

ATTORNEY AT LAW

Requestor's Name

660 E. Jefferson

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Tallahassee, FL 32301

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Phone #

A 99000000 1018

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CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1- FISHER TREE TOP INVESTMENT LP

2-

3-

4-

☒ Walk-in

☐ Pick-up time ASAP

☐ Certified Copy

☐ Mail-out

☐ Will wait

☐ Photocopy

☐ Certificate of Status

37C 6/23/99

NEW FILINGS

<input type="checkbox"/>	Profit
<input type="checkbox"/>	Non-Profit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS

<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

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OTHER FILINGS

<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/QUALIFICATION

<input type="checkbox"/>	Foreign
XX	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

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Examiner's Initials

CERTIFICATE OF LIMITED PARTNERSHIP AND  
LIMITED PARTNERSHIP AGREEMENT

OF

FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP,

A FLORIDA LIMITED PARTNERSHIP

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21st THIS LIMITED PARTNERSHIP AGREEMENT is entered into and effective as of the day of June, 1999, by and among JOSEPH C. FISHER, as the General Partner, and JACOB FISHER and JANE FISHER, as the Limited Partners, pursuant to the provisions of the Florida Revised Uniform Limited Partnership Act ("Act"), on the following terms and conditions:

**ARTICLE I  
THE PARTNERSHIP**

**Section 1.1 Formation.** The Partners hereby agree to form the Partnership as a limited partnership pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement.

**Section 1.2 Partnership Name.** The name of the Partnership shall be the FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP, a Florida Limited Partnership, and all business of the Partnership shall be conducted in that name. The General Partner may change the name of the Partnership at any time and shall notify the Limited Partners of any change.

**Section 1.3 Purpose.** The purpose of the Partnership is to engage in activities permitted to be engaged in by limited partnerships under the laws of Florida including receiving cash, receiving, acquiring, developing, holding, leasing, mortgaging and selling real and personal property (including interests as a limited partner or as an assignee of a limited partner in limited partnerships) and to engage in any and all activities related or incidental to those activities.

**Section 1.4 Principal Place of Business.** The principal place of business and the mailing address of the Partnership shall be at 1249 Seagrape Lane, Sanibel Island, FL 33957. The General Partner may change the principal place of business and/or the mailing address of the Partnership to any other place within or without the State of Florida at any time and shall notify the Limited Partners of any change.

**Section 1.5 Term.** The term of the Partnership shall commence on the date the certificate of limited partnership, the affidavit of limited partner contributions, and any other required documents described in the Act (collectively, the "Certificate") are filed with the Florida Department of State in accordance with the Act and shall continue until the winding up and liquidation of the Partnership and its business is completed following a Liquidating Event, as provided in Article XIII.

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**Section 1.6 Filings; Agent for Service of Process.**

(a) The General Partner shall cause the Certificate to be filed with the Florida Department of State in accordance with the provisions of the Act. The General Partner shall take any and all other actions reasonably necessary to perfect and maintain the status of the Partnership, as a limited partnership, under the laws of Florida. The General Partner shall cause amendments to the Certificate to be filed whenever required by the Act. Amendments may be executed by the General Partner or by any Person designated in the amendment as a new General Partner.

(b) The General Partner shall execute and cause to be filed original or amended certificates and shall take any and all other actions as may be reasonably necessary to perfect and maintain the status of the Partnership as a limited partnership or similar type of entity under the laws of any other states or jurisdictions in which the Partnership engages in business.

(c) The name and address of the registered agent for service of process on the Partnership shall be JOSEPH C. FISHER, 1249 Seagrape Lane, Sanibel Island, FL 33957 or any successor as appointed by the General Partner in accordance with the Act. The registered office of the Partnership in the State of Florida is located at 1249 Seagrape Lane, Sanibel Island, FL 33957.

(d) Upon the dissolution of the Partnership, the General Partner (or, in the event there is no remaining General Partner, any Person elected pursuant to Section 13.2) shall promptly execute and cause to be filed certificates of cancellation in accordance with the Act and the laws of any other states or jurisdictions in which the Partnership has filed certificates.

**Section 1.7 Title to Property.** All property owned by the Partnership shall be owned by the Partnership as an entity. No Partner shall have any ownership interest in that property in their individual name or right, and each Partner's interest in the Partnership shall be personal property for all purposes. Except as otherwise provided in this Agreement, the Partnership shall hold all of its property in the name of the Partnership and not in the name of any Partner.

**Section 1.8 Payments of Individual Obligations.** The Partnership's credit and assets shall be used solely for the benefit of the Partnership. No asset of the Partnership shall be transferred or encumbered for or in payment of any individual obligation of any Partner.

**Section 1.9 Independent Activities; Transactions With Affiliates.**

(a) The General Partner and any of his Affiliates shall be required to devote only such time to the affairs of the Partnership as the General Partner determines, in his sole discretion, may be necessary to manage and operate the Partnership, and each Person, to the extent not otherwise directed by the General Partner, shall be free to serve any other Person or enterprise in any capacity that it may deem appropriate in his or her discretion.

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(b) Insofar as permitted by applicable law, the General Partner (acting on his own behalf) and each Limited Partner (acting on his or her own behalf) may, notwithstanding this Agreement, engage in whatever activities they choose, whether the same are competitive with the Partnership or otherwise, without having or incurring any obligation to offer any interest in those activities to the Partnership or any Partner, and neither this Agreement nor any activity undertaken pursuant to this Agreement, shall prevent any Partner from engaging in those activities, or require any Partner to permit the Partnership or any Partner to participate in any of those activities and, as a material part of the consideration for the execution of this Agreement by each Partner, each Partner hereby waives, relinquishes and renounces any right or claim of participation in those activities.

(c) To the extent permitted by applicable law and, except as otherwise provided in this Agreement, the General Partner, when acting on behalf of the Partnership, is hereby authorized to purchase property from, sell property to or otherwise deal with any Partner, acting on his own behalf, or any Affiliate of any Partner, provided that the purchase, sale or other transaction shall be made on terms and conditions no less favorable to the Partnership than if the sale, purchase or other transaction had been entered into with an independent third party.

Section 1.10 Definitions. Capitalized words and phrases used in this Agreement have the following meanings:

(a) "Accepting Offerees" has the meaning set forth in Section 10.4(d).

(b) "Act" means the Florida Revised Uniform Limited Partnership Act (1986), as set forth in Sections 620.101 through 620.205 Florida Statutes, as amended from time to time (or any corresponding provisions of succeeding law).

(c) "Affiliate" means, with respect to any Person:

(i) Any Person directly or indirectly controlling, controlled by or under common control with that Person;

(ii) Any Person owning or controlling ten percent (10%) or more of the outstanding voting interests of that Person;

(iii) Any officer, director or general partner of that Person; or

(iv) Any Person who is an officer, director, general partner, trustee or holder of ten percent (10%) or more of the voting interests of any Person described in clauses (i) through (iii) of this subsection (c). For purposes of this definition, the term "controls," "is controlled by" or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(d) "Agreement" or "Partnership Agreement" means this Agreement of Limited Partnership, as amended from time to time.

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(e) "Bankruptcy" means, with respect to any Person, a "Voluntary Bankruptcy" or an "Involuntary Bankruptcy." "A"Voluntary Bankruptcy" means, with respect to any Person, the inability of that Person, generally, to pay his or her debts as those debts become due, or an admission in writing by that Person of his or her inability to pay his or her debts, generally, or a general assignment by that Person for the benefit of creditors; the filing of any petition or answer by that Person seeking to adjudicate him or her a bankrupt or insolvent, or seeking for himself or herself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of that Person or his or her debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for that Person or for any substantial part of his or her property; or corporate action taken by that Person to authorize any of the actions set forth above. An "Involuntary Bankruptcy" means, with respect to any Person, without the consent or acquiescence of that Person, the entering of an order other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against that Person, which petition shall not be dismissed within ninety (90) days, or, without the consent or acquiescence of that Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of that Person or of all or any substantial part of the property of that Person, which order shall not be dismissed within sixty (60) days.

(f) "Business Day" means a day of the year on which banks are not required or authorized to close in New York City.

(g) "Capital Account" means, with respect to the General Partner or any Interest Holder, the Capital Account maintained for that Person in accordance with the following provisions:

(i) To each Person's Capital Account there shall be credited that Person's Capital Contributions, that Person's distributive share of Profits and any items in the nature of income or gain which are specifically allocated pursuant to Section 3.3, and the amount of any Partnership liabilities assumed by that Person or that are secured by any Property distributed to that Person.

(ii) To each Person's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to that Person pursuant to any provision of this Agreement, that Person's distributive share of Losses and any items in the nature of expenses or losses that are specifically allocated pursuant to Section 3.3, and the amount of any liabilities of that Person assumed by the Partnership or that are secured by any property contributed by that Person to the Partnership.

(iii) In the event all or a portion of an interest in the Partnership is transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the transferred interest.

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(iv) In determining the amount of any liability for purposes of Sections 1.10(g)(i) and 1.10(g)(ii), there shall be taken into account Code Section 7520 and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with those Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits to the Capital Accounts (including, without limitation, debits or credits relating to liabilities secured by contributions or distributed property or assumed by the Partnership, General Partner or Interest Holders), are computed in order to comply with those Regulations, the General Partner may make that modification, provided that it is not likely to have a material effect on the amounts distributed to any Person, pursuant to Article XIII, upon the dissolution of the Partnership. The General Partner also shall:

(i) Make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the General Partner and Interest Holders and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.70-1(b)(2)(iv)(q); and

(ii) Make any appropriate modifications in the event unanticipated events (for example, the acquisition by the Partnership of oil or gas properties) might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

(h) "Capital Contributions" means, with respect to the General Partner or any Interest Holder, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Partnership with respect to the interest in the Partnership held by that Person.

(i) "Certificate" has the meaning set forth in Section 1.5.

(j) "Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(k) "Family" has the meaning set forth in Section 10.2.

(l) "Firm Offer" has the meaning set forth in Section 10.4(b).

(m) "Fiscal Year" means:

(i) The period commencing on the effective date of this Agreement and ending on December 31;

(ii) Any subsequent twelve (12) month period commencing on January 1 and ending on December 31; or

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(iii) Any portion of the period described in clause (ii) for which the Partnership is required to allocate Profits, Losses and other items of Partnership income, gain, loss or deduction pursuant to Article III.

(n) "General Partner" means the Person who:

(i) Is referred to as such in the first paragraph of this Agreement or has become a General Partner pursuant to the terms of this Agreement; and

(ii) Has not ceased to be a General Partner pursuant to the terms of this Agreement. "General Partners" means all such Persons.

(o) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for Federal Income Tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of the asset, as determined by the contributing Partner and the General Partner;

(ii) The Gross Asset Values of all Partnership assets shall be adjusted to equal their respective gross fair market values, as determined by the General Partner, as of the following times:

(1) The acquisition of an additional interest in the Partnership by any new or existing Partner in exchange for more than a *de minimis* Capital Contribution;

(2) The distribution by the Partnership to the General Partner or Interest Holder of more than a *de minimis* amount of Property as consideration for an interest in the Partnership; and

(3) The liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g).

Provided, however, that adjustments pursuant to subclauses (1) and (2) above shall be made only if the General Partner reasonably determines that those adjustments are necessary or appropriate to reflect the relative economic interests of the General Partner and Interest Holders in the Partnership;

(iii) The Gross Asset Value of any Partnership asset distributed to any General Partner or Interest Holder shall be adjusted to equal the gross fair market value of that asset on the date of distribution as determined by the distributee and the General Partner, provided that, if the distributee is the General Partner, the determination of the fair market value of the distributed asset shall require the consent of the Limited Partners; and

(iv) The Gross Asset Value of any Partnership asset shall be increased (or decreased) to reflect any adjustments to the adjusted basis of those assets

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pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that those adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Section 1.10(ee)(v), provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 1.10(o)(iv) to the extent the General Partner determines that an adjustment, pursuant to Section 1.10(o)(ii), is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 1.10(o)(iv).

(p) "Interest" means an ownership interest in the Partnership representing a Capital Contribution by a Limited Partner pursuant to Section 2.2, including any and all benefits to which the holder of the Interest may be entitled, as provided in this Agreement, together with all obligations of that Person to comply with the terms and provisions of this Agreement.

(r) "Involuntary Bankruptcy" has the meaning set forth in Section 1.10(e).

(s) "Limited Partner" means any Person:

(i) Whose name is set forth in Section 2.2 or who has become a Limited Partner pursuant to the terms of this Agreement; and

(ii) Who holds an Interest.

"Limited Partners" means all such Persons. All references in this Agreement to a majority or a specified percentage of the Limited Partners shall mean Limited Partners whose combined Interests represent more than fifty percent (50%) or such specified percentage, as the case may be, of the Interests then held by all Limited Partners.

(t) "Liquidating Event" has the meaning set forth in Section 13.1.

(u) "Net Cash Flow" means the gross cash proceeds from Partnership operations, sales, dispositions and refinancing, less the portion thereof used to pay or establish reserves for all Partnership expenses, debt payments, capital improvements, replacements and contingencies, all as determined by the General Partner. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions or similar allowances, but shall be increased by any reductions of reserves previously established pursuant to the first sentence of this Section 1.10(u).

(v) "Offer Notice" has the meaning set forth in Section 10.4(b).

(w) "Offer Period" has the meaning set forth in Section 10.4(c).

(x) "Offer Price" has the meaning set forth in Section 10.4(a).

(y) "Offered Interests" has the meaning set forth in Section 10.4.

(z) "Offerees" has the meaning set forth in Section 10.4(b).



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(aa) "Partners" means all General Partners and all Limited Partners, where no distinction is required by the context in which the term is used in this Agreement. "Partner" means any one of the Partners. All references in this Agreement to a majority or a specified percentage of the Partners shall mean Partners who are entitled to receive more than fifty percent (50%) or such specified percentage, as the case may be, of any distributions pursuant to Section 4.1(b).

(bb) "Partnership" means the partnership formed pursuant to this Agreement and the partnership continuing the business of this Partnership in the event of dissolution as provided in this Agreement.

(cc) "Permitted Transfer" has the meaning set forth in Section 10.2.

(dd) "Person" means any individual or partnership or any corporation, trust or other entity.

(ee) "Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Partnership's taxable income or loss for the Fiscal Year, 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), shall be included in taxable income or loss), with the following adjustments:

(i) 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 Section 1.10(ee), shall be added to that taxable income or loss;

(ii) 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 Section 1.10(ee), shall be subtracted from that taxable income or loss;

(iii) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to Section 1.10(o)(ii) or Section 1.10(o)(iii), the amount of the adjustment shall be taken into account as gain or loss from the disposition of that asset for purposes of computing Profits or Losses;

(iv) 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 Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of that property differs from its Gross Asset Value;

(v) To the extent an adjustment to the adjusted tax basis of any Partnership asset, pursuant to Code Section 734(b) or Code Section 743(b), is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution, other than in complete liquidation of a Partner's or Interest Holder's Interest, the amount of that adjustment shall be treated as an item of gain (if the adjustment

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increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(vi) Notwithstanding any other provision of this Section 1.10(ee), any items specifically allocated, pursuant to Section 3.3, shall not be taken into account in computing Profits or Losses.

The amounts of the items of Partnership income, gain, loss or deduction available to be specifically allocated, pursuant to Section 3.3, shall be determined by applying rules analogous to those set forth in Sections 1.10(ee)(i) through 1.10(ee)(vi) above.

(ff) "Purchase Offer" has the meaning set forth in Section 10.4(a).

(gg) "Purchaser" has the meaning set forth in Section 10.4(a).

(hh) "Reconstitution Period" has the meaning set forth in Section 13.1.

(ii) "Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as those regulations may be amended from time to time, including corresponding provisions of succeeding regulations).

(jj) "Seller" has the meaning set forth in Section 10.4.

(kk) "Tax Matters Partner" has the meaning set forth in Section 5.1(k).

(ll) "Transfer" means, as a noun, any voluntary or involuntary transfer, sale or other disposition and, as a verb, voluntarily or involuntarily, to transfer, sell or otherwise dispose of.

(mm) "Voluntary Bankruptcy" has the meaning set forth in Section 1.10(e).

## ARTICLE II PARTNER'S CAPITAL CONTRIBUTIONS

**Section 2.1 General Partner.** The Name and Business Address, Capital Contribution of the General Partner and Percentage Interest are as follows:

<u>Name and Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
JOSEPH C. FISHER 1249 Seagrape Lane Sanibel Island, FL 33957	\$10.00	2%

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**Section 2.2 Limited Partners.** The Name and Business Address, Capital Contribution and Percentage Interest of the Limited Partners are as follows:

<u>Name and Address</u>	<u>Capital Contribution</u>	<u>Percentage Interest</u>
JACOB FISHER 1249 Seagrape Lane Sanibel Island, FL 33957	\$500.00	49%
JANE FISHER 1249 Seagrape Lane Sanibel Island, FL 33957	\$500.00	49%

**Section 2.3 Other Matters.**

(a) Except as otherwise provided in this Agreement, neither the General Partner nor an Interest Holder shall demand or receive a return of their Capital Contributions or withdraw from the Partnership without the consent of all Partners. Under circumstances requiring a return of any Capital Contributions, neither the General Partner nor an Interest Holder shall have the right to receive property other than cash, except as may be specifically provided in this Agreement

(b) Neither the General Partner nor an Interest holder shall receive any interest, salary or drawing with respect to their Capital Contributions or his or her Capital Account or for services rendered on behalf of the Partnership or otherwise in his capacity as a General Partner or Interest Holder, except as otherwise provided in this Agreement.

(c) Provided that the Limited Partners act in accordance with this Agreement, no Limited Partner shall be liable for the debts, liabilities, contracts or any other obligations of the Partnership. Except as otherwise provided by any other agreements among the Partners or mandatory provisions of applicable State law, a Limited Partner shall be liable only to make his or her Capital Contributions and shall not be required to lend any funds to the Partnership or, after his or her Capital Contributions have been made, to make any additional Capital Contributions to the Partnership.

(d) The General Partner shall have no personal liability for the repayment of any Capital Contributions of any Interest Holder.

**ARTICLE III  
ALLOCATIONS**

**Section 3.1 Profits.** After giving effect to the special allocations set forth in Section 3.3, Profits for any Fiscal Year shall be allocated ninety-eight percent (98.0%) to the Limited Partners and two percent (2.0%) to the General Partner.

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**Section 3.2**                    **Losses.** After giving effect to the special allocations set forth in Section 3.3, Losses for any Fiscal Year shall be allocated ninety-eight percent (98.0%) to the Limited Partners and two percent (2.0%) to the General Partner.

**Section 3.3**                    **Section 754 Adjustments.** To the extent an adjustment to the adjusted tax basis of any Partnership asset, pursuant to Code Section 734(b)) or Code Section 743(b), is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a General Partner or Interest Holder in complete liquidation of their interest in the Partnership, the amount of the adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) and that gain or loss shall be specifically allocated to the General Partner and the Interest Holders in accordance with their interests in the Partnership, in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the General Partner or Interest Holder to whom the distribution was made, in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

**Section 3.4**                    **Other Allocation Rules.**

(a) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a monthly, quarterly or other basis, as determined by the General Partner using any permissible method under Code Section 706 and the Regulations under that Code Section.

(b) All allocations to the Interest Holders, pursuant to this Article III, shall, except as otherwise provided, be divided among them in proportion to the Interests held by each. In the event there is more than one General Partner, all such allocations to the General Partners shall be divided among them as they may agree.

(c) The Partners are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their shares of Partnership income and loss for income tax purposes.

**Section 3.5**                    **Tax Allocations: Code Section 704(c).** In accordance with Code Section 704(c) and the Regulations under that Code Section, income, gain, loss and deduction, with respect to any property contributed to the capital of the Partnership, shall, solely for tax purposes, be allocated among the General Partner and Interest Holders so as to take account of any variation between the adjusted basis of that property to the Partnership for Federal Income Tax purposes and its initial Gross Asset Value, computed in accordance with Section 1.10(o)(i).

In the event the Gross Asset Value of any Partnership asset is adjusted, pursuant to Section 1.10(o)(ii), subsequent allocations of income, gain, loss and deduction with respect to that asset shall take account of any variation between the adjusted basis of that asset for Federal Income Tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations under that Code Section.

Any elections or other decisions relating to those allocations shall be made by the General Partner in any manner that reasonably reflects the purpose and intention of the Agreement. Allocations pursuant to this Section 3.5 are solely for purposes of Federal, State and local taxes and shall not affect, or in any way be taken into account, in computing any Person's Capital Account or share of Profits, Losses, other items or distributions, pursuant to any provision of this Agreement.

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#### **ARTICLE IV DISTRIBUTIONS**

**Section 4.1 Net Cash Flow.** Except as otherwise provided in Article XIII, Net Cash Flow, if any, shall be distributed at such time as the General Partner shall determine, two percent (2.0%) to the General Partner and ninety-eight percent (98.0%) to the Interest Holders.

**Section 4.2 Division Among Interest Holders and General Partner.** All distributions to the Interest Holders, pursuant to this Article IV, shall be divided among them in proportion to the Interests held by each.

**Section 4.3 Amounts Withheld.** All amounts withheld, pursuant to the Code or any provision of any State or local tax law, with respect to any payment, distribution or allocation to the Partnership, the General Partner or the Interest Holders shall be treated as amounts distributed to the General Partner and the Interest Holders, pursuant to this Article IV, for all purposes under this Agreement. The General Partner is authorized to withhold from distributions, or with respect to allocations, to the General Partner and Interest Holders and to pay over to any Federal, State or local government any amounts required to be so withheld, pursuant to the Code or any provisions of any other Federal, State or local law, and shall allocate any such amounts to the General Partner and Interest Holders with respect to which such amount was withheld.

#### **ARTICLE V MANAGEMENT**

**Section 5.1 Authority of the General Partner.** Subject to the limitations and restrictions set forth in this Agreement (including, without limitation, those set forth in this Article V), the General Partner shall have the sole and exclusive right to manage the business of the Partnership and shall have all of the rights and powers that may be possessed by a general partner under the Act, including, without limitation, the right and power to:

(a) Acquire by purchase, lease or otherwise any real or personal property that may be necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;

(b) Operate, maintain, finance, improve, construct, own, grant options with respect to, sell, convey, assign, mortgage and lease any real property and any personal property necessary, convenient or incidental to the accomplishment of the purposes of the Partnership;

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(c) Invest and reinvest in equity securities listed on U.S. or foreign securities exchanges or traded over-the-counter or privately, including, without limitation, common stock, preferred stock, securities representing the right to acquire stock (such as convertible debentures, options and warrants) and depository receipts for any of the foregoing equity securities; debt instruments of every kind whatsoever, whether U.S. or foreign and wherever and however traded, issued by corporations and companies of every type, governments, government agencies, supranational agencies and companies; fixed income obligations, including, without limitation, cash equivalents (such as bankers' acceptances, certificates of deposit, commercial paper, short-term government and corporate obligations and repurchase agreements); put and call options, both exchange-listed and over-the-counter, on securities, equity and fixed-income indices and other financial instruments; futures contracts and options thereon; interest rate transactions such as swaps, caps, floors or collars; currency transactions, such as currency forwarded contracts, currency futures contracts, currency swaps or options on currencies or currency futures; and derivatives of every kind whatsoever;

(d) Execute any and all agreements, contracts, documents, certifications and instruments necessary, convenient or incidental in connection with the management, maintenance and operation of Property, or in connection with managing the affairs of the Partnership, including executing amendments to the Agreement and the Certificate in accordance with the terms of the Agreement, both as General Partner and, if required, as attorney-in-fact for the Limited Partners pursuant to any power of attorney granted by the Limited Partners to the General Partner;

(e) Borrow money and issue evidences of indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Partnership, and secure the same by mortgage, pledge or other lien on any Property;

(f) Execute, in furtherance of any or all of the purposes of the Partnership, any deed, lease, mortgage, deed of trust, mortgage note, promissory note, bill of sale, contract or other instrument purporting to convey or encumber any or all of the Property;

(g) Prepay, in whole or in part, refinance, recast, increase, modify or extend any liabilities affecting the Property and, in connection therewith, execute any extensions or renewals of encumbrances on any or all of the Property;

(h) Care for and distribute funds to the General Partner and Interest Holders by way of cash, income, return of capital or otherwise, all in accordance with the provisions of this Agreement, and perform all matters in furtherance of the objectives of the Partnership or this Agreement;

(i) Contract on behalf of the Partnership for the employment and services of employees, independent contractors or both, such as lawyers, accountants and investment managers, and delegate to those persons the duty to manage or supervise any of the assets or operations of the Partnership;

(j) Engage in any kind of activity and perform and carry out contracts of any kind (including contracts of insurance covering risks to Property and General Partner

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liability) necessary or incidental to or in connection with, the accomplishment of the purposes of the Partnership, as may be lawfully carried on or performed by partnership under the laws of each State in which the Partnership is then formed or qualified;

(k) Make any and all elections for Federal, State and local tax purposes including, without limitation, any election, if permitted by applicable law:

(i) To adjust the basis of Property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of State or local law, in connection with transfers of interests in the Partnership and Partnership distributions;

(ii) With the consent of a majority of the Limited Partners, to extend the statute of limitations for assessment of tax deficiencies against the General Partner and Interest Holders with respect to adjustments to the Partnership's Federal, State or local tax returns; and

(iii) To the extent provided in Code Sections 6221 through 6231, to represent the Partnership, the General Partner and the Interest Holders before taxing authorities or courts of competent jurisdiction in tax matters affecting the Partnership, the General Partner and the Interest Holders, in their capacities as General Partner or Interest Holders, and to file any tax returns and to execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the General Partner and Interest Holders with respect to such tax matters or otherwise affect the rights of the Partnership, General Partner and Interest Holders.

The General Partner is specifically authorized to act as the "Tax Matters Partner" under the Code and in any similar capacity under State or local law;

(l) Take, or refrain from taking, all actions, not expressly proscribed or limited by this Agreement, as may be necessary or appropriate to accomplish the purposes of the Partnership; and

(m) Institute, prosecute, defend, settle, compromise and dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of or against the Partnership or the Partners in connection with activities arising out of, connected with or incidental to this Agreement, and to engage counsel or others in connection therewith.

## **Section 5.2 Right to Rely on General Partner.**

(a) Any Person dealing with the Partnership may rely (without duty of further inquiry) upon a certificate signed by the General Partner as to:

(i) The identity of the General Partner or any Limited Partner;

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(ii) The existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the General Partner or which are, in any other manner, germane to the affairs of the Partnership;

(iii) The Persons who are authorized to execute and deliver any instrument or document of the Partnership; or

(iv) Any act or failure to act by the Partnership or any other matter whatsoever involving the Partnership or any Partner.

(b) The signature of the General Partner shall be necessary and sufficient to convey title to any property owned by the Partnership or to execute any promissory notes, trust deeds, mortgages, pledge agreements, security agreements or other instruments of hypothecation, and all of the Partners agree that a copy of this Agreement may be shown to the appropriate parties in order to confirm the same, and, further, agree that the signature of the General Partner shall be sufficient to execute any "statement of partnership" or other documents necessary to effectuate this or any other provision of this Agreement. All of the Partners do hereby appoint the General Partner as their attorney-in-fact for the execution of any or all of the documents described in this Section 5.2(b).

### **Section 5.3 Restrictions on Authority of General Partner.**

The General Partner shall not have the authority to, and covenants and agrees that it shall not, do any of the following acts without the unanimous consent of the Partners:

(a) Cause or permit the Partnership to engage in any activity that is not consistent with the purposes of the Partnership as set forth in Section 1.3;

(b) Knowingly do any act in contravention of this Agreement;

(c) Knowingly do any act that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;

(d) Knowingly perform any act that would subject any Limited Partner to liability as a general partner in any jurisdiction;

(e) Cause the Partnership to voluntarily take any action that would cause a Bankruptcy of the Partnership; and

(f) Cause the Partnership to admit any additional Limited Partner, other than pursuant to Section 10.7.

### **Section 5.4 Duties and Obligations of the General Partner.**

(a) The General Partner shall cause the Partnership to conduct its business and operations separate and apart from that of the General Partner or any of his Affiliates, including, without limitation:



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(i) Segregating Partnership assets and not allowing funds or other assets of the Partnership to be commingled with the funds or other assets of, held by or registered in the name of the General Partner or any of his Affiliates;

(ii) Maintaining books and financial records of the Partnership separate from the books and financial records of the General Partner and his Affiliates, and observing all Partnership procedures and formalities, including, without limitation, maintaining minutes of Partnership meetings and acting on behalf of the Partnership only, pursuant to due authorization of the Partners;

(iii) Causing the Partnership to pay its liabilities from assets of the Partnership; and

(iv) Causing the Partnership to conduct its dealings with third parties in its own name and as a separate and independent entity.

(b) The General Partner shall take all actions that may be necessary or appropriate:

(i) For the continuation of the Partnership's valid existence as a limited partnership under the laws of the State of Florida and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Limited Partners or to enable the Partnership to conduct the business in which it is engaged; and

(ii) For the accomplishment of the Partnership's purposes, including the buying, selling and holding property in accordance with the provisions of this Agreement and applicable laws and regulations.

(c) The General Partner shall be under a fiduciary duty to conduct the affairs of the Partnership in the best interests of the Partnership and of the Limited Partners, including the safekeeping and use of all of the Property and the use thereof for the exclusive benefit of the Partnership.

## **Section 5.5 Indemnification of General Partner.**

(a) The Partnership, its receiver or its trustee (in the case of its receiver or trustee, to the extent of Partnership Property) shall indemnify, save harmless and pay all judgments and claims against the General Partner or any trustees, officers or directors of the General Partner relating to any liability or damage incurred by reason of any act performed, or omitted to be performed, by the General Partner, trustee, officer or director, in connection with the business of the Partnership, including attorneys' fees incurred by the General Partner, trustee, officer or director in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, including all such liabilities under Federal and State securities laws (including the Securities Act of 1933, as amended) as permitted by law and including all such liabilities arising from any breach of fiduciary duty.

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(b) In the event of any action by an Interest Holder against the General Partner or against any trustee, officer or director of the General Partner, including a Partnership derivative suit, the Partnership shall indemnify, save harmless and pay all expenses of the General Partner, trustee, officer or director including attorneys' fees, incurred in the defense of such action, if the General Partner, trustee, officer or director is successful in such action.

(c) Notwithstanding the provisions of Sections 5.5(a) the General Partner shall not be indemnified from any liability for fraud, bad faith, willful misconduct or gross negligence.

(d) Notwithstanding anything to the contrary in any of Sections 5.5(a), 5.5(b) and 5.5(c) above, in the event that any provision in any of those Sections is determined to be invalid, in whole or in part, that Section shall be enforced to the maximum extent permitted by law.

#### **Section 5.6 Compensation and Loans.**

(a) **Compensation and Reimbursement.** Except as otherwise provided in this Section 5.6, no Partner shall receive any salary, fee or draw for services rendered to or on behalf of the Partnership, nor shall any Partner be reimbursed for any expenses incurred by that Partner on behalf of the Partnership.

(b) **Expenses.** The General Partner may charge the Partnership a reasonable management fee and for any expenses reasonably incurred in connection with the Partnership's business.

(c) **Loans.** Any Person may, with the consent of the General Partner, lend or advance money to the Partnership. If any Partner shall make any loan or loans to the Partnership or advance money on its behalf, the amount of any such loan or advance shall not be treated as a Capital Contribution, but shall be a debt due from the Partnership. The amount of any such loan or advance by a lending Partner shall be repayable out of the Partnership's cash and shall bear interest at such rate as the General Partner and the lending Partner shall agree, but not in excess of the maximum rate permitted by law. If the General Partner, or an Affiliate of the General Partner, is the lending Partner, the rate of interest shall be determined by the General Partner taking into consideration, without limitation, prevailing interest rates and the interest rates the lender is required to pay, in the event that the lender has itself borrowed funds to loan or advance to the Partnership, and the terms and conditions of that loan, including the rate of interest, shall be no less favorable to the Partnership than if the lender had been an independent third party. None of the Partners shall be obligated to make any loan or advance to the Partnership.

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## **ARTICLE VI ROLE OF LIMITED PARTNERS**

**Section 6.1 Rights or Powers.** The Limited Partners shall not have any right or power to take part in the management or control of the Partnership or its business and affairs or to act for or bind the Partnership in any way.

**Section 6.2 Voting Rights.** The Limited Partners shall have the right to vote on the matters specifically reserved for his or her approval or consent set forth in this Agreement.

**Section 6.3 Procedure for Consent.** In any circumstances requiring the approval or consent of the Limited Partners, as specified in this Agreement, that approval or consent shall, except as expressly provided to the contrary in this Agreement, be given or withheld in the sole and absolute discretion of the Limited Partners and conveyed in writing to the General Partner not later than thirty (30) days after the approval or consent was requested by the General Partner. The General Partner may require response within a shorter time, but not less than ten (10) Business Days. A failure to respond in that time period shall constitute a vote that is consistent with the General Partner's recommendation with respect to the proposal. If the General Partner receives the necessary approval or consent of the Limited Partners to the action, the General Partner shall be authorized and empowered to implement that action without further authorization by the Limited Partners.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES**

**Section 7.1 In General.** As of the date of this Agreement, each of the Partners hereby makes each of the representations and warranties applicable to that Partner set forth in Section 7.2, and those warranties and representations shall survive the execution of this Agreement.

**Section 7.2 Representations and Warranties.** Each Partner hereby represents and warrants that:

(a) **Due Incorporation or Formation; Authorization of Agreement.** If the Partner is a corporation or a trust, it is duly organized or duly formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate or trust power and authority to own its property and carry on its business as owned and carried on at the date of this Agreement and as contemplated by this Agreement. The Partner is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations under this Agreement. The Partner has the individual, corporate or trust power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement and, if the Partner is a corporation or trust, the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or trust action, as the case may be. This Agreement constitutes the legal, valid and binding obligation of the Partner.

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(b) **No Conflict With Restrictions; No Default.** Neither the execution, delivery or performance of this Agreement, nor the consummation by the Partner of the transactions contemplated by this Agreement:

(i) Will conflict with, violate or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree, determination or award of any court, any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator applicable to the Partner;

(ii) Will conflict with, violate, result in a breach of or constitute a default under any of the terms, conditions or provisions of the Articles of Incorporation, Bylaws or Trust Agreement of the Partner or of any material agreement or instrument to which the Partner is a party or by which the Partner is or may be bound or to which any of its material properties or assets is subject;

(iii) Will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization or approval under any indenture, mortgage, lease agreement or instrument to which that Partner is a party or by which that Partner is or may be bound; or

(iv) Will result in the creation or imposition of any lien upon any of the material properties or assets of that Partner.

(c) **Investigation.** That Partner is acquiring his or her interest in the Partnership based upon his or her own investigation, and the exercise by that Partner of his or her rights and the performance of its obligations under this Agreement will be based upon his or her own investigation, analysis and expertise. That Partner's acquisition of his or her interest in the Partnership is being made for his or her own account for investment and not with a view to the sale or distribution.

## **ARTICLE VIII BOOKS AND RECORDS**

**Section 8.1 Books and Records.** The Partnership shall maintain at its principal place of business, or other location designated by the General Partner, separate books of accounts for the Partnership that show a true and accurate record of all costs and expenses incurred, all changes made, all credits made and received and all income derived in connection with the conduct of the Partnership and the operation of its business in accordance with generally accepted accounting principles consistently applied, and, to the extent inconsistent therewith, in accordance with this Agreement. The Partnership shall use the cash method of accounting in preparation of its annual reports and for tax purposes and shall keep its books and records accordingly. Any Partner or his or her designated representative shall have the right, at any reasonable time, to have access to and inspect and copy the contents of those books or records.

**Section 8.2 Reports.** The General Partner shall be responsible for the preparation of financial reports of the Partnership and the coordination of financial matters of the Partnership with the Partnership's accountants and investment managers.

**Section 8.3 Tax Information.** Necessary tax information shall be delivered to each Partner after the end of each Fiscal Year of the Partnership.

## **ARTICLE IX AMENDMENTS; MEETINGS**

### **Section 9.1 Amendments.**

(a) Amendments to this Agreement may be proposed by any Partner. Following such proposal, the General Partner shall submit to the Limited Partners a verbatim statement of any proposed amendment, providing that counsel for the Partnership shall have approved of the same in writing as to form, and the General Partner shall include in any such submission a recommendation as to the proposed amendment. The General Partner shall seek the written vote of the Partners on the proposed amendment or shall call a meeting to vote on the proposed amendment and to transact any other business that she may deem appropriate. A proposed amendment shall be adopted and be effective as an amendment to this Agreement if it receives the affirmative vote of the General Partner and a majority of the Limited Partners.

(b) Notwithstanding Sections 6.3 and 9.1(a), this Agreement shall not be amended without the consent of each Partner adversely affected if the amendment would:

(i) Convert a Limited Partner's interest in the Partnership into a General Partner's interest;

(ii) Modify the limited liability of a Limited Partner; or

(iii) Alter the interest of a Partner in Profits, Losses, other items or any Partnership distributions.

**Section 9.2 Written Consent.** The Partnership may take any action contemplated under this Agreement, if approved by consent of the General Partner and a majority of the Limited Partners acting without a meeting, such consent to be provided in writing, by telephone or facsimile, if the telephone conversation or facsimile is followed by a hard copy of the telephone conversation or facsimiled communication, sent by registered or certified mail, postage and charges prepaid, addressed as described in Section 15.1, or to such other address as the Person may, from time to time, specify by notice to the Partners.

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## ARTICLE X TRANSFERS OF INTERESTS

**Section 10.1**      **Restriction on Transfers.** Except as otherwise permitted by this Agreement, no Interest Holder shall Transfer, pledge or hypothecate all or any portion of his or her Interests.

**Section 10.2**      **Permitted Transfers.** Subject to the conditions and restrictions set forth in Section 10.3, an Interest Holder may, at any time, Transfer all or any portion of his or her Interests to:

- (a) Any other Interest Holder;
- (b) Any member of the Transferor's Family;
- (c) The Transferor's executor, administrator, trustee or personal representative to whom those Interests are transferred at death or, involuntarily, by operation of law; or
- (d) Any Purchaser, in accordance with Section 10.4 (any such Transfer being referred to in this Agreement as a "Permitted Transfer"). For purposes of this Agreement, an Interest Holder's "Family" shall include only the Interest Holder's natural or adoptive lineal ancestors or descendants, and trusts for his, her or their exclusive benefit.

**Section 10.3**      **Conditions to Permitted Transfers.** A Transfer shall not be treated as a Permitted Transfer under Section 10.2 unless and until the following conditions are satisfied:

- (a) Except in the case of a Transfer of Interests at death or, involuntarily, by operation of law, the Transferor and Transferee shall execute and deliver to the Partnership the documents and instruments of conveyance as may be necessary or appropriate, in the opinion of counsel to the Partnership, to effect the Transfer and to confirm the agreement of the Transferee to be bound by the provisions of this Article X. In the case of a Transfer of Interests at death or, involuntarily, by operation of law, the Transfer shall be confirmed by presentation to the Partnership of legal evidence of the Transfer, in form and substance satisfactory to counsel to the Partnership. In all cases, the Partnership shall be reimbursed by the Transferor or Transferee for all costs and expenses that it reasonably incurs in connection with the Transfer.
- (b) Except in the case of a Transfer at death or, involuntarily, by operation of law, the Transferor shall furnish to the Partnership an opinion of counsel, which counsel and opinion are satisfactory to the Partnership, that the Transfer will not cause the Partnership to terminate for Federal Income Tax purposes.
- (c) The Transferor and Transferee shall furnish the Partnership with the Transferee's taxpayer identification number, sufficient information to determine the Transferee's initial tax basis in the Interests transferred, and any other information reasonably necessary to permit the Partnership to file all required Federal and State tax

returns and other legally required information, statements or returns. Without limiting the generality of the foregoing, the Partnership shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Interests until it has received that information.

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(d) Except in the case of a Transfer of Interests at death or involuntarily by operation of law, either:

(i) The Interests shall be registered under the Securities Act of 1933, as amended, and any applicable State securities laws; or

(ii) The Transferor shall provide an opinion of counsel, which opinion and counsel are satisfactory to the Partnership, to the effect that the Transfer is exempt from all applicable registration requirements and that the Transfer will not violate any applicable laws regulating the Transfer of securities.

(e) Except in the case of a Transfer of Interests at death or involuntarily by operation of law, the Transferor shall provide an opinion of counsel, which opinion and counsel are reasonably satisfactory to the other Partners, to the effect that the Transfer will not cause the Partnership to be deemed to be an "investment company" under the Investment Company Act of 1940.

**Section 10.4 Right of First Refusal.** In addition to the other limitations and restrictions set forth in this Article X, except as permitted by Section 10.2, no Interest Holder shall Transfer all or any portion of his or her Interests (the "Offered Interests") unless the Interest Holder (the "Seller") first offers to sell the Offered Interest pursuant to the terms of this Section 10.4.

(a) **Limitation on Transfers.** No Transfer may be made under this Section 10.4 unless the Seller has received a bona fide written offer (the "Purchase Offer") from a Person (the "Purchaser") to purchase the Offered Interest for a purchase price (the "Offer Price") denominated and payable in United States dollars at closing, or according to specified terms, with or without interest, which offer shall be in writing, signed by the Purchaser, and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period, as defined below.

(b) **Offer Notice.** Prior to making any Transfer that is subject to the terms of this Section 10.4, the Seller shall give to the Partnership and each Limited Partner written notice (the "Offer Notice"), which shall include a copy of the Purchase Offer and an offer (the "Firm Offer"), to sell the Offered Interests to the Limited Partners and the General Partner (the "Offerees") for the Offer Price, payable according to the same terms as (or more favorable terms than) those contained in the Purchase Offer, provided that the Firm Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser prior to closing, and without regard to any security (other than the Offered Interest) to be provided by the Purchaser for any deferred portion of the Offer Price.

(c) Offer Period. The Firm Offer shall be irrevocable for a period (the Offer Period") ending at 11:59 A.M., local time, at the Partnership's principal place of business, on the ninetieth (90<sup>th</sup>) day following the day of the Offer Notice.

(d) Acceptance of Firm Offer. At any time during the first sixty (60) days of the Offer Period, any Offeree who is a Limited Partner may accept the Firm Offer as to all or any portion of the Offered Interest, by giving written notice of acceptance to the Seller and the General Partner, which notice shall indicate the maximum Interests that the Offeree is willing to purchase. In the event that, within the first sixty (60) days of the Offer Period, Offerees who are Limited Partners ("Accepting Offerees"), in the aggregate, accept the Firm Offer with respect to all of the Offered Interests, the Firm Offer shall be deemed to be accepted and each of the Accepting Offerees shall be deemed to have accepted that portion of the Offered Interests that corresponds to the ratio of the Interests that the Accepting Offerees indicated a willingness to purchase to the aggregate Interests all Accepting Offerees indicated a willingness to purchase. At any time after the sixtieth (60<sup>th</sup>) day of the Offer Period, the General Partner may accept the Firm Offer, as to any portion of the Offered Interest that has not been previously accepted, by giving written notice of that acceptance to the Seller. In the event that Offerees, including the General Partner ("Accepting Offerees"), in the aggregate, accept the Firm Offer, with respect to all of the Offered Interest, the Firm Offer shall be deemed to be accepted. If Offerees do not accept the Firm Offer as to all of the Offered Interest during the Offer Period, the Firm Offer shall be deemed to be rejected in its entirety.

(e) Closing of Purchase Pursuant to Firm Offer. In the event that the Firm Offer is accepted, the closing of the sale of the Offered Interest shall take place within thirty (30) days after the Firm Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute the documents and instruments as may be necessary or appropriate to effect the sale of the Offered Interest, pursuant to the terms of the Firm Offer and this Article X.

(f) Sale Pursuant to Purchase Offer If Firm Offer Rejected. If the Firm Offer is not accepted in the manner provided above, the Seller may sell the Offered Interest to the Purchaser at any time within sixty (60) days after the last day of the Offer Period, provided that the sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer and, provided further, that sale complies with other terms, conditions and restrictions of this Agreement that are applicable to sales of Interests and are not expressly made inapplicable to sales occurring under this Section 10.4. In the event that the Offered Interest is not sold in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Section 10.4.

**Section 10.5 Prohibited Transfers.** Any purported Transfer of Interests that is not a Permitted Transfer shall be null and void and of no force or effect whatever; provided that, if the Partnership is required to recognize a Transfer that is not a Permitted Transfer (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not a Permitted Transfer), the Interest Transferred shall be strictly limited to the Transferor's rights to allocations and distributions, as provided by this Agreement and the Act, with respect to the transferred Interests, which allocations and distributions may be applied (without limiting any

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other legal or equitable rights of the Partnership) to satisfy any debts, obligations or liabilities for damages that the Transferor or Transferee of the Interests may have to the Partnership.

In the case of a Transfer or attempted Transfer of Interests that is not a Permitted Transfer, the parties engaging or attempting to engage in the Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability and damage that any of those indemnified Persons may incur (including, without limitation, incremental tax liability and lawyers' fees and expenses) as a result of the Transfer or attempted Transfer and efforts to enforce the indemnity granted by this Article X.

**Section 10.6 Rights of Unadmitted Assignees.** A Person who acquires one or more Interests, but who is not admitted as a substituted Limited Partner pursuant to Section 10.7, shall be entitled only to allocations and distributions with respect to those Interests in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Partnership, shall not be entitled to inspect the books or records of the Partnership and shall not have any of the rights of a General Partner or a Limited Partner under the Act or this Agreement.

**Section 10.7 Admission of Interest Holders as Partners.** Subject to the other provisions of this Article X, a Transferee of Interests may be admitted to the Partnership as a substituted Limited Partner only upon satisfaction of the conditions set forth below in this Section 10.7:

(a) The General Partner consents to that admission, which consent may be given or withheld in the sole and absolute discretion of the General Partner;

(b) The Interests with respect to which the Transferee is being admitted were acquired by means of a Permitted Transfer;

(c) The Transferee becomes a party to this Agreement as a Limited Partner and executes the documents and instruments the General Partner may reasonably request (including, without limitation, amendments to the Certificate) as may be necessary or appropriate to confirm the Transferee as a Limited Partner in the Partnership and the Transferee's agreement to be bound by the terms and conditions of this Agreement;

(d) The Transferee pays or reimburses the Partnership for all reasonable legal, filing and publication costs that the Partnership incurs in connection with the admission of the Transferee as a Limited Partner with respect to the Transferred Interests;

(e) The Transferee provides the Partnership with evidence, satisfactory to counsel for the Partnership, that the Transferee has made each of the representations and undertaken each of the warranties applicable to it described in Article VII; and

(f) If the Transferee is not an individual of legal majority, the Transferee provides the Partnership with evidence, satisfactory to counsel for the Partnership, of the authority of the Transferee to become a Partner and to be bound by the terms and conditions of this Agreement.

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## **Section 10.8 Covenants; Legend.**

(a) Each Interest Holder hereby represents, covenants and agrees with the Partnership, for the benefit of the Partnership and all Interest Holders, that:

(i) He is not currently making a market in Interests and will not in the future make a market in Interests;

(ii) He will not Transfer his or her Interests on an established securities market, a secondary market (or the substantial equivalent of a secondary market) within the meaning of Code Section 7704(b) (and any regulations, proposed regulations, revenue rulings or other official pronouncements of the Internal Revenue Service or Treasury Department that may be promulgated or published under that Code Section); and

(iii) In the event those Regulations, revenue rulings or other pronouncements treat any or all arrangements that facilitate the selling of partnership interests and that are commonly referred to as "matching services" as being a secondary market or substantial equivalent thereof, he will not Transfer any Interest through a matching service that is not approved in advance by the Partnership. Each Interest Holder further agrees that he will not Transfer any Interest to any Person unless that Person agrees to be bound by this Section 10.8(a) and to Transfer those Interests only to Persons who agree to be similarly bound. The Partnership shall, from time to time and at the request of an Interest Holder, consider whether to approve a matching service and shall notify all Interest Holders of any matching service that is so approved.

(b) Each Interest Holder hereby agrees that the following legend may be placed upon any counterpart of this Agreement, a certificate representing ownership of an Interest or any other document or instrument evidencing ownership of Interests:

The Partnership Interests represented by this document have not been registered under any securities laws and the transferability of these Interests is restricted. The Interests may not be sold, assigned or transferred, nor will any assignee, vendee, transferee or endorsee be recognized as having acquired any such Interests by the issuer for any purposes, unless: (1) a registration statement under the Securities Act of 1933, as amended, with respect to those Interests shall then be in effect and the transfer has been qualified under all applicable State securities laws; or (2) the availability of an exemption from registration and qualification shall be established to the satisfaction of counsel to the Partnership.

The Interests represented by this document are subject to further restriction as to their sale, transfer, hypothecation or assignment as set forth in the Agreement of Limited Partnership and agreed to by each Limited Partner. That restriction provides, among other things, that no Interest may be transferred without

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first offering the Interest to the other Interest Holders and General Partners, and that no vendee, transferee, assignee or endorsee of an Interest Holder shall have the right to become a substituted Limited Partner without the consent of the General Partner, which consent may be given or withheld in the sole and absolute discretion of the General Partner.

**Section 10.9 Distributions and Applications in Respect to Transferred Interests.**

If any Partnership Interest is sold, assigned or Transferred during any Fiscal Year, in compliance with the provisions of this Article X, Profits, Losses, each item thereof and all other items attributable to the Transferred Interest for the Fiscal Year shall be divided and allocated between the Transferor and the Transferee by taking into account their varying Interests during that Fiscal Year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the General Partner. All distributions on or before the date of that Transfer shall be made to the Transferor, and all distributions thereafter shall be made to the Transferee. Solely for purposes of making those allocations and distributions, the Partnership shall recognize that Transfer not later than the end of the calendar month during which it is given notice of that Transfer, provided that, if the Partnership is given notice of a Transfer at least ten (10) Business Days prior to the Transfer, the Partnership shall recognize that Transfer as the date of that Transfer, and, provided further, that, if the Partnership does not receive a notice stating the date the Interest was Transferred and such other information as the General Partner may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Partnership, was the owner of the Interest on the last day of the Fiscal Year during which the Transfer occurs. Neither the Partnership nor the General Partner shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 10.9, whether or not the General Partner or the Partnership has knowledge of any Transfer of ownership of any Interest.

**ARTICLE XI  
GENERAL PARTNERS**

**Section 11.1 Additional General Partners.** Except as provided in this Article XI and Section 13.1, no Person shall be admitted to the Partnership as a General Partner without the consent of the General Partner, if any, and a majority of the Limited Partners.

**Section 11.2 Covenant Not to Withdraw, Transfer, or Dissolve.** Except as otherwise permitted by this Agreement, the General Partner hereby covenants and agrees not to:

- (a) Take any action to file a certificate of cancellation or its equivalent with respect to himself;
- (b) Take any action that would cause a Voluntary Bankruptcy of that General Partner;
- (c) Withdraw or attempt to withdraw from the Partnership;

- (d) Exercise any power under the Act to dissolve the Partnership;
- (e) Transfer all or any portion of his interest in the Partnership as a General Partner; or
- (f) Petition for judicial dissolution of the Partnership.

Further, the General Partner hereby covenants and agrees to continue to carry out the duties of a General Partner under this Agreement, until the Partnership is dissolved and liquidated pursuant to Article XIII.

### **Section 11.3 Permitted Transfers.**

- (a) A General Partner may Transfer all or any portion of his interest in the Partnership as a General Partner to any Person who is approved by a majority of the Partners.
- (b) A Transferee of an interest in the Partnership from a General Partner under this Article XI shall be admitted as a General Partner with respect to said interest if, but only if, the admission of the Transferee as a General Partner is approved by a majority of the Partners.
- (c) A Transferee who acquires a Partnership Interest from a General Partner under this Article XI by means of a Transfer that is permitted under this Section 11.3, but who is not admitted as a General Partner, shall have no authority to act for or bind the Partnership, to inspect the Partnership's books, or otherwise to be treated as a General Partner, but the Transferee shall be treated as an Interest Holder who acquired an Interest in a Permitted Transfer under Article X.

**Section 11.4 Prohibited Transfers.** Any purported Transfer of an Interest in the Partnership held by the General Partner that is not permitted by Section 11.3 above shall be null and void and of no force or effect whatever; provided that, if the Partnership is required to recognize a Transfer that is not so permitted (or if the Partnership, in its sole discretion, elects to recognize a Transfer that is not so permitted), the Interest transferred shall be strictly limited to the Transferor's rights to allocations and distributions, as provided by this Agreement, with respect to the transferred Interest, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Partnership) to satisfy any debts, obligations or liabilities for damages that the Transferor or Transferee of that Interest may have to the Partnership.

In the case of a Transfer or attempted Transfer of a Partnership Interest that is not permitted by Section 11.3 above, the parties engaging or attempting to engage in that Transfer shall be liable to indemnify and hold harmless the Partnership and the other Partners from all cost, liability and damage that any of the indemnified Persons may incur (including, without limitation, incremental tax liability and attorneys' fees and expenses) as a result of that Transfer or attempted Transfer and efforts to enforce the indemnity granted by this Section 11.4

### **Section 11.5 Termination of Status as General Partner.**

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- (a) A General Partner shall cease to be a General Partner upon the first to occur of:
- (i) The Bankruptcy of that General Partner;
  - (ii) The Transfer of a portion of that Partner's interest as a General Partner that causes that General Partner to hold less than ten percent (10%) of the interest that Person initially held as a General Partner;
  - (iii) The involuntary Transfer by operation of law of that General Partner's interest in the Partnership; or
  - (iv) The vote of a majority of the Limited Partners to approve a request by that General Partner to withdraw.

In the event a Person ceases to be a General Partner without having Transferred his or her entire Interest as a General Partner, that Person shall be treated as an unadmitted Transferee of a Partnership Interest as a result of an unpermitted Transfer of an Interest pursuant to Section 11.4.

If a General Partner ceases to be a General Partner for any reason under this Agreement, that Person shall continue to be liable as a General Partner for all debts and obligations of the Partnership existing at the time that Person ceases to be a General Partner, regardless of whether, at that time, those debts or liabilities were known or unknown, actual or contingent. A Person shall not be liable as a General Partner for Partnership debts and obligations arising after that Person ceases to be a General Partner. Any debts, obligations or liabilities in damages to the Partnership of any Person who ceases to be a General Partner shall be collectible by any legal means and the Partnership is authorized, in addition to any other remedies at law or in equity, to apply any amounts otherwise distributable or payable by the Partnership to that Person to satisfy those debts, obligations or liabilities.

(b) It is the intention of the Partners that the Partnership not dissolve as a result of the cessation of any General Partner's status as a General Partner; provided, however, that, if it is determined by a court of competent jurisdiction that the Partnership has dissolved, the provisions of Section 13.1 shall govern.

(c) If, at the time a Person ceases to be a General Partner, that Person is also a Limited Partner or an Interest Holder with respect to Interests other than his or her Interest as a General Partner, such cessation shall not affect that Person's rights and obligations with respect to those Interests.

## ARTICLE XII POWER OF ATTORNEY

**Section 12.1 General Partner as Attorney-In-Fact.** Each Limited Partner hereby makes, constitutes and appoints the General Partner and any successor General Partner, with full power of substitution and re-substitution, his or her true and lawful attorney-in-fact for him

or her and in his or her name, place and stead and for his or her use and benefit, to sign, execute, certify, acknowledge, swear to, file and record:

(a) All certificates of limited partnership, amended name or similar certificates, and other certificates and instruments (including counterparts of this Agreement), which the General Partner may deem necessary or appropriate to be filed by the Partnership under the laws of the State of Florida or any other State or jurisdiction in which the Partnership is doing or intends to do business;

(b) Any and all amendments or changes to this Agreement and the instruments described in (a), as now or hereafter amended, which the General Partner may deem necessary or appropriate to effect a change or modification of the Partnership in accordance with the terms of this Agreement, including, without limitation, amendments or changes to reflect:

(i) The exercise by the General Partner of any power granted to him under this Agreement;

(ii) Any amendments adopted by the Partners in accordance with the terms of this Agreement;

(iii) The admission of any substituted Partner; and

(iv) The disposition by any Partner of its Interest.

(c) All certificates of cancellation and other instruments the General Partner may deem necessary or appropriate to effect the dissolution and termination of the Partnership pursuant to the terms of this Agreement; and

(d) Any other instrument that is now or may hereafter be required by law to be filed on behalf of the Partnership or is deemed necessary or appropriate by the General Partner to carry out fully the provisions of this Agreement in accordance with its terms.

Each Limited Partner authorizes each such attorney-in-fact to take any further action that said attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving each such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in connection with the foregoing, as fully as such Limited Partner might or could do personally, and hereby ratifying and confirming all that any such attorney-in-fact shall lawfully do or cause to be done by virtue thereof or hereof.

**Section 12.2 Nature of Special Power.** The power of attorney granted pursuant to this Article XII:

(a) Is a special power of attorney coupled with an interest and is irrevocable;

(b) May be exercised by any such attorney-in-fact by listing the Limited Partner executing any agreement, certificate, instrument or other document with the

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single signature of any such attorney-in-fact acting as attorney-in-fact for that Limited Partner; and

(c) Shall survive the death, disability, legal incapacity, bankruptcy, insolvency, dissolution or cessation of existence of a Limited Partner and shall survive the delivery of an assignment by a Limited Partner of the whole or a portion of his or her Interests, except that, where the assignment is of that Limited Partner's entire Interests and the assignee, with the consent of the General Partner, is admitted as a substituted Limited Partner, the power of attorney shall survive the delivery of that assignment for the sole purpose of enabling any such attorney-in-fact to effect the substitution.

### ARTICLE XIII DISSOLUTION AND WINDING UP

**Section 13.1 Liquidating Events.** The Partnership shall dissolve and commence winding up and liquidating upon the first to occur of any of the following ("Liquidating Events"):

- (a) December 31, 2050;
- (b) The sale of all or substantially all of the property of the Partnership;
- (c) The affirmative vote of the General Partner and a majority of the Limited Partners to dissolve, wind up and liquidate the Partnership;
- (d) The happening of any other event that makes it unlawful, impossible or impractical to carry on the business of the Partnership; or
- (e) The withdrawal or removal of a General Partner, the assignment by the General Partner of his entire interest in the Partnership or any other event that causes a General Partner to cease to be a general partner under the Act, provided that any such event shall not constitute a Liquidating Event if the Partnership is continued pursuant to this Section 13.1.

The Partners hereby agree that, notwithstanding any provision of the Act or the Florida Uniform Partnership Act, the Partnership shall not dissolve prior to the occurrence of a Liquidating Event. Upon the occurrence of any event set forth in Section 13.1(e), the Partnership shall not be dissolved or required to be wound up if:

- (a) At the time of such event, there is at least one remaining General Partner and that General Partner carries on the business of the Partnership (any such remaining General Partner being hereby authorized to carry on the business of the Partnership); or
- (b) Within ninety (90) days after that event, all remaining Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of the date of that event, of one or more additional General Partners.

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If it is determined by a court of competent jurisdiction that the Partnership has dissolved prior to the occurrence of a Liquidating Event, or if, upon the occurrence of an event specified in Section 13.1(e), the Partners fail to appoint a substitute General Partner, effective as of the date of that event, and to agree to continue the business of the Partnership as provided in this Section 13.1, then, within an additional ninety (90) days after such determination or the last day of such ninety (90) day period, as the case may be (the "Reconstitution Period"), a two-thirds majority of the Partners may elect to reconstitute the Partnership and continue its business on the same terms and conditions set forth in this Agreement by forming a new limited partnership on terms identical to those set forth in this Agreement and having as a general partner a Person elected by that two-thirds majority. Upon the election by a two-thirds majority of the Partners, all Partners shall be bound thereby and shall be deemed to have consented to that decision. Unless such an election is made within the Reconstitution Period, the Partnership shall wind up its affairs in accordance with Section 13.2. If such an election is made within the Reconstitution Period, then:

(a) The reconstituted limited partnership shall continue until the occurrence of a Liquidating Event as provided in this Section 13.1;

(b) If the successor general partner is not a former General Partner, then the interest in the Partnership of any former General Partner shall thereafter be treated as the interest of a Limited Partner; and

(c) All necessary steps shall be taken to cancel this Agreement and the Certificate and to enter into a new partnership agreement and certificate of limited partnership, and the successor general partner may, for this purpose, exercise the powers of attorney granted the General Partner pursuant to Article XIV;

provided that the right of a two-thirds majority of the Partners to select a successor general partner and to reconstitute and continue the business of the Partnership shall not exist and may not be exercised unless the Partnership has received an opinion of counsel that the exercise of the right would not result in the loss of limited liability of any Limited Partner and neither the Partnership nor the reconstituted partnership would cease to be treated as a partnership for Federal Income Tax purposes upon the exercise of that right to continue.

**Section 13.2 Winding Up.** Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Partners. No Partner shall take any action that is inconsistent with, or not necessary to or appropriate for the winding up of the Partnership's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the Partnership property has been distributed pursuant to this Section 13.2 and the Certificate has been canceled in accordance with the Act. The General Partner (or, in the event there is no remaining General Partner, any Person elected by a majority of the Limited Partners) shall be responsible for overseeing the winding up and dissolution of the Partnership, shall take full account of the Partnership's liabilities and property, shall cause the Partnership property to be liquidated as promptly as is consistent with obtaining the fair value thereof and shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:



(a) First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than General Partners;

(b) Second, to the payment and discharge of all of the Partnership's debts and liabilities to General Partners;

(c) The balance, if any, to the General Partner and Interest Holders in accordance with their Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods.

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article XIII. The General Partner understands and agrees that, by accepting the provisions of this Section 13.2 setting forth the priority of the distribution of the assets of the Partnership to be made upon its liquidation, the General Partner expressly waives any right which it, as a creditor of the Partnership, might otherwise have under the Act to receive distributions of assets *pari passu* with the other creditors of the Partnership, in connection with a distribution of assets of the Partnership in satisfaction of any liability of the Partnership, and hereby subordinates to said creditors any such right.

#### **Section 13.3 Deemed Distribution and Re-Contribution.**

Notwithstanding any other provision of this Article XIII, in the event the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. Instead, solely for Federal Income Tax purposes, the Partnership shall be deemed to have distributed the Property in kind to the General Partner and Interest Holders, who shall be deemed to have assumed and taken subject to all Partnership liabilities, all in accordance with their respective Capital Accounts and, if the General Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations for all Fiscal Years, including the Fiscal Year during which the liquidation occurs), the General Partner shall contribute to the capital of the Partnership the amount necessary to restore the deficit balance to zero in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(3). Immediately thereafter, the General Partner and Interest Holders shall be deemed to have re-contributed the Property in kind to the Partnership, which shall be deemed to have assumed and taken subject to all such liabilities.

**Section 13.4 Rights of General Partner and Interest Holders.** Except as otherwise provided in this Agreement:

(a) The General Partner and each Interest Holder shall look solely to the assets of the Partnership for the return of his or her Capital Contribution and shall have no right or power to demand or receive property other than cash from the Partnership; and

(b) No Interest Holder shall have priority over any other Interest Holder as to the return of his or her Capital Contributions, distributions or allocations.

**Section 13.5 Notice of Dissolution.** In the event a Liquidating Event occurs or an event occurs that would, but for the provisions of Section 13.1, result in a dissolution of

the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners and to all other parties with whom the Partnership regularly conducts business (as determined in the discretion of the General Partner) and shall publish notice thereof in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the discretion of the General Partner).

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#### ARTICLE XIV MISCELLANEOUS

**Section 14.1 Notices.** Any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be in writing and sent by overnight courier, or by telephone or facsimile, if such telephone conversation or facsimile is followed by a hard copy of the telephone conversation or facsimiled communication, sent by overnight courier, charges prepaid and addressed as follows, or to such other address as such Person may from time to time specify by notice to the Partners:

- (a) If to the Partnership, to the Partnership at the address set forth in Section 1.4;
- (b) If to a General Partner, to the address set forth in Section 2.1; and
- (c) If to a Limited Partner, to the address set forth in Section 2.2.

Any such notice shall be deemed to be delivered, given and received for all purposes as of the date so delivered.

**Section 14.2 Binding Effect.** Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement shall be binding upon and inure to the benefit of the Partners and their respective heirs, legatees, legal representatives and permitted successors, transferees and assigns.

**Section 14.3 Construction.** Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Partner. The terms of this Agreement are intended to embody the economic relationship among the Partners and shall not be subject to modification by, or be conformed with, any actions by the Internal Revenue Service, except as this Agreement may be explicitly so amended and except as may relate specifically to the filing of tax returns.

**Section 14.4 Time.** Time is of the essence with respect to this Agreement.

**Section 14.5 Headings.** Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

**Section 14.6 Severability.** Every provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason

whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement.

**Section 14.7 Incorporation by Reference.** Every exhibit, schedule and other appendix attached to this Agreement and referred to in this Agreement is incorporated in this Agreement by reference.

**Section 14.8 Further Action.** Each Partner, upon the request of the General Partner, agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the provisions of this Agreement.

**Section 14.9 Variation of Pronouns.** All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

**Section 14.10 Governing Law.** The laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Partners.

**Section 14.11 Waiver of Action for Partition; No Bill for Partnership Accounting.** Each of the Partners irrevocably waives any right that he may have to maintain any action for partition with respect to any of the Property. To the fullest extent permitted by law, each Partner covenants that it will not (except with the consent of the General Partner) file a bill for Partnership accounting.

**Section 14.12 Counterpart Execution.** This Agreement may be executed in any number of counterparts with the same effect as if all of the Partners had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

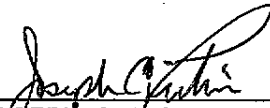
**Section 14.13 Sole and Absolute Discretion.** Except as otherwise provided in this Agreement, all actions that the General Partner may take and all determinations that the General Partner may make pursuant to this Agreement may be taken and made at the sole and absolute discretion of the General Partner.


**Section 14.14 Specific Performance.** Each Partner agrees with the other Partners that the other Partners would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching Partners may be entitled, at law or in equity, the non-breaching Partners shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and, specifically, to enforce the terms and provisions of this Agreement in any action instituted in any court of the United States or any State thereof having subject matter jurisdiction thereof.

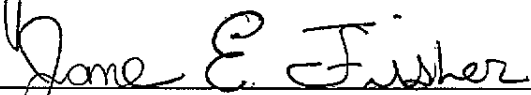
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IN WITNESS WHEREOF, the parties have entered into this Agreement of Limited Partnership as of the day first above set forth.

  
\_\_\_\_\_  
JOSEPH C. FISHER  
General Partner

  
\_\_\_\_\_  
JACOB FISHER  
Limited Partner

  
\_\_\_\_\_  
JANE FISHER  
Limited Partner

ACCEPTANCE OF REGISTERED AGENT DESIGNATED  
IN LIMITED PARTNERSHIP AGREEMENT

JOSEPH C. FISHER having been designated as the Registered Agent in the above and foregoing Limited Partnership Agreement of FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP, states that he is a resident of the state of Florida, his street address is identical with the mailing and street address of this limited partnership and he is familiar with and accepts the obligations of the position of Registered Agent of FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP.

  
\_\_\_\_\_  
JOSEPH C. FISHER

STATE OF  
COUNTY OF

A F F I D A V I T  
OF CAPITAL CONTRIBUTIONS

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BEFORE ME, the undersigned authority, personally appeared  
JOSEPH C. FISHER, who upon being duly sworn, deposed, and says:

1. That I am over eighteen years of age, competent to make  
this affidavit and have personal knowledge of the facts stated in  
this affidavit.

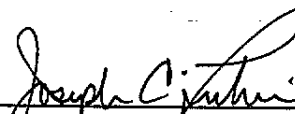
2. That all the facts stated in this affidavit are true and  
correct.

3. That I, JOSEPH C. FISHER, am the sole general partner of  
FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP.


4. A copy of the Limited Partnership Agreement of FISHER  
TREE TOP INVESTMENT LIMITED PARTNERSHIP is attached hereto.

5. One thousand (1,000.00) Dollars is the amount of capital  
contributed by the limited partners of FISHER TREE TOP INVESTMENT  
LIMITED PARTNERSHIP.

6. No property other than cash has been contributed by the  
limited partners of FISHER TREE TOP INVESTMENT LIMITED PARTNERSHIP.  
No additional cash nor other property is anticipated to be  
contributed by the limited partners to FISHER TREE TOP INVESTMENT  
LIMITED PARTNERSHIP.

  
\_\_\_\_\_  
JOSEPH C. FISHER

SWORN TO AND SUBSCRIBED before me under oath by JOSEPH C.  
FISHER who is personally known to me or who has produced his  
driver's license as identification on the 21st day of June, 1999.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Jackie M. Morrison, Notary Public  
State of Michigan, County of Leelanau  
My Commission expires: 02/19/2000

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