

# AGREEMENT OF LIMITED PARTNERSHIP OF THE «PARTNERSHIP»

## I. FORMATION AS A TEXAS LIMITED PARTNERSHIP

This limited partnership is created under the Texas Revised Limited Partnership Act, Article 6132a-1, Vernon's Texas Revised Civil Statutes, this \_\_\_\_ day of «month», «year», among the undersigned General and Limited Partners. This Partnership will become effective upon the execution of this Agreement and the filing of the Certificate of Limited Partnership with the Texas Secretary of State ("Effective Date"). The Partnership will not conduct any business until the Effective Date.

## II. PARTNERSHIP NAME

The name of the partnership is «PARTNERSHIP».

## III. REGISTERED AGENT, REGISTERED ADDRESS, AND PRINCIPAL OFFICE

The registered agent and street address for the Partnership in the State of Texas is: «REG\_AGENT», reg add~. The street address of the Partnership's principal office in the United States is: «prin\_add». All records of the Partnership required by the Act will be maintained at the principal office.

## IV. DEFINITIONS

The use of any of the following defined terms in their uncapitalized form shall indicate that the words have their normal meaning.

**A. "Act"** means the Texas Revised Limited Partnership Act, as amended and any successor statute.

**B. "Additional Proceedings"** is defined in Article XVIII, Section K., of this Agreement.

**C. "Adjusted Capital Account"** means, with respect to a Partner, that Partner's Capital Account after (i) crediting to his Capital Account any amount which the Partner is deemed to be obligated to restore pursuant to the penultimate sentence of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); (ii) crediting to his Capital Account any amount that Partner is unconditionally obligated to contribute to the Partnership under applicable law; and (iii) debiting to the Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6). This definition of Adjusted Capital Account is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and 1.704-2, and will be interpreted consistently with those provisions.

**D. "Adjusted Capital Account Deficit"** means, with respect to a Partner, the deficit balance, if any, in that Partner's Adjusted Capital Account.

**E. "Affiliate"** means, with respect to any Person, any other Person controlling, controlled by, or under common control with that first Person, or, with regard to a Person who is an individual, a member of such Persons family, whether by blood or marriage. As used in this definition, the term "*control*" means (a) with respect to any corporation or other entity having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions, the ownership or power to vote more than fifty percent 50% of shares or the equivalent having the power to vote in the election of directors, managers, or Persons performing similar functions, and (b) with respect to any other entity, the ability to direct its business and affairs.

**F. "Agreed Value"** means the Gross Asset Value of any Contributed Property or distributed property net of any liability assumed or taken subject to by the Partnership or the distributee, as the case may be.

**G. "Agreement"** means this Agreement of Limited Partnership as amended.

**H. "Allocation Regulations"** means Treasury Regulations promulgated under Sections 704(b) and 704(e) of the Code.

**I. "Assignee"** means a person who has acquired all or a portion of an interest in a Partnership Interest by assignment as of the date the assignment of the Partnership Interest has become "effective." As used in this Agreement, the assignment of a Partnership Interest becomes "effective" as of the date on which all of the requirements of an assignment expressed in this Agreement, particularly Article XIII, shall have been met. An Assignee has only the rights granted under Section 7.02 of the Act. An Assignee does not have the right to become a partner except as provided in this Agreement or in Section 7.04 of the Act.

**J. "Appraisal"** means, unless the context indicates otherwise, a written valuation report by an Appraiser that describes and values the fair market value of an ownership interest in the Partnership.

**K. "Appraiser"** means a person or firm qualified to perform business Appraisals of partnerships and ownership interests in the partnerships. The Appraiser must be a member of the American Society of Appraisers, [P. O. BOX 17265, WASHINGTON, D.C. 20041].

**L. "Built-In Gain"** with respect to any Partnership property means (1) as of the time of contribution, the excess of the Gross Asset Value of any Contributed Property over its adjusted basis for federal income tax purposes and (2) in the case of any adjustment to the Carrying Value of any Partnership property pursuant to Article IX, Section B., of this Agreement, the Unrealized Gain.

**M. "Built-In Loss"** with respect to any Partnership property means (1) as of the time of contribution, the excess of the adjusted basis for federal income tax purposes of any Contributed Property over its Gross Asset Value and (2) in the case of any adjustment to the Carrying Value of any Partnership property pursuant to Article IX, Section B, of this Agreement, the Unrealized Loss.

**N. "Capital Account"** shall have the meaning ascribed to it in Article IX of this Agreement.

**O. "Capital Contribution"** means with respect to any Partner, the Agreed Value of any property and the amount of cash contributed to the Partnership. Any reference in this Agreement to the Capital Contribution of a Partner will include a Capital Contribution made by any prior Partner with respect to the Partnership interest of the Partner.

**P. "Carrying Value"** means (1) with respect to any Contributed Property, the Gross Asset Value of the property reduced as of the time of determination by all Depreciation and an appropriate amount to reflect any sales, retirements, or other dispositions of assets included in the property and, (2) with regard to other Property, the adjusted basis of the property for federal income tax purposes as of the time of determination; provided, however, that the Carrying Values shall be further adjusted as provided in Article IX of this Agreement and, at the time of adjustment, the property shall thereafter be deemed to be a Contributed Property contributed as of the date of adjustment.

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

**R. "Contributed Property"** means any property other than cash contributed to the Partnership.

**S. "Default Interest Rate"** means the rate per annum equal to the lesser of (1) the **Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks** as its prime commercial or similar reference interest rate, with adjustments to be made on the same date as any change in the rate, and (2) the maximum rate permitted by applicable law.

**T. "Depreciation"** means, for each taxable year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for the year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of the year or other period, Depreciation will be an amount which bears the same ratio to the beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction of the year or other period bears to the beginning adjusted tax basis, provided that if the federal income tax depreciation, amortization, or other cost recovery deduction for the year or other period is zero, Depreciation will be determined with reference to the beginning Gross Asset Value using any reasonable method selected by the General Partner.

**U. "Distributable Cash"** means, at the time of determination for any period (on the cash receipts and disbursements method of accounting), all Partnership cash derived from the conduct of the Partnership's business, including distributions from entities owned by the Partnership, cash from operations or investments, and cash from the sale or other disposition of Partnership property, other than (1) Capital Contributions with interest earned pending its utilization, (2) financing or other loan proceeds, (3) reserves for working capital, and (4) other amounts that the General Partner reasonably determines should be retained by the Partnership in accordance with the General Partner's discretion under Article XII.

**V. "Effective Date"** means the date when this Partnership becomes effective as defined in Article I of this Agreement.

**W. "Family"** means and their descendants.

**X. "Family Assets"** means all Property owned by the Family, individually or in combination with others, which has been contributed to or acquired by the Partnership.

**Y. "General Partner" or "General Partners"** means the Person(s) designated as General Partner(s) on Schedule A and any successor General Partner(s) pursuant to the terms of this Agreement, but does not include any person who has ceased to be a General Partner in the Partnership.

**Z. "General Partnership Interest"** means the Partnership Interest owned by a General Partner.

**AA. "Gross Asset Value"** means, (i) with regard to property contributed to the Partnership, the fair market value of the property as of the date of the contribution and (ii) as to any property the Carrying Value of which is adjusted pursuant to Article IX, the fair market value of the property as of the date of the adjustment, as the fair market value is determined by the General Partner using any reasonable method.

**BB. "Limited Partner" or "Limited Partners"** means the Person(s) admitted to the Partnership as original, additional or substituted Limited Partners as reflected on Schedule A as amended.

**CC. "Limited Partnership Interest"** means the Partnership Interest owned by a Limited Partner.

**DD. "Liquidator"** means the General Partner or, if there are no remaining General Partners, a person or committee selected by a Majority in Interest of Limited Partners who will commence to wind up the affairs of the Partnership

and to liquidate and sell its properties when there has been a dissolution or termination without reconstitution of the Partnership. "Liquidator" shall also refer to any successor or substitute Liquidator.

**EE. "Majority in Interest"** means those Partners whose Sharing Ratios aggregate more than fifty percent (50%) of the Sharing Ratios of all Partners.

**FF. "Majority in Interest of Limited Partners"** means those Limited Partners whose Sharing Ratios aggregate more than fifty percent (50%) of the Sharing Ratios of all Limited Partners.

**GG. "Partner"** shall mean a partner (whether limited or general) of the Partnership and "Partners" shall mean all the General and Limited Partners of the Partnership.

**HH. "Partnership"** shall mean the limited partnership formed under this Agreement, as constituted or amended.

**II. "Partnership Interest"** means the ownership interest and rights of a Partner in the Partnership, including, without limitation, his right to a distributive share of the Profits and Losses, distributions, and the Property of the Partnership and the right to consent or approve.

**JJ. "Partnership Purposes"** shall be those purposes set out in Article V of this Agreement.

**KK. "Permitted Transferee"** means (1) a spouse of a Partner other than a spouse who is legally separated under a decree of separate maintenance or a spouse who is a party to a pending divorce proceeding; (2) a descendant of a Partner, including descendants by adoption if the adoption was a court adoption of a minor under five (5) years of age; (3) any parent or sibling of a Partner; (4) a descendant of a sibling of a Partner including those by adoption as defined in (2) above; (5) a trust created for the benefit of anyone in (1) through (4) above; (6) any organization described in each of the following sections of the Code: Section 170(b)(1)(A), Section 170(c), Section 2055(a) and Section 2522(a); and (7) a charitable remainder trust created under Section 664 of the Code. A Permitted Transferee, upon receiving a transfer of a Limited Partnership Interest, shall be an Assignee. A Permitted Transferee who has become an Assignee shall have the right to become a substitute Limited Partner by Required Consent. A Permitted Transferee, upon receiving a transfer of a Limited Partnership Interest, shall be a substitute Limited Partner.

**LL. "Person"** means any individual, estate, partnership, corporation, trust, unincorporated association, limited liability company, joint venture or any other entity.

**MM. "Profits" and "Losses"** means for each fiscal year or other period, an amount equal to the Partnership's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1), and any guaranteed payments paid to the General Partner, shall be included in taxable income or loss), with the following adjustments:

1. any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;
2. any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be subtracted from such taxable income or loss;
3. gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for

federal income tax purposes shall be computed by reference to the Carrying Value or Section 704(e) Carrying Value of the property disposed of, as the case may be, notwithstanding that the adjusted tax basis of such property differs from its Carrying Value or Section 704(e) Carrying Value;

4. in lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Depreciation for the taxable year or other period;

5. if the Carrying Value or Section 704(e) Carrying Value, as the case may be, of any Partnership property is adjusted under Article IX, the adjustment will be taken into account as gain or loss from disposition of the asset for purposes of computing Profits or Losses;

6. notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Article X, Section B.5. of this Agreement shall not be taken into account in computing Profits or Losses.

**NN. "Property"** means all real and personal property which has been contributed to or acquired by the Partnership and all increases and decreases applicable to the Property.

**OO. "Required Consent"** means that percentage of Partnership Interest required to admit a new or substitute Limited Partner as defined in Article XIII, Section A., of this Agreement.

**PP. "Regulations"** means Treasury Regulations promulgated under the Code as amended.

**QQ. "70 Percent in Interest"** means those Partners whose aggregate Sharing Ratios equal seventy percent (70%) or more of the Sharing Ratios of all Partners.

**RR. "70 Percent in Interest of Limited Partners"** means those Limited Partners whose aggregate Sharing Ratios equal seventy percent (70%) or more of the Sharing Ratios of all Limited Partners.

**SS. "Section 704(e) Capital Account"** shall have the meaning ascribed to it in Article IX of this Agreement.

**TT. "Section 704(e) Carrying Value"** shall have the meaning ascribed to it in Article IX of this Agreement.

**UU. "Sharing Ratio"** means the ratio of a Partner's Capital Account to the Capital Accounts of all Partners, or, if applicable, the ratio of a Partner's Section 704(e) Capital Account to the Section 704(e) Capital Accounts of all Partners. The initial Sharing Ratios of the Partners as of the Effective Date are set forth on Schedule A. Each Partner's Sharing Ratio is subject to change over time as provided in this Agreement. Section 704(e) Capital Accounts and Section 704(e) Carrying Values are maintained in order to insure that allocations under Article X are made in accordance with Section 704(e) of the Code. Section 704(e) Capital Accounts and Section 704(e) Carrying Values are applicable for determining Sharing Ratios for any period beginning immediately after an adjustment has been made under Article IX, Section C. and ending immediately before any next succeeding adjustment under Article IX, Section B.

**VV. "Unanimous Consent"** means the consent of all Partners.

**WW. "Unrealized Gain"** attributable to a Partnership property means the excess of the Gross Asset Value of the property over the Carrying Value or the Section 704(e) Carrying Value, as the case may be, of the property as of the date of determination.

**XX. "Unrealized Loss"** attributable to a Partnership property means the excess of the Carrying Value or the Section 704(e) Carrying Value, as the case may be, of the property over its Gross Asset Value as of the date of

determination.

## **V. PURPOSES**

**A.** The purpose of the Partnership is to make a Profit, increase wealth, and provide a means for the Family to become knowledgeable of, manage, and preserve Family Assets. The Partnership will accomplish the following:

1. provide resolution of any disputes which may arise among the Family in order to preserve family harmony and avoid the expense and problems of litigation;
2. maintain control of Family Assets;
3. consolidate fractional interests in Family Assets;
4. increase Family wealth;
5. establish a method by which annual gifts can be made without fractionalizing Family Assets;
6. continue the ownership of Family Assets and restrict the right of non-Family to acquire interests in Family Assets;
7. provide protection to Family Assets from claims of future creditors against Family members;
8. prevent the transfer of a Family member's interest in the Partnership as a result of a failed marriage;
9. provide flexibility in business planning not available through trusts, corporations, or other business entities;
10. facilitate the administration and reduce the cost associated with the disability or probate of the estate of Family members; and
11. promote the Family's knowledge of and communication about Family Assets.

**B.** The Partnership is authorized to engage in all business permitted by the Act. If the Partnership qualifies to do business in a foreign jurisdiction, then it may transact all business permitted in that jurisdiction. There is no jurisdictional restriction upon Property or activity of the Partnership.

**C.** To accomplish the Partnership Purposes, the Partnership has, but is not limited to, the following authority:

1. to engage in farming and ranching business; acquire, own, hold, develop, and operate farm and ranching properties, either as operator, managing agent, principal, agent, partner, stockholder, syndicate member, associate, joint venturer, participant, or otherwise; invest in and raise funds for farming and ranching; purchase, construct, acquire, own, develop, operate, lease, mortgage, pledge, sell or otherwise dispose of crops, livestock, and facilities; and do anything necessary or incident to farming and ranching;
2. to engage in the real estate business; acquire, own, hold, develop, and operate real estate properties, either as operator, managing agent, principal, agent, partner, stockholder, syndicate member, associate, joint venturer, participant, or otherwise; invest in and raise funds for real estate development and operation; purchase, construct, acquire, own, develop, operate, lease, mortgage, pledge, sell or otherwise dispose of buildings, fixtures, and improvements; and do

anything necessary or incident to the real estate business;

**3.** to purchase, sell, invest and deal in the following: stocks, bonds, notes, evidences of indebtedness of any Person, domestic or foreign, bonds and any other obligations of any governmental entity, domestic or foreign, bills of exchange and commercial paper, and any other securities; and gold, silver, grain, cotton, and other commodities and provisions usually dealt on exchanges or over-the-counter markets;

**4.** to invest Partnership Property or carry on of trade or business, form all types of business entities or trusts; or acquire general or limited partnership interests in a partnership, membership interests in a limited liability company or a joint venture, shares in a corporation, or interests in any syndication;

**5.** to buy, sell, lease, and deal in services, personal property, and real property; and engage in any other trade, business, or investment activity;

**6.** to buy, sell, trade, exchange, acquire, transfer, assign, lease, develop, manage, and operate oil, gas and other mineral interests, either alone or together with others;

**7.** to operate any lawful business enterprise which accomplishes other Partnership Purposes;

**8.** to guarantee the financial transactions of others, with or without charging a fee;

**9.** to borrow and lend money; and, unless prohibited, allow a Partner to lend money to and transact other business with the Partnership or Partners;

**10.** to invest and reinvest any of the Property or income of the Partnership, whether or not the original purpose for the investment has been accomplished, and it being understood that, until the end of the term of the Partnership, the investment objectives of this Partnership are to continue until the Partnership is dissolved and its affairs wound up.

**11.** to purchase, lease, acquire, sell or dispose of machinery, equipment, buildings and other depreciable property;

**12.** to purchase, lease, acquire, hold, operate, sell, lease or dispose of full or fractional interests in improved or unimproved real and personal property;

**13.** to borrow or raise money by the issuance, acceptance, endorsement or execution of notes, drafts, bills of exchange, warrants, bonds, debentures, instruments or evidences of indebtedness, securing the indebtedness by mortgage, pledge, transfer or assignment in trust of all or any part of the Property; and by selling, pledging or disposing of obligations of the Partnership;

**14.** to operate one or more offices, lease or acquire office space, engage personnel and do all things necessary to operate the office;

**15.** to carry insurance as the General Partner may deem necessary and appropriate;

**16.** to make, enter into, deliver and perform all contracts, agreements or undertakings, pay all costs and expenses and perform all acts deemed appropriate by the General Partner to carry out the Partnership Purposes.

**D.** The General Partner may take any action permitted by this Agreement and the Act to accomplish the Partnership

Purposes. This shall include any act customary or reasonably related to the acquisition, ownership, management, sale, investment, reinvestment, or financing of the Partnership Property. These customary activities shall include, but not be limited to, buying and selling options, short sales, hedging, and purchases on margin.

## **VI. TERM OF THE LIMITED PARTNERSHIP**

This Partnership shall be a term-of-years partnership pursuant to the Act. The Partnership will begin upon the Effective Date and will end on December 31 of the year following the expiration of 50 years from the Effective Date (called "initial term"). The Partnership may continue, by Unanimous Consent, from calendar year to calendar year until terminated as provided in this Agreement (called the "secondary term"), provided, however, that the secondary term shall not be extended beyond . The Partnership may be terminated and dissolved at any time during the initial term or a secondary term by Unanimous Consent unless sooner terminated and wound up in accordance with the Act or this Agreement.

The Partnership shall be a term-of-years partnership pursuant to the Act. The Partnership will begin upon the Effective Date and will end on December 31, . The Partnership may be terminated and wound up at any time by Unanimous Consent unless sooner terminated and wound up in accordance with the Act or this Agreement.

The Partnership shall be a term-of-years partnership pursuant to the Act. The Partnership will begin upon the Effective Date and may not continue beyond December 31, . The Partnership may be terminated and wound up at any time by Unanimous Consent unless sooner terminated and wound up in accordance with the Act or this Agreement.

## **VII. PARTNERS**

**A. Admission of New Partners.** The initial Partners are those Partners who executed this Agreement as General and Limited Partners as of the Effective Date. After the Effective Date, no Person shall be admitted as a Partner except as provided in this Agreement and the Act. Once the Person has been admitted as a Partner, he shall have the rights and obligations of a Limited Partner or General Partner, as applicable. Any new Partner will be required to accept and assume the terms and conditions of this Agreement in writing.

### **B. Management by General Partners.**

1. The General Partner shall be responsible for the exclusive management, operation and control of the business and affairs of the partnership. The General Partner shall act as a "manager" of the partnership. If there is more than one General Partner, all obligations of the General Partners under this Agreement shall be joint and several. Any actions taken by the General Partners shall be valid if approved by a majority of the General Partners.

2. The General Partners by unanimous consent of the General Partners may designate a managing partner ("Manager"). A designated Manager shall serve until the designation is revoked or the Manager ceases to serve for any other reason. If a Manager is designated, the Manager is authorized and directed to manage and control the assets and the business of the Partnership. The Manager may exercise all of the powers which could be exercised by majority consent of the General Partners. If a Manager is designated, any reference to "General Partner" in this Agreement shall also include "Manager" if applicable.

3. The General Partner may hire employees of the Partnership, appoint any individual as an officer of the Partnership, and delegate to the officer or employee any power or duty a General Partner may have. The fact that a Partner is directly or indirectly an Affiliate of any person shall not prohibit that person from being employed or dealing with the Partnership. Any employment or dealing shall be done at reasonable rates for similar services, supplies, or materials.

4. A General Partner will have the authority to employ, select, remove, and change the authority and

responsibility of any consultants or professionals as the General Partner considers necessary to assist in the prudent management of the Partnership and its Property. The fact that a Partner is directly or indirectly an Affiliate of any Person shall not prohibit that Person from being employed or dealing with the Partnership as a consultant or professional.

5. The General Partner shall remain responsible to the Partnership for the acts or omissions of the Manager, agent, or employee and for performance of their General Partner duties provided for in this Agreement or the Act.

**C. Admission of Additional General Partner.** Additional General Partners may be admitted as provided in Article XVI, Section C.4.

**D. Removal of a General Partner.** Notwithstanding anything herein to the contrary, a general partner may not be removed unless there is at least one remaining general partner. Except as otherwise provided in this Agreement, will have the right to remove an existing General Partner. In the event that a General Partner is removed for any reason, then the removed General Partner shall automatically become a Limited Partner and his Partnership Interest converted to a Limited Partnership Interest. Notwithstanding the foregoing, if a General Partner is in material breach of his obligations and does not cure, or commence and diligently prosecute the curing of, such breach within 90 days after notice thereof by any of the Limited Partners, or if he has committed any act or omission of fraud or malfeasance to the injury of the Partnership, then said General Partner shall be removed upon agreement of at least .

**E. Authority of A General Partner.** The General Partner shall have full power to do all things appropriate in carrying out the Partnership Purposes, including authority to:

1. sell, exchange, assign, convey, lease and/or transfer legal and equitable title to the Partnership Property on terms and conditions deemed reasonable by the General Partner.
2. acquire, utilize for Partnership Purposes, and operate, improve, and develop any Partnership Property
3. retain, without liability, any property in the form in which it is received without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole.
4. register or take title to Partnership assets in the name of the Partnership or as Trustee, with or without disclosing the identity of his principal, or to permit the registration of securities in "street name" under a custodial arrangement with an established securities brokerage firm, trust department, or other custodian.
5. borrow money, finance, refinance or otherwise incur obligations for the account of the Partnership and pledge, mortgage, and grant a security interest in the Property;
6. carry out the Partnership Purposes through other partnerships, corporations, limited liability companies, or other entities;
7. compromise claims against the Partnership;
8. make any election under any tax law in the manner the General Partner deems advisable, the election or failure to elect of which shall not result in any cause of action against the General Partner.
9. execute and/or accept any instrument, conveyance, or agreement incident to the partnership's business or property without the joinder, ratification, or consent of the Partners.
10. pay all Partnership debts, obligations, and expenses;

11. perform the Partnership's obligations, and exercise all of the Partnership's rights, under any agreement to which the Partnership or any nominee of the Partnership is a party;
12. loan funds to any Partner on terms and conditions deemed reasonable by the General Partner;
13. advance any monies to the Partnership required for the business of the Partnership, but with no obligation to do so.
14. to acquire and determine the amounts of insurance coverages required by the Partnership Purposes, Property, and/or business.
15. enter into contracts and business undertakings to further the Partnership Purposes;
16. open and maintain bank and investment accounts and arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
17. maintain the Partnership Property in good order;
18. collect sums due the Partnership;
19. invest and reinvest Property to accomplish Partnership Purposes, including but not limited to investing the Property in accordance with the Modern Portfolio Theory;
20. make distributions of Distributable Cash subject to other provisions of this Agreement;
21. execute and file certificates or instruments as required or permitted by the Act and any other laws of the State of Texas or any other jurisdiction where the Partnership does business;

**F. Restrictions on General Partner.** The General Partner will not have the authority to enter into any of the following transactions without the consent of **70 Percent in Interest** **70 Percent in Interest of Limited Partners** **Unanimous Consent**~:

1. incur Partnership indebtedness in excess of a loan to value ratio of 50 percent (cumulative of all Partnership liabilities and the cumulative value of the Property measured at book value);
2. prior to the actual termination of the Partnership, sell substantially all of the Property in liquidation or cessation of business;
3. compromise any claim or dispute having an amount or value in issue in excess of 50 percent of the total value of the Property;
4. confess a judgment against the Partnership;
5. do any act in violation of this Agreement;

6. possess Property or assign the right of the Partnership or its Partners in specific Property for other than a Partnership Purpose;

7. make, execute, or deliver any assignments for the benefit of creditors, or on the Assignee's promise to pay the debts of the Partnership;

8. do any act for which the consent of the Limited Partners is required by the Act;

**G. Requirement of Unanimous Consent.** The General Partner will not have the authority to enter into any of the following transactions without Unanimous Consent:

1. terminate, liquidate and wind up the Partnership, except as otherwise provided in Article XVI, Section A.2. of this Agreement;

2. admit additional or substitute partners except as otherwise provided in Article XIII of this Agreement;

3. do any act that would make it impossible to carry on the Partnership Purposes and business of the Partnership (provided, however, that the sale or other disposition of all or any Property shall not be deemed to be an act making it impossible for the Partnership to carry on its business);

4. engage in any business activity other than that which is consistent with the Partnership Purposes;

5. amend this Agreement except as provided for elsewhere in this Agreement;

**H. Compensation and Reimbursement of General Partner.** The General Partner shall diligently and faithfully devote the time to the management of the Partnership necessary to serve the Partnership Purposes and shall perform all of the duties of a General Partner which are provided for in this Agreement and the Act. A General Partner will be entitled to a reasonable annual compensation for services rendered to the Partnership, reasonable compensation to be measured by the time required in the administration of the Partnership, the value of property under the General Partner's administration, and the responsibilities assumed in the discharge of the duties of office and shall comply with Section 704(e) of the Code, if applicable. This compensation shall be a guaranteed payment. The General Partner will be entitled to reimbursement of all reasonable and necessary business expenses incurred in the administration of the Partnership. of Limited Partners may adjust a General Partner's compensation based upon the General Partner's performance and dedication of time to the business of the Partnership. If the cash flow of the Partnership is insufficient to pay the compensation, the unpaid portion of the compensation may be deferred and bear interest at the Default Interest Rate. Payments to the General Partner for services rendered to the Partnership will not be a return on invested capital, but will be paid as compensation for services rendered.

**I. Indemnification and Limitations on General Partner's Liability.**

1. To the extent Texas law will permit, a General Partner who succeeds another will be responsible only for the property and records delivered by or otherwise acquired from the preceding General Partner, and may accept as correct the records of the preceding General Partner without duty to audit the records or to inquire further into the administration of the predecessor and without liability for a predecessor's errors and omissions.

2. No General Partner shall be liable for any act or omission except those resulting from gross negligence,

fraud, bad faith, or misconduct.

3. A General Partner will not have liability for loss of income from or depreciation in the value of the property which was retained in the form which the General Partner received it.

4. The General Partner shall be entitled to all indemnification authorized in the Act.

5. The General Partner will not owe a fiduciary duty to the Partnership or to any Partner. The General Partner will owe a duty of loyalty and a duty of care to the Partnership.

6. Each General Partner shall indemnify, save and hold harmless the Partnership and each of the Limited Partners from any loss, damage, claim or liability incurred by them, including but not limited to reasonable attorneys' fees and expenses, due to or arising out of the General Partner's gross negligence, fraud, bad faith, or misconduct.

7. Pursuant to the Act, the Partnership shall indemnify, save and hold harmless the General Partner, its affiliates, officers, directors, partners, employees, and agents from any loss, damage, claim or liability, including but not limited to direct and indirect costs and reasonable attorneys' fees and expenses, incurred by them by reason of any act performed by the General Partner on behalf of the Partnership or in furtherance of the Partnership Purposes other than an act of gross negligence, fraud, misconduct, or bad faith; provided, however, that this indemnity from the Partnership shall be satisfied out of Partnership assets only.

8. The Partnership may purchase insurance to minimize all or part of any indemnification risk.

9. For purposes of this section the term "General Partner" shall also refer to the General Partner's heirs, administrators, executors, successors and assigns.

10. The Partners authorize any General Partner, in the discretion of such General Partner, to register the Partnership as a registered limited liability partnership under Section 3.08 of the Texas Revised Partnership Act, 6132b-1, Vernon's Texas Revised Civil Statutes and Section 2.14 of the Act, and further authorize such General Partner to take or cause the Partnership to take all actions, at the expense of the Partnership, as necessary or appropriate to effect and maintain the registration, including without limitation, to change the name of the Partnership to include the designation "L.L.P."

#### **J. Waiver of Self-Dealing.**

1. The General Partner shall have the authority to enter into any transaction on behalf of the Partnership despite the fact that another party to the transaction may be (1) a trust of which a Partner is a trustee or beneficiary; (2) an estate of which a Partner is a personal representative or beneficiary; (3) a business controlled by one or more Partners or a business of which any Partner is also a director, officer or employee; (4) any affiliate, employee, stockholder, associate, manager, partner, or business associate; (5) any Partner, acting individually; or (6) any relative of a Partner; provided the terms of the transaction are no less favorable than those the Partnership could obtain from unrelated third parties.

2. It is expressly understood that each Partner is entitled to invest his personal assets for his own account and is entitled to conduct his personal affairs and investments without regard to whether they constitute a Partnership "opportunity."

3. A Partner may engage in or possess an interest in any other business or venture of any nature and description, independently or with others, including ones in competition with the Partnership, with no obligation to offer to the Partnership or any other Partner the right to participate. Neither the Partnership nor its Partners shall have by virtue of this Agreement any right in any independent venture or its income or Profits.

**K. Amendment to Certificate of Limited Partnership.** If a General Partner is unwilling or unable to sign a required amendment to the Certificate of Limited Partnership, the amended certificate may be signed by any remaining or successor General Partner(s). Each General Partner appoints his successor and any remaining General Partner(s), if any, as his attorney in fact to sign the amended certificate.

**L. Reliance by Third Parties.**

1. Any Person dealing with the Partnership, other than a Partner, may rely on the authority of the General Partner in taking any action in the name of the Partnership without inquiry into the provisions of this Agreement. Any document executed by the General Partner shall be deemed to be the action of the Partnership as to any third parties. No purchaser, tenant, transferee or obligor will have any obligation to see to the application of payments made to the General Partner.

2. Any Person dealing with the Partnership or the General Partner may rely upon a certificate signed by the General Partner as to:

- a. The identity of the Partners;
- b. Any conditions precedent to acts by the Partnership;
- c. The Persons who are authorized to execute any documents and bind the Partnership; and
- d. Any other matter involving the Partnership or any Partner.

**M. Limited Partners' Liability and Authority to Act.** No Limited Partner shall be personally liable for all or any part of the debts or other obligations of the Partnership. The Limited Partners shall not take part in the management or control of the business, or transact any business of the Partnership or have power to sign for or to bind the Partnership. However, this provision shall not prevent a Limited Partner from acting in a capacity or exercising a power enumerated in Section 3.03(b) of the Act.

**N. Voting of Limited Partners.**

1. Limited Partners shall have the right to vote upon the matters listed below:

- a. Removal of the General Partner;
- b. Election of a successor General Partner;
- c. Termination and dissolution of the Partnership;
- d. Amendment of this Agreement;
- e. The extension of the term of the Partnership; and
- f. Any matter requiring the vote of the Limited Partners as set out elsewhere in this Agreement or

in the Act.

2. Those matters to be voted on by the Limited Partners can be done by written consent. Such a written

consent may be utilized at any meeting of the Partners, or it may be utilized in obtaining approval by the Partners without a meeting.

**O. Restrictions of Limited Partners.**

1. No Limited Partner shall have the right to withdraw from the Partnership or to receive a return of any of its contributions to the Partnership until the Partnership is terminated and its affairs wound up in accordance with Section 8.04 of the Act and this Agreement. A Limited Partner will breach this Agreement if he (1) attempts to withdraw from the Partnership, (2) interferes in the management of the Partnership affairs, (3) engages in conduct which could result in the Partnership losing its tax status as a partnership, (4) engages in conduct that tends to bring the Partnership into disrepute, (5) owns a Partnership Interest that becomes subject to a charging order, attachment, garnishment, or similar legal proceedings, (6) breaches any confidentiality provisions of this Agreement, or (7) fails to meet any commitment to the Partnership. A Limited Partner who is in breach of this Agreement shall be liable to the Partnership for damages caused by the breach. The Partnership may offset for the damages against any distributions or return of capital to the Limited Partner who has breached this Agreement.

2. No Limited Partner shall have the right or power to cause the dissolution and winding up of the Partnership by court decree or otherwise.

**P. Partnership Communication.**

1. At least once a year, and as soon as possible after the financial statements are completed, a meeting shall be held for all Partners. The General Partner shall review and discuss the financial statements at the meeting and report to the Limited Partners the financial condition of the partnership. The annual meeting shall be held at a place designated by the General Partner on or before the third Tuesday in April of each year. All partners shall receive prior notice of dates, time, and place of the meeting.

2. The General Partner or of Limited Partners may establish an Advisory Committee of the Partnership consisting of three or more Limited Partners (the "Advisory Committee"). If the Advisory Committee is established, at least once each calendar year, the General Partner, on notice to each member on or before the tenth day prior to the meeting, shall call a meeting of the Advisory Committee, at which the General Partner apprises it generally of the business and affairs of the Partnership since the latest meeting of the Advisory Committee. The Advisory Committee may make recommendations to or otherwise advise and consult with the General Partner regarding the business and affairs of the Partnership; however, the Advisory Committee is not authorized to take any action on behalf of the Partnership or to compel any Partner to take any action. The Advisory Committee may make a report of the meeting to the remaining Limited Partners. A Limited Partner or representative entitled to payment from the Partnership for its expenses regarding attendance at meetings of the Advisory Committee.

**Q. Ownership of Partnership Property.** All Property shall be owned by and in the name of the Partnership. Each Partner expressly waives the right to require partition of any Property. The Partners shall execute any documents that may be necessary to reflect the Partnership's ownership of its Property and shall record the documents in the public offices that may be necessary or desirable in the discretion of the Partners. No Partner shall have the right or power to demand or receive Property other than cash in return for his contribution.

**R. Confidentiality of Information.**

1. Each Partner is entitled to all information under the circumstances and subject to the conditions stated in this Agreement and the Act. The Partners agree, however, that the General Partner or 70 Percent in Interest of Limited Partners may determine, due to contractual obligations, business concerns, or other considerations, that certain information

regarding the business, affairs, Property, and financial condition of the Partnership shall be kept confidential and not provided to some or all other Limited Partners, and that it is not just or reasonable for those Partners or Assignees or representatives to examine or copy that information.

2. The Partners acknowledge that they may receive information regarding the Partnership in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Partnership or Persons with which it does business. Each Partner shall hold in strict confidence any information it receives regarding the Partnership that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Partner, except for disclosures (1) compelled by law (but the Partner must notify the General Partner or 70 Percent in Interest of Limited Partners, as appropriate, promptly of any request for that information, before disclosing it, if practicable), (2) to advisers or representatives of the Partner or Assignees of the Partner, but only if they have agreed to be bound by the provisions of this section, or (3) of information that Partner also has received from a source independent of the Partnership that the Partner reasonably believes obtained that information without breach of any obligation of confidentiality. The Partners acknowledge that breach of the provisions of this section may cause irreparable injury to the Partnership for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Partners agree that the provisions of this section may be enforced by specific performance.

**S. Classes.** This Partnership shall have only one class of partnership interest.

## **VIII. CAPITAL CONTRIBUTIONS**

**A. Initial Contributions.** Each Partner shall contribute to the Partnership, as his initial Capital Contribution, cash or other property, the description and Gross Asset Value of which are set forth on Schedule A attached as part of this Agreement.

**B. Optional Contributions.** The Partners shall be permitted to make additional Capital Contributions to the Partnership. Any optional Capital Contributions shall be made pro rata, in accordance with the Partners' Sharing Ratios unless otherwise agreed to by all Partners in writing. A General Partner is required to maintain a General Partnership Interest of at least 1% at all times.

The Partners shall be permitted to make additional Capital Contributions to the Partnership on a pro rata or non-pro rata basis. Optional Capital Contributions by a Limited Partner will be subject to the consent of the General Partner. Optional Capital Contributions by a General Partner will be subject to the consent of 70 Percent in Interest of Limited Partners. The required consent need not be in writing, and any optional Capital Contributions will be presumed to have been made with the required consent unless there is clear and convincing evidence to the contrary. A General Partner is required to maintain a General Partnership Interest of at least 1% at all times.

**C. Required Contributions - All Partners.** If required in the discretion of the General Partner, the Partners will be required to make additional Capital Contributions to the Partnership to meet operating expenses of the Partnership within thirty (30) days from date of written notice by the General Partner. Any required Capital Contributions shall be made pro rata, in accordance with the Partners' Sharing Ratios unless otherwise agreed to by all Partners in writing.

**D. Required Contributions -- General Partners.** The Sharing Ratio of each General Partner shall at all times equal or exceed one percent (1%). Accordingly, in addition to other available means by which the General Partners would each maintain a one percent (1%) Sharing Ratio, the General Partners agree to contribute capital, from time to time, in the form of cash or other property, so that they each maintain a Sharing Ratio of no less than one percent (1%).

**E. Gift.** All or any part of one or more of the Capital Contributions of the Limited Partners may be made by one or more of the other Partners on behalf of such Limited Partner as a gift.

**F.** To simplify Partnership accounting, any adjustment to the Sharing Ratios of the Partners caused by required or optional Capital Contributions shall be made as of the end of the calendar quarter in which the contributions were made.

To simplify the Partnership accounting, any adjustment to the Sharing Ratios of the Partners caused by required or optional Capital Contributions shall be made semi-annually on the June 30 or December 31 following the contribution.

**G. Failure to Contribute.**

**1.** If a Partner fails to make a required Capital Contribution, the Partnership may exercise, on notice to that Partner (the "Delinquent Partner"), one or more of the following remedies:

**a.** taking such action, at the cost and expense of the Delinquent Partner, to obtain payment by the Delinquent Partner of the portion of the Delinquent Partner's Capital Contribution that is in default, together with interest on that amount at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made;

**b.** permitting the Partners, in proportion to their Sharing Ratios or in such other percentages as they may agree (the "Lending Partner", whether one or more), to advance the portion of the Delinquent Partner's Capital Contribution that is in default, with the following results:

**(1)** the sum advanced constitutes a loan from the Lending Partner to the Delinquent Partner and a Capital Contribution of that sum to the Partnership by the Delinquent Partner,

**(2)** the principal balance of the loan and all accrued unpaid interest is due and payable on the tenth day after written demand by the Lending Partner to the Delinquent Partner,

**(3)** the amount lent bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued, is repaid to the Lending Partner,

**(4)** all distributions from the Partnership that would be made to the Delinquent Partner shall be paid to the Lending Partner until the loan and all interest accrued have been paid in full,

**(5)** the payment of the loan and interest accrued is secured by a security interest in the Delinquent Partner's Partnership Interest,

**(6)** the Lending Partner has the right, in addition to the other rights and remedies granted to it under this Agreement or at law or in equity, to take any action, at the cost and expense of the Delinquent Partner, that the Lending Partner may deem appropriate to obtain payment by the Delinquent Partner of the loan and all accrued and unpaid interest;

**c.** exercising the rights of a secured party under the Uniform Commercial Code of the State of Texas; or

**d.** exercising any other rights and remedies available at law or in equity.

**2.** Each Partner grants to the Partnership, and to the Lending Partner with respect to any loans made to that Partner, as security, equally and ratably for the payment of all Capital Contributions that Partner has agreed to make and the payment of all loans and interest accrued made by Lending Partners to that Partner, a security interest in its Partnership Interest under the Uniform Commercial Code of the State of Texas. On any default in the payment of a required Capital

Contribution or in the payment of a loan or interest accrued, the Partnership or the Lending Partner, as applicable, is entitled to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Texas with respect to the security interest granted. Each Partner shall execute and deliver to the Partnership and the other Partners all financing statements and other instruments that the General Partner or the Lending Partner, as applicable, may request to effectuate and carry out the preceding provisions of this section. At the option of the General Partner or a Lending Partner, this Agreement or a carbon, photographic, or other copy of this Agreement may serve as a financing statement.

**H. Right to Demand Return of Capital Contribution.** No Partner shall have the right to demand the return of all or any part of his Capital Contributions.

## **IX. CAPITAL ACCOUNTS**

**A.** A "Capital Account" shall be established for each Partner and shall be maintained at all times throughout the existence of the Partnership in a manner so as to correspond with the rules set forth in the Regulations under Code Section 704(b). A Partner's Capital Account shall be increased by (1) the amount of his Capital Contribution to the Partnership, and (2) allocations of income or gain to the Partner for partnership book purposes pursuant to Article X, and shall be reduced by (1) the amount of money distributed to the Partner by the Partnership, (2) the Agreed Value of any property distributed to the Partner by the Partnership, and (3) allocations of deduction or loss to the Partner for partnership book purposes by the Partnership pursuant to Article X. The Capital Accounts of the Partners shall not bear interest.

**B.** If any additional Partnership Interests are to be issued in consideration for a contribution of Property or cash (other than a de minimis amount) or if any Property or cash (other than a de minimis amount) is to be distributed in liquidation of the Partnership or a Partnership Interest, the Capital Accounts of the Partners and the Carrying Value of all Property shall, immediately prior to such issuance or distribution, be adjusted (consistent with the provisions of Section 704(b) of the Code and the Regulations) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to all Property (as if the Unrealized Gain or Unrealized Loss had been recognized upon actual sale of the Property upon a liquidation of the Partnership immediately prior to issuance).

**C.** If all or any portion of a Partnership Interest is transferred to a Permitted Transferee as a gift or deemed gift, the Capital Accounts of the Partners and the Carrying Value of all Property shall, immediately prior to such transfer, be adjusted upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to such Property in a manner similar to that set forth in Section B. of this article. The Capital Accounts and Carrying Values so determined under this Section C. shall be referred to as the "Section 704(e) Capital Accounts" and "Section 704(e) Carrying Values," respectively. The Section 704(e) Capital Accounts and Section 704(e) Carrying Values shall thereafter be adjusted in the same manner as Capital Accounts and Carrying Values.

**D.** Except as otherwise required by the Regulations under Code 704(b), in the event any interest in the Partnership is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account and the Section 704(e) Capital Account of the transferor to the extent it relates to the transferred interest.

**E.** No Partner will be required to restore a deficit in his Capital Account upon liquidation of the Partnership or the Partner's Partnership Interest.

**F.** The General Partner's General Partner Interest will be maintained separately from any Limited Partnership Interest which he may have.

## **X. ALLOCATIONS**

**A. General.** Except as otherwise provided in this Article X, for federal income tax purposes, each item of income,

gain, loss and deduction will be allocated among the Partners in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Article X.

**B. Profits and Losses.** Profits and Losses shall be allocated as follows:

1. First, Losses shall be allocated to the Partners in accordance with and in proportion to the Partners' Sharing Ratios but only to the extent of the Partners' Adjusted Capital Accounts.

2. Second, to the extent the allocation of Losses to a Partner would create an Adjusted Capital Account Deficit for that Partner, such Losses shall be allocated to the General Partner.

3. Third, Profits shall be allocated to the General Partner in a cumulative amount equal to the cumulative Losses allocated to the General Partner under Section B.2 of this article.

4. Fourth, Profits shall be allocated to Partners in accordance with such Partners' Sharing Ratios.

5. Notwithstanding the preceding allocations, and to the extent the General Partner deems it necessary to insure that the Agreement and the allocations thereunder meet the requirements of Section 704 of the Code and the Allocation Regulations, allocations of the following type and in the following priority will be made to the appropriate Partners in the necessary and required amounts as set forth in the Regulations under Code Section 704(b) before any other allocations under Section B of this article:

a. Partner nonrecourse debt minimum gain chargeback under Regulations Section 1.704-2(i);

b. Partnership minimum gain chargeback under Regulations Section 1.704-2(f) (provided that the General Partner may seek a waiver of such chargeback in appropriate circumstances under Regulations Section 1.704-2(f)(4) in its sole discretion);

c. In the event any Partners unexpectedly receive any adjustments, allocations, or distributions described in Regulations Section 1.704-1(b)(2) (ii)(d)(4), (5), or (6), items of Partnership income and gain to such Partners in an amount and manner sufficient to eliminate the deficit balances in their Capital Accounts (excluding from such deficit balance amounts Partners are obligated to restore under this Agreement or are treated as obligated to restore pursuant to Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-1(b)(2)(ii)(h), 1.704-2(g), or 1.704-2(i)(5)) created by such adjustments, allocations, or distributions as quickly as possible and in a manner which complies with Regulations Section 1.704-1(b)(2)(ii)(d);

d. Partner nonrecourse deductions under Regulations Section 1.704-2(i) which will in all cases be allocated to the Partner which bears economic risk of loss for the indebtedness to which such deductions are attributable; and.

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

The allocations set forth in Section B.5 of this article (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may effect

results which would not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partner is authorized to divide other allocations of Profits, Losses, and other items among the Partners so as to prevent the Regulatory Allocations from distorting the manner in which distributions would be divided among the Partners under Article XI if such distributions were made in accordance with the Sharing Ratios of the Partners but for application of the Regulatory Allocations. In general, the reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss and deductions, to the extent they exist, among the Partners so that the net amount of the Regulatory Allocations and the special allocations to each Partner is zero. The General Partner will have discretion to accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Regulations. Pursuant to Regulations Section 1.752-3(a)(3), solely for purposes of determining each Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership (as defined in Regulations Section 1.752-3(a)(3)), the Partners' respective interests in Profits will be equal to their Sharing Ratio.

**C. Transferor - Transferee Allocations; Section 754 Election.** Income, gain, loss, deduction or credit attributable to any interest in the Partnership which has been transferred shall be allocated between the transferor and the transferee under any method allowed under Section 706 of the Code as agreed by the transferor and the transferee. The General Partner, at his discretion, may make the election provided under Section 754 of the Code and any corresponding provision of applicable state law.

**D. Reliance on Advice of Accountants and Attorneys.** The General Partner shall have no liability to the Limited Partners or the Partnership if he relies upon the written opinion of tax counsel or accountants retained by the Partnership with respect to all matters (including disputes) relating to computations and determinations required to be made under this article or other provisions of this Agreement. After all allocations under this article have been made, the General Partner, in its discretion, shall reallocate income among the Partners to the least extent necessary to insure that the provisions of Section 704(e) and the Regulations have been fulfilled, especially Regulations Section 1.704-1(e)(3). To the extent that any Partner was allocated income which the Internal Revenue Service finally determines should have allocated to any other Partner under the principles of Section 704(e), whether by way of a guaranteed payment or otherwise, the second Partner intends and does designate the income as a gift to the first Partner.

**E. Tax Allocations; Code Section 704(c).** With regard to income, gain, loss, depreciation, depletion and cost recovery deductions for federal income tax purposes: In the case of a Contributed Property, such items will be allocated among the Partners in the manner provided in Section 704(c) of the Code and its Regulations to take account of the Built-in Gain and Built-in Loss at the time of contribution and, in the case of any Property the Carrying Value of which has been adjusted pursuant to Article IX, such items will be allocated among the Partners in a manner consistent with the principles of Section 704(c) of the Code and its Regulations to take into account differences between the Gross Asset Value and the adjusted tax basis of such property at the time of such adjustment. Allocations under this Section E are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Partner's Capital Account or share of Profits, Losses or other items or distributions under any provision of this Agreement.

**F. Partner Acknowledgment.** The Partners agree to be bound by the provisions of this Article X in reporting their shares of Partnership income and loss for income tax purposes.

## **XI. DISTRIBUTIONS**

**A. General.** Subject to Article XII and other provisions of this Agreement, Distributable Cash may be distributed at the sole discretion of the General Partner among the Partners pro rata in accordance with their Sharing Ratios.

**B. No Interest.** If any Partner does not withdraw the whole or part of his share of any cash distribution made pursuant to Article XI, Section A., the Partner shall not be entitled to receive any interest without Unanimous Consent. Further, such non-withdrawn amount shall become an Optional Capital Contribution under Article VIII, Section B., if

otherwise permitted at that time.

**C. Transferor - Transferee Shares.** Unless agreed in writing by a transferor and transferee, Distributable Cash allocable to the transferred Partnership Interest which may have been transferred during any year shall be distributed to the holder of such Partnership Interest who was recognized as the owner on the date of such distribution, without regard to the results of Partnership operations during the year.

**D. Partner Loans.** Notwithstanding the foregoing, if any Partner advances any funds or makes any other payment to or on behalf of the Partnership, not required in this Agreement, to cover operating or capital expenses of the Partnership which cannot be paid out of the Partnership's operating revenues, any advance or payment shall be deemed a loan to the Partnership by the Partner, bearing interest from the date the advance or payment was made until the loan is repaid at the Default Interest Rate. Notwithstanding Article XI, Sections A. and B., all distributions of Distributable Cash shall first be distributed to the Partners making the loans until the loans have been repaid, together with interest. Thereafter, the balance of the distributions, if any, shall be made in accordance with the terms of Article XI, Sections A. and B. If distributions are insufficient to repay all loans as provided above, the funds available shall first be applied to repay the oldest loan and, if any funds remain available, the funds shall be applied in a similar manner to remaining loans in accordance with the order of the dates on which they were made; however, as to loans made on the same date, each loan shall be repaid pro rata in the proportion that the loan bears to the total loans made on that date.

## **XII. LIMITATION ON GENERAL PARTNER'S DISCRETION TO MAKE DISTRIBUTIONS.**

With regard to Distributable Cash and Property, the General Partner shall make a determination, in accordance with his duty of care and loyalty to the Partnership in his fiduciary capacity to the Partnership, as to the need for the Property in the operation of the Partnership business, considering both current needs for operating capital, prudent reserves for future operating capital, current investment opportunities, and prudent reserves for future investment opportunities, all in keeping with the Partnership Purposes. It is the duty of the General Partner, in determining the amount of Distributable Cash available for the payment of distributions, to take into account the needs of the Partnership in its business and sums necessary in the operation of its business until the income from further operations is available, the amounts of its debts, the necessity or advisability of paying its debts, or at least reducing them within the limits of the Partnership's credit, the preservation of its capital as represented in the Property of the Partnership as a fund for the protection of its creditors, and the character of its surplus Property. Any contributed Property or borrowed funds by the Partnership shall be considered as needed for Partnership investment purposes, and any cash produced from the sale of Property contributed to the Partnership or from the sale of any Property purchased with borrowed funds, or any reinvestment of any of the Property, including the portion of the sale proceeds representing capital appreciation, shall be considered as needed reserves for Partnership investment purposes. Any Distributable Cash derived from income shall, to the extent deemed unnecessary for Partnership Purposes by the General Partner under the foregoing standard, be distributed in accordance with this Agreement.

## **XIII. RESTRICTIONS UPON PARTNERSHIP INTERESTS**

The ownership and transferability of interests in the Partnership are substantially restricted. Neither record title nor beneficial ownership of a Partnership Interest of any Partner may be transferred or encumbered except as otherwise set forth in this Agreement.

**A. Generally.** This Partnership is formed by those who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability in the case of a Limited Partner), or who will have assumed management responsibility and risk (in the case of a General Partner) based upon their relationship and trust. Capital is material to the business and investment objectives of the Partnership and its federal tax status. An unauthorized transfer of a Partner's interest could create a substantial hardship to the Partnership, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and

preserve existing relationships based upon trust and the Partnership's capital and its financial ability to continue. **Except as provided in Article XIII, Section B., neither record title nor beneficial ownership of a Partnership Interest may be transferred without the prior written consent of all Partners ("Required Consent"). Except as provided in Article XIII, Section B., neither record title nor beneficial ownership of a Partnership Interest may be transferred without the consent of all General Partner(s) and of Limited Partners ("Required Consent"). Except as provided in Article XIII, Section B., neither record title nor beneficial ownership of a Partnership Interest may be transferred, in the case of the Limited Partnership Interest, without the consent of all General Partners and, in the case of the General Partnership Interest, without the consent of all the Limited Partners ("Required Consent").** In addition, no assignee of a Partnership Interest shall have the right to assign any transferred interest except as provided in Article XIII. To be a valid assignment, in addition to meeting the other requirements of Article XIII, the assignment must be in writing, the terms of which are not in contravention of any of the provisions of the Agreement, and the assignment must be received by the Partnership and recorded on the books of the Partnership. Until the effective date of an assignment of a transferred interest, both the Partnership and the Partners shall be entitled to treat the assignor of the transferred interest as the absolute owner thereof in all respects. Upon the effective date of an assignment of transferred interests, the Partnership will not be required to recognize the interest of any transferee who has purportedly obtained a purported transferred interest as the result of a transfer or assignment that is not authorized by this Agreement and the transfer and assignment shall be null and void for all purposes. If there is a doubt as to ownership of a Partnership Interest or who is entitled to Distributable Cash or liquidating proceeds or other Property, the General Partner may accumulate Distributable Cash or liquidation proceeds or other Property until the issue is resolved to the satisfaction of the General Partner.

**B. Disclosures, Limitations, and Exceptions.** The ownership and transfer or assignment of a Partnership Interest is further subject to the following disclosures, limitations and exceptions:

**1. Federal Law Disclosure and Limitations.** The Partnership Interests have not, nor will be, registered under federal or state securities laws. Partnership Interests may not be offered for sale, sold, pledged, or otherwise transferred unless so registered, or unless an exemption from registration exists. The availability of any exemption from registration must be established by an opinion of counsel, whose opinion must be satisfactory to the General Partner.

**2. Death or Incompetency of a Partner.** The death of an individual General Partner will automatically convert his General Partnership Interest to a Limited Partnership Interest. A Limited Partner who is (1) an individual, (2) a trust with an individual beneficiary who has a limited or unlimited power of appointment at his death, or (3) a General Partner whose death converted his General Partnership Interest to a Limited Partnership Interest may transfer his Limited Partnership Interest to a Permitted Transferee without Required Consent.

The transfer may be accomplished (1) pursuant to the properly probated last will of a Partner; (2) pursuant to the terms for a Permitted Transferee; (3) pursuant to the exercise of a limited or unlimited power of appointment or beneficiary designation of any trust; or (4) pursuant to a written and acknowledged assignment and designation of beneficiary delivered by the Partner to a General Partner prior to the death of the Partner, effective as of his death or the death of the beneficiary.

If there has been no pre-arranged transfer as provided above, the executor, administrator, guardian, conservator, or legal representative of a deceased or incompetent Limited Partner shall have the status of an Assignee and, in accordance with Section 7.05 of the Act, may exercise all the deceased or incompetent Limited Partner's rights and powers to settle the Limited Partner's estate or administer the Limited Partner's property, including the right of an Assignee to become a Limited Partner by obtaining Required Consent. However, the estate of a deceased or incompetent Limited Partner shall not have the right to become a substitute Limited Partner except as may be provided in this article.

**3. Estate Planning Transfers.** A Limited Partner who is an individual or a trust with an individual beneficiary with a limited or unlimited right to make a disposition of all or any part of his interest in the trust during his

lifetime, will have the right to make transfers of his Limited Partnership Interest with or without consideration to a Permitted Transferee without Required Consent.

**4. Nonrecognition of an Unauthorized Transfer.** The Partnership will not be required to recognize the interest of any Assignee or transferee who has obtained a purported Partnership Interest as the result of a transfer or assignment which is not authorized by this Agreement. If there is a doubt as to ownership of a Partnership Interest or who is entitled to Distributable Cash or liquidating proceeds, the General Partner may accumulate Distributable Cash or liquidation proceeds until the issue is resolved to the satisfaction of the General Partner.

**5. Acquisition of an Interest Conveyed to Another Without Authority.** If any Person acquires the Partnership Interest, or becomes an Assignee, as the result of an order of a court which the Partnership is required by law to recognize, or if a Partner's interest in the Partnership is subjected to a lawful "charging order", or if a Partner makes an unauthorized transfer or assignment of a Partnership Interest, which the Partnership is required by law (and by order of a court) to recognize, the Partnership will have the unilateral option to acquire the interest of the transferee or Assignee, or any fraction or part thereof, upon the following terms and conditions:

a. The Partnership will have the option to acquire the interest by giving written notice to the transferee or Assignee of its intent to purchase within ninety (90) days from the date it is finally determined that the Partnership is required to recognize the transfer or assignment.

b. The valuation date for the determination of the purchase price of the interest will be the first day of the month following the month in which notice is delivered.

c. Unless the Partnership and the transferee or Assignee agree otherwise, the purchase price for the interest, or any fraction to be acquired by the Partnership, shall be its fair market value as determined by an Appraisal.

d. Closing of the sale will occur at the principal office of the Partnership at 10 o'clock a.m. on the first Tuesday of the month following the month in which the Appraisal is rendered.

e. In order to reduce the burden upon the resources of the Partnership, the Partnership will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in fifteen (15) equal annual installments [or the remaining term of the Partnership if less than fifteen (15) years] with interest at the Default Interest Rate. The first installment of principal, with interest, will be due and payable on the first day of the calendar year following closing, and subsequent annual installments, with accrued interest, will be due and payable on the first day of each succeeding calendar year until the entire amount of the obligation is paid. The Partnership will have the right to prepay all or any part of the purchase money obligation at any time without penalty.

f. By Required Consent, other than the Partner whose interest is to be acquired, the General Partner may assign the Partnership's option to purchase to one or more of the remaining Partners and when done, any rights or obligations imposed upon the Partnership will instead become, by substitution, the rights and obligations of the Partners who are assignees.

g. Neither the transferee nor Assignee of an unauthorized transfer or assignment or the Partner causing the transfer or assignment will have the right to vote on Partnership matters during the prescribed option period or, if the option to purchase is timely exercised, until the sale is closed.

**6. Admission of Substitute Limited Partners.** Notwithstanding anything in this article to the contrary, any successor to the Partnership Interest of a Limited Partner shall be admitted to the Partnership as a substitute Limited Partner only upon the (a) furnishing to the General Partners of a written acceptance in a form satisfactory to the General

Partners of all of the terms and conditions of this Agreement and such other documents and instruments as may be required to effect the admission of the successor as a Limited Partner; and (b) obtaining the Required Consent. The consent may be withheld or granted in the sole discretion of those constituting the Required Consent. The transferee shall be admitted to the Partnership as a substitute Limited Partner as of the effective date of the transfer. Notwithstanding anything in this article to the contrary, any successor to the Partnership Interest of a Limited Partner permitted under the terms of this Agreement shall be admitted to the Partnership as a substitute Limited Partner only upon the (a) furnishing to the General Partners of a written acceptance in a form satisfactory to the General Partners of all of the terms and conditions of this Agreement and such other documents and instruments as may be required to effect the admission of the successor as a Limited Partner; and (b) obtaining the Required Consent except where the successor is a Permitted Transferee. The consent may be withheld or granted in the sole discretion of those constituting the Required Consent. The transferee shall be admitted to the Partnership as a substituted Limited Partner as of the effective date of the transfer.

**C. Partnership Interest Pledge or Encumbrance.** No Partner may grant a security interest in or otherwise pledge, hypothecate or encumber his interest in this Partnership or such Partner's distributions without Required Consent. It is understood that the Partners are under no obligation to give consent nor are they subject to liability for withholding consent.

#### **XIV. TAXES, ACCOUNTING, BOOKS, AND RECORDS**

**A. Fiscal Year; Accounting Records.** The fiscal period of the Partnership shall be the calendar year and the accounting records of the Partnership shall be kept on the cash receipts and disbursements method of accounting or in accordance with generally accepted accounting principles, at the discretion of the General Partner. All books, records, accounts, papers, and memoranda in any manner relating to the Partnership (including those records required by the Act) shall be kept at the principal office of the Partnership. Subject to the provisions of Article VII, Section R., of this Agreement, each Partner at all reasonable times during regular office hours shall have access to the records for purposes of inspecting and copying, at the Partner's expense (unless otherwise required by the Act).

**B. Financial Statements and Reports.** The General Partners shall cause to be delivered to each Partner the following:

1. Within ninety (90) days after the end of each fiscal year, an unaudited balance sheet and statement of operations, Partners' equity and changes in financial position, which shall be prepared in accordance with the accounting method as provided in Article XIV, Section A. above; and

2. Within ninety (90) days after the end of each fiscal year:

a. U.S. federal income tax Form K-1 and any similar forms required by any state or local taxing authority; and

b. any other information concerning the Partnership reasonably necessary for the preparation of the Partners' federal and state income tax returns.

The General Partner, upon showing good cause, shall be entitled to a reasonable extension of the ninety (90) day period applicable to the items described in subsection (b). "Good cause" shall be determined without regard to the foreseeability of such cause. All financial statements and reports shall be prepared at the expense of the Partnership.

**C. Tax Matters Partner; Tax Elections.** The General Partner, and if there are multiple General Partners then a General Partner appointed by majority vote of the General Partners, and if there is no General Partner appointed then the General Partner with the largest combined General and Limited Partnership Interest, shall be the initial "Tax Matters Partner" for federal income tax purposes. Any successor Tax Matters Partner shall be a General Partner. Unless otherwise agreed to by a Majority in Interest, the Partnership shall make such elections and adopt such accounting methods and procedures for federal and state income tax purposes as the Tax Matters Partner deems to be in the best interest of the Partnership.

## **XV. POWER OF ATTORNEY**

Each Limited Partner, and any Assignee or transferee of his interest in the Partnership, does irrevocably constitute and appoint the General Partner as his true and lawful attorney in fact and agent, to execute, acknowledge, swear to, deliver, record and file, in the Partner's or assignee's or transferee's name, place and stead, all instruments, documents and certificates which may from time to time be required by the laws of the United States of America, the State of Texas, or any other jurisdictions the laws of which are applicable to the Partnership (1) to effectuate, implement and continue the valid existence of the Partnership as organized and operated in accordance with the terms of this Agreement, including, without limitation, all certificates and other instruments (including counterparts of this Agreement and amendments) which the General Partners deem appropriate to reflect any amendment, change or modification of the Partnership in accordance with the terms of this Agreement; (2) to reflect the dissolution and termination of the Partnership pursuant to the terms of this Agreement, including the writing required by the Act to cancel the Partnership's certificate filed with the Secretary of State of Texas; (3) to comply with the fictitious or assumed name statutes in effect in the State of Texas and all other jurisdictions in which the Partnership conducts or plans to conduct business. The agent and attorney in fact shall not, however, have the right, power or authority to amend, extend the term, or modify this Agreement when acting in his capacity. The power of attorney granted herein shall be deemed to be coupled with an interest, shall be irrevocable, shall survive the death, dissolution, incompetency or legal disability of any Partner and shall extend to the Partners' heirs, executors, successors and assigns; and may be exercised by said agent and attorney in fact for all (or any one) of them or in other manner, including by facsimile signature, as the agent and attorney in fact may deem appropriate. Notwithstanding the foregoing, nothing in this article shall enlarge the powers granted to the General Partners pursuant to the other terms of this Agreement.

## **XVI. DISSOLUTION**

**A. Events of Dissolution.** The happening of any one of the following events shall work an immediate dissolution of the Partnership:

1. an event of withdrawal of a General Partner described in Section 4.02(a) of the Act Section 4.02(a) of the Act, except that any event described in Subsection (4), (5), (7), (8) and (9) of Section 4.02(a) of the Act shall not be an event of withdrawal;
2. by Unanimous Consent the written consent of Partners whose Sharing Ratios equal not less than ninety-nine percent (99%) of the Sharing Ratios of all Partners;
3. the entry of a decree of judicial dissolution under Section 8.02 of the Act;
4. the expiration of the term of the Partnership as stated in Article VI; or
5. any other event causing dissolution under the Act.

**B. Dissolution or Bankruptcy of a Partner.** On the dissolution or bankruptcy of a Partner, such Partner and his successors shall thereafter have the status of an Assignee and shall receive distributions to which he is entitled. For purposes

of this Agreement, the "bankruptcy" of a Partner shall be deemed to have occurred upon the happening of any event described in Subsections (4) and (5) of Section 4.02(a) of the Act.

**C. Withdrawals; Reconstitution.** Technical dissolutions may occur pursuant to Article XVI, Sections A.1. and A.5., of this Agreement, but if there is a remaining General Partner, the Partnership will be reconstituted and continued.

1. The General Partners each agree not to withdraw as a General Partner of the Partnership, pursuant to Section 6.02 of the Act, without the prior written consent of a majority in interest. For purposes of this subsection, "majority in interest" means at least fifty-one percent (51%) of the Sharing Ratios remaining after excluding the Sharing Ratio of the Partner seeking to withdraw. Any withdrawal shall be effective upon the later of (1) thirty (30) days after the necessary written consent is given by a majority in interest or (2) the date specified in the written consent. Upon the withdrawal, the Partnership Interest held by the General Partner seeking to withdraw and classified as a General Partner interest shall be converted to a Limited Partner interest and thereafter, such Partner shall be a Limited Partner for all purposes under this Agreement.

2. If a General Partner withdraws in violation of this section, the withdrawal will be treated as a breach of this Agreement and the Partnership may recover damages from the withdrawing Partner, including the reasonable cost of obtaining replacement of the services the withdrawing Partner was obligated to perform. The Partnership may, in addition to pursuing any remedies otherwise available under applicable law, recover from the withdrawing Partner by offsetting any damages against any amount otherwise distributable to the withdrawing Partner, reducing the Limited Partner interest into which the withdrawing General Partner's interest may be converted, or both.

3. If a General Partner withdraws in violation of this section, the Partnership Interest held by such Partner as a General Partner shall automatically be converted to that of a Limited Partner. If, for any reason, a withdrawal is of a sole General Partner, the Partnership Interest held by such Partner as a General Partner shall automatically be converted to that of a Limited Partner effective immediately after the succession of new General Partners. The resulting Limited Partner interest of the withdrawn General Partner may be reduced pro rata with all other Partners to provide compensation or an interest in the Partnership, or both, to a successor General Partner selected from outside the Partnership. The withdrawn General Partner shall thereafter have no voting rights in the Partnership, in which case "majority in interest" shall thereafter for all purposes mean at least fifty-one percent (51%) of the Sharing Ratios remaining after excluding the Sharing Ratio of the withdrawn General Partner. The Partnership shall have the unilateral option to acquire the entire interest of the withdrawn General Partner under the same terms and conditions specified in Article XIII, Section B.5., as if the withdrawn General Partner was a transferee of an interest conveyed without authority.

4. If a General Partner ceases to serve for any reason, the remaining General Partner(s) acting unanimously shall appoint the successor General Partner(s), so that there shall be three (3) General Partners serving at all times. If all of the General Partners cannot for any reason serve as General Partners, a Majority in Interest of Limited Partners shall, within ninety (90) days after the withdrawal of the General Partners, elect three (3) new General Partners from among the Limited Partners or any Persons not already Limited Partners. One percent (1%) of the Sharing Ratio of each successor General Partner shall be classified or automatically reclassified, as the case may be, as a Partnership Interest of a General Partner.

5. Subject to Article VI, and provided that at least one General Partner remains after an event of dissolution described in Article XVI, Section A.1., it is agreed that the Partnership shall be automatically reconstituted without being wound up and the business of the Partnership shall be carried on by the successor General Partners. If no General Partner remains after an event of dissolution described in Article XVI, Section A.1., it is agreed that, within ninety (90) days after the occurrence of such an event of dissolution, all remaining Partners shall elect new General Partners in accordance with Article XVI, Section C.4., and shall reconstitute and continue the business of the Partnership.

6. A General Partner may have the power but not the right to withdraw at any time from the Partnership and cease to be a General Partner under the provisions of Section 6.02(a) of the Act by giving written notice to the other Partners. Any General Partner who withdraws or ceases to be a General Partner pursuant to Section 4.02(a)4.02(a), Subsections (1), (2), (3), (6), and (10) of the Act, before the expiration of the stated term of this Partnership violates this Agreement, and the Partnership may recover damages from the withdrawing General Partner, including the reasonable cost of obtaining replacement of the services the withdrawn Partner was obligated to perform, for breach of this Agreement. The Partnership may, in addition to pursuing any remedies otherwise available under applicable law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing General Partner, reducing the Limited Partner's interest into which the withdrawing General Partner's interest may be converted under Section 6.02(b)(1) of the Act.

7. Subject to the liability created under Section 6.02(a) of the Act, a General Partner who ceases to be a General Partner under Section 4.02(a)4.02(a), Subsections (1), (2), (3), (6), and (10) of the Act shall, at the option of the remaining General Partners or, if there are no remaining General Partners, at the option of a Majority in Interest of Limited Partners in a vote that excludes any Limited Partnership Interest held by the withdrawing General Partner:

a. convert the interest in that General Partner's Capital Account, Profits, Losses, and distributions to that of a Limited Partner; or

b. pay to the withdrawn General Partner in cash, other property of the Partnership of equivalent value, or secure by bond approved by a court of competent jurisdiction, the fair market value of that Partner's Partnership Interest less the damages caused by the withdrawn General Partner's breach of this Agreement.

8. The Partnership shall have the unilateral option to acquire the entire interest of the withdrawn General Partner under the same terms and conditions specified in Article XIII, Section B.5., as if the withdrawn General Partner was a transferee of an interest conveyed without authority.

9. **Successor General Partner.** If there are multiple General Partners and one or more General Partners withdraws or ceases to serve for any reason and there is at least one remaining General Partner, the business of the Partnership is permitted to continue by the remaining General Partners without amendment to this Agreement. If a General Partner, serving alone, withdraws or ceases to serve for any reason, then, without any amendment to this Agreement, in the priority and in succession, the following persons will serve as successor General Partners: ("Designated Successor General Partners"), and the business of the Partnership is permitted to continue. Prior to the withdrawal of all multiple General Partners or the withdrawal of a sole General Partner serving without a Designated Successor General Partner, additional General Partners or Designated Successor General Partners may be appointed by Unanimous ConsentMajority In Interest70 Percent in Interestconsent of all General Partners. If a General Partner, serving alone, withdraws or ceases to serve for any reason and there are no Designated Successor General Partners remaining, then without amendment to this Agreement, all the remaining Partners may continue the business of the Partnership and appoint one or more new General Partners effective as of the date of withdrawal of the withdrawing General Partner. Any Designated Successor General Partner will not have the duties nor the liability of a General Partner until such time as the successor actually assumes the position of a General Partner. A General Partner who ceases to be a General Partner will not be personally liable for the debts and obligations of the Partnership incurred following the termination of his service as a General Partner.

## **XVII. LIQUIDATION AND TERMINATION.**

### **A. Liquidator.**

1. If the Partnership is dissolved under Article XVI, Sections A.2. or A.3., or if the General Partners have

withdrawn and no successors have been chosen pursuant to Article XVI, Section C.4., a Liquidator will be appointed to commence to wind up the affairs of the Partnership and to liquidate and sell its properties. The Partners shall continue to share operating Profits and Losses and other items of income, gain, loss, and deduction during the period of liquidation. The Liquidator will proceed, as promptly as practicable without undue sacrifice, to liquidate and sell all remaining properties of the Partnership for the best price obtainable in the judgment of the Liquidator or appropriate to distribute the Property to the creditors or Partners in kind in accordance with their Sharing Ratios. The Liquidator may be required by the Partners (at the expense of the Partnership) to give a bond to assure faithful performance of his duties. The Liquidator shall be entitled to receive compensation for his services as shall be agreed upon, payable out of the assets of the Partnership. The Liquidator may resign at any time by giving thirty (30) days' written notice to the Partners. The Liquidator may be removed at any time by written notice of removal by Unanimous Consent. Upon the death, dissolution, removal or resignation of the Liquidator, a successor Liquidator (who shall have and succeed to all of the rights, powers, and duties of the original Liquidator) will, within thirty (30) days, be appointed in the same manner as the appointment of the original Liquidator. The right to appoint a successor Liquidator shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue.

2. If, within thirty (30) days following the dissolution of the Partnership, no person has agreed to serve as the Liquidator or if, within thirty (30) days after the need for a successor Liquidator arises, such successor shall not have been appointed and accepted such appointment, any interested Partner shall have the right to make application to a State or Federal District Judge (or if any State or Federal District Judge is unwilling, then the Local Administrative Judge for the county in which the principal office of the Partnership is located) (the "Judge") for appointment of the Liquidator. The Judge, acting as an individual and not in his judicial capacity, shall be fully authorized to appoint the Liquidator.

**B. Powers of the Liquidator.** Subject to Article XVII, Section A., the Liquidator shall have the powers of the General Partner to the extent necessary to carry out the duties and functions of the Liquidator, including but not limited to the following powers:

1. The power to continue to manage any business of the Partnership during the liquidation, including the power to enter into contracts which may extend beyond the liquidation;
2. The power to execute deeds, bills of sale, assignments, and transfers to convey Property of the Partnership; provided, that the Liquidator may not impose personal liability upon any of the Partners or their legal representatives or successors in interest under any warranty of title contained in any instrument;
3. The power to borrow funds, in the Liquidator's best judgment, reasonably required to pay any obligations of the Partnership, and to execute security documents encumbering Property as security for the indebtedness of the Partnership; provided that the Liquidator shall not have the power to create any personal obligation of any of the Partners or their successors in interest to repay indebtedness other than out of available proceeds of foreclosure or sales of the Property as to which a lien is granted;
4. The power to settle, compromise, or adjust any claim asserted to be owing by or to the Partnership, and the right to file, prosecute, or defend lawsuits and legal proceedings in connection with any matters; and
5. The power to make deeds, bills of sale, assignments and transfers to the respective Partners incident to final distribution of the remaining Property (if any); provided, that the Liquidator may not impose personal liability upon any of the Partners or their legal representatives or successors in interest under any warranty of title contained in any instrument.

**C. Liquidating Distributions.** The net liquidation sales proceeds, unliquidated Property, and all other funds of the Partnership shall be distributed in the following order: (1) to the payment of all the Partnership's liabilities, other than those to any of the Partners, including expenses of liquidation; (2) to the setting up of any reserves which the Liquidator may

deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership; (3) to the payment and discharge of any liabilities of the Partnership to any of the Partners; and (4) after all allocations of income, gains, losses and deductions pursuant to Article X, to the Partners in payment of the positive balances in their Capital Accounts. If the Partnership makes distributions in kind Property which secures indebtedness, each of the Partners receiving the distribution of Property subject to the indebtedness will be severally liable (as among each other, but not for the benefit of others) for a share of the indebtedness proportionate to the share of such Property distributed to each Partner, provided that no Partner will be deemed to have assumed any liability on any indebtedness secured by Property distributed to any Partner for which the Partner is not liable under the terms of the instrument creating the indebtedness, and provided that the liability of each Partner to other Partners for indebtedness secured by Property distributed to him will be limited to the value of his interest in the Property. Notwithstanding anything to the contrary in the preceding portions of this Article XVII, indebtedness secured by Property distributed to Partners in kind need not be discharged out of the proceeds of liquidation of the Partnership.

**D. Compliance With Timing Requirements of Treasury Regulation.** If the Partnership is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions will be made under this Article XVII to the Partners as provided in Article XVII, Section C in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2).

**E. Final Accounting.** Within a reasonable time following the completion of the liquidation of the Partnership, the Liquidator shall supply to each Partner a statement prepared by the Partnership's accountant which shall set forth the assets and liabilities of the Partnership as of the date of liquidation, each Partner's portion of distributions pursuant to liquidation and the amount, if any, retained as reserves pursuant to Article XVII, Section C.

**F. Termination of Partnership.** Upon the completion of the liquidation of the Partnership and the distribution of all Partnership Property, the Partnership shall terminate and the Liquidator shall have the authority to execute and record all documents required to effectuate the dissolution and termination of the Partnership.

**G. Rights of Lender.** The rights and powers granted to the Partners and the Liquidator are subject to the rights and powers of the holder of first mortgage liens (if any) against all or any part of the Property owned by the Partnership.

## **XVIII. ALTERNATIVE DISPUTE RESOLUTION ("ADR"); BINDING ARBITRATION**

**A. Agreement to Use Procedure.** The Partners have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this Agreement (the "Dispute"), they will first utilize the procedures specified in this Article (the "Procedure") prior to any Additional Proceedings.

**B. Initiation of Procedure.** The Partner seeking to initiate the Procedure (the "Initiating Partner") shall give written notice to the other Partners, describing in general terms the nature of the Dispute, the Initiating Partner's claim for relief and identifying one or more individuals with authority to settle the Dispute on such Partner's behalf. The Partner(s) receiving such notice (the "Responding Partner", whether one or more) shall have five (5) business days within which to designate by written notice to the Initiating Partner, one or more individuals with authority to settle the Dispute on such Partner's behalf. The individuals so designated shall be known as the "Authorized Individuals". The Initiating Partner and the Responding Partner shall collectively be referred as the "Disputing Partners" or individually "Disputing Partner".

**C. Direct Negotiations.** The Authorized Individuals shall be entitled to make such investigation of the Dispute as they deem appropriate, but agree to promptly, and in no event later than thirty (30) days from the date of the Initiating Partner's written notice, meet to discuss resolution of the Dispute. The Authorized Individuals shall meet at such times and places and with such frequency as they may agree. If the Dispute has not been resolved within thirty (30) days from the date of their initial meeting, the Disputing Partners shall cease direct negotiations and shall submit the Dispute to mediation in

accordance with the following procedure.

**D. Selection of Mediator.** The Authorized Individuals shall have five (5) business days from the date they cease direct negotiations to submit to each other a written list of acceptable qualified attorney-mediators not affiliated with any of the Partners. Within five (5) days from the date of receipt of such list, the Authorized Individuals shall rank the mediators in numerical order of preference and exchange such rankings. If one or more names are on both lists, the highest ranking person shall be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Partners agree jointly to request a State or Federal District Judge of their choosing (or if they cannot agree, the Local Administrative Judge for the county in which the principal office of the Partnership is located) to supply within ten (10) business days a list of potential qualified attorney-mediators. Within five (5) business days of receipt of the list, the Authorized Individuals shall again rank the proposed mediators in numerical order of preference and shall simultaneously exchange such list and shall select as the mediator the individual receiving the highest combined ranking. If such mediator is not available to serve, they shall proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

**E. Time and Place of Mediation.** In consultation with the mediator selected, the Authorized Individuals shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than forty-five (45) days after selection of the mediator.

**F. Exchange of Information.** In the event any Disputing Partner to this Agreement has substantial need for information in the possession of another Disputing Partner to this Agreement in order to prepare for the mediation, all Disputing Partners shall attempt in good faith to agree to procedures for the expeditious exchange of such information, with the help of the mediator if required.

**G. Summary of Views.** At least seven (7) days prior to the first scheduled session of the mediation, each Disputing Partner shall deliver to the mediator and to the other Disputing Partners a concise written summary of its views on the matter in Dispute, and such other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Partner to him.

**H. Parties to be Represented.** In the mediation, each Disputing Partner shall be represented by an Authorized Individual and may be represented by counsel. In addition, each Disputing Partner may, with permission of the mediator, bring such additional Persons as needed to respond to questions, contribute information, and participate in the negotiations.

**I. Conduct of Mediation.** The mediator shall determine the format for the meetings, designed to assure that both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Disputing Partner's views on the matter in dispute, and that the authorized parties attempt to negotiate a resolution of the matter in dispute, with or without the assistance of counsel or others, but with the assistance of the mediator. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Partners. The mediation session shall be private. The mediator will keep confidential all information learned in private caucus with any Disputing Partner unless specifically authorized by such Disputing Partner to make disclosure of the information to the other Disputing Partner. The Disputing Partners agree to sign a document agreeing that the mediator shall be governed by the provisions of Chapter 154 of the Tex. Civ. Prac. & Rem. Code and such other rules as the mediator shall prescribe. The Disputing Partners commit to participate in the proceedings in good faith with the intention of resolving the Dispute if at all possible.

**J. Termination of Procedure.** The Disputing Partners agree to participate in the mediation procedure to its conclusion. The mediation shall be terminated (1) by the execution of a settlement agreement by the Disputing Partners, (2) by a declaration of the mediator that the mediation is terminated, or (3) by a written declaration of a Disputing Partner to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. Even if the mediation is terminated without a resolution of the Dispute, the Disputing Partners agree not to terminate negotiations and not to commence any Additional Proceedings prior to the expiration of five (5) days following the mediation. Notwithstanding the

foregoing, any Disputing Partner may commence Additional Proceedings within such five (5) day period if the Dispute could be barred by an applicable statute of limitations.

**K. Arbitration.** The parties agree to participate in good faith in the ADR to its conclusion. If the Disputing Partners are not successful in resolving the dispute through the ADR, then the Disputing Partners may agree to submit the matter to binding arbitration or a private adjudicator, or either Disputing Partner may seek an adjudicated resolution through the appropriate court agree that the dispute shall be settled by arbitration in accordance with the provisions of the Texas General Arbitration Act Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction agree that either Disputing Partner may initiate litigation upon ten (10) days written notice to the other Disputing Partner ("Additional Proceedings").

**L. Fees of Mediation; Disqualification.** The fees and expenses of the mediator shall be shared equally by the Disputing Partners. The mediator shall be disqualified as a witness, consultant, expert or counsel for any Disputing Partner with respect to the Dispute and any related matters.

**M. Confidentiality.** Mediation is a compromise negotiation for purposes of Federal and State Rules of Evidence and constitutes privileged communication under Texas law. The entire mediation process is confidential, and no stenographic, visual or audio record shall be made. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Partner, their agents, employees, representatives or other invitees and by the mediator are confidential and shall, in addition and where appropriate, be deemed privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative of any of the Partners; provided, however, that evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation.

## **XIX. MISCELLANEOUS**

**A. Notices.** All notices under this Agreement shall be in writing and shall be given to the Partner entitled by personal service or by certified or registered mail, return receipt requested, except that the notice of any meeting or the furnishing of any financial statement to the Partners may be done by regular mail. Any notice shall be deemed received after twenty-four (24) hours from the date and time of postmark if it is deposited with the U.S. Mail pursuant to the above (if mailed) or when personally received if the mail service is not used.

**B. Construction.** Whenever the context so requires, the gender of all words used in this Agreement includes the masculine, feminine, and neuter, and the singular shall include the plural, and conversely. All references to articles, sections, subsections or subparagraphs are to provisions of this Agreement unless context dictates otherwise.

**C. Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement binding on all parties, notwithstanding that all the parties are not signatory to the original or the same counterpart.

**D. Attorney Fees.** Subject to provisions of Article XVIII of this Agreement, in the event a dispute arises between any Partner(s) and the Partnership or between the Partners themselves, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs incurred.

**E. Tax Audit.** In the event this Partnership is audited by the Internal Revenue Service, the costs and expenses incurred to defend and comply with the audit shall be an expense of the Partnership. Any audit of any individual Partner shall not be deemed to be an audit of this Partnership.

**F. Governing Law.** This Agreement shall be governed by the laws of the State of Texas.

**G. Binding Nature.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Partner.

**H. Severance.** In the event any sentence or paragraph of this Agreement is declared by a court to be void or by the Internal Revenue Service, for the purposes of Section 2704 of the Code, to be noneffective, that sentence or paragraph shall be deemed severed from the remainder of the Agreement, and the balance of the Agreement shall remain in effect. To the extent applicable, the default provisions of the Act shall govern in the place of the severed sentence or paragraph. This provision shall not prohibit the Partnership or any Partner from contesting a determination of noneffectiveness of any provision of this Agreement by the Internal Revenue Service.

**I. Amendment of Agreement.** This Agreement may be modified or amended at any time by a writing signed by all the Partners.

**J. Applicable Law.** This Agreement and all rights and liabilities of the parties with reference to this Partnership shall be governed by the Act and all other applicable laws of the State of Texas other than its conflicts of laws rules and principles.

**K. Foreign Qualification.** Prior to the qualification of the Partnership to conduct business in any jurisdiction other than Texas, the General Partners shall cause the Partnership to comply, to the extent procedures are available and those matters are reasonably within the control of the General Partners, with all requirements necessary to qualify the Partnership as a foreign limited partnership in that jurisdiction. At the request of the General Partners, each Partner shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with the terms of this Agreement that are necessary or appropriate to qualify, continue, and terminate the Partnership as a foreign limited partnership in all jurisdictions in which the Partnership may conduct business.

**L. Headings.** The headings used in this Agreement are for convenience only and shall not be construed in interpreting this Agreement.

**M. Entire Agreement.** This Agreement contains the entire agreement among the Partners with respect to the matters of this Agreement and shall supersede and govern all prior agreements, written or oral.

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

**O. Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Partnership or other third parties.

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

**Q. Offset.** Whenever the Partnership is to pay any sum to any Partner, any amounts that Partner owes the Partnership may be deducted from that sum before payment.

**R. Disclosure.** Each of the Partners acknowledge that he or she (1) was urged in advance by the Attorney who prepared this Agreement to secure separate independent legal counsel in connection with signing and making this Agreement

and its effect upon each of them and their marital Property, (2) has carefully read and understood the provisions of this Agreement, (3) understands that his or her marital rights in real property may be adversely affected by this Agreement, (4) is signing and making this Agreement voluntarily, (5) has been provided a fair and reasonable disclosure of the property and financial obligations of the other Party, and (6) hereby voluntarily and expressly waives in this writing any right to disclosure of the Property and financial obligations of the other Partners beyond the disclosure provided.

## **S. Marital Property Interest.**

**1. Preservation of Separate Ownership of Partnership Interest.** It has been and is the intent of the Partners and their respective spouses, and they agree, that only the separate property of each of the Partners has been or will be used to capitalize the Partnership.

**2. Partition.** To the extent there are any community property attributes of any assets (including, but not limited to, the devotion of community time, toil, talent, and effort) used to capitalize the Partnership (whether by initial or future contributions) each Partner and his or her spouse hereby partition and agree to partition such present or future community interest. Each non-Partner spouse hereby transfers and partitions all of his or her interest (whether present or to be acquired in the future whether by reason of contributions or otherwise) in and to the Partnership to his or her Partner spouse and each of the Partners and their spouses agree as between themselves that all of the Partners's share of the Partnership's income and capital appreciation (and losses and depreciation) shall be the separate property (or liability) of such Partner.

**3. Consideration.** As consideration for the agreements contained in Section S. of this article by the Partner's spouse, each Partner agrees to indemnify and hold harmless his or her respective spouse from any and all losses, claims, demands and causes of action arising or to arise out of the Partner's (or the Partner's spouse's) participation in the Partnership; provided, however, that this indemnity agreement shall be subject to and be effective only upon (a) the consummation of the sale, conveyance or assignment to the Partner of his or her spouse's interest or (b) the allocation or awarding of such Partnership interest to the Partner in such Decree of Divorce or related agreement.

**4. Acknowledgment of Marital Agreement.** Each Partner and his or her Partner's spouse declares that he or she, respectively: (a) is completely informed as to the facts relating to the subject matter of this Agreement and as to their rights and liabilities; (b) enters into this Agreement voluntarily after receiving advice (or after having had the opportunity to receive advice) of independent counsel of his or her own choosing; (c) has given mature thought to the making of this Agreement; (d) has carefully read each provision of this Agreement; (e) fully and completely understands each provision of this Agreement, both as to the subject matter and legal effect; and EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE MAY BE PERMANENTLY SURRENDERING CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW TO INCOME OR PROPERTY DERIVED FORM THE SEPARATE PROPERTY OF HIS OR HER SPOUSE.

The date of this agreement, for purposes of identification, is the \_\_\_\_ day of «month», «year».

Acceptance and Approval  
By General Partner(s)

Acceptance and Approval  
By Limited Partner(s)

**CERTIFICATE OF ACKNOWLEDGMENT**

State of Texas

County of «**county**»

On the \_\_\_\_\_ day of «**month**», «**year**», before me, a Notary Public of said State, personally appeared **GEN PARTNER~**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged that executed the same.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**SUBSCRIPTION AND ACCEPTANCE BY LIMITED PARTNER**

I, individually or as the authorized representative of a Subscriber/Limited Partner, have subscribed to an interest in the Partnership formed by written contract to which this acceptance is appended, and

- (1) acknowledge that I have received and reviewed the Agreement with the opportunity and encouragement to seek the advice and consultation of independent legal and tax counsel;
- (2) acknowledge and confirm my subscription to a Limited Partnership Interest in the Partnership equal to the value of property to be contributed to the Partnership by me as a percentage of the value of all property contributed to the Partnership, and agree to transfer my required contribution of capital to the Partnership upon the Effective Date, and upon notice of the General Partner to make the contribution according to my subscribed interest;
- (3) acknowledge that this subscription agreement and my ownership interest in the Partnership will be subject to the restrictions against transfer stated in the Agreement and the following restriction:

THE PARTNERSHIP INTERESTS HAVE NOT, NOR WILL BE, REGISTERED OR QUALIFIED UNDER FEDERAL OR STATE SECURITIES LAWS. THE PARTNERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED, OR UNLESS AN EXEMPTION FROM REGISTRATION OR QUALIFICATION EXISTS. THE AVAILABILITY OF ANY EXEMPTION FROM REGISTRATION OR QUALIFICATION MUST BE ESTABLISHED BY AN OPINION OF COUNSEL FOR THE OWNER, WHICH OPINION AND COUNSEL MUST BE REASONABLY SATISFACTORY TO THE PARTNERSHIP.

- (4) agree to be bound by the terms and conditions of the Agreement and Certificate of Limited Partnership.

- (5) acknowledge that the following disclosures have been made prior to my execution of this subscription agreement:

THE PERCENTAGES OF OWNERSHIP OF THE PARTNERSHIP HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. THE PERCENTAGES OF OWNERSHIP ARE OFFERED AND SOLD IN RELIANCE ON EXCEPTIONS FROM THE REGISTRATION REQUIREMENT OF THE SECURITIES ACT AND SUCH LAWS, AND PARTICULARLY REGULATION D [enacted by the Securities and Exchange Commission effective April 15, 1982, pertaining to certain offers and sales of securities without registration under the Securities Act of 1933.]

THE PARTNERSHIP WILL NOT BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND WILL NOT FILE REPORTS, PROXY STATEMENTS AND OTHER INFORMATION WITH THE SECURITIES AND EXCHANGE COMMISSION.

Dated and effective the \_\_\_\_\_ day of «month», «year».

\_\_\_\_\_  
«F1ST\_LTD\_PTN», Subscriber  
Limited Partnership Interest

\_\_\_\_\_  
«F2ND\_LTD\_PTN», Subscriber  
Limited Partnership Interest

State of Texas  
County of «county»

On this \_\_\_\_\_ day of «month», «year», before me a Notary Public of said State, personally appeared **1ST LTD PTN-**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged that executed the same.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

State of Texas  
County of «county»

On this \_\_\_\_\_ day of «month», «year», before me a Notary Public of said State, personally appeared **2ND LTD PTN-**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged that executed the same.

WITNESS MY HAND and official seal.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
Printed Name: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_