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations (the Regulations") and other guidance of general applicability that is issued thereunder. Those changes will be made in a manner to produce a result, so far as is practical, not inconsistent with the rights of Employee expressly set forth in this Agreement. Employee hereby acknowledges that at all times the deferral of the payment of Management Fee Participation pursuant hereto will be operated in accordance with the requirements of the New Law, to the extent the New Law applies to amounts deferred as contemplated herein.

In addition, Employee hereby agrees and acknowledges that the provisions of this Agreement that allow for the payment of amounts to him upon the termination of his service, death, disability and the occurrence of an unforeseeable emergency will not apply or be available if the Employer determines, in its sole discretion, that the same is necessary or advisable in connection with or to assure compliance with, New Law. Employer shall take the actions contemplated in the final paragraph of Section 10 of this Agreement and such other actions as Employer considers reasonable (without any obligation to pay money) in order to help to mitigate the effect of the foregoing sentence.

Employee is aware that deferral elections are irrevocable by Employee except to the extent allowed by Employer, in its sole discretion, and permissible under the New Law.

xii) Taxes. All payments to Employee shall be subject to applicable deductions, payroll and withholdings taxes, as required by law.

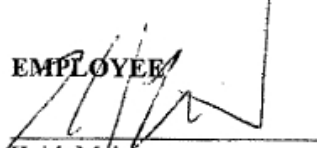
## 22. Other

- i) Employee shall follow all policies and procedures and compliance manuals adopted by or in respect of any or all of the Funds, the Fund GPs or the Other Parties. In addition, Employee shall not, personally or on behalf of any other person or entity, invest in or provide advise with respect to, any investment made or actively being considered by Employer, the Funds, the Fund GPs and Icahn Related Entities or any of their respective Affiliates except to the extent disclosed to Employer and Icahn Related Entities in advance in writing by Employee and to the extent previously approved in writing by Employer and Icahn Related Entities in its sole and absolute discretion, including, without limitation, the amount of any investment which Employee may make at any time or from time to time and restrictions on the sale of any such investment.
- ii) Employee agrees to provide Employer and Icahn Related Entities a written list of all existing and future investments to be made by Employee, directly or indirectly, and shall prior to the time of making such new investment(s) give Employer and Icahn Related Entities reasons for Employee making such investment(s). No investment shall be made by Employee without the prior written consent of Employer and Icahn Related Entities, which may be withheld for any reason or no reason and/or may be conditioned.
- iii) The Icahn Related Entities agree that the indemnity agreement of Starfire Holding Corporation and Employee dated March 18, 2004 shall include Employee's activities as an officer, director or authorized signatory of the Funds, the Fund GPs, Management Company, CCI Manager LLC, CCI Onshore LLC and CCI Offshore LLC.


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In WITNESS WHEREOF, undersigned have executed this Agreement as of the date first written above.

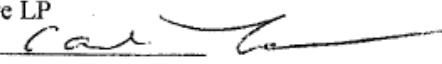
**EMPLOYEE**

  
Keith Meister


Icahn Management LP

By:   
Name:  
Title: Authorized Signatory

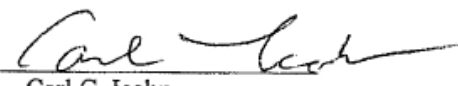
Icahn Onshore LP

By:   
Name:  
Title: Authorized Signatory

Icahn Offshore LP

By:   
Name:  
Title: Authorized Signatory

**ICAHN RELATED ENTITIES**

By:   
Carl C. Icahn

[Signature page to Keith Meister Employment Agreement.]

December 31, 2004



## **Schedule A**

### **Terminating Events**

(a) If a Terminating Event occurs, amounts shall be paid to Employee as follows:

- (I) Ninety-five percent (95%) of the Applicable Amounts shall be paid to the Employee within 100 days after the month in which a Terminating Event, as described in subsections b(I), (II), (III), (IV) or (VI) below, occurs. The remainder of such amounts shall be paid to Employee promptly after the completion of the audited financial statements of the Offshore Fund for the fiscal year which includes the date upon which such Terminating Event occurs.
- (II) Upon the occurrence of a Terminating Event described in subsection b(V) hereof, 95% of the amount determined by the Management Company pursuant to that subsection to be the amount necessary to satisfy the financial need giving rise to such Terminating Event shall be paid to Employee within 100 days after the month in which such Terminating Event occurs. The remainder of such amounts shall be paid to Employee promptly after the completion of the audited financial statements of the Offshore Fund for the Fiscal Year which includes the date upon which such Terminating Event occurs.

(b) The following events shall each constitute "Terminating Events":

- (I) Solely to the extent permissible under the New Law, the termination of the Management Agreement, unless within 30 days of such termination, the Management Agreement is renewed or the Offshore Fund (or its successor) and the Management Company (or its Affiliate, defined for these purposes as any entity controlling, controlled by, or under common control with the Management Company) enter into a new agreement with substantially the same terms as the Management Agreement;
- (II) Solely to the extent permissible under the New Law, the dissolution or liquidation of the Offshore Fund;
- (III) the death or disability (as defined in Section 409A(a)(2)(C) of the Code and the Regulations thereunder) of the Employee;
- (IV) Solely to the extent permissible under the New Law, except to the extent that Section 409A of the Code and the

applicable Regulations provide to the contrary, the employment of the Employee with the Management Company ceases for any reason (whether it is terminated for Cause, terminated without Cause or by the action of Employee such as resignation or retirement (death and disability being addressed in clause b(II) above)) provided, however, that there shall be no Terminating Event if Employee becomes a partner or employee, as the case may be, of the Management Company within 30 days of the termination of such employment or membership;

- (V) written notification by the Employee to the Management Company of an Unforeseeable Emergency (as defined in Section 409A(a)(2)(B)(ii) of the Code and the Regulations thereunder, provided that such term shall not include "disability" as defined in clause b(II) above) with respect to Employee, a determination by the Board of the Management Company (or equivalent body) and the Board of the Offshore Fund that such an Unforeseeable Emergency in fact exists, and a determination by the Board of the Management Company (or equivalent body) and the Board of the Offshore Fund as to the amount needed to satisfy the financial need giving rise to such Unforeseeable Emergency, provided, however, that such amount shall not exceed the amount described in Section 409A(a)(2)(B)(ii)(II) of the Code and the Regulations thereunder; and
- (VI) Solely to the extent permissible under the New Law, presentation by the Management Company of satisfactory evidence of a change in the applicable tax law or the interpretation thereof, or a final determination by the Internal Revenue Service which, in the opinion of the Board of the Offshore Fund would cause the Management Company to be subject to current income taxes with respect to applicable amounts.

Keith Meister  
525 West 22<sup>nd</sup> Street  
New York, NY 10011

June 1, 2005

Icahn Management LP  
Icahn Onshore LP  
Icahn Offshore LP  
The Icahn Related Entities  
767 Fifth Avenue  
New York, New York 10153

Re: Agreement dated as of December 31, 2004 (the "Agreement"), by and between Icahn Management LP (the "Management Company"), Icahn Onshore LP, Icahn Offshore LP, the Icahn Related Entities (as defined in the Agreement) and Keith Meister ("Employee") (capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement)

Dear Sirs:

The purpose of this letter is to clarify certain terms of Employee's employment with the Management Company and the Icahn Related Entities.

Under Section 7 of the Agreement Employee is entitled to base salary of \$500,000 per annum. Employee hereby acknowledges that it is his understanding under the Agreement, and Employee hereby agrees, that such base salary to be paid under the Agreement in any calendar year is to be reduced by an amount equal to the \$250,000 cash salary paid to Employee in respect of such year by or on behalf of American Property Investors, Inc., American Real Estate Holding LP or American Real Estate Partners LP.

In WITNESS WHEREOF, the undersigned has executed this letter as of the date first written above.



Keith Meister

AMENDMENT NO. 1  
OF AGREEMENT MADE AS OF  
THE 31<sup>ST</sup> DAY OF DECEMBER, 2004

The parties hereto entered into that certain Agreement made as of the 31st day of December 2004 (the "Original Agreement") by and between Icahn Management LP (the "Management Company" or "Employer"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), Icahn Associates Corp. ("IAC"), High River Limited Partnership ("High River") and any entity beneficially owned 100% by Carl C. Icahn which has its offices at 767 Fifth Avenue, New York, New York 10153, for so long as it remains beneficially owned 100% by Carl C. Icahn (the "Icahn Entities") (IAC, High River and the Icahn Entities together being the "Icahn Related Entities"), and Keith Meister residing at 525 West 22<sup>nd</sup> Street, New York, NY 10011 ("Employee" or "you"). Capitalized terms used herein but not defined herein, shall have the meanings attributed to them in the Original Agreement.

The parties hereto desire to supplement the rights of Employee under the Original Agreement by providing to the Employee the additional rights set forth in Sections 1 and 2 below and to modify the Original Agreement as set forth in Sections 3 and 4 below, all to be effective at 12:01 A.M. January 1, 2006. It is the intent of the parties, through these provisions, amendments and modifications to:

- (i) provide to Employee, during the Term, with an interest as a limited partner in the Management Company equal to 1.5% of the net management fees paid during the Term by the Funds from and after January 1, 2006, (being the management fee net of expenses of the Management Company), such amount to be distributed promptly following each payment of such management fees to the Management Company;
- (ii) increase the Employee's participation during the Term in the incentive allocations from the Funds made during the Term on and after December 31, 2006 by 1.5%, such amounts to be distributed promptly following each December 31 during the Term;
- (iii) reduce the rights of the Employee under the Original Agreement in management fees earned from and after January 1, 2006 to an interest in 2.5% of the net management fees (being the management fee net of expenses of the Management Company); and
- (iv) preclude the Employee from working, individually or on behalf of others, in the asset management or similar businesses for a 12 month period following the cessation of his employment under the Original Agreement, as amended by this Amendment No. 1.

3. Application of Expenses under Original Agreement. Section 9 of the Original Agreement is hereby amended by the addition of the following as clause (iv) thereof:

(iv) Notwithstanding any other term of this Agreement, from and after January 1, 2006, the participation of the Employee in all amounts in respect of Management Fees (including, without limitation, as contemplated in Section 9(i) of this Agreement above and including any and all Management Fee Participation, Profit Participation and Vested Amounts attributable thereto) shall be calculated based solely upon the Net Management Fee (as defined below). The "Net Management Fee" shall equal the Management Fee paid to the Management Company in any year net of the expenses incurred by the Management Company in such year (such expenses in any year to be limited to the Annual Expense Cap, as defined below).

The "Annual Expense Cap" shall mean the Base (as defined and adjusted below). The "Base" shall mean \$25,000,000 per annum if the aggregate contribution to the Funds from time to time is \$3 billion or less. If the aggregate contribution to the Funds from time to time is over \$3 billion the Base shall be adjusted upward, proportionally (based on \$100 million investment increments) to reflect the dollar amount by which aggregate contributions to the Funds from time to time exceed \$3 billion.

4. Non-Compete. The introductory language of Section 19 of the Original Agreement and Section 19 (i) of the Original Agreement is amended and restated in its entirety as follows:

19. Competitive Services. During the Term and for a period of one (1) year after Employee ceases to be employed under this Agreement for any reason, including, but not limited to, the expiration of the term of employment hereunder, Employee will not:

(i) invest in, participate in, engage in the business of investing, managing, raising or pooling, of cash or other assets for investment in private or public debt or equity, either individually or with any person, entity, venture, vehicle, limited liability company, business, fund, partnership, corporation, agency, proprietorship or any other enterprise (whether or not conducted for profit) (each a "Covered Business") or group of Affiliated Covered Businesses (including, without limitation, any hedge fund, mutual fund, investment company, managed account, fund of funds or other vehicles for the investment or management of money or assets),

prohibit his activities as set forth above throughout the world. The Employee acknowledges and agrees that the provisions of this Section 19(i) are fair and reasonable and necessary to protect the business, reputation, goodwill and franchise of the Icahn Related Entities. Employee acknowledges that, in light of the significant compensation of Employee, Employee is voluntarily entering into this provision and is well able to comply with its provisions without hardship.

5. Miscellaneous.

i) Amendments and Waivers. No provisions of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by Employee and the Other Parties. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement. Notwithstanding anything herein to the contrary, the Other Parties may amend this Agreement (and such amendment shall be binding upon Employee) at any time, retroactively or otherwise, without Employee's consent, to comply with Section 409A of the Code and the Regulations thereunder. Employer will take such actions as Employer considers reasonable (without any obligation to pay money) in order to help mitigate the adverse effect of any such amendment.

ii) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Agreement.

iii) Severability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect.

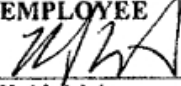
iv) Judicial Modification. If any court or arbitrator determines that any of the covenants in Section 19 of the Original Agreement (as amended by Section 4 above), or any part of any of them, is invalid or unenforceable, the remainder of such covenants and parts thereof shall not thereby be affected and shall be given full effect, without regard to the invalid portion. If any court or arbitrator determines that any of such covenants, or any part thereof, is invalid or unenforceable because of the geographic or temporal scope of such provision, such court or arbitrator shall reduce such scope to the extent necessary to make such covenants valid and enforceable.

v) Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and assign of the Other Parties. Employee

6. Continued Effect. Except as expressly amended or modified as set forth herein, all terms and provisions of the Original Agreement shall continue in full force and effect. From and after the cessation of the employment of Employee under the Original Agreement for any reason, Employee shall have no right to obtain any payment, distribution, allocation or economic or other benefit under, as a result of, or arising from, Sections 1 and 2 of this agreement (whether directly or indirectly, under any limited partnership agreement or otherwise), other than the right to be paid amounts due and required to be paid on or prior to the date of such cessation of employment.

In WITNESS WHEREOF, undersigned have executed this Agreement as of January 1, 2006.

EMPLOYEE

  
Keith Meister

Icahn Management LP

By: 

Name:

Title:

Icahn Onshore LP

By: 

Name:

Title:

Icahn Offshore LP

By: 

Name:

Title:

ICAHN RELATED ENTITIES

By: 

Carl C. Icahn

[Signature page to Keith Meister Employment Agreement Amendment No. 1 providing: (i) additional 1.5% participation in management fees net of expenses and incentive fees, (ii) causing existing participation in management fees to also be net of expenses; and (iii) expanding non-compete following 1 year period from cessation of employment, to prohibit any money management or related activities.]

Keith Meister  
525 West 22<sup>nd</sup> Street  
New York, NY 10011

March 14, 2006

Icahn Management LP  
Icahn Onshore LP  
Icahn Offshore LP  
The Icahn Related Entities  
767 Fifth Avenue  
New York, New York 10153

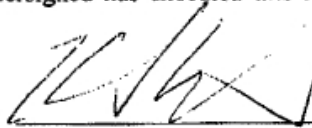
Re: Agreement dated as of December 31, 2004, as amended by Amendment No. 1 thereto dated as of January 1, 2006 (collectively, the "Agreement"), by and between Icahn Management LP (the "Management Company"), Icahn Onshore LP, Icahn Offshore LP, the Icahn Related Entities (as defined in the Agreement) and Keith Meister ("Employee") (capitalized terms used but not defined herein shall have the meanings given such terms in the Agreement)

Dear Sirs:

The purpose of this letter is to clarify certain terms of Employee's employment with the Management Company and the Icahn Related Entities.

Under Section 7 of the Agreement, Employee is entitled to base salary of \$500,000 per annum. Employee hereby acknowledges that it is his understanding under the Agreement, and Employee hereby agrees, that such base salary to be paid under the Agreement in any calendar year is to be reduced by an amount equal to the aggregate director fees actually paid to Employee in respect of such year by or on behalf of American Property Investors, Inc., American Real Estate Holding LP or American Real Estate Partners LP.

In WITNESS WHEREOF, the undersigned has executed this letter as of the date first written above.



Keith Meister



Keith Meister  
525 West 22<sup>nd</sup> Street  
New York, NY 10011

April 11, 2006

Icahn Management LP  
Icahn Onshore LP  
Icahn Offshore LP  
The Icahn Related Entities  
767 Fifth Avenue  
New York, New York 10153

Re: Agreement dated as of December 31, 2004 (the "Employment Agreement"), as amended by Amendment No. 1 thereto dated as of January 1, 2006 (the "Amendment") (the Employment Agreement, as modified by the Amendment, and as may be from time in the future further amended, supplemented, modified, replaced or superseded, is hereinafter referred to as the "Amended Employment Agreement"), by and between Icahn Management LP (the "Management Company"), Icahn Onshore LP, Icahn Offshore LP, the Icahn Related Entities (as defined in the Amended Employment Agreement) and Keith Meister (the "Employee") (capitalized terms used but not defined herein shall have the meanings given such terms in the Amended Employment Agreement)

Dear Sirs:

On September 30, 2004, the Management Company and certain of its affiliates entered into an agreement (the "Aegis Agreement") with Aegis Capital Corp. ("Aegis") and Robert Hurst ("Hurst"), pursuant to which Mr. Hurst, as a registered representative of Aegis, was engaged by the Management Company to, among other things, solicit purchasers for limited partnership interests and shares in the Funds.

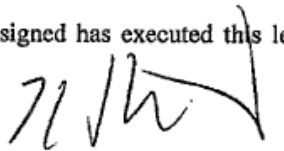
On or about the date hereof, the Management Company, at the request of various parties including the Employee, will enter into an amendment to the Aegis Agreement (the Aegis Agreement, as modified by such amendment, and as may be from time in the future further amended, supplemented, modified, replaced or superseded, is hereinafter referred to as the "Amended Aegis Agreement"), pursuant to which, among other things, Mr. Hurst's engagement will be reinstated and extended.

The Management Company and certain of its affiliates recently entered into the Amendment with the Employee, pursuant to which, among other things, certain provisions of the Employment Agreement were modified. Under the Amended Employment Agreement, the Employee has certain rights to participate in the Management Fee paid to the Management Company in any year net of the expenses incurred by the Management Company in such year.

The purpose of this letter is to clarify certain terms of Employee's employment with the Management Company and the Icahn Related Entities.

Employee hereby acknowledges that the following amounts shall be deemed to be expenses incurred by the Management Company in any year: (i) all amounts paid or allocated in such year to Aegis and/or Hurst by the Management Company pursuant to the Amended Aegis Agreement; (ii) all amounts paid or allocated in such year to Aegis and/or Hurst by the Onshore GP pursuant to the Amended Aegis Agreement; and (iii) all amounts paid or allocated in such year to Aegis and/or Hurst by the Offshore GP pursuant to the Amended Aegis Agreement.

In WITNESS WHEREOF, the undersigned has executed this letter as of the date first written above.

A handwritten signature in black ink, appearing to read 'K Meister', is written over a horizontal line.

Keith Meister

Carl C. Icahn  
767 Fifth Avenue  
Suite 4700  
New York, New York 10153

As of February 1, 2007

Keith Meister  
525 West 22<sup>nd</sup> Street  
New York, NY

Dear Keith:

1. You (the "Employee") are a party to an agreement dated as of December 31, 2004 (the "Original Agreement") as supplemented by Amendment No. 1 thereto ("Amendment No. 1") dated as of January 1, 2006, and between Icahn Management LP (the "Management Company"), Icahn Onshore LP, Icahn Offshore LP (the "Offshore GP"), Icahn Associates Corp. ("IAC"), High River Limited Partnership ("High River") and others (the Original Agreement and Amendment No. 1 shall be referred to herein as the "Existing Agreement" and together with this letter, constituting a single agreement referred to herein as the "Amended Agreement"). Unless otherwise defined herein, capitalized terms used herein will have the meanings attributed to them in the Existing Agreement.

2. As you know, a new fund to be known as Icahn Partners Master Fund II L.P., a Cayman Islands exempted limited partnership ("Master Fund II") has been formed. It will initially receive investments from a newly formed feeder fund known as Icahn Fund II Ltd. ("Feeder Fund II") as well as from Koala Holding limited partnership (which is owned by Carl Icahn) ("Koala") and Icahn Partners Master Fund II Feeder LP, a Delaware limited partnership (the "Employee Feeder"). The Management Company will enter into a management agreement with Feeder Fund II ("Offshore Management Agreement II"). The Offshore GP will serve as the general partner of Master Fund II. In addition, a new feeder fund to be known as Icahn Cayman Partners LP, a Cayman Islands exempted limited partnership ("Feeder Fund III") is being formed which will invest in the Master Fund. The Management Company will enter into a management agreement with Feeder Fund III ("Offshore Management Agreement III"). For the avoidance of doubt, the parties acknowledge and agree that: (i) under and subject to the terms of, Amendment No. 1, the Employee is entitled to receive 1.5% of certain net management fees which payments are to be distributed promptly following each payment of such management fees to the Management Company and 1.5% of certain incentive allocations which payments are to be distributed promptly following each December 31, and the parties agree that the management fees earned by the Management Company under the Offshore Management Agreement II and the Offshore Management Agreement III and the incentive allocations made to the Offshore GP as the general partner of Master Fund II, will be treated in the same manner (subject to the participation percentages, payment terms, netting of expenses and other terms of Amendment No. 1) as provided in Amendment No. 1 with respect to the management fees and incentive

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allocations contemplated therein; and (ii) the amounts referred to in (i) above will not be deferred under paragraph 5 of this letter.

3. This letter will confirm our agreement and understanding that the management fees earned by the Management Company under the Offshore Management Agreement II and the Offshore Management Agreement III and the incentive allocations made to the Offshore GP as the general partner of Master Fund II, will be treated under the Amended Agreement in the same manner (subject to the participation percentages, payment terms, deferrals, netting of expenses, vesting and other provisions of the Amended Agreement) as Management Fees earned under the Management Agreement and Incentive Allocations allocated under the partnership agreement for each of the Domestic Fund and the Offshore Fund, are treated under the Existing Agreement.

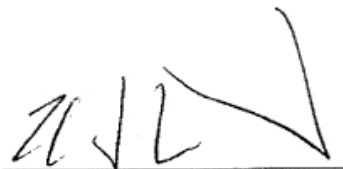
4. With respect to Offshore Management Agreement II and Master Fund II, as is the case with the existing Management Agreement and Funds: (i) no management fees or incentive allocations will be earned or allocated with respect to investments made by Mr. Icahn and his affiliates (such as Koala); and (ii) Mr. Icahn and his affiliates will have the power to waive the application of management fees and incentive allocations to any investments for any person (such as the Employee Feeder) and no management fees will be earned or incentive allocations allocated with respect to such investments. Therefore the amounts payable to the Employee under the Amended Agreements do not take into account any investments made by Mr. Icahn or his affiliates, or any other investments to which management fees or incentive allocations do not apply.

5. Notwithstanding the foregoing or Section 10 of the Original Agreement, the Employee will not have the option of deferring any portion of his Management Fee Participation, as described in Section 9(i) of the Original Agreement, which is attributable to Feeder Fund II or Feeder Fund III with respect to the first fiscal year of each of Feeder Fund II and Feeder Fund III ending December 31, 2007. Instead, 100% of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III with respect to the first fiscal year of each of Feeder Fund II and Feeder Fund III ending December 31, 2007 will be automatically deferred on a mandatory basis to January 30, 2012, subject to earlier payment upon a Terminating Event, as set forth in Section 12 of the Original Agreement. Deferral of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III with respect to fiscal years of each of Feeder Fund II and Feeder Fund III beginning on or after January 1, 2008 shall be in accordance with Section 10 of the Original Agreement. So long as the Offshore Management Agreement II is in effect, the Management Company may, to the extent that it deems such to be possible, defer an amount equal to the amount of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III deferred hereunder under the Deferred Management Fee Agreement dated as of February 1, 2007 between the Management Company and Feeder Fund II (the "Deferred Fee Agreement II") in accordance with the election of the Employee and this Amended Agreement. Management Company will direct Feeder Fund II to invest such deferred amount in Master Fund II to the extent that Feeder Fund II is able to do so, and, if Feeder Fund II is not able to do so, to invest such amounts in U.S. Treasury obligations. Notwithstanding Sections 10 or 12 (reference being made in particular to Section 12(i)) of the Original Agreement to the contrary, the then current value of the Employee's deferred Management Fee Participation attributable to Feeder


Fund II and Feeder Fund III shall be calculated in accordance with the methodology set forth in the Deferred Fee Agreement II. In determining the "Net Management Fees" earned by the Management Company from the Domestic Fund, the Offshore Fund, Feeder Fund II and Feeder Fund III, or any other source, the expenses of the Management Company shall be allocated by the Management Company, acting in a reasonable manner.

Please execute this letter in the space provided below, whereupon it will evidence our mutual agreement with respect to the matters set forth herein.

AGREED AND ACCEPTED:

  
Name: Keith Meister

Very truly yours,  
Icahn Management LP  
Icahn Onshore LP  
Icahn Offshore LP  
and  
Icahn Related Entities

By:   
Name: Carl C. Icahn

[Amendment to include under employment agreement of Keith Meister management fees and incentive allocations from new funds established as of February 1, 2007 and March 1, 2007 (subject to the participation percentages, payment terms, netting of expenses, deferrals, vesting and other terms of the employment agreement)].

**Icahn Associates Corp.**  
**AND AFFILIATED COMPANIES**

**MEMORANDUM**

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**TO:** Keith Meister  
**FROM:** Carl C. Icahn  
**DATE:** April 19, 2007  
**SUBJECT:** Employment Contract

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Each of you is a party to an employment agreement with Icahn Management LP (the "Management Company") and my affiliates, as amended by a letter dated as of February 1, 2007 (the "February Amendment") (each employment agreement, as so amended, the "Amended Agreement"). Each such agreement is hereby amended by the addition of the following:

As you know, a new fund to be known as Icahn Partners Master Fund III L.P., a Cayman Islands exempted limited partnership ("Master Fund III") has been formed. It will initially receive investments from a newly formed feeder fund known as Icahn Fund III Ltd. ("Feeder Fund III") as well as from Koala Holding limited partnership (which is owned by Carl C. Icahn). The Management Company will enter into a management agreement with Feeder Fund III ("Offshore Management Agreement III"). Icahn Offshore LP (the "Offshore GP") will serve as the general partner of Master Fund III.

This memorandum will confirm our agreement and understanding that the management fees earned by the Management Company under Offshore Management Agreement III and the incentive allocations made to the Offshore GP as the general partner of Master Fund III will be treated in the same manner (subject to the participation percentages, payment terms, netting of expenses, vesting and other provisions of the Amended Agreement) as the management fees earned by the Management Company under Offshore Management Agreement II (as defined in the February Amendment) and the incentive allocations made to the Offshore GP as the general partner of Master Fund II (as defined in the February Amendment) are treated under the February Amendment.

Please execute this memorandum in the space provided below, whereupon it will evidence our mutual agreement with respect to the matters set forth herein.

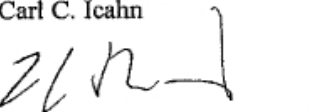
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767 Fifth Avenue, New York, New York 10153, Telephone No. (212) 702-4300, Fax No. (212) 688-1158

Notwithstanding the foregoing or Section 10 of your respective original employment agreements, you will not have the option of deferring any portion of your Management Fee Participation, as described in Section 9(i) of such agreement, which is attributable to Feeder Fund III for its fiscal year ending December 31, 2007. Instead, Section 5 of your respective February Amendment shall apply to you, Feeder Fund III and the management company for such fiscal year and subsequent fiscal years in the same manner as it applies to Feeder Fund II (and the references to the agreements set forth therein shall be deemed references to the corresponding agreements for Feeder Fund III).

AGREED AND ACCEPTED:

  
\_\_\_\_\_  
Carl C. Icahn

  
\_\_\_\_\_  
Keith A. Meister

[Memorandum to include under employment agreements of Keith Meister, management fees and incentive allocations from Icahn Fund III (subject to the participation percentages, payment terms, netting of expenses, vesting and other terms of the respective employment agreements)].

## AMENDMENT

THIS AMENDMENT is made this 8<sup>th</sup> day of August 2007 by and between Icahn Capital Management LP (the "Management Company" or "Employer"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), and Keith Meister residing at 525 West 22<sup>nd</sup> Street, New York, NY 10011 ("Employee" or "you").

### RECITALS:

Employee executed an Agreement dated as of December 31, 2004, as amended (the "Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement) with Icahn Management LP, the Onshore GP, the Offshore GP and the Icahn Related Entities, as defined therein.

Pursuant to a Management Contribution, Assignment and Assumption Agreement dated as of August 8, 2007 between Icahn Management LP and the Management Company (the "Assignment"), Icahn Management LP assigned, transferred and conveyed to the Management Company, effective as of 12:01 a.m., August 8, 2007 (the "Effective Date"), all of its right, title and interest in and to the Agreement, and the Management Company assumed and agreed to perform the liabilities and obligations (the "Assumed Obligations") of Icahn Management LP under the Agreement, other than liabilities and obligations arising prior to the Effective Date, including, without limitation, liabilities and obligations with respect to Employee's Management Fee Participation arising prior to the Effective Date (those liabilities and obligations arising prior to the Effective Date, the "Retained Obligations").

Each of Employer, the Onshore GP and the Offshore GP is owned indirectly by American Real Estate Holdings Limited Partnership, a Delaware limited partnership ("AREH"). The sole limited partner of AREH is American Real Estate Partners, L.P., a Delaware limited partnership ("AREP").

The parties wish to amend the Agreement, as so assigned, such amendments to be effective as of the Effective Date.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Consent**. Employee hereby consents to the assignment of the Agreement pursuant to the Assignment.

2. **Obligations of Icahn Management LP**. Employee acknowledges and agrees that his right, title and interest to, and his obligations with respect to, the Management Fee Participation earned pursuant to the Agreement prior to the Effective Date were not assigned to the Management Company pursuant to the Assignment, and that the portion of the Agreement that relates to such Management Fee Participation has been amended pursuant to the Amendment In Relation to Management Fee Participation dated as of August 8, 2007 between Icahn Management LP, the Fund GPs, the Icahn Related Entities and Employee. Employee further agrees and acknowledges that the Management Company shall have no liability with respect to Employee's Management Fee Participation earned prior to the Effective Date.

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3. **Management Company.** As of and following the Effective Date, all references in the Agreement to “Management Company” or “Employer” shall be deemed to be references to Icahn Capital Management LP. Notwithstanding the foregoing, Employee acknowledges and agrees that the payments made to him by Icahn Management LP prior to the Effective Date pursuant to his right to distribution and payment of an amount equal to 1.5% of the Net Management Fees for the fiscal quarter of the Funds during which the Effective Date occurs shall also be deemed to satisfy, to the extent applicable, the corresponding obligation of the Management Company with respect to Management Fees attributable to the period from the Effective Date through to the end of such fiscal quarter.

4. **Aggregate Rights Undiminished.** The parties agree that the Assignment, which resulted in the separation of the Agreement into two elements (a portion of the Agreement remaining with Icahn Management LP and the balance being assumed by the Management Company) shall not, in the aggregate, diminish or expand the rights or obligations of Employee and, in particular, will not diminish or expand his right to receive payments or other economic rights, in the aggregate. The parties agree that in addition to any other obligations they may have, Icahn Management LP is responsible for performing all of the Retained Obligations, and the Management Company is responsible for performing all of the Assumed Obligations. The parties agree and acknowledge that neither the Assignment nor this Amendment shall release the Other Parties from their obligations under the Agreement, as assigned, and the Other Parties will continue to be responsible for the obligations under the Agreement, as assigned, to the extent they are not performed by the Management Company and its Affiliates. In particular, no incremental cost, if any, that may be incurred by the Management Company and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement entered into pursuant to that certain Contribution and Exchange Agreement dated August 8, 2007 by and among Icahn Management LP, CCI Offshore Corp., CCI Onshore Corp., Carl C. Icahn and AREP (the “Contribution Agreement”), or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution Agreement, or to any expenses incurred because the Management Company will be owned by AREP and its Affiliates (that is, dealing with AREP’s accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement, as assigned. Attached hereto as Annex A is a schedule showing Employee’s accrued but unpaid Profit Participation, including unpaid amounts with respect to his deferred Management Fee Participation and amounts standing to the credit of the Employee Capital Account in respect of his Incentive Allocation Participation, updated through August 4, 2007. The parties agree that, absent manifest error, Annex A accurately sets forth the Profit Participation of the Employee to the date hereof and methodology for the calculation of the matters set forth therein.

5. **Admission as Limited Partner.** Section 2 of the Agreement shall be amended as of the Effective Date by the addition of the following sentence at the end of Section 2:

Employee has also been admitted as a limited partner of the Management Company effective as of the August 8, 2007 (all of which partnership interest and all related rights, powers and privileges shall, without any further act or deed, cease and terminate in all respects on the last day of the Term). References in this Agreement to the “employment” of Employee by the Management Company shall refer to Employee’s limited partnership interest in, and his provision of services as a limited partner to, the Management Company, and all payments to Employee by the Management Company provided for herein shall be reported to Employee by the Management Company on a Form K-1. The rights of Employee as a limited partner of the Management Company, and the duties of the Management Company and its respective partners to Employee as limited partner of the Management Company, shall be limited to those expressly set forth in the Agreement, as hereby amended and as further amended from time to time, and Employee shall have no other rights as a limited partner of the Management Company, whether by virtue of applicable statutory law or otherwise. Employee expressly waives and disclaims any other rights or obligations in favor of Employee.

6. **Deferral of Management Fee Participation.** As of and following the Effective Date, all references in the Agreement to the “Management Fee Participation” shall mean Employee’s Management Fee Participation earned hereunder in respect of periods from and after the Effective Date (which for the avoidance of doubt does not include the 1.5% of the Net Management Fees required to be paid to Employee currently). Such deferred Management Fee Participation shall be deemed to be hypothetically invested in the Offshore Fund, and accruals and payments to Employee under the Agreement with respect to such deferred Management Fee Participation shall be equal to the amount hypothetically invested as the same may be increased or decreased by the actual returns on the amounts hypothetically invested in the Offshore Fund. The Management Company shall be responsible for payment of Employee’s Management Fee Participation earned on and following the Effective Date, together with all hypothetical gains and losses thereon.

7. **Vesting.** Employee’s right to receive any amount or payments in respect of the Profit Participation earned after the Effective Date shall vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee’s periods of service with Icahn Management LP and the Icahn Related Entities commencing January 1, 2005 through the Effective Date, and Employee’s periods of service with the Management Company and the Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, neither the Assignment nor Employee’s ceasing to provide services to Icahn Management LP as of the Effective Date shall result in the accelerated vesting of the Profit Participation pursuant to Section 11 of the Agreement.

8. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

9. **Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Agreement, as assigned, shall remain and continue in full force and effect.

10. **Responsibility of AREP.** AREP shall be jointly and severally responsible for the obligations of the Management Company hereunder.

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

**EMPLOYEE**

/s/ Keith Meister

Keith Meister

Icahn Capital Management LP

By: Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

Icahn Onshore LP

By: Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

Icahn Offshore LP

By: Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

AMERICAN REAL ESTATE PARTNERS, L.P.

By: Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

[Signature page to Amendment to Keith Meister Employment Agreement

**AMENDMENT IN RELATION TO  
MANAGEMENT FEE PARTICIPATION**

This Amendment In Relation to Management Fee Participation (this "Amendment") is entered into effective as of 12.01 a.m. on August 8, 2007 (the "Effective Date") by and between Icahn Management LP, a Delaware limited partnership (the "Original Management Company"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and, together with the Onshore GP, the "Fund GPs"), and Keith Meister residing at 525 West 22<sup>nd</sup> Street, New York, NY 10011 ("Employee").

**RECITALS:**

The parties hereto executed an Agreement dated as of December 31, 2004, which was subsequently amended pursuant to Amendment No. 1 effective as of January 1, 2006 and pursuant to letter agreements dated June 1, 2005, March 14, 2006, April 11, 2006, February 1, 2007 and April 19, 2007 (together, the "Agreement").

Except as otherwise provided herein, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

Pursuant to a Management Contribution, Assignment and Assumption Agreement dated as of August 8, 2007 between the Original Management Company and Icahn Capital Management LP (the "Assignment"), the Original Management Company assigned, transferred and conveyed to Icahn Capital Management LP, effective as of the Effective Date, all of its right, title and interest in and to the Agreement, and Icahn Capital Management LP assumed and agreed to perform the liabilities and obligations (the "Assumed Obligations") of the Original Management Company under the Agreement, other than liabilities and obligations arising prior to the Effective Date, including, without limitation, liabilities and obligations with respect to Employee's Management Fee Participation arising prior to the Effective Date (those liabilities and obligations arising prior to the Effective Date, the "Retained Obligations").

Pursuant to the Agreement, payment of 100% of Employee's Management Fee Participation (which for the avoidance of doubt does not include the 1.5% of the Net Management Fees required to be paid to Employee currently) with respect to each of the 2005, 2006 and 2007 calendar years has been deferred to January 30, 2012, subject to earlier payment upon a Terminating Event, as set forth in Section 12 and Schedule A of the Agreement.

The parties hereto desire to enter into this Amendment to amend, effective as of the Effective Date, that portion of the Agreement that was not subject to the Assignment (the "Original Employment Agreement").

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. **Provision of Services.** Effective on and following the Effective Date, Employee shall cease to provide services to the Original Management Company, but shall remain a limited partner of the Original Management Company. Effective on and following the Effective Date, Employee shall provide services to Icahn Capital Management LP, the Fund GPs and the Icahn Related Entities pursuant to the Agreement, as assigned pursuant to the Assignment and as amended by the Amendment to the Agreement effective as of the Effective Date between Icahn Capital Management LP, the Fund GPs and Employee.

2. **Receipt of Distributions and Payments.** The parties agree and acknowledge that (i) Employee has received from the Original Management Company all distributions and other payments with respect to his 1.5% non-deferred interest in the Net Management Fees earned prior to the Effective Date; (ii) Employee will continue to retain, subject to the terms of the Agreement, his interest in his Management Fee Participation earned prior to the Effective Date, together with hypothetical gains and losses on his deferred Management Fee Participation as if invested in the Master Fund, Master Fund II and Master Fund III consistent with past practice, including gains and losses accruing after the Effective Date, and the Original Management Company will continue to be responsible for payment thereof; (iii) except as contemplated in clause (ii) of this Section 2, Employee will not accrue any further Management Fee Participation on and after the Effective Date with respect to the Original Management Company; (iv) Icahn Capital Management LP shall have no liability with respect to Employee's Management Fee Participation earned prior to the Effective Date or hypothetical gains and losses thereon; (v) Icahn Capital Management LP shall be responsible for payment of Employee's Management Fee Participation earned on and following the Effective Date, together with all hypothetical gains and losses thereon; and (vi) the terms of the Original Employment Agreement relating to the calculation, deferral, vesting, withdrawal and nature of, and all of Employee's rights with respect to, the Management Fee Participation, shall continue to apply, as hereby amended, to the Management Fee Participation earned prior to the Effective Date, and all hypothetical gains and losses thereon.

3. **Vesting.** Following the Effective Date, Employee's right to receive from the Original Management Company any amount or payments in respect of the Management Fee Participation earned prior to the Effective Date, as deferred, shall continue to vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee's periods of service with the Original Management Company and the Icahn Related Entities commencing January 1, 2005 through the Effective Date, and Employee's periods of service with Icahn Capital Management LP and the Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, neither the Assignment nor Employee's ceasing to provide services to the Original Management Company as of the Effective Date shall result in the accelerated vesting of such Management Fee Participation pursuant to Section 11 of the Agreement.

4. **Relationship Between Employee and Original Management Company.** Effective on and after the Effective Date, the relationship between the Original Management Company and Employee shall be governed exclusively by the Original Employment Agreement, as hereby amended, and by the Amended and Restated Limited Partnership Agreement of the Original Management Company dated as of January 1,

2006, as it may be amended from time to time. For the avoidance of doubt, Employee agrees and acknowledges that (i) he has not and shall not have any rights, claim or interest, whether as an allocation of the profits and losses or otherwise, in or in relation to depository units representing limited partnership interests in American Real Estate Partners, L.P. ("AREP") that the Original Management Company may receive pursuant to that certain Contribution and Exchange Agreement dated August 8, 2007 by and among the Original Management Company, CCI Offshore Corp., CCI Onshore Corp., Carl C. Icahn and AREP (the "Contribution Agreement"), or any other right to or interest in the Contribution Agreement or any agreement, document or instrument related thereto, or any proceeds of any of the foregoing or any dividends, earnings or profits thereon, or any earnings or profits derived from any of the foregoing; and (ii) his rights as a limited partner in the Original Management Company includes those (and only those) set forth in his Original Employment Agreement and in this Amendment.

5. **Aggregate Rights Undiminished.** The parties agree that the Assignment, which resulted in the separation of the Agreement into two elements (the Original Employment Agreement remaining with the Original Management Company and the balance being assumed by Icahn Capital Management LP) shall not, in the aggregate, diminish or expand the rights or obligations of Employee and, in particular, will not diminish or expand his right to receive payments or other economic rights, in the aggregate. The parties agree that in addition to any other obligations they may have, the Original Management Company is responsible for performing all of the Retained Obligations, and Icahn Capital Management LP is responsible for performing all of the Assumed Obligations. The parties agree and acknowledge that the Assignment shall not release the Other Parties from their obligations under the Agreement, as assigned, and the Other Parties will continue to be responsible for the obligations under the Agreement, as assigned, to the extent they are not performed by Icahn Capital Management LP and its Affiliates. In particular, no incremental cost, if any, that may be incurred by Icahn Capital Management LP and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement entered into pursuant to the Contribution Agreement, or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution Agreement, or to any expenses incurred because Icahn Capital Management LP will be owned by AREP and its Affiliates following the Effective Date (that is, dealing with AREP's accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement, as assigned. Attached hereto as Annex A is a schedule showing Employee's accrued but unpaid Profit Participation, including unpaid amounts with respect to his deferred Management Fee Participation and amounts standing to the credit of the Employee Capital Account in respect of his Incentive Allocation Participation, updated through August 4, 2007. The parties agree that, absent manifest error, Annex A accurately sets forth the Profit Participation of the Employee to the date hereof and methodology for the calculation of the matters set forth therein.

6. **Term.** The Original Employment Agreement, as hereby amended, shall continue in full force and effect until the earlier of (i) the date on which Employee's Management Fee Participation earned prior to the Effective Date, as deferred, shall have been paid in

full to Employee, or (ii) the expiration of the Term of the Agreement pursuant to Section 6 of the Agreement, as assigned to Icahn Capital Management LP.

7. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

8. **Original Employment Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Original Employment Agreement shall remain and continue in full force and effect with respect to the Management Fee Participation earned prior to the Effective Date, as deferred.

**[The remainder of this page is intentionally left blank]**

In WITNESS WHEREOF, undersigned have executed this Agreement as of the date first written above.

**EMPLOYEE**

/s/ Keith Meister  
Keith Meister

Icahn Management LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

Icahn Onshore LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

Icahn Offshore LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

[Signature page to Amendment to Keith Meister Employment Agreement to reflect the fact that he will remain a limited partner in Icahn Management LP but that he will also become a limited partner of Icahn Capital Management LP]



**AMENDMENT TO  
AGREEMENT DATED DECEMBER 31, 2004**

THIS AMENDMENT (this "Amendment") is made this 1st day of January 2008 by and between Icahn Capital Management LP ("ICM"), Icahn Management LP, Icahn Capital LP (the "Employer"), Icahn Onshore LP (the "Onshore GP"), Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), Icahn Enterprises L.P. ("IELP"), the Icahn Related Entities (as defined below) and Keith Meister residing at 525 West 22<sup>nd</sup> Street, New York, NY 10011 ("Employee" or "you").

**RECITALS:**

Employee executed an Agreement dated as of December 31, 2004 (as amended to date including by this Amendment, the "Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement as amended) with, among others, Icahn Management LP, the Onshore GP, the Offshore GP and the Icahn Related Entities (as defined in the Agreement).

The Agreement was assigned by Icahn Management LP to ICM on August 8, 2007.

Icahn Management LP and ICM have provided administrative and back office services to Icahn Partners LP, Icahn Master Fund LP and certain other fund clients (the "Funds") in consideration of the payment of management fees by the Funds. The management agreements providing for such management fees (the "Management Agreements") were terminated during the first day of January 2008.

The limited partnership agreements of the Funds (the "Fund LPAs") were amended to provide that as of January 1, 2008 (the "Effective Date") (i) the Fund GPs will provide administrative and back office services to the Funds and (ii) the Fund GPs will receive Special Profits Interest Allocations (as defined in the Fund LPAs).

Pursuant to an Assignment dated January 1, 2008, the Employee has assigned, transferred and conveyed to the Fund GPs, effective as of the Effective Date, all his right, title and interest in and to his partnership interests in ICM.

Each of ICM, the Onshore GP, the Offshore GP and the Employer is owned indirectly by IELP.

Under the Agreement, prior to the amendments contemplated herein, Employee is, generally speaking, entitled to the following during the Term:

- a) a 1.5% interest in the net management fees paid during the Term by the Funds from and after January 1, 2006 (being the management fee net of expenses of the Management Company), such amount to be distributed promptly following each payment of such management fees to the Management Company;
  - b) a 2.5% interest in management fees earned between November 3, 2004 and the last day of the Term (which amount will be calculated with respect to management fees for periods from and after January 1, 2006 net of expenses of the Management Company), vesting as set forth in the Agreement;
-

- c) a 1.5% participation in the incentive allocations from the Funds made during the Term on and after December 31, 2006, such 1.5% to be distributed promptly following each December 31 during the Term:
- d) a 2.5% participation in the incentive allocations from the Funds made between November 3, 2004 and the last day of the Term, vesting as set forth in the Agreement.

Pursuant to the various agreements contemplated above, the management agreement and the management fees are being terminated and the general partners of the Funds are going to be receiving Special Profits Interest Allocations from the Funds (together, the "Termination and Allocation"). The parties are entering into this Amendment with the intent of maintaining their economic rights and obligations under the Agreement, as generally summarized above in paragraphs (a) through (d) taking into account the Termination and Allocation and this Amendment should be interpreted to maintain the substance of the rights and obligations set forth in such paragraphs (it being understood by the parties however that under the Agreement as amended hereby the 2.5% interest in management fees will instead come only out of profits (through the Special Profits Interest Allocations) earned by the Funds, if any.

The parties wish the amendments to the Agreement effected hereby to be effective as of the Effective Date.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, effective as of the Effective Date the parties agree as follows:

1. **Management Agreements Termination.** The Employee agrees that although the Management Agreements were in effect for a portion of January 1, 2008 and were then terminated, he is not entitled to any payment in respect of the management fees that were payable thereunder prior to termination for 2008 (or thereafter) inasmuch as the parties to the Management Agreements have agreed that no management fees were accrued or earned thereunder after December 31, 2007.
2. **Employment.** Icahn Capital LP shall be an "Icahn Entity" for all purposes of the Agreement. All references to "Employer" in the Agreement shall be references to Icahn Capital LP.
3. **Amendments to Defined Terms.** For all periods from and after January 1, 2008:
  - A. All references in the Agreement to "the Management Company" shall be references to "the Fund GPs".
  - B. All references in the Agreement to "Management Fees" shall be references to "the Fund GPs' Special Profits Interest Allocations" and all references to "Management Fee Participation" shall be to "Employee's Special Profits Interest Allocation Participation".

C. “The Fund GPs’ Net Special Profits Interest Allocations” shall mean in respect of each year of the Term commencing on or after the Effective Date, each of Onshore GP’s and Offshore GP’s Special Profits Interest Allocations in the Funds less the smaller of: (a) the sum of (i) the costs and expenses borne directly or indirectly by the Fund GPs and their affiliates in providing administrative and back office services to the Funds pursuant to the Fund LPAs (as reasonably determined and, to the extent applicable, consistent with past practices of the Fund GPs and their affiliates) plus (ii) the amount of all Incentive Allocations and Fund GPs’ Net Special Profit Interest Allocations allocated to Aegis Capital Corp. (“Aegis”) pursuant to the agreement among, inter alia, Aegis and the Fund GPs dated April 1, 2006 as amended and (b) the amount of the Annual Expense Cap in effect with respect to such year pursuant to the Agreement (collectively, the “Fund GP Expenses”). Without limiting the generality of the parenthetical contained in clause (a)(i) above, no incremental cost, if any, that may be incurred by the Fund GPs and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement dated August 8, 2007, as amended from time to time, with ICM and IELP or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution Agreement executed on August 8, 2007 in connection therewith, or to any expenses incurred because the Fund GPs will be owned by IELP and its Affiliates (that is, dealing with IELP’s accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement.

4. **Cash Compensation.** For all periods from and after January 1, 2008, Section 7 of the Agreement is hereby amended to provide that the Employee shall be entitled to receive additional Cash Compensation (that is, in addition to his base salary and Bonus as presently provided pursuant to Section 7) each quarter during the Term, commencing with January 1, 2008, equal to 1.5% of (a) minus (b) where (a) equals the aggregate Target Special Profits Interest Amounts (as defined in the Fund LPAs) of the limited partners in the Funds and (b) equals the Fund GP Expenses for such quarter. Such additional Cash Compensation shall be paid in advance on the first business day of each quarter based on a good faith estimate of the Fund GP Expenses that will be incurred by the Fund GPs during such quarter. If, due to any miscalculation or mis-estimation of Fund GP Expenses or any other reason, the Employee shall have been paid in cash more or less than he is entitled to under the Agreement, then an appropriate adjustment shall be made.

5. **Restatement.** For all periods from and after January 1, 2008, Section 9 of the Agreement is hereby amended and restated in its entirety as follows:

9. **Profit Participation.**

i) Subject to all of the terms and provisions of this Agreement (including, without limitation, those relating to vesting and forfeiture) the Employee shall be entitled to receive 2.5% of the Fund GPs’ Net Special Profits Interest Allocations and 4.0% (2.5% of which is subject to vesting and 1.5% of which will be paid annually as provided in paragraph 9(iv) below) of the Incentive Allocations allocated to the Fund GPs during the period from January 1, 2008 through the last day of the Term. If, due to any miscalculation or any other reason, the Employee shall have been allocated more or less than he is entitled to under the Agreement, then an appropriate adjustment shall be made.

ii) The Employee's participation in the Fund GPs' Net Special Profits Interest Allocations and Incentive Allocations for each year shall be reflected by the establishment of capital accounts (the "Employee Capital Accounts") in the name of Employee, as a limited partner, under the Partnership Agreements. As contemplated by the Fund LPAs, all amounts credited to each Employee Capital Account in respect of the Fund GPs' Net Special Interest Allocations and Incentive Allocations will be invested by the Onshore GP in the Onshore Fund and by the Offshore GP in Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "Offshore Funds"), in each case for the benefit of the Employee Capital Account established in the Onshore GP or Offshore GP, as the case may be. The right of the Employee to participate in each of the Fund GPs' Net Special Profits Interest Allocations (the "Employee's Net Special Profits Interest Allocation Participation") and the Incentive Allocations (the "Employee's Incentive Allocation Participation"), subject to and in accordance with the terms of this Agreement, and in any investment made in respect thereof in accordance with the terms of this Agreement and all returns, earnings and profits thereon, are referred to collectively herein as the "Profit Participation".

iii) Subject to the final sentence of this paragraph 9(iii), Employee acknowledges and agrees that pursuant to the terms of this Agreement, Employee will only participate in the Fund GPs' Net Special Profits Interest Allocations and Incentive Allocations allocated from January 1, 2008 until he ceases to be employed hereunder and that if such employment ceases for any reason he will not accrue any further benefit in respect of the Fund GPs' Net Special Profits Interest Allocations or Incentive Allocations allocated thereafter, nor will he have any ongoing rights or interest in respect of the Fund GPs' Net Special Profits Interest Allocations or Incentive Allocations allocated on or prior to the date such employment ceases other than the right to Vested Amounts (as defined below) in respect of Fund GPs' Net Special Profits Interest Allocations and Incentive Allocations allocated on or prior to the date such employment ceases (and any investment made in respect thereof, and all returns, earnings and profits thereon, made in accordance with the terms of this Agreement). Because the Fund GPs' Net Special Interest Allocations and Incentive Allocations are made as of year end (other than in the event of dissolution, partner withdrawal or other events specified in the Fund LPAs, in which event such allocations are made as of the date prior to year end specified in such agreement (the periods in respect of which such allocations are made, each a "Short Period")), in the event that the employment of Employee hereunder ceases, the Employee's Net Special Profits Interest Allocation Participation and Incentive Allocation Participation under this Agreement will include a pro rated portion of 4.0% of the immediately following Fund GPs' Net Special Profits Interest Allocations and Incentive Allocations (based upon the number of days elapsed in the one year period beginning on January 1 of the year in which such employment ceases, divided by 365 (and in the case of a Short Period during which such employment ceases, the number of days elapsed from January 1 of the Short Period until such employment ceases, divided by the total number of days in the Short Period).

iv) Employee's 1.5% share of the Incentive Allocations allocated to the Fund GPs during the period from January 1, 2008 through the last day of the Term pursuant to paragraph 9(i) above shall be distributed to the Employee promptly following each December 31 occurring during the Term.

6. **Prior Rights Undiminished.** The parties agree and acknowledge that (i) except as provided in Section 7 below, the Employee's rights under the Agreement with respect to periods prior to the Effective Date (including, without limitation, with respect to management fees and incentive allocations earned and allocated prior to such date) remain intact and are not amended, affected or diminished in any way by this Amendment and (ii) neither the Assignment nor this Amendment shall release the Other Parties from their obligations under the Agreement, and the Other Parties will continue to be responsible for the obligations under the Agreement, to the extent they are not performed by the Fund GPs, the Employer or their affiliates.

7. **Deferral Termination Trigger.** The Agreement, including without limitation Section 10 and Section(b)(I) of Schedule A thereof and Section 5 of the February 1, 2007 amendment thereof, is amended pursuant to transition relief promulgated under Section 409A of the Internal Revenue Code of 1986, as amended, and contained in Internal Revenue Service Notices 2005-1, 2006-79 and 2007-86 and Section XI(C) of the preamble to REG-158080-04, 2005-43 I.R.B. 786, dated October 4, 2005 (Application of Section 409A to Nonqualified Deferred Compensation Plans), to delete all provisions that would permit or cause any portion of the deferred Management Fee Participation owing by Icahn Management LP or ICM to Employee to be payable to the Employee upon the termination of Management Agreements.

8. **Change in Character.** For all periods from and after January 1, 2008, and after giving effect to Section 7 above, Sections 10 and 21(ix) and Section(b)(I) of Schedule A of the Agreement and Section 5 of the February 1, 2007 amendment to the Agreement are deleted in their entirety except with respect to the portions of the Management Fee Participation that were properly deferred pursuant to the Agreement prior to January 1, 2008. For the avoidance of doubt and without limiting Section 6 above, such sections (exclusive of the third sentence of Section 5 of the February 1, 2007 amendment to the Agreement which is deleted for all purposes) shall continue to be applicable to the portions of the Management Fee Participation that were properly deferred pursuant to the Agreement in respect of periods to January 1, 2008.

9. **Vesting.** Employee's right to receive any amount or payments in respect of the Profit Participation (other than his 1.5% share of Incentive Allocations payable pursuant to Section 9(iv) of the Agreement) allocated from and after the Effective Date shall vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee's periods of service with Icahn Management LP, ICM and the other Icahn Related Entities commencing January 1, 2005 through the date preceding the Effective Date, and Employee's periods of service with the Employer and the other Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, none of the Assignment, the execution of this Amendment, the termination of the Management Agreements or the Employee's ceasing to provide services to ICM as of the Effective Date shall accelerate vesting of the Profit Participation payable by Icahn Management LP or ICM pursuant to Section 11 of the Agreement. Section 11(C) of the Agreement is amended to substitute "Employer" for the reference to "Management Company".

10. **Withdrawal.** Sections 12(ii) and 13 of the Agreement are amended to delete the following text in both places where it appears: "(calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP)".

11. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

12. **Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Agreement, shall remain and continue in full force and effect.

13. **Responsibility of IELP.** IELP shall be jointly and severally responsible for the obligations of the Employer and the Fund GPs under the Agreement.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

/s/ Keith Meister  
**Keith Meister**

**ICAHN CAPITAL MANAGEMENT LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN MANAGEMENT LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN CAPITAL LP**

By: IPH GP LLC, its general partner  
By: Icahn Enterprises Holding L.P.  
By: Icahn Enterprises G.P. Inc.

By: /s/ Andrew Skobe  
Name: Andrew Skobe  
Title: Chief Financial Officer

**ICAHN ONSHORE LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN OFFSHORE LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN ENTERPRISES L.P.**

By: Icahn Enterprises G.P. Inc., its general partner

By: /s/ Andrew Skobe

Name: Andrew Skobe

Title: Chief Financial Officer

**ICAHN RELATED ENTITIES**

By: /s/ Carl Icahn

Name: Carl Icahn

Title: Authorized Signatory



## AGREEMENT

Agreement made as of the 31st day of December 2004 by and between Icahn Management LP (the "Management Company or "Employer"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), Icahn Associates Corp. ("IAC"), High River Limited Partnership ("High River"), and any entity beneficially owned 100% by Carl C. Icahn which has its offices at 767 Fifth Avenue, New York, New York 10153, for so long as it remains beneficially owned 100% by Carl C. Icahn (the "Icahn Entities") (IAC, High River and the Icahn Entities together being the "Icahn Related Entities"), and Vincent J. Intrieri residing at 1675 York Avenue, Unit 4K, New York, NY 10128 ("Employee" or "you").

### RECITALS:

The purpose of this agreement (the "Agreement") is to set forth the terms and conditions of Employee's admission as a limited partner of the Fund GPs and of his employment with the Management Company and the Icahn Related Entities.

The Fund GPs provide investment management and certain administrative services to Icahn Partners LP, a Delaware limited partnership (the "Domestic Fund" or "Onshore Fund"), and Icahn Partners Master Fund LP, a Cayman Islands exempted limited partnership (the "Master Fund") that serves as the master fund into which substantially all of the assets of Icahn Fund Ltd., a Cayman Islands company (the "Offshore Fund" and together with the Domestic Fund and the Master Fund, the "Funds") are invested. The Management Company provides certain administrative and management services to the Funds.

Pursuant to the terms of separate management agreements (each a "Management Agreement") with each of the Domestic Fund and the Offshore Fund, the Management Company is entitled to receive management fees on a quarterly basis (the "Management Fees"). Pursuant to the partnership agreements for each of the Domestic Fund and the Master Fund, the Onshore GP and the Offshore GP may receive "Incentive Allocations" (as defined in those partnership agreements).

Employee and the Icahn Related Entities entered into an agreement with the parties hereto dated as of December 30, 2004, and an employment agreement dated as of December 31, 2001, the term of which expires on December 31, 2004 (both such employment agreements, together the "Prior Agreement") which terminated and superseded the first employment agreement between those parties dated October 6, 1998 (the "First Agreement").

The parties hereto desire to enter into this Agreement dated as of the date hereof, which shall and hereby does, terminate and supersede the Prior Agreement. Their relationship shall hereafter be governed exclusively by this Agreement.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Employment:** Subject to the terms of this Agreement, each of Employer and the Icahn Related Entities hereby employs Employee to perform the duties described in Section 3 below, and Employee hereby accepts such employment. Employee's title shall be Managing Director.
2. **Admission as Limited Partner.** Employee will be and, hereby is, admitted as a limited partner of each of the Fund GPs as of November 3, 2004. The rights of the Employee as a limited partner shall be limited to those expressly set forth in Sections 2 and 9 and in Sections 11 through 16 below and Employee shall have no other rights as a limited partner of the Fund GPs, whether by virtue of applicable statutory law or otherwise. The duties of the Fund GPs and their respective partners to Employee, as a limited partner of the Fund GPs, shall be limited to those expressly set forth in this Agreement. Employee expressly waives and disclaims any other rights or obligations in favor of Employee. As a condition of such admission, Employee agrees to execute and deliver to the Fund GPs the limited partnership agreement of each Fund GP and all amendments, restatements, supplements or modifications (each limited partnership agreement, as amended, restated, supplemented or modified from time to time, a "Partnership Agreement" and together, the "Partnership Agreements") and all other agreements, documents and certificates related thereto, as may be requested of Employee from time to time. Those agreements, documents and certificates shall include such terms as shall be determined by Carl C. Icahn and his Affiliates in their sole discretion, so long as they are not inconsistent with the rights of Employee expressly set forth in this Agreement. At any time following expiration of the Term (as defined herein) the partnership interests of the Employee in each Fund GP may be terminated by each Fund GP by the giving of written notice thereof to Employee. Such termination shall be effective upon the payment to the Employee of an amount (the "Payment") equal to the Maximum Available Amount (as defined in Section 13 below) as of the date of such notice or \$1.00 (one dollar) if the Maximum Available Amount as of that date is \$0 or less than \$0; provided that if the Employee is 100% vested (as provided in Section 11 hereof) at such time then the Payment shall be equal to the balance of the Employee Capital Account in such Fund GP. The partnership interests of the Employee in the Fund GPs may not, without the consent of the general partner thereof (which may be granted or withheld in its sole and absolute discretion), be directly or indirectly pledged, assigned, hypothecated, transferred or otherwise disposed of. In no event will the Employee be entitled to receive or participate in any distribution from or being made by the Fund GPs except as expressly set forth herein. The Employee shall perform those duties for the Fund GPs contemplated in Section 3 below. Employee will make a capital contribution of \$5,000 to each of the Fund GPs.
3. **Duties.** Employee shall be employed to act as a senior executive officer to provide the types of services he has previously provided during his employment with Carl C. Icahn ("Icahn") and his Affiliates, and to perform credit analysis, research, and transaction analysis and such other investment analysis and to perform such other duties, for Employer, the Fund GPs, the Icahn Related Entities or other Affiliates of Icahn as Employer or the Icahn Related Entities shall request from time to time. Employee agrees to devote his full business time and reasonable best efforts to such duties.

4. **Benefits.** During the Term (as defined herein) Employee shall be entitled to 3 weeks of paid vacation annually and shall be entitled to participate in all benefit programs and plans for which he is eligible, which are made available to all senior executive employees of Icahn Related Entities. Additionally, during the Term, Employee shall have the opportunity to invest his personal funds in the Domestic Fund and the Offshore Fund in accordance with the terms of such funds at such time as such Funds are accepting additional funds. Neither such investment, Employee's Management Fee Participation nor Employee's Capital Account (as such terms are defined herein) shall be assessed any management fee, incentive allocation, exit fee, entrance fee or similar fee.

5. **Prior Agreements.** Effective on December 31, 2004 (the "Effective Date"), the Prior Agreement shall terminate and no further obligations and/or entitlements under the Prior Agreement shall exist, provided that Employee shall remain liable for any breach thereof occurring on or prior to the Effective Date.

6. **Term.** The term of employment under this Agreement shall be for a period of seven years commencing on January 1, 2005 and ending on December 31, 2011 unless such employment ceases earlier for any reason (See Section 8 below) (whether: (i) terminated for Cause; (ii) terminated without Cause; (iii) due to death; (iv) or by the action of Employee such as resignation or retirement). For all purposes under this Agreement "Term" shall mean the period from January 1, 2005 through the last day of Employee's employment hereunder.

7. **Cash Compensation.** During the Term, the Icahn Related Entities agree to pay to Employee and Employee agrees to accept, as his cash compensation for all services to be rendered under this Agreement, a base salary at a rate of \$400,000 per annum, which shall be earned and payable every two weeks, plus a bonus ("Bonus") (such base salary and Bonus together "Cash Compensation") in respect of each calendar year during the Term, to be paid at Employee's option either in the last month of the same, or the first month of the next, calendar year (except that, with respect to the calendar year ending in the year in which the employment of Employee hereunder ceases, the Bonus shall be paid in the last month of such calendar year). The amount of any and all Bonuses paid or payable under this Section 7 of this Agreement shall be solely within the discretion of the Icahn Related Entities but shall be no less than \$1,000,000 and no more than \$1,250,000 in respect of each calendar year during the Term. All payments of base salary and Bonus shall be made in cash and shall be subject to applicable deductions, and to payroll and withholding taxes as required by law.

8. **Cash Compensation/Early Termination.**

i) **Power of Termination.** The Employer or the Icahn Related Entities, or any or all of such entities, may terminate the employment of Employee under this Agreement on behalf of and in respect of all persons employing Employee hereunder, at any time, with Cause, or in the sole and absolute discretion of Employer or the Icahn Related Entities, without Cause. For purposes of this Agreement the term "Cause", shall mean (i) Employee's material breach of this Agreement provided, however, that disability shall not be considered Cause, (ii) Employee's conviction of a criminal violation of Applicable

Law (as hereinafter defined), (iii) Employee's conviction for a felony violation (other than traffic violations), (iv) Employee's conviction for securities law violations, (v) Employee's breach of the confidentiality provision of this Agreement or (vi) Employee's resignation before January 1, 2012. For purposes hereof, the term "Applicable Law" shall mean any law, rule or regulation ("Law") relating in any way to the activity of investing or trading in securities or other Law that is violated during the course of the Employee's performance of services hereunder. Employee shall not be deemed to be in violation of Applicable Law if such violation occurred as a result of action taken at the direction, or with the consent (after full disclosure) of Employer.

ii) Termination for Cause/Resignation. In the event that Employee's employment is terminated for Cause or by the action of Employee such as by resignation or retirement, then the entire amount of the Cash Compensation earned through the date of termination but not yet paid shall be paid to Employee (it being understood and agreed that Employee shall not be entitled to any pro rated Bonus, any Bonus being deemed to be earned only on December 31, of the applicable year of employment if the Employee is still employed hereunder on that date).

iii) Without Cause. In the event that the employment of Employee hereunder is terminated by the Employer or the Icahn Related Entities prior to December 31, 2007 (and not by Employee) without Cause, then Employer shall pay on each normal payroll date to Employee the base salary due to Employee until December 31, 2007, plus a Bonus payment of \$1,000,000 each December 31 remaining from the date of termination to and including December 31, 2007. In the event that the employment of Employee hereunder is terminated by the Employer or the Icahn Related Entities without Cause after December 31, 2007, then Employee shall be paid any Cash Compensation earned through the date of termination and not yet paid and a prorated Bonus payment determined by multiplying \$1,000,000 by a fraction the numerator of which is the number of days elapsed from the most recent prior January 1 until the date of termination and the denominator of which is 365.

iv) Death. In the event of Employee's death during the Term, Employee's employment hereunder shall cease upon such death and Employer shall pay to Employee's estate the entire amount of base salary earned through the date of Employee's death and a prorated Bonus payment determined by multiplying \$1,000,000 by a fraction the numerator of which is the number of days elapsed from the most recent January 1 until the date of death and the denominator of which is 365. Neither the Employee nor the Employee's estate shall be entitled to any further Cash Compensation after the date of death it being understood that this sentence shall not limit the rights of Employee under this Agreement other than the right to receive Cash Compensation pursuant to Section 7 hereof and this Section 8.

#### 9. Profit Participation.

i) Subject to all of the terms and provisions of this Agreement (including, without limitation, those relating to vesting and forfeiture), the Employee shall be entitled to receive 2.5% of the Management Fees and 2.5% of the Incentive Allocations earned by

the Management Company or the Fund GPs, respectively, during the period from November 3, 2004 through the last day of the Term (subject to clause 9(ii) below); provided that if, due to any miscalculations or due to the fact that Management Fees are paid in advance, the Management Company or the Fund GP's are at any time required to return or otherwise pay over any portion of such amount to any of the Funds or their investors then the Employee shall be required to return to the Management Company or the Fund GP's, as applicable, its pro rata share of the amounts so returned or paid over. Employer's participation in the Management Fee is a contractual right, as set forth in Section 21(ix) of this Agreement. Employee's participation in the Incentive Allocation shall be reflected by the establishment of a capital account (the "Employee Capital Account") in the name of Employee, as a limited partner, under the Partnership Agreements. All amounts credited to each Employee Capital Account will be invested by the Onshore GP in the Onshore Fund and by the Offshore GP in the Offshore Fund, in each case for the benefit of the Employee Capital Account established in the Onshore GP or Offshore GP, as the case may be. The right of the Employee to participate in each of the Management Fees (the "Management Fee Participation") and the Incentive Allocations (the "Incentive Allocation Participation"), subject to and in accordance with the terms of this Agreement, and in any investment made in respect thereof in accordance with the terms of this Agreement and all returns, earnings and profits thereon, are referred to collectively herein as the "Profit Participation".

ii) Notwithstanding the other provisions of this Agreement, the Employee shall receive a payment on February 3, 2005 of \$79,943.00 in cash in satisfaction of its rights in respect of the Management Fees accruing from November 3, 2004 through December 31, 2004 (such amount being paid in respect of the Management Fees paid by the Domestic Fund on November 29 and December 21, 2004 and by the Offshore Fund on January 10, 2005).

iii) Subject to the final sentence of this paragraph, Employee acknowledges and agrees that pursuant to the terms of this Agreement, Employee will only participate in Management Fees and Incentive Allocations earned and allocated from November 3, 2004 until he ceases to be employed hereunder and that if such employment ceases for any reason he will not accrue any further benefit in respect of Management Fees or Incentive Allocations earned or allocated thereafter, nor will he have any ongoing rights or interest in respect of Management Fees or Incentive Allocations earned or allocated on or prior to the date such employment ceases; other than the right to Vested Amounts (as defined below) in respect of Management Fees and Incentive Allocations earned or allocated on or prior to the date such employment ceases (and any investment made in respect thereof, and all returns, earnings and profits thereon made in accordance with the terms of this Agreement). Because Incentive Allocations are made as of year end (other than in the event of dissolution, partner withdrawal or other events specified in the partnership agreements of the Master Fund and the Domestic Fund, in which event such allocations are made as of the date prior to year end specified in such agreement (the periods in respect of which such allocations are made, each a "Short Period")), in the event that the employment of Employee hereunder ceases, his Incentive Allocation Participation under this Agreement will include a pro rated portion of 2.5% of the immediately following Incentive Allocation (based upon the number of days elapsed in

the one year period beginning on January 1 of the year in which such employment ceases until the date employment ceases, divided by 365 (and in the case of a Short Period during which such employment ceases, the number of days elapsed from January 1 of the Short Period until such employment ceases, divided by the total number of days in the Short Period).

10. **Deferral of Management Fee Participation.** To the extent that Employer determines that a deferral of the payment of Management Fee Participation as contemplated herein will not constitute current income of such deferred amount to Employee under applicable federal income tax laws, rules and regulations and Employer is able to engage in such deferral under such laws, rules and regulations, Employee's participation in the Management Fees for each calendar year during the Term and all payments in respect thereof shall be deferred, until at least January 30, 2010 or such later date as shall be set forth in an annual election made by the Employee made no later than December 31<sup>st</sup> of the preceding calendar year (no such election to exceed 10 years). So long as the Management Agreement with the Offshore Fund is in effect, an amount equal to all amounts of Employee's Management Fee Participation deferred hereunder will, to the extent that Management Company deems such to be possible, also be deferred by Management Company under its Deferred Fee Agreement (as defined below) with the Offshore Fund in accordance with the election of the Employee and the terms of this Agreement. Management Company will direct the Offshore Fund to invest the amount deferred under this Section 10 in the Master Fund to the extent that it is able to do so and if not able to do so, will invest such funds in US Treasury obligations.

Employee has previously elected to defer his entire Management Fee Participation for the period January 1, 2005 through December 31, 2005 until January 30, 2010.

To the extent that Employer determines that a deferral of the payment of Management Fee Participation as contemplated herein for any period from and after January 1, 2006 will or may constitute current income of such deferred amount to Employee under applicable federal law, rules or regulations, or that Employer is not or may not be, able to engage in such deferral under such laws, rules or regulations: (i) the Employee's right to the Management Fee Participation shall be treated in the same manner (but in respect of the Management Company and Employee) as the Incentive Allocation Participation is treated in respect of the Fund GPs and the Employee, including, without limitation, pursuant to Sections 2, 9, 11, 12(ii), 13, 14, 15 and 16 of this Agreement and all of the provisions of such sections shall apply to Employee and the Management Company in the same manner that such provisions apply to the Employee and the Fund GPs and the Employee shall, in such event, be admitted as a limited partner of the Management Company; provided that the capital account so established on behalf of Employee in the Management Company will not be allocated any portion of the cost or expense of operating the Management Company; or (ii) at the election of the Fund GPs, all such rights shall be reflected by the Fund GPs providing Employee with additional rights in the Fund GPs that provide the same economic interest for Employee as contemplated in clause (i) above.

11. **Vesting.** The right of Employee to receive any amounts or payments in respect of the Profit Participation shall be subject to and limited by, all of the terms and provisions of this Agreement. Employee shall have no rights to receive any amounts or payments in respect of the Profit Participation unless, and then only to the extent that, Employee is vested therein in accordance with the terms of this Agreement (such amounts so vested, the "Vested Amount"). During the Term, the Employee's rights in the Profit Participation shall vest on the following schedule:

- i) 42.857% shall vest on the Effective Date, provided, however, that any right to the Profit Participation shall be deemed forfeited if (x) Employee is terminated by Employer for Cause prior to December 31, 2007; or (y) Employee terminates his employment, whether by resignation or retirement prior to December 31, 2007, (provided that the death of Employee shall not constitute termination by Employer of such employment).
- ii) An additional 14.286% of the Profit Participation shall vest ratably on a monthly basis during the twelve month period ending December 31, 2008.
- iii) An additional 14.286% of the Profit Participation shall vest ratably on a monthly basis during the twelve month period ending December 31, 2009.
- iv) The remaining 28.571% of the Profit Participation shall vest on December 31, 2009, so that on December 31, 2009 the entire Profit Participation shall be fully vested.

Except as provided in clause (i) above, Employee will only vest in Profit Participation during such periods as he continues to be an employee under this Agreement during the Term. All unvested amounts will be forfeited in all respects by Employee on any cessation of his employment under this Agreement.

12. **Withdrawal.**

i) **Management Fee Participation.** The then current value (calculated in accordance with the methodology set forth in the Deferred Management Fee Agreement (the "Deferred Fee Agreement") dated December 29, 2004 between the Offshore Fund and the Management Company) of the amounts deferred and invested as contemplated herein in respect of the Vested Amounts of the Management Fee Participation (the "Applicable Amounts") shall be paid to Employee in cash (subject to clause (iv) below):

- A) following the last day of the respective deferral period thereof as follows: (i) 95% of the Management Company estimate of the amount due shall be paid promptly (but not more than 10 days) after the last date of such deferral period; and (ii) the balance shall be paid promptly (but not more than 10 days) after the completion of: (x) if the last day of such deferral occurs in the month of January, the preparation of the prior year's audited financial statement of the Offshore Fund; and (y) if the last day of such deferral occurs in any other month, the preparation of the current year's audited financial statement of the Offshore Fund; and



- B) as set forth in Schedule A hereto in respect of any Terminating Event (as contemplated in Schedule A) to the extent permissible under applicable law including, without limitation, the New Law (as defined in Section 21(xi) below).

Employee acknowledges that payments are to be made to Employee under this Section 12(i) or otherwise in respect of the Management Fee Participation only with respect to Vested Amounts of the Management Fee Participation, that the term "Applicable Amounts" used herein includes only Vested Amounts of the Management Fee Participation and that in any event no such payment will be made prior to January 1, 2008 for any reason, unless prior to January 1, 2008, Employee dies or his employment hereunder is terminated by Employer without Cause.

ii) Incentive Allocation Participation. Subject to Section 13 below, the then current balance (calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP) of the Employee Capital Account, may be withdrawn by the Employee in cash, subject to clause (iv) below (and without payment of any withdrawal fee) upon 90 days prior written notice. Withdrawals are subject to provision by the Fund GPs for all liabilities of the Fund GP in accordance with applicable laws and regulations and holdbacks for estimated accrued expenses, liabilities and contingencies as determined by the Fund GPs (or their applicable general partner) in good faith.

iii) Fees. Payments to Employee pursuant to Section 12(i) or (ii) shall not be diminished by any withdrawal fee.

iv) Segregated Investments. To the extent that any amount to be withdrawn hereunder has been invested in a Segregated Investment (as defined in the partnership agreement of the Master Fund or the Onshore Fund), then any such amount properly to be withdrawn hereunder will be paid as soon as practicable after the Segregated Investment is realized.

13. Restrictions on Withdrawal. In no event shall the Employee be entitled to make or receive any withdrawal or distribution from a Fund GP if, and no withdrawal or distribution shall be permitted to be made to Employee to the extent that, after taking such withdrawal or distribution into account, the aggregate distributions and withdrawals to Employee at any time from an Employee Capital Account exceed, the Maximum Withdrawal Amount. The maximum amount that, at the time of determination, Employee is permitted to receive by withdrawal or distribution (other than by Tax Distribution) pursuant to the preceding sentence in respect of any Fund GP, is referred to herein as the "Maximum Available Amount". The term "Maximum Withdrawal Amount" shall mean, with respect to any Employee Capital Account, the aggregate percentage of vesting that has occurred pursuant to Section 11 multiplied by the Hypothetical Account. The term "Hypothetical Account" shall mean the sum of (i) the amount of the applicable Employee Capital Account as of the applicable date of determination (calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP); plus (ii) an amount equal to all prior withdrawals and distributions from such account. Employee agrees that he may not make any



withdrawal or receive any distribution from any such capital account, whether or not so vested, prior to January 1, 2008, unless prior to January 1, 2008, Employee dies or his employment hereunder is terminated by Employer, without Cause.

This Section 13, which limits the right of Employee to make withdrawals or receive distributions does not, and shall not be deemed to, limit his right to receive Tax Distributions as contemplated in Sections 15 and 16 below.

14. **Clawback.** Employee agrees that, if prior to the time that the Profit Participation is 100% vested (i) he has received a Tax Distribution and (ii) he has ceased to be employed under this Agreement, then Employee shall pay upon demand to each Fund GP, an amount equal to the Difference. The "Difference" means, with respect to any Fund GP, the amount by which the aggregate distributions and withdrawals made to Employee by such Fund GP exceeds the Maximum Withdrawal Amount on the last day of Employee's employment hereunder, provided that in no event shall the Difference be deemed to exceed the aggregate Tax Distributions made to Employee by such Fund GP. The Fund GPs and the Icahn Related Entities shall be entitled to set off the payment of the Difference from the Employee Capital Accounts or any other assets held or payments owed by any such persons to Employee (so that, for example, amounts payable by Management Company to Employee can be applied to the payment of the Difference). If the Employee's employment has been terminated by Employer for any reason, the sole recourse of a Fund GP in respect of the Difference shall be through such set-offs and the Employee shall not otherwise be obligated to pay the Difference.

15. **Special Distributions.** Employee shall have the right to receive, with respect to each fiscal year of each Fund GP, a distribution from each of his Employee Capital Accounts in an amount equal to his Presumed Tax Liability (as defined below), as determined by the general partners of the applicable Fund GP, arising from allocations in respect of his Employee Capital Account (a "Tax Distribution"). The Fund GP shall distribute to the Employee, if practicable, on February 15<sup>th</sup> or as soon as practicable thereafter but not later than March 30, after the end of a fiscal year, an amount of cash equal to the Employee's Tax Distribution with respect to such fiscal year.

16. **Presumed Tax Liability.** For purposes of Section 15, "Presumed Tax Liability" with respect to each Employee Capital Account for any fiscal year means the regular U.S. federal, state and local income tax liability, as determined by the general partner of the applicable Fund GP, that would have been imposed on the Employee in respect of allocations arising from such capital account for such fiscal year had such income tax liability for all fiscal years been calculated solely by reference to the items (the "Partnership Items") of income, gain, loss and deduction recognized for income tax purposes and allocated to the Employee with respect to his Employee Capital Account. The Presumed Tax Liability shall be computed using the highest marginal personal income tax rates for such year applicable to the character or type of recognized income or gain (for example, ordinary income, long-term capital gains and dividends) allocated to the Employee, and shall take into account any capital loss or net operating loss carryovers from prior fiscal years which would have been utilizable by the Employee for income tax purposes calculated solely by reference to the Partnership Items. For purposes of this

Section 16, any net capital loss or net operating loss calculated for any fiscal year by reference to the Partnership Items shall be carried forward (other than any such loss which is applied pursuant to the following sentence). At the election and in the discretion of the general partner of each Fund GP, if for any fiscal year the Employee has a taxable loss computed by reference to the Partnership Items of an Employee Capital Account and taxable income computed by reference to the Partnership Items of another Employee Capital Account, the Presumed Tax Liability of the account which generated net taxable income shall be computed by taking into account all the Partnership Items of the capital account which generated a net taxable loss. Unless otherwise notified by Employee, it shall be assumed that the Employee is a resident of New York City for income tax purposes.

17. **Representations and Warranties.** Employee represents as follows:

- i) To the best of his knowledge, except as known to Employer, he is not a party to, or involved in, or under investigation in, any pending or threatened litigation, proceeding or investigation of any governmental body or authority or any private person, corporation or other entity.
- ii) Employee has never been suspended, censured or otherwise subjected to any disciplinary action or other proceeding by any State, other governmental entities, agencies or self-regulatory organizations.
- iii) Employee is not subject to any restriction whatsoever which would cause him to not be able fully to fulfill his duties under this Agreement.

18. **Confidentiality of Information.** Except as otherwise required by law, Employee agrees that he will at all times keep material non-public or competitively sensitive information obtained as a result of his employment hereunder confidential. In addition, Employee acknowledges that the performance of the Other Parties and their Affiliates and the rates of return of all such persons (where such measurements are applicable) are and shall be the result of the efforts, skill, knowledge and interaction of all of Employer's traders, analysts and other personnel. Except as required to obtain contractual payments pursuant to the terms of this Agreement, Employee agrees not to disclose the performance results of the Funds, the Icahn Related Entities or other Icahn Affiliates (unless such information is already publicly available other than as the result of a breach of this Agreement by Employee) or represent that he is responsible for those results or that he or his positions achieved any particular rate of return for any of such persons. Employee may describe his employment history with Employer and his job responsibilities with Employer, so long as such description is consistent with the foregoing sentence. In addition, during and after the termination of this Agreement, Employee will keep confidential personal and otherwise non-public information about Mr. Icahn and/or his family.

19. **Competitive Services.** During the three year period following the Effective Date, Employee agrees that he will not seek, consider, discuss with, and/or accept employment with any other person, firm or other entity in which employment Employee is expected to

or will render Competitive Services (as defined below), except in the event that Employee's employment is terminated by Employer for any reason. For the purposes of this Agreement, "Competitive Services" shall mean acting in any position, whether engaged in retail or wholesale activities, in a firm or in a public or private fund (whether such firm or fund engages in either the buy or sell side or both) or otherwise, where Employee has a role relating to the purchase of investments directly or indirectly in distressed securities or other high yield securities or special investments or where Employee provides advice to the firm or its clients or customers regarding such distressed or other high yield securities or regarding bankruptcies or reorganizations.

Anything in this Agreement to the contrary notwithstanding, at any time that Employer has an obligation to pay Employee Cash Compensation during any period during which Employee is no longer employed pursuant to this Agreement, then such obligation to pay shall be reduced dollar for dollar by any amount of compensation of any kind of character which Employee receives from any source whatsoever for services of any kind rendered by Employee to any other person, firm or other entity, whether or not related to the types of services Employee renders to Employer under this Agreement.

20. **Remedy for Breach.** Employee hereby acknowledges that the provisions of Sections 18 and 19 of this Agreement are reasonable and necessary for the protection of the other parties hereto (the "Other Parties") and their Affiliates and are not unduly burdensome to Employee and that Employee acknowledges such obligations under such covenants. Employee further acknowledges that the Other Parties and their respective Affiliates will be irreparably harmed if such covenants are not specifically enforced. Accordingly, Employee agrees that, in addition to any other relief to which the Other Parties may be entitled, including claims for damages, the Other Parties shall be entitled to seek and obtain injunctive relief (without the requirement of any bond) from a court of competent jurisdiction for the purpose of restraining Employee from an actual or threatened breach of such covenants.

21. **Miscellaneous.**

i) **Affiliate.** For purposes of this Agreement the term "Affiliate" (or a person or entity "Affiliated" with another person or entity) and "control" (including the terms "controlling," "controlled by" and "under common control with") shall have the meanings set forth in Rule 405 of Regulation C of the Securities Act of 1933, as amended.

ii) **Entire Agreement.** This Agreement supersedes any and all existing agreements, oral or written, between Employee and any of the Other Parties relating to the terms and conditions of Employee's employment with the Management Company and Employee's admission as a limited partner of each of the Fund GPs or any participation in any of the economic benefits arising from or relating to, the Funds. Employee is not entitled to any other payments or benefits from any of the Other Parties except as expressly provided for herein.

- iii) Amendments and Waivers. No provisions of this Agreement may be amended, modified, waived or discharged except as agreed to in writing by Employee and the Other Parties. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement. Notwithstanding anything herein to the contrary, the Other Parties may amend this Agreement (and such amendment shall be binding upon Employee) at any time, retroactively or otherwise, without Employee's consent to comply with Section 409A of the Code and the Regulations thereunder. Employer will take such actions as Employer considers reasonable (without any obligation to pay money) in order to help mitigate the adverse effect of any such amendment.
- iv) Deferred Fee Agreement. Nothing under the Deferred Fee Agreement will change the rights of Employee under this Agreement.
- v) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Agreement shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Agreement.
- vi) Severability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect.
- vii) Judicial Modification. If any court or arbitrator determines that any of the covenants in Sections 18 or 19, or any part of any of them, is invalid or unenforceable, the remainder of such covenants and parts thereof shall not thereby be affected and shall be given full effect, without regard to the invalid portion. If any court or arbitrator determines that any of such covenants, or any part thereof, is invalid or unenforceable because of the geographic or temporal scope of such provision, such court or arbitrator shall reduce such scope to the extent necessary to make such covenants valid and enforceable.
- viii) Successors; Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and assign of the Other Parties. Employee may not sell, convey, assign, transfer or otherwise dispose of, directly or indirectly, any of the rights, claims, powers or interest established hereunder (including, without limitation, any Profit Participation or partnership or membership interest) other than with the prior written consent (which may be granted or withheld in their sole and absolute discretion) of the Management Company and Carl C. Icahn, provided that the same may, upon the death of Employee, be transferred by will or intestate succession, to his estate, executors, administrators or heirs, whose rights therein shall for all purposes be deemed subject to the terms of this Agreement.

ix) Title to Deferred Amounts. This Agreement constitutes a contractual obligation to make payments in the future in respect of the deferred Management Fees. Title to and beneficial ownership of any assets, whether cash or investments, in respect of each Management Fee shall at all times remain in the Management Company, and Employee shall not have any property interest whatsoever in any of such assets. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between any Employer and the Employee. Any amount of Management Fee which may be invested under the provisions of this Agreement shall continue for all purposes to be a part of the general assets of the Management Company and subject to the claims of its general creditors, and no person other than the Management Company shall by virtue of the provisions of this Agreement have any interest in such amount. To the extent Employee acquires a right to receive all or a portion of any Management Fee under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Management Company.

Notwithstanding any provision to the contrary herein, no provision in this Agreement shall create or be construed to create any claim, right or cause of action against the Management Company or its Affiliates or their respective officers, directors, owners, managers, or advisors arising from any diminution in value in connection with the investment of such Management Fee or the Incentive Allocation in accordance with this Agreement.

x) No Assignment of Management Fee. The right of Employee to the payment of all or a portion of any Management Fee under this Agreement (and any right of the Management Company to any portion of such fee invested in any subaccount with the Master Fund in respect of that portion of such fees in which Employee is entitled to participate hereunder) shall in no event be assigned, transferred, pledged or encumbered, either by Employee or Management Company, and any attempted assignment, transfer, pledge or encumbrance shall be null and void.

xi) New Law. Employee agrees to (and will enter into any agreement that the Fund GP determines is appropriate to reflect) any changes made by any of the Other Parties to the terms hereof and of any related or associated document or agreement if such Other Party determines, in its sole discretion, that such changes are necessary to comply with Section 409A (the "New Law") of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations (the "Regulations") and other guidance of general applicability that is issued thereunder. Those changes will be made in a manner to produce a result, so far as is practical, not inconsistent with the rights of Employee expressly set forth in this Agreement. Employee hereby acknowledges that at all times the deferral of the payment of Management Fee Participation pursuant hereto will be operated in accordance with the requirements of the New Law, to the extent the New Law applies to amounts deferred as contemplated herein.

In addition, Employee hereby agrees and acknowledges that the provisions of this Agreement that allow for the payment of amounts to Employee upon the termination of Employee's service, death, disability and the occurrence of an

unforeseeable emergency will not apply or be available if the Employer determines, in its sole discretion, that the same is advisable in connection with or to assure compliance with, the New Law. Employer shall take the actions contemplated in the final paragraph of Section 10 of this Agreement and such other actions as Employer considers reasonable (without any obligation to pay money) in order to help to mitigate the effect of the foregoing sentence.

Employee is aware that deferral elections are irrevocable by Employee except to the extent allowed by Employer, in its sole discretion, and permissible under the New Law.

xii) Taxes. All payments to Employee shall be subject to applicable deductions, payroll and withholdings taxes, as required by law.

## **22. Other**

i) Employee recognizes that the business of the Employer and the Icahn Related Entities requires that he be on call at any time and as a result Employee is required to maintain an office at his residence which is equipped with a dedicated phone line, fax, personal computer and such other reasonable office equipment which Employee deems to be necessary to conduct the Employers and the Icahn Related Entities business at home.

ii) Employee recognizes that Employer and the Icahn Related Entities may request from time to time that Employee serve on Boards of Directors or as an employee or officer of one or more entities. Should Employee accept such service, Employer and the Icahn Related Entities agree to indemnify and hold harmless the Employee for such requested service. Any remuneration or other property obtained as a result of such service shall remain the property of the Employee.

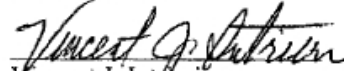
iii) Employee shall follow all policies and procedures and compliance manuals adopted by or in respect of any or all of the Funds, the Fund GPs or the Other Parties. In addition, and not in limitation of the foregoing, Employee agrees to give IAC in writing a list of new personal investments, other than mutual fund investments, to be made by him in any securities and shall prior to the time of placing such orders give IAC reasons for making such personal investments and a list of such orders in writing. Employee shall make no personal investment in a security knowingly, which, in the reasonable written opinion of the Icahn Related Entities at such time of notification by Employee conflicts with an existing investment of the Icahn Related Entities or materially interferes with Employee's ability to conduct his duties. Employee may not knowingly take contrary stock positions or make contrary trades with respect to existing investments of the Icahn Related Entities. With respect to companies in which the Icahn Related Entities and Employee are co-invested and together own greater than 5% where Employee's co-investment is subject to 13D reporting requirements, Employee shall obtain IAC's written consent prior to unilaterally selling Employee's position. With respect to public companies in which the Icahn Related Entities and Employee are co-invested but together own less than 5%, Employee shall also obtain IAC's written consent prior to unilaterally selling his position, provided such consent by IAC shall not be unreasonably withheld

and is provided within two days of when consent is sought. Employee shall disclose to IAC any information regarding Employee necessary to make filings with governmental and/or regulatory authorities.

**[The remainder of this page is intentionally left blank]**

In WITNESS WHEREOF, undersigned have executed this Agreement as of the date first written above.

**EMPLOYEE**

  
Vincent J. Intrieri

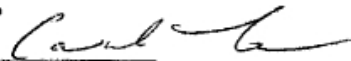
Icahn Management LP

By: 

Name:

Title: Authorized Signatory

Icahn Onshore LP

By: 

Name:

Title: Authorized Signatory


Icahn Offshore LP

By: 

Name:

Title: Authorized Signatory

**ICAHN RELATED ENTITIES**

By:   
Carl C. Icahn

[Signature page to Vince Intrieri Employment Agreement.]

December 31, 2004



## Schedule A

### Terminating Events

(a) If a Terminating Event occurs, amounts shall be paid to Employee as follows:

- (I) Ninety-five percent (95%) of the Applicable Amounts shall be paid to the Employee within 100 days after the month in which a Terminating Event, as described in subsections b(I), (II), (III), (IV) or (VI) below, occurs. The remainder of such amounts shall be paid to Employee promptly after the completion of the audited financial statements of the Offshore Fund for the fiscal year which includes the date upon which such Terminating Event occurs.
- (II) Upon the occurrence of a Terminating Event described in subsection b(V) hereof, 95% of the amount determined by the Management Company pursuant to that subsection to be the amount necessary to satisfy the financial need giving rise to such Terminating Event shall be paid to Employee within 100 days after the month in which such Terminating Event occurs. The remainder of such amounts shall be paid to Employee promptly after the completion of the audited financial statements of the Offshore Fund for the Fiscal Year which includes the date upon which such Terminating Event occurs.

(b) The following events shall each constitute "Terminating Events":

- (I) Solely to the extent permissible under the New Law, the termination of the Management Agreement, unless within 30 days of such termination, the Management Agreement is renewed or the Offshore Fund (or its successor) and the Management Company (or its Affiliate, defined for these purposes as any entity controlling, controlled by, or under common control with the Management Company) enter into a new agreement with substantially the same terms as the Management Agreement;
- (II) Solely to the extent permissible under the New Law, the dissolution or liquidation of the Offshore Fund;
- (III) the death or disability (as defined in Section 409A(a)(2)(C) of the Code and the Regulations thereunder) of the Employee;

- (IV) Solely to the extent permissible under the New Law, except to the extent that Section 409A of the Code and the applicable Regulations provide to the contrary, the employment of the Employee with the Management Company ceases for any reason (whether it is terminated for Cause, terminated without Cause or by the action of Employee such as resignation or retirement (death and disability being addressed in clause b(II) above)), provided, however, that there shall be no Terminating Event if Employee becomes a partner or employee, as the case may be, of the Management Company within 30 days of the termination of such employment or membership;
- (V) written notification by the Employee to the Management Company of an Unforeseeable Emergency (as defined in Section 409A(a)(2)(B)(ii) of the Code and the Regulations thereunder, provided that such term shall not include "disability" as defined in clause b(II) above) with respect to Employee, a determination by the Board of the Management Company (or equivalent body) and the Board of the Offshore Fund that such an Unforeseeable Emergency in fact exists, and a determination by the Board of the Management Company (or equivalent body) and the Board of the Offshore Fund as to the amount needed to satisfy the financial need giving rise to such Unforeseeable Emergency, provided, however, that such amount shall not exceed the amount described in Section 409A(a)(2)(B)(ii)(II) of the Code and the Regulations thereunder; and
- (VI) Solely to the extent permissible under the New Law, presentation by the Management Company of satisfactory evidence of a change in the applicable tax law or the interpretation thereof, or a final determination by the Internal Revenue Service which, in the opinion of the Board of the Offshore Fund would cause the Management Company to be subject to current income taxes with respect to applicable amounts.

Carl C. Icahn  
767 Fifth Avenue  
Suite 4700  
New York, New York 10153

As of February 1, 2007

Vincent J. Intrieri  
1365 York Avenue  
Apartment 28A  
New York, NY 10128

Dear Vince:

1. You (the "Employee") are a party to an agreement dated as of December 31, 2004 between Icahn Management LP (the "Management Company"), Icahn Onshore LP, Icahn Offshore LP (the "Offshore GP"), Icahn Associates Corp. ("IAC"), High River Limited Partnership ("High River") and others (the "Existing Agreement" and together with this letter, constituting a single agreement referred to herein as the "Amended Agreement"). Unless otherwise defined herein, capitalized terms used herein will have the meanings attributed to them in the Existing Agreement.
2. As you know, a new fund to be known as Icahn Partners Master Fund II L.P., a Cayman Islands exempted limited partnership ("Master Fund II") has been formed. It will initially receive investments from a newly formed feeder fund known as Icahn Fund II Ltd. ("Feeder Fund II") as well as from Koala Holding limited partnership (which is owned by Carl Icahn) ("Koala") and Icahn Partners Master Fund II Feeder LP, a Delaware limited partnership (the "Employee Feeder"). The Management Company will enter into a management agreement with Feeder Fund II ("Offshore Management Agreement II"). The Offshore GP will serve as the general partner of Master Fund II. In addition, a new feeder fund to be known as Icahn Cayman Partners LP, a Cayman Islands exempted limited partnership ("Feeder Fund III") is being formed which will invest in the Master Fund. The Management Company will enter into a management agreement with Feeder Fund III ("Offshore Management Agreement III").
3. This letter will confirm our agreement and understanding that the management fees earned by the Management Company under the Offshore Management Agreement II and the Offshore Management Agreement III and the incentive allocations made to the Offshore GP as the general partner of Master Fund II, will be treated under the Amended Agreement in the same manner (subject to the participation percentages, payment terms, deferrals, netting of expenses, vesting and other provisions of the Amended Agreement) as Management Fees earned under the Management Agreement and Incentive Allocations allocated under the partnership agreement for each of the Domestic Fund and the Offshore Fund, are treated under the Existing Agreement.

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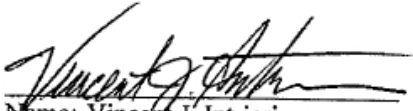
4. With respect to Offshore Management Agreement II and Master Fund II, as is the case with the existing Management Agreement and Funds: (i) no management fees or incentive allocations will be earned or allocated with respect to investments made by Mr. Icahn and his affiliates (such as Koala); and (ii) Mr. Icahn and his affiliates will have the power to waive the application of management fees and incentive allocations to any investments for any person (such as the Employee Feeder) and no management fees will be earned or incentive allocations allocated with respect to such investments. Therefore the amounts payable to the Employee under the Amended Agreements do not take into account any investments made by Mr. Icahn or his affiliates, or any other investments to which management fees or incentive allocations do not apply.

5. Notwithstanding the foregoing or Section 10 of the Existing Agreement, the Employee will not have the option of deferring any portion of his Management Fee Participation, as described in Section 9(i) of the Existing Agreement, which is attributable to Feeder Fund II or Feeder Fund III with respect to the first fiscal year of each of Feeder Fund II and Feeder Fund III ending December 31, 2007. Instead, 100% of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III with respect to the first fiscal year of each of Feeder Fund II and Feeder Fund III ending December 31, 2007 will be automatically deferred on a mandatory basis to January 30, 2010, subject to earlier payment upon a Terminating Event, as set forth in Section 12 of the Existing Agreement. Deferral of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III with respect to fiscal years of each of Feeder Fund II and Feeder Fund III beginning on or after January 1, 2008 shall be in accordance with Section 10 of the Existing Agreement. So long as the Offshore Management Agreement II is in effect, the Management Company may, to the extent that it deems such to be possible, defer an amount equal to the amount of the Employee's Management Fee Participation attributable to each of Feeder Fund II and Feeder Fund III deferred hereunder under the Deferred Management Fee Agreement dated as of February 1, 2007 between the Management Company and Feeder Fund II (the "Deferred Fee Agreement II") in accordance with the election of the Employee and this Amended Agreement. Management Company will direct Feeder Fund II to invest such deferred amount in Master Fund II to the extent that Feeder Fund II is able to do so, and, if Feeder Fund II is not able to do so, to invest such amounts in U.S. Treasury obligations. Notwithstanding Sections 10 or 12 (reference being made in particular to Section 12(i)) of the Existing Agreement to the contrary, the then current value of the Employee's deferred Management Fee Participation attributable to Feeder Fund II and Feeder Fund III shall be calculated in accordance with the methodology set forth in the Deferred Fee Agreement II.

[remainder of this page intentionally left blank]


Please execute this letter in the space provided below, whereupon it will evidence our mutual agreement with respect to the matters set forth herein.

AGREED AND ACCEPTED:



Name: Vincent J. Intrieri

Very truly yours,  
Icahn Management LP  
Icahn Onshore LP  
Icahn Offshore LP  
and  
Icahn Related Entities

By:   
Name: Carl C. Icahn

[Amendment to include under employment agreement of Vincent J. Intrieri management fees and incentive allocations from new funds established as of February 1, 2007 and March 1, 2007 (subject to the participation percentages, payment terms, netting of expenses, deferrals, vesting and other terms of the employment agreement)].

**Icahn Associates Corp.**  
**AND AFFILIATED COMPANIES**

**MEMORANDUM**

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**TO:** Vincent Intrieri  
**FROM:** Carl C. Icahn  
**DATE:** April 19, 2007  
**SUBJECT:** Employment Contract

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Each of you is a party to an employment agreement with Icahn Management LP (the "Management Company") and my affiliates, as amended by a letter dated as of February 1, 2007 (the "February Amendment") (each employment agreement, as so amended, the "Amended Agreement"). Each such agreement is hereby amended by the addition of the following:

As you know, a new fund to be known as Icahn Partners Master Fund III L.P., a Cayman Islands exempted limited partnership ("Master Fund III") has been formed. It will initially receive investments from a newly formed feeder fund known as Icahn Fund III Ltd. ("Feeder Fund III") as well as from Koala Holding limited partnership (which is owned by Carl C. Icahn). The Management Company will enter into a management agreement with Feeder Fund III ("Offshore Management Agreement III"). Icahn Offshore LP (the "Offshore GP") will serve as the general partner of Master Fund III.

This memorandum will confirm our agreement and understanding that the management fees earned by the Management Company under Offshore Management Agreement III and the incentive allocations made to the Offshore GP as the general partner of Master Fund III will be treated in the same manner (subject to the participation percentages, payment terms, netting of expenses, vesting and other provisions of the Amended Agreement) as the management fees earned by the Management Company under Offshore Management Agreement II (as defined in the February Amendment) and the incentive allocations made to the Offshore GP as the general partner of Master Fund II (as defined in the February Amendment) are treated under the February Amendment.

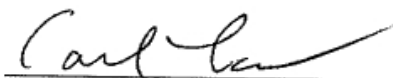
Please execute this memorandum in the space provided below, whereupon it will evidence our mutual agreement with respect to the matters set forth herein.

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767 Fifth Avenue, New York, New York 10153, Telephone No. (212) 702-4300, Fax No. (212) 688-1158

Notwithstanding the foregoing or Section 10 of your respective original employment agreements, you will not have the option of deferring any portion of your Management Fee Participation, as described in Section 9(i) of such agreement, which is attributable to Feeder Fund III for its fiscal year ending December 31, 2007. Instead, Section 5 of your respective February Amendment shall apply to you, Feeder Fund III and the management company for such fiscal year and subsequent fiscal years in the same manner as it applies to Feeder Fund II (and the references to the agreements set forth therein shall be deemed references to the corresponding agreements for Feeder Fund III).

AGREED AND ACCEPTED:

  
Carl C. Icahn

  
Vincent J. Intrieri

[Memorandum to include under employment agreements of Vincent Intrieri, management fees and incentive allocations from Icahn Fund III (subject to the participation percentages, payment terms, netting of expenses, vesting and other terms of the respective employment agreements)].

## AMENDMENT

THIS AMENDMENT is made this 8th day of August 2007 by and between Icahn Capital Management LP (the "Management Company" or "Employer"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), and Vincent J. Intrieri residing at 1365 York Avenue, Apartment 21B, New York, NY 10128 ("Employee" or "you").

### RECITALS:

Employee executed an Agreement dated as of December 31, 2004, as amended (the "Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement) with Icahn Management LP, the Onshore GP, the Offshore GP and the Icahn Related Entities, as defined therein.

Pursuant to a Management Contribution, Assignment and Assumption Agreement dated as of August 8, 2007 between Icahn Management LP and the Management Company (the "Assignment"), Icahn Management LP assigned, transferred and conveyed to the Management Company, effective as of 12:01 a.m., August 8, 2007 (the "Effective Date"), all of its right, title and interest in and to the Agreement, and the Management Company assumed and agreed to perform the liabilities and obligations (the "Assumed Obligations") of Icahn Management LP under the Agreement, other than liabilities and obligations arising prior to the Effective Date, including, without limitation, liabilities and obligations with respect to Employee's Management Fee Participation arising prior to the Effective Date (those liabilities and obligations arising prior to the Effective Date, the "Retained Obligations").

Each of Employer, the Onshore GP and the Offshore GP is owned indirectly by American Real Estate Holdings Limited Partnership, a Delaware limited partnership ("AREH"). The sole limited partner of AREH is American Real Estate Partners, L.P., a Delaware limited partnership ("AREP").

The parties wish to amend the Agreement, as so assigned, such amendments to be effective as of the Effective Date.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Consent**. Employee hereby consents to the assignment of the Agreement pursuant to the Assignment.

2. **Obligations of Icahn Management LP**. Employee acknowledges and agrees that his right, title and interest to, and his obligations with respect to, the Management Fee Participation earned pursuant to the Agreement prior to the Effective Date were not assigned to the Management Company pursuant to the Assignment, and that the portion of the Agreement that relates to such Management Fee Participation has been amended pursuant to the Amendment In Relation to Management Fee Participation dated as of August 8, 2007 between Icahn Management LP, the Fund GPs, the Icahn Related Entities and Employee. Employee further agrees and acknowledges that the Management Company shall have no liability with respect to Employee's Management Fee Participation earned prior to the Effective Date.

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3. **Management Company.** As of and following the Effective Date, all references in the Agreement to “Management Company” or “Employer” shall be deemed to be references to Icahn Capital Management LP.

4. **Aggregate Rights Undiminished.** The parties agree that the Assignment, which resulted in the separation of the Agreement into two elements (a portion of the Agreement remaining with Icahn Management LP and the balance being assumed by the Management Company) shall not, in the aggregate, diminish or expand the rights or obligations of Employee and, in particular, will not diminish or expand his right to receive payments or other economic rights, in the aggregate. The parties agree that in addition to any other obligations they may have, Icahn Management LP is responsible for performing all of the Retained Obligations, and the Management Company is responsible for performing all of the Assumed Obligations. The parties agree and acknowledge that neither the Assignment nor this Amendment shall release the Other Parties from their obligations under the Agreement, as assigned, and the Other Parties will continue to be responsible for their obligations under the Agreement, as assigned, to the extent they are not performed by the Management Company and its Affiliates. In particular, no incremental cost, if any, that may be incurred by the Management Company and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement entered into pursuant to that certain Contribution and Exchange Agreement dated August 8, 2007 by and among CCI Offshore Corp., CCI Onshore Corp., Icahn Management LP, Mr. Icahn and AREP (the “Contribution Agreement”), or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution, or to any expenses incurred because the Management Company will be owned by AREP and its Affiliates (that is, dealing with AREP’s accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement, as assigned. Attached hereto as Annex A is a schedule showing Employee’s accrued but unpaid Profit Participation, including unpaid amounts with respect to his deferred Management Fee Participation and amounts standing to the credit of the Employee Capital Account in respect of his Incentive Allocation Participation, updated through August 4, 2007. The parties agree that, absent manifest error, Annex A accurately sets forth the Profit Participation of the Employee to the date hereof and methodology for the calculation of the matters set forth therein.

5. **Deferral of Management Fee Participation.** As of and following the Effective Date, all references in the Agreement to the “Management Fee Participation” shall mean Employee’s Management Fee Participation earned hereunder in respect of periods from and after the Effective Date. Such deferred Management Fee Participation shall be deemed to be hypothetically invested in the Offshore Fund, or in such other Funds that the Management Company may select from time to time, and accruals and payments to Employee under the Agreement with respect to such deferred Management Fee Participation shall be equal to the amount hypothetically invested as the same may be increased or decreased by the actual returns on the amounts hypothetically invested in the Offshore Fund. The Management Company shall be responsible for payment of Employee’s Management Fee Participation earned on and following the Effective Date, together with all hypothetical gains and losses thereon.

6. **Vesting.** Employee's right to receive any amount or payments in respect of the Profit Participation earned after the Effective Date shall vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee's periods of service with Icahn Management LP and the Icahn Related Entities commencing January 1, 2005 through the Effective Date, and Employee's periods of service with the Management Company and the Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, neither the Assignment nor Employee's ceasing to provide services to Icahn Management LP as of the Effective Date shall result in the accelerated vesting of the Profit Participation pursuant to Section 11 of the Agreement.

7. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

8. **Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Agreement, as assigned, shall remain and continue in full force and effect.

9. **Responsibilities of AREP.** If any amount required to be paid to Employee by Employer hereunder is not paid when due, following written demand by Employee to AREP, AREP shall be responsible for paying all such amounts to Employee.

**[The remainder of this page is intentionally left blank]**

In WITNESS WHEREOF, undersigned have executed this Agreement as of the date first written above.

**EMPLOYEE**

/s/ Vincent J. Intrieri

Vincent J. Intrieri

Icahn Capital Management LP

By: /s/ Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

Icahn Onshore LP

By: /s/ Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

Icahn Offshore LP

By: /s/ Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

American Real Estate Partners, L.P.

By: /s/ Edward Mattner

Name: Edward Mattner

Title: Authorized Signatory

[Signature page to Amendment to Vincent J. Intrieri Employment Agreement]

**AMENDMENT IN RELATION TO  
MANAGEMENT FEE PARTICIPATION**

This Amendment In Relation to Management Fee Participation (this "Amendment") is entered into effective as of 12.01 a.m. on August 8, 2007 (the "Effective Date") by and between Icahn Management LP, a Delaware limited partnership (the "Original Management Company"), Icahn Onshore LP (the "Onshore GP") and Icahn Offshore LP (the "Offshore GP" and, together with the Onshore GP, the "Fund GPs"), and Vincent J. Intrieri residing at 1365 York Avenue, Apartment 21B, New York, NY 10128 ("Employee").

**RECITALS:**

The parties hereto executed an Agreement dated as of December 31, 2004, as subsequently amended (the "Agreement"). Except as otherwise provided herein, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement.

Pursuant to a Management Contribution, Assignment and Assumption Agreement dated as of August 8, 2007 between the Original Management Company and Icahn Capital Management LP (the "Assignment"), the Original Management Company assigned, transferred and conveyed to Icahn Capital Management LP, effective as of the Effective Date, all of its right, title and interest in and to the Agreement, and Icahn Capital Management LP assumed and agreed to perform the liabilities and obligations (the "Assumed Obligations") of the Original Management Company under the Agreement, other than liabilities and obligations arising prior to the Effective Date, including, without limitation, liabilities and obligations with respect to Employee's Management Fee Participation arising prior to the Effective Date (those liabilities and obligations arising prior to the Effective Date, the "Retained Obligations").

Pursuant to the Agreement, payment of 100% of Employee's Management Fee Participation with respect to each of the 2005, 2006 and 2007 calendar years has been deferred to January 30, 2010, subject to earlier payment upon a Terminating Event, as set forth in Section 12 and Schedule A of the Agreement.

The parties hereto desire to enter into this Amendment to amend, effective as of the Effective Date, that portion of the Agreement that was not subject to the Assignment (the "Original Employment Agreement").

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Provision of Services.** Effective on and following the Effective Date, Employee shall cease to be an employee of the Original Management Company. Effective on and following the Effective Date, Employee shall become an employee of Icahn Capital Management LP pursuant to the Agreement, as assigned pursuant to the Assignment and
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as amended by the Amendment to the Agreement effective as of the Effective Date between Icahn Capital Management LP, the Fund GPs and Employee.

2. **Management Fee Participation.** The parties agree and acknowledge that (i) Employee will continue to retain, subject to the terms of the Agreement, his interest in his Management Fee Participation earned prior to the Effective Date, together with hypothetical gains and losses on his deferred Management Fee Participation as if invested in the Master Fund, Master Fund II and Master Fund III consistent with past practice, including gains and losses accruing after the Effective Date, and the Original Management Company will continue to be responsible for payment thereof; (ii) except as contemplated in clause (i) of this Section 2, Employee will not accrue any further Management Fee Participation on and after the Effective Date with respect to the Original Management Company; (iii) Icahn Capital Management LP shall have no liability with respect to Employee's Management Fee Participation earned prior to the Effective Date or hypothetical gains or losses thereon; (iv) Icahn Capital Management LP shall be responsible for payment of Employee's Management Fee Participation earned on and following the Effective Date, together with all hypothetical gains and losses thereon; and (v) the terms of the Original Employment Agreement relating to the calculation, deferral, vesting, withdrawal and nature of, and all of Employee's rights with respect to, the Management Fee Participation, shall continue to apply, as hereby amended, to the Management Fee Participation earned prior to the Effective Date, and all hypothetical gains and losses thereon.

3. **Vesting.** Following the Effective Date, Employee's right to receive from the Original Management Company any amount or payments in respect of the Management Fee Participation earned prior to the Effective Date, as deferred, shall continue to vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee's employment with the Original Management Company and the Icahn Related Entities commencing January 1, 2005 through the Effective Date, and Employee's employment with Icahn Capital Management LP and the Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, neither the Assignment nor Employee's ceasing to provide services to the Original Management Company as of the Effective Date shall result in the accelerated vesting of such Management Fee Participation.

4. **Relationship Between Employee and Original Management Company.** Effective on and after the Effective Date, the relationship between the Original Management Company and Employee shall be governed exclusively by the Original Employment Agreement, as hereby amended. The Original Management Company shall perform all of the Retained Obligations when due.

5. **Aggregate Rights Undiminished.** The parties agree that the Assignment, which resulted in the separation of the Agreement into two elements (the Original Employment Agreement remaining with the Original Management Company and the balance being assumed by Icahn Capital Management LP) shall not, in the aggregate, diminish or expand the rights or obligations of Employee and, in particular, will not diminish or expand his right to receive payments or other economic rights, in the aggregate. The

parties agree that in addition to any other obligations they may have, the Original Management Company is responsible for performing all of the Retained Obligations, and Icahn Capital Management LP is responsible for performing all of the Assumed Obligations. The parties agree and acknowledge that the Assignment shall not release the Other Parties from their obligations under the Agreement, as assigned, and the Other Parties will continue to be responsible for their obligations under the Agreement, as assigned, to the extent they are not performed by Icahn Capital Management LP and its Affiliates. In particular, no incremental cost, if any, that may be incurred by Icahn Capital Management LP and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement entered into pursuant to that certain Contribution and Exchange Agreement dated August 8, 2007 by and among CCI Offshore Corp., CCI Onshore Corp., the Original Management Company, Mr. Icahn and American Real Estate Partners, L.P. ("AREP") (the "Contribution Agreement"), or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution Agreement, or to any expenses incurred because Icahn Capital Management LP will be owned by AREP and its Affiliates following the Effective Date (that is, dealing with AREP's accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement, as assigned. Attached hereto as Annex A is a schedule showing Employee's accrued but unpaid Profit Participation, including unpaid amounts with respect to his deferred Management Fee Participation and amounts standing to the credit of the Employee Capital Account in respect of his Incentive Allocation Participation, updated through August 4, 2007. The parties agree that, absent manifest error, Annex A accurately sets forth the Profit Participation of the Employee to the date hereof and methodology for the calculation of the matters set forth therein.

6. **Term.** The Original Employment Agreement, as hereby amended, shall continue in full force and effect until the earlier of (i) the date on which Employee's Management Fee Participation earned prior to the Effective Date, as deferred, shall have been paid in full to Employee, or (ii) the expiration of the Term of the Agreement pursuant to Section 6 of the Agreement, as assigned to Icahn Capital Management LP.

7. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

8. **Original Employment Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Original Employment Agreement shall remain and continue in full force and effect with respect to the Management Fee Participation earned prior to the Effective Date, as deferred.

[The remainder of this page is intentionally left blank]

In WITNESS WHEREOF, undersigned have executed this Agreement as of the date first written above.

**EMPLOYEE**

/s/ Vincent J. Intrieri  
Vincent J. Intrieri

Icahn Management LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

Icahn Onshore LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

Icahn Offshore LP

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

[Signature page to Amendment to Vincent J. Intrieri  
Employment Agreement with Icahn Management LP]

**AMENDMENT TO  
AGREEMENT DATED DECEMBER 31, 2004**

THIS AMENDMENT (this "Amendment") is made this 1st day of January 2008 by and between Icahn Capital Management LP ("ICM"), Icahn Management LP, Icahn Capital LP (the "Employer"), Icahn Onshore LP (the "Onshore GP"), Icahn Offshore LP (the "Offshore GP" and together with the Onshore GP, the "Fund GPs"), Icahn Enterprises L.P. ("IELP"), the Icahn Related Entities (as defined below) and Vincent J. Intrieri residing at 1675 York Avenue, Unit 4K, New York, NY 10128 ("Employee" or "you").

**RECITALS:**

Employee executed an Agreement dated as of December 31, 2004 (as amended to date including by this Amendment, the "Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Agreement as amended) with, among others, Icahn Management LP, the Onshore GP, the Offshore GP and the Icahn Related Entities (as defined in the Agreement).

The Agreement was assigned by Icahn Management LP to ICM on August 8, 2007.

Icahn Management LP and ICM have provided administrative and back office services to Icahn Partners LP, Icahn Master Fund LP and certain other fund clients (the "Funds") in consideration of the payment of management fees by the Funds. The management agreements providing for such management fees (the "Management Agreements") were terminated during the first day of January 2008.

The limited partnership agreements of the Funds (the "Fund LPAs") were amended to provide that as of January 1, 2008 (the "Effective Date") (i) the Fund GPs will provide administrative and back office services to the Funds and (ii) the Fund GPs will receive Special Profits Interest Allocations (as defined in the Fund LPAs).

Each of ICM, the Onshore GP, the Offshore GP and the Employer is owned indirectly by IELP.

Under the Agreement, prior to the amendments contemplated herein, Employee is, generally speaking, entitled to the following during the Term:

- a) a 2.5% interest in management fees paid between November 3, 2004 and the last day of the Term, vesting as set forth in the Agreement;
- b) a 2.5% participation in the incentive allocations from the Funds made between November 3, 2004 and the last day of the Term, vesting as set forth in the Agreement.

Pursuant to the various agreements contemplated above, the management agreement and the management fees are being terminated and the general partners of the Funds are going to be receiving Special Profits Interest Allocations from the Funds (together, the "Termination and Allocation"). The parties are entering into this Amendment with the intent of maintaining their economic rights and obligations under the Agreement, as generally summarized above in paragraphs (a) through (b) taking into account the Termination and Allocation and this Amendment should be interpreted to maintain the substance of the rights and obligations set forth in such paragraphs (it being understood by the parties however that under the Agreement as amended hereby the 2.5% interest in management fees will instead come only out of profits (through the Special Profits Interest Allocations) earned by the Funds, if any).

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The parties wish the amendments to the Agreement effected hereby to be effective as of the Effective Date.

In consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, effective as of the Effective Date the parties agree as follows:

1. **Management Agreements Termination.** The Employee agrees that although the Management Agreements were in effect for a portion of January 1, 2008 and were then terminated, he is not entitled to any payment in respect of the management fees that were payable thereunder prior to termination for 2008 (or thereafter) inasmuch as the parties to the Management Agreements have agreed that no management fees were accrued or earned thereunder after December 31, 2007.
2. **Employment.** Icahn Capital LP shall be an "Icahn Entity" for all purposes of the Agreement. All references to "Employer" in the Agreement shall be references to Icahn Capital LP.
3. **Amendments to Defined Terms.** For all periods from and after January 1, 2008:
  - A. All references in the Agreement to "the Management Company" shall be references to "the Fund GPs".
  - B. All references in the Agreement to "Management Fees" shall be references to "the Fund GPs' Special Profits Interest Allocations" and all references to "Management Fee Participation" shall be to "Employee's Special Profits Interest Allocation Participation".
  - C. "The Fund GPs' Special Profits Interest Allocations" shall mean in respect of each year of the Term commencing on or after the Effective Date, each of Onshore GP's and Offshore GP's Special Profits Interest Allocations in the Funds. For the avoidance of doubt, no incremental cost, if any, that may be incurred by the Fund GPs and that is attributable to the compensation, bonus or expenses of Carl C. Icahn under his employment agreement dated August 8, 2007, as amended from time to time, with ICM and IELP or to the earn-out payable to Mr. Icahn and his Affiliates under the Contribution Agreement executed on August 8, 2007 in connection therewith, or to any expenses incurred because the Fund GPs will be owned by IELP and its Affiliates (that is, dealing with IELP's accounting and reporting requirements), will diminish any amounts to be accrued or paid to Employee pursuant to the Agreement.
4. **Restatement.** For all periods from and after January 1, 2008, Section 9 of the Agreement is hereby amended and restated in its entirety as follows:

9. **Profit Participation.**

i) Subject to all of the terms and provisions of this Agreement (including, without limitation, those relating to vesting and forfeiture) the Employee shall be entitled to receive 2.5% of the Fund GPs' Special Profits Interest Allocations and 2.5% of the Incentive Allocations allocated to the Fund GPs during the period from January 1, 2008 through the last day of the Term. If, due to any miscalculation or any other reason, the Employee shall have been allocated more or less than he is entitled to under the Agreement, then an appropriate adjustment shall be made.

ii) The Employee's participation in the Fund GPs' Special Profits Interest Allocations and Incentive Allocations for each year shall be reflected by the establishment of capital accounts (the "Employee Capital Accounts") in the name of Employee, as a limited partner, under the Partnership Agreements. As contemplated by the Fund LPAs, all amounts credited to each Employee Capital Account in respect of the Fund GPs' Net Special Interest Allocations and Incentive Allocations will be invested by the Onshore GP in the Onshore Fund and by the Offshore GP in Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP (collectively, the "Offshore Funds"), in each case for the benefit of the Employee Capital Account established in the Onshore GP or Offshore GP, as the case may be. The right of the Employee to participate in each of the Fund GPs' Special Profits Interest Allocations (the "Employee's Special Profits Interest Allocation Participation") and the Incentive Allocations (the "Employee's Incentive Allocation Participation"), subject to and in accordance with the terms of this Agreement, and in any investment made in respect thereof in accordance with the terms of this Agreement and all returns, earnings and profits thereon, are referred to collectively herein as the "Profit Participation".

iii) Subject to the final sentence of this paragraph 9(iii), Employee acknowledges and agrees that pursuant to the terms of this Agreement, Employee will only participate in the Fund GPs' Special Profits Interest Allocations and Incentive Allocations allocated from January 1, 2008 until he ceases to be employed hereunder and that if such employment ceases for any reason he will not accrue any further benefit in respect of the Fund GPs' Special Profits Interest Allocations or Incentive Allocations allocated thereafter, nor will he have any ongoing rights or interest in respect of the Fund GPs' Special Profits Interest Allocations or Incentive Allocations allocated on or prior to the date such employment ceases other than the right to Vested Amounts (as defined below) in respect of Fund GPs' Special Profits Interest Allocations and Incentive Allocations allocated on or prior to the date such employment ceases (and any investment made in respect thereof, and all returns, earnings and profits thereon, made in accordance with the terms of this Agreement). Because the Fund GPs' Net Special Interest Allocations and Incentive Allocations are made as of year end (other than in the event of dissolution, partner withdrawal or other events specified in the Fund LPAs, in which event such allocations are made as of the date prior to year end specified in such agreement (the periods in respect of which such allocations are made, each a "Short Period")), in the event that the employment of Employee hereunder ceases, the Employee's Special Profits Interest Allocation Participation and Incentive Allocation Participation under this Agreement will include a pro rated portion of 2.5% of the immediately following Fund GPs' Special Profits Interest Allocations and Incentive Allocations (based upon the number of days elapsed in the one year period beginning on January 1 of the year in which such employment ceases, divided by 365 (and in the case of a Short Period during which such employment ceases, the number of days elapsed from January 1 of the Short Period until such employment ceases, divided by the total number of days in the Short Period)).

5. **Prior Rights Undiminished.** The parties agree and acknowledge that (i) except as provided in Section 6 below, the Employee's rights under the Agreement with respect to periods prior to the Effective Date (including, without limitation, with respect to management fees and incentive allocations earned and allocated prior to such date) remain intact and are not amended, affected or diminished in any way by this Amendment and (ii) this Amendment shall not release the Other Parties from their obligations under the Agreement, and the Other Parties will continue to be responsible for the obligations under the Agreement, to the extent they are not performed by the Fund GPs, the Employer or their affiliates.

6. **Deferral Termination Trigger.** The Agreement, including without limitation Section 10 and Section(b)(I) of Schedule A thereof and Section 5 of the February 1, 2007 amendment thereof, is amended pursuant to transition relief promulgated under Section 409A of the Internal Revenue Code of 1986, as amended, and contained in Internal Revenue Service Notices 2005-1, 2006-79 and 2007-86 and Section XI(C) of the preamble to REG-158080-04, 2005-43 I.R.B. 786, dated October 4, 2005 (Application of Section 409A to Nonqualified Deferred Compensation Plans), to delete all provisions that would permit or cause any portion of the deferred Management Fee Participation owing by Icahn Management LP or ICM to Employee with respect to periods prior to the Effective Date to be payable to the Employee upon the termination of Management Agreements.

7. **Change in Character.** For all periods from and after January 1, 2008, and after giving effect to Section 6 above, Sections 10 and 21(ix) and Section(b)(I) of Schedule A of the Agreement and Section 5 of the February 1, 2007 amendment to the Agreement are deleted in their entirety except with respect to the portions of the Management Fee Participation that were properly deferred pursuant to the Agreement prior to January 1, 2008. For the avoidance of doubt and without limiting Section 5 above, such sections (exclusive of the third sentence of Section 5 of the February 1, 2007 amendment to the Agreement which is deleted for all purposes) shall continue to be applicable to the portions of the Management Fee Participation that were properly deferred pursuant to the Agreement in respect of periods to January 1, 2008.

8. **Vesting.** Employee's right to receive any amount or payments in respect of the Profit Participation allocated from and after the Effective Date shall vest in accordance with Section 11 of the Agreement, taking into account for such purpose Employee's periods of service with Icahn Management LP, ICM and the other Icahn Related Entities commencing January 1, 2005 through the date preceding the Effective Date, and Employee's periods of service with the Employer and the other Icahn Related Entities from and after the Effective Date. For the avoidance of doubt, none of the execution of this Amendment, the termination of the Management Agreements or the Employee's ceasing to provide services to ICM as of the Effective Date shall accelerate vesting of the Profit Participation payable by Icahn Management LP or ICM pursuant to Section 11 of the Agreement.

9. **Withdrawal.** Sections 12(ii) and 13 of the Agreement are amended to delete the following text in both places where it appears: "(calculated in accordance with the methodology set forth in the Partnership Agreement of the applicable Fund GP)".

10. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and/or to be performed in that State, without regard to any choice of law provisions thereof. All disputes arising out of or related to this Amendment shall be submitted to the state and federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto, but does so only for the purposes of this Amendment.

11. **Agreement in Force.** Except as specifically amended by this Amendment, all terms and provisions of the Agreement, shall remain and continue in full force and effect.

12. **Responsibility of IELP.** IELP shall be jointly and severally responsible for the obligations of the Employer and the Fund GPs under the Agreement.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

/s/ Vincent J. Intrieri  
**Vincent J. Intrieri**

**ICAHN CAPITAL MANAGEMENT LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN MANAGEMENT LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN CAPITAL LP**

By: IPH GP LLC, its general partner  
By: Icahn Enterprises Holding L.P.  
By: Icahn Enterprises G.P. Inc.

By: /s/ Andrew Skobe  
Name: Andrew Skobe  
Title: Chief Financial Officer

**ICAHN ONSHORE LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN OFFSHORE LP**

By: /s/ Edward Mattner  
Name: Edward Mattner  
Title: Authorized Signatory

**ICAHN ENTERPRISES L.P.**

By: Icahn Enterprises G.P. Inc., its general partner

By: /s/ Andrew Skobe

Name: Andrew Skobe

Title: Chief Financial Officer

**ICAHN RELATED ENTITIES**

By: /s/ Carl Icahn

Name: Carl Icahn

Title: Authorized Signatory