CAUTION:

THIS PARTNERSHIP AGREEMENT IS PROVIDED FOR EDUCATIONAL PURPOSES AND SHOULD ONLY BE USED BY PERSONS WHO ARE FAMILIAR WITH ALL ASPECTS OF RELAVENT STATE AND FEDERAL PARTERSHIP AND TAX LAW RELATING TO THE FORMATION, OPERATION AND LIQUIDATION OF A FAMILY LIMITED PARTNERSHIP

AGREEMENT OF LIMITED PARTNERSHIP[1] OF [LN[2]] FAMILY[3] LIMITED PARTNERSHIP

This Agreement of Limited Partnership of **[LN] FAMILY LIMITED PARTNERSHIP** (the "Partnership") is made and entered into effective as of the _____ day of _____, 2008, by and between **[GP1/LP1]**[4] and **[GP2/LP2]** whose business address is _____, as the

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[1] *"IRC" or "Code" refers to the Internal Revenue Code of 1986, as amended. "Treas. Reg." Refers to the United States Treasury Regulations, as amended. "M.S." refers to the Minnesota Statutes Annotated, as amended. "FLP" refers to "Family Limited Partnership".*

[2] *Enter the last name of the family member who is forming the FLP [e.g.* **SMITH***]*

[3] *The reference to "Family" in the FLP is a reference to the family limited partnership income tax rules under IRC § 704(e). In general, the family partnership tax rules require that income follow the person who earned it or provided the services regardless how it is allocated in the partnership agreement. In FLP's , family members who are not active in the business may only be recognized as partners if capital is an income producing factor and they have a capital interest (even if received by gift). Allocation of income is subject to a mandatory allocation of a reasonable value for the services of a donor-partner. Thus, if all income in an FLP is attributable to the personal efforts of the donor partner, then the donor partner will be taxed on the entire partnership income . In general, see IRC § 704 (e) and Treas. Reg. 1.704-1(e). Subchapter K must be read in light of its relationship to IRC § 61, which requires, that income be taxed to the person who earned it through his or her own labor or skill and the utilization of his or her own capital. See Treas. Reg. 1.704-1(e)(1)(i). The partnership interest transferred by gift to a junior family member must be a complete transfer, in a bona fide transaction, and not a mere sham for tax avoidance or evasion purposes. See Treas. Reg. §1.704-1(e)(1)(iii). Assignment of income- the tax laws allow an assignment of income, but it is restricted to income from property and does not extent to income from services. See generally, the line of assignment of income cases, Helvering v. Horst,, 311 U.S. 112 (1940) Whether capital is a material income producing factor is made by reference to all the facts and circumstances. However, some guidance is provided in the Regulations. Capital is a material income producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital in the business, (e.g. substantial inventories, machinery, real estate, equipment, securities, cash. Capital is not a material income producing factor where income comes from fees, commissions, or other compensation for personal services performed by members or employees. See Treas. Reg. §1.704-1(e)(1)(iv). Trustees may be partners. See Treas. Reg. §1.704-1(e)(1)(vii). Minors may be partners if shown to be competent to manage property. Minors will generally not be recognized as partners unless control of the property is exercised by another person as fiduciary for the sole benefit of the child. See Treas. Reg. §1.704-1(e)(1)(viii).*

[4] *Enter the name of the general partners. Note, consider an LLC or "S" corporation as a general partner. General partners can be entities. General partners have unlimited liability for partnership debt. To avoid liability is it common for the general partner to be an LLC having senior family members as owners. Consider making the*

Notes and Comments:

General Partner, and **[GP1/LP1]**[5] and **[GP2/LP2]** as the Limited Partners.

W I T N E S S E T H:

WHEREAS, the Partners desire to form this limited partnership for the general purpose of investing the capital of the Partnership for the common benefit and profit of the Partners and the conduct of any legal business as provided in this Agreement[6]; and

WHEREAS, the Partners contemplate that assets in which the Partnership may invest may include, but are not limited to, interests in other business enterprises (regardless of the form in which such businesses are organized), interests in real estate and improvements thereon (including leasehold and mineral interests), tangible personal property, financial assets, and insurance on the lives of the Partners or other persons.[7]

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election to be a limited liability limited partnership under Minnesota law, which will give all general partners the same limited liability as a member in an LLC. See M.S. § 321.0201. Uniform Limited Partnership Act 2001. The certificate of limited partnership must state whether the limited partnership is a limited liability limited partnership.

[5] *Enter the name of the limited partners. Note, the initial general and limited partners may be the same persons.*

[6] *A limited partnership can transact any business a general partnership can. See M.S. § 322A.06. and M.S. § 322A.07 (pre-2005 Minnesota law); A limited partnership may be organized for any lawful purpose. See M.S.§321.0104 (post-2005 Minnesota law, Uniform Limited Liability Act 2001). A partnership under the Code must carry on a business, financial operation, or venture. See IRC§ 7701(a)(2).*

[7] *In general, some types of assets are better candidates for an FLP than others. Non-homestead real estate is an excellent candidate for an FLP. Residential and commercial rental real estate is also a good candidate. Consideration should be given to sheltering risk assets in separate entities,(e.g. LLC), then transferring the entity interest to an FLP. Homestead real estate is not a good candidate for an FLP. The state homestead tax exemption may be lost. The "owner" of the homestead would be the FLP, not the partner/resident. The partner, not the FLP would be "occupying and using" the homestead. See M.S. § 273.124. Also, certain income tax free exclusions under IRC § 121 may be lost-exclusion for gain of $250,000/$500,000 from sale or exchange of principal residence. Farm or ranch land are good candidates for FLP's. The issues surrounding IRC § 2032A should be considered-Special Use Valuation. To qualify under IRC § 2032A real property may be owned indirectly through an interest in a corporation, partnership or trust. Where ownership is indirect is must qualify as a closely held business under IRC §6166. See Treas. Reg. § 20.2032A-3. Cash, cash equivalents, life insurance policies, marketable securities and other investments are good candidates for an FLP but the following issues must be considered: 1) IRS argument that the FLP lacks a business purpose. See Estate of Murphy, TCM 1990-472, Estate of Harrison, Jr. TCM 1987-8, TAM 9736004,TAM 9751003,TAM 9804001, TAM 9842003; 2) Investment company rules under IRC § 351(e)(1). See also IRC § 721(b). In general, if marketable securities are transferred to an FLP and there is a "diversification" of assets among partners the non-recognition rules of IRC § 721 do not apply. See IRC § 721(b). See Avoiding Investment Company Rules on Formation of FLP's and LLC's by Martin M. Shenkman,* Estate Planning*, December*

Notes and Comments:

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NOW, THEREFORE, in consideration[8] of the mutual agreement contained herein, the Partners, and each of them, intending to be legally bound, agree as follows:

ARTICLE 1
DEFINED TERMS

Section 1.1 **Defined Terms**: Defined terms used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this Article 1.

[9]**"Adjusted Capital Account Deficit"**[10] means the deficit balance, if any, in a Limited

1999 Vol. 26/No. 10. Encumbered assets are generally not good candidates for an FLP. A transfer of an encumbered asset may trigger a breach of a loan or other bank covenant causing the debt to be immediately due and payable. Unencumbered FLP assets may be jeopardized by creditors of encumbered FLP assets. A transfer of encumbered assets to an FLP may inadvertently cause recognition of taxable gain to the transferor partner. Any decrease in a partner's individual liability by reason of the assumption by the partnership of such individual liabilities, is considered a "distribution of money" to the partner. If money (debt is considered money for income tax purposes) distributed exceeds the adjusted basis of the partner in the contributed property taxable gain must be recognized by the partner. Limited partnership interests in other entities are generally not good candidates for an FLP. A transfer of a limited partnership interest by a partner who has a negative capital account balance to a newly formed FLP may trigger income recognition. problems. Under the "aggregate theory" of partnership taxable each partner owns a share of partnership assets and partnership liabilities. When a partner of a limited partnership has a "negative capital account" it merely means that the partner's share of partnership liabilities exceeds his or her outside basis in partnership assets. See generally, IRC§ 731-Extent of recognition of gain or loss on distribution. Tangible personal property is not a good candidate for an FLP. This type of property is easily misused. If it is transferred to an FLP but continues to be used personally, the IRS may attack the FLP as one having no business purpose/lack of economic substance/sham transaction. This is a transfer tax attack. See ASA Investerings v. Comm'r TC Memo, 1998-305 (1998); Vanderschraaf v. Comm'r TC Memo, 1997-306 (1997)-partnership lacked a business purpose and thus partnership form should be disregarded. See Estate of Murphy v. Comm'r. TC Memo, 1990-472 (1990)-partnership lacked economic substance and thus partnership form should be disregarded. See Estate of Schauerhamer v. Commissioner, T.C. Memo 1997-242-failure to adhere to literal terms of partnership agreement/formalities-partnership form should be disregarded. There may also be an income tax attack by the IRS. See Treas. Reg. § 1.701-2 partnership anti-abuse rules. In general, for income tax purposes, a partnership must be bona fide and substance over form controls.

[8] *A partnership agreement is a contract requiring consideration.*

[9] IRC§704(b) Partnership Allocations/"Substantial Economic Effect"- *One of the advantages of the partnership form is that it allows for the allocation of specific items of income, gain or deduction, loss or items attributable to specific operations in a manner different from general profit and loss sharing ratios. Allocations will only be respected by the IRS, however, if they have "substantial economic effect" under IRC § 704(b). In general, if a partner will*

Notes and Comments:

Partner's Capital Account increased by the amount of the Limited Partner's share of minimum gain as defined by Treas. Reg. Section 1.704-2(g)[11] and any additional amounts

benefits economically from an item of partnership income or gain, then that item must be allocated to him or her so that he or she bears the correlative tax burden. If a partner suffers the economic burden of an item of partnership loss or deduction , then he or she must be allocated the associated tax benefit. Tax allocations must follow the economics of the partnership agreement. Most FLP's are "straight-up" limited partnerships wherein the partnership agreement does not provide for special allocations. Nevertheless, the IRC § 704(b) rules should be incorporated into every FLP agreement to avoid inadvertent tax allocations that may run afoul of the IRC § 704(b) rules. IRC § 704(b) provides that a partner's distributive share of income, gain, loss, deduction or credit shall be determined in accordance with the partner's interest in the partnership (determined by taking into account all of the facts and circumstances) if- (1) the partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit, or, (2) the allocation to a partner under the agreement of income, gain, loss, deduction, or credit does not have "substantial economic effect". Allocations have economic substance if they are consistent with the underlying financial arrangement of the partners. For example, a limited partner who has no risk under the partnership agreement other than his initial capital contribution generally may not be allocated losses attributable to a partnership recourse liability to the extent such losses exceed his capital contribution. They instead should be allocated to the partners who bear the ultimate burden of discharging partnership debt. "Substantial" means that the partnership allocations should not and cannot be transitory. See Treas. Reg. § 1.704-1(b)(2)(iii)(c). If there is a reasonable possibility that an allocation will substantially affect the dollar amounts to be received by the partner, independent of the tax consequences, the allocation is considered to be "substantial". See Treas. Reg. § 1.704-1(b)(2)(iii). The Treasury Regulations contain 3 objective requirements for partnership allocations to have economic effect: (1)Maintenance of capital accounts in a prescribed manner; (2) Making liquidating (including withdrawal) distributions in accordance with the capital accounts, and; (3) Requiring an unconditional make-up of any deficit. See Treas. Reg. § 1.704-1(b)(2)(ii). A deficit make-up provision requires an unconditional ultimate obligation by the partner to provide funds to offset losses, including satisfying any positive capital account balances of other partners. This rule can be satisfied by local law. See Treas. Reg. 1.704-1(b)(2)(ii). An unconditional deficit make-up provision can be somewhat impractical and harsh so the Regulations provide for an "alternative test" under Treas. Reg. § 1.704-1(b)(2)(ii)(d). Instead of an unconditional deficit-make up provision the partnership agreement can instead contain a "qualified income offset", that is an arrangement to allocate gross income to make-up a deficit resulting from unplanned distributions, and still comply with the IRC § 704(b) rules on economic effect. The FLP contains provisions that comply with the altnernative test for economic effect. As can be seen the rules under IRC § 704(b) are extremely complex and difficult to understand.

[10] *This provision defines "Adjusted Capital Account Deficit". As stated above, proper capital account maintenance is required by Treasury Regulations under IRC § 704(b). In general, partners must restore capital account deficits by one of the methods stated in the Treasury Regulation, (i.e. unconditional make up provision or qualified income offset provision). This provisions identifies the component parts that make up a partner's capital account deficit balance at any given time.*

[11] *Treas. Reg. Section 1.704-2(g)- Share of partnership minimum gain. This provision defines a "partner's share of minimum gain". For financial accounting purposes a partner has a "capital account" that reflects his equity investment in the partnership. Capital accounts are maintained at "book value". For example, if partner A contributes*

Notes and Comments:

which such Partner is obligated to restore or deemed obligated to restore by Treas. Reg. Section 1.704-1(b)(2)(ii)(c)[12], and decreased by the items described in Treas. Reg. Sections

$100,000 to a partnership for a 50% partnership interest and partner B contributes land with a cost basis of $50,000 and a value of $100,000 to a partnership for a 50% partnership interest then both partners have IRC § 704(b) capital accounts of $100,000, even though the tax basis of partner B's land is only $50,000. Capital accounts can be negative if the partnership has more debt than assets. A "partner's basis in his partnership interest" is different that a partner's capital account. A partner's basis in his partnership interest can not be below zero. See IRC § 705(a)(2)-a partner's basis in his partnership interest is decreased (but not below zero) by distributions. Unlike a partner's capital account, a "partner's basis in his partnership interest" includes his share of partnership recourse liabilities, if any, for which he bears an "economic risk of loss. Under Subchapter K, liabilities are either "recourse" or "nonrecousre". Recourse liabilities are debt wherein a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner would be obligated to make a payment to a creditor. Personal guaranties count. See Treas. Reg. § 1.752-1(a)(1). Nonrecourse debt is anything that is not a recourse debt. See Treas. Reg. § 1.752-1(a)(2). The distinction is best illustrated by a simple example. Partner A and partner B contribute $50,000 each to form a partnership. Each partner has an initial capital account and basis in their partnership interest equal to $50,000. If the partnership then borrowed $20,000 on a recourse basis then each partner would still have a capital account of $50,000 but their basis in their partnership interest would have increased to $60,000 each, [$50,000 initial capital plus $10,000 each of recourse debt]. See generally, IRC § 705 and IRC § 752. Limited partners generally do not bear any economic risk of loss relating to partnership liabilities. Notwithstanding, a limited partner does include as part of his basis in his partnership interest his allocable share of partnership non-recourse liabilities. Again, non-recourse liabilities are those for which no partner bears the economic risk of loss, for example, a mortgage on an office building that is secured only by a lien on the building and on the rents, but with no personal obligation to repay the loan on the part of any of the partners. Non-recourse liabilities are shared by all partners in a manner that correlates with the allocation of deductions attributable to such liabilities. A partner's share of partnership non-recourse liabilities increases a partner's basis in his partnership interest and thus reduces his deficit in his capital account, which in term reduces his deficit make-up obligation required under Treas. Reg. § 1.704-1. Therefore, in order to determine a partner's deficit make-up obligation we need to figure out what is his basis in his partnership interest. To determine that, we need to know the partner's share of partnership non-recourse liabilities. A partner's share of partnership non-recourse liabilities includes: (1) Tier # 1-the partner's share of partnership minimum gain; (2) Tier # 2-the amount of any taxable gain under IRC § 704(c)-pre-contribution gain allocated to contributing partner, and; (3) Tier #3-the partner's share of the excess non-recourse liabilities as determined in accordance with the partner's share of partnership profits. See Treas. Reg. § 1.752-3(a) Partnership "minimum gain" is determined by first computing for each partnership non-recourse liability any gain the partnership would realize if it disposed of the property subject to that liability for no consideration other than the full satisfaction of the liability, and then aggregating the separately computed gains. See Treas. Reg. . § 1.704-2(d). This is the so called "Tufts principle"; Commissioner v. Tufts, 461 U.S. 300 (1983)-nonrecouse liability taken into account in determining basis is taken into account in determining amount realized even if it exceeds fair market value of encumbered property.

[12] *Treas. Reg §1.704-1(b)(2)(ii)(c)-Obligation to restore deficit. This provision ties into the prior discussion about partner deficit make-up obligation. To correctly determine a partner's deficit make-up obligation under the alternative test the Code requires that a couple of additional adjustments be make to a partner's capital account. These adjustments*

Notes and Comments:

1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition is intended to comply with the requirements of Treas. Reg. Section 1.704-1(b)(2)(ii)(d).[13]

"Agreement" means this Agreement of Limited Partnership, as amended from time to time, together with accompanying Schedules, as executed by the General Partners on behalf of the Partnership and Limited Partners of the Partnership either individually or by a General Partner as attorney-in-fact.

"Assigning Partner" means any Partner who proposes to assign his, her or its Interest in the Partnership pursuant to Section 8.4, whether such assignment is to an Immediate Family Member or to a third party.

"Assignment" means any sale, transfer, gift, pledge, hypothecation or other disposition of a Partnership Interest, whether voluntary, involuntary or by operation of law.

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are identified in Treas. Reg §1.704-1(b)(2)(ii)(c). They are: (1) the outstanding principal balance of any promissory note of which the partner is the maker that was contributed to the partnership by such partner and (2) the amount of any unconditional obligation of such partner to make a subsequent contribution to the partnership. These two adjustment items would increase a partners deficit in his capital account and thus increase his deficit make-up obligation. This only makes sense. A partner's own promissory note should not count when determining his deficit make-up obligation to the partnership.

[13] *Treas. Reg. § 1.704-1(b)(2)(ii)(d) Alternative test for economic effect - This is a cite to the alternative test for "economic effect". As stated above, a deficit make-up provision requires an unconditional ultimate obligation by the partner to provide funds to offset losses, including satisfying any positive capital account balances of other partners. This rule can be satisfied by local law. See Treas. Reg. 1.704-1(b)(2)(ii). This is the so called "basic test". But, an unconditional deficit make-up provision can be somewhat impractical and harsh so the Regulations provide for an "alternative test" for economic effect under Treas. Reg. § 1.704-1(b)(2)(ii)(d). Instead of an unconditional deficit-make up provision the partnership agreement can instead contain a "qualified income offset", that is an arrangement to allocate gross income to make-up a deficit resulting from unplanned distributions, and still comply with the IRC § 704(b) rules on economic effect. This FLP contains provisions that comply with the alternative test for economic effect. There are other tests for economic effect provided in the Treasury Regulations. One is the "economic effect equivalence test"-the "dumb but lucky test". This test respects allocations in partnerships that do not maintain capital accounts under the IRC§ 704(b) rules, but achieve the same results. See Treas. Reg.§ 1.704-1(b)(2)(ii)(i). It primarily protects simple general partnerships. There is also the "liquidation test". Allocations to partnerships without an unconditional deficit make-up provision are respected if they are the same as changes in liquidation rights. See Treas. Reg. § 1.704-1(b)(3)(iii). Finally, there is the "interest in the partnership test". The Treasury Regulations do not define it per se but provide four factors to consider (1) relative capital contributions, (2) rights to economic profits and losses (3) rights to cash flow and (4) liquidation rights. The latter being the most important. See Treas. Reg. 1.704-1(b)(3)(i)*

Notes and Comments:

"Capital Account" means the capital account established for each Partner under Article 3, as adjusted from time to time.[14]

"Capital Contribution" means the total amount or value of cash and property contributed by each Partner to the Partnership as an equity investment in the Partnership pursuant to Section 3.1, or as an Additional Capital Contribution pursuant to Section 3.2 or Section 11.3(5).[15]

[14] *As stated above, for financial accounting purposes a partner has a "capital account" that reflects his equity investment in the partnership. Partnership liabilities are not taken into account in computing a partner's capital account. Capital accounts are maintained at "book value". A partner's capital account must be credited [increased] with the following items: (1) the amount of money the partner contributes to the partnership (2) the fair market value of property the partner contributes to the partnership (net of liabilities encumbering the contributed property that the partnership is considered to assume or take subject to under IRC § 752, (3) the partner's distributive share of partnership "book" income and gain (or items thereof), including income and gain exempt from tax. A partner's capital account must be debited [decreased] with the following items: (1) the amount of money distributed to the partner by the partnership (2) the fair market value of property distributed to the partner by the partnership (net of liabilities encumbering the distributed property that the partner is considered to assume or take subject to under IRC § 752 (3) the partner's distributive share of partnership expenditures described in IRC § 705(a)(2)(B)-expenditures of the partnership not deductible in computing taxable income and not properly chargeable to capital accounts, and (4) the partner's distributive share of partnership "book" loss and deduction (or items thereof), other than items already accounted for as distributive shares of partnership IRC § 705(a)(2)(B).*

[15] *In general, no gain or loss is recognized by a partner or the partnership on the contribution of property to a partnership in exchange for an interest in the partnership. See IRC§ 721(a). The partnership has a transferred basis in the property received and a "tacked" holding period to the extent property transferred is capital or a IRC § 1231 asset but not to the extent attributable to inventory or receivables. See IRC § 722, IRC § 7701(a)(44) and IRC §1223(1). The partner also has an exchanged basis in his partnership interest with a tacked holding period. See IRC § 723, IRC § 7701(a)(44) and IRC §1223(1). Gain or loss may be recognized if the transfer is considered a sale instead of a contribution to the partnership. Also, be aware of the "mixing bowl" transactions under IRC § 737 and the disguised sale rules under IRC § 707. Depreciation recapture generally does not result from a transfer of property to a partnership. See IRC § 1245(b)(3). Investment tax credit (ITC) recapture may result, however. A transfer of an installment obligation generally does not trigger immediate recognition. See Treas. Reg. §1.453-9(c)(2). The basis of inventory but not the inventory method (e.g. LIFO) carries over in a partnership non-recognition transaction. If the partner receives non-qualifying consideration on the transfer of property to the partnership gain may result. Such property is called "boot" because the taxpayer receives not only qualifying property but something "to boot". If a partner receives boot on a transfer to a partnership the boot is treated as a distribution from the partnership. Gain is recognized only if the deemed distribution exceeds the total basis of the partner in his partnership interest. See IRC § 721(a) and IRC § 731(a) and IRC § 733. Liabilities increase a partner's basis in his partnership interest. Liabilities are netted. See IRC § 752, Treas. Reg. § 1.752-1(b).*

Notes and Comments:

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or corresponding provisions of subsequent laws and the Treasury Regulations promulgated thereunder.

"Deceased Partner" means any Partner following his or her death.

"Distributions" means any and all cash and or property distributed by the Partnership to any Partner in his, her or its capacity as a Partner pursuant to Section 5.1.[16]

"Financing" means any loan(s) obtained by the Partnership secured by Partnership Property, whether as original or subsequent financing for any Partnership Property other than from Capital Contributions by the Partners.

"General Partners" means [GP1/LP1] and [GP2/LP2] and any successor-in-interest to any General Interest transferred pursuant to this Agreement.[17]

"General Interest" means an Interest in the Partnership acquired by a General Partner in the manner described in Section 3.1.[18]

Liabilities in excess of basis is boot. It is an aggregate approach, however. Liabilities are in excess of basis and therefore boot if the aggregate amount of liabilities exceeds the aggregate basis of assets transferred. Accounts payable of a cash-basis taxpayer that would give rise to a deduction are not boot. See IRC § 704(c)(3). The receipt of a partnership "profits interest" or a "capital interest" for services may result in immediate taxation. A taxpayer's receipt of a partnership interest in future profits for past services was taxable. See Diamond v. Commissioner, 492 F2nd 286 (7th Cir. 1974).

[16] *As stated above distributions reduce a partner's capital account balance and his basis in his partnership interest. See IRC § 705(A)(2). Distributions do not constitute taxable income, however. A partner's distributive share of partnership income is not that same as partnership distributions for the year.*

[17] *A limited partnership must have at least one person as a general partner. See M.S. § 322A.01(9) (pre-2005 Minnesota law); See M.S. § 321.0102(11) (post-2005 Minnesota law). A general partner may be an individual or an entity (e.g. and LLC or a corporation). "Person" means a natural person, limited partnership (domestic or foreign), trust, estate, association, LLC (whether domestic or foreign), or corporation. See M.S. § 322A.01(13). (pre-2005 Minnesota law); See M.S. § 321.0102(14)(post-2005 Minnesota law).*

[18] *A partner's basis for his partnership interest is significant whenever the interest is transferred, sold or liquidated. It is also important in ascertaining the consequences of nonliquidating partnership distributions under IRC § 731 and IRC § 732, and in determining the deductibility of losses. Generally, losses are deductible only to the extent of a partner's basis in his partnership interest. See IRC § 704(b). A partner's basis in his partnership interest can*

Notes and Comments:

"Immediate Family Member" or "**Family**" means [GP1/LP1], [GP2/LP2] or any of their children, grandchildren or more remote issue.[19] The term "Immediate Family Member" shall also refer to trusts of which such aforementioned individuals are beneficiaries.[20]

"Income and Losses" means, at any time during the existence of the Partnership, the income or loss of the Partnership for book purposes determined as of the close of the Partnership's fiscal year, including, without limitation, each item of Partnership income, gain, loss, deduction, expense or credit.[21]

"Interest" means the entire ownership interest of a Partner in the Partnership at any particular time, including the right of such Partner to any or all benefits to which a Partner may be entitled as provided in this Agreement, together with the obligations of such Partner to comply with all of the terms and provisions of this Agreement.[22]

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never be below zero. See IRC § 733. A partner's initial basis in his partnership interest acquired by the contribution of property to the partnership is determined under IRC § 722 and is generally the cost basis of the property contributed. See IRC § 1012. A partner's initial basis in his partnership interest is increased by his distributive share of (1) partnership taxable income (2) tax-exempt income (3) additional capital contributions, (4) certain depletion items and is decreased by (1) cash distributed (2) basis of property distributed to him (3) his distributive share of losses and non-deductible expenditures and (4) certain depletion items. Most importantly, partner's basis in his partnership interest is increased or decreased by his share of partnership liabilities. See IRC § 754. As stated above, this is what differentiates a "partner's capital account" from his "basis in his partnership interest". In general, the aggregate of the partners' adjusted bases in their partnership interests equals the aggregate of the adjusted bases of partnership assets plus partnership liabilities.

[19] *Transfers within an FLP are often restricted to lineal descendents, excluding relatives by marriage. If transfers to spouses and relatives by marriage are desired then the definition should be changed accordingly.*

[20] *It is contemplated that the only partners of the FLP will be family members.*

[21] *Partnership taxable income is calculated in the same manner as that of an individual with certain modifications. See §703(a). Partnerships are pass through entities-that is, taxable income is passed through and reported by partners on their individual income tax returns, form 1040. The character of income is determined at the partnership level and "passes through" to partners. See IRC § 703(a). Most tax elections are made at the partnership level. See IRC § 703(b). Losses of a partnership also pass through to partners subject to limitations on deduction based on the partner's basis in his interest in the partnership and certain at-risk rules under IRC § 465 and certain passive loss rules under IRC § 469.*

[22] *This is the definition of the partner's [basis] for his partnership interest. As stated above A partner's basis for his partnership interest is significant whenever the interest is transferred, sold or liquidated. It is also important in ascertaining the consequences of nonliquidating partnership distributions under IRC § 731 and IRC § 732, and in determining the deductibility of losses..*

Notes and Comments:

"Investment Activity" means the actual or contemplated investment by the Partnership in a single business enterprise which is operated as a single unit, regardless of the nature of such Partnership Investment. For example, the Partnership may hold common and preferred stock and debt of a single business organization, and the cumulative amount of Partnership Property invested in such business organization shall be considered to be a single "Investment Activity". Similarly, contiguous parcels of real estate may be owned as a single Investment Activity, although separately described for real estate title purposes.[23]

"Legal Representative" means a Deceased Partner's personal representative, executor, estate, spouse, heirs or trustees of a trust which includes a Partnership Interest.

"Limited Partner" means each Limited Partner identified as such on Schedule A, and each assignee of any part of a Limited Partner's Limited Interest in the Partnership; provided, however, that such assignee shall not be entitled to any substantive rights of a Limited Partner unless such assignee is admitted as a substitute Limited Partner as provided in Article 8.[24]

"Limited Interest" means the Interest in the Partnership acquired by each Limited Partner in the manner described in Section 3.1.

"Majority of Interests" means an affirmative vote by Partners[25] entitled to vote owning a majority of the Percentage Interests of all General and Limited Partners at the time of the

[23] *The purpose of this optional definition is to segregate different investment activities for determining when the partners must vote for acquiring, refinancing or selling various investments when the Partnership holds multiple projects or types of investments.*

[24] *A limited partnership must have at least one person as a limited partner. See M.S. § 322A.01(9) (pre-2005 Minnesota law); See M.S. § 321.0102(11)(post-2005 Minnesota law). A general partner may be an individual or an entity (e.g. and LLC or a corporation). "Person" means a natural person, limited partnership (domestic or foreign), trust, estate, association, LLC (whether domestic or foreign), or corporation. See M.S. § 322A.01(13) (pre-2005 Minnesota law); See M.S. § 321.0102(14)(post-2005 Minnesota law).*

[25] *An optional provision might include a provision that gives a particular controlling person veto power over certain partnership actions. For example: "*Provided, however, that at any time that [VETO PARTNER] or any affiliate of [VETO PARTNER] is a Partner of the Partnership, such vote of a Majority of Interests must include the affirmative vote of [VETO PARTNER], and/or such affiliate for such action to be approved*".*

Notes and Comments:

vote.[26]

"Majority of Limited Interests" means a vote by Limited Partners entitled to vote owning a majority of the Percentage Interests of all Limited Partners at the time of the vote.[27]

"Partner" means any General or Limited Partner, and any additional or substitute General or Limited Partners which are explicitly permitted by this Agreement.

"Partner Loan Rate" means either (i) the rate agreed upon between the Partnership and a Partner to whom money is owned, if such rate is a commercially reasonable rate, or (ii) in the absence of such an agreed rate, a floating interest rate equal to two percent (2%)[28] over the rate published from time to time by the bank or other financial institution where the Partnership's primary operating accounts are maintained at its prime or reference rate, calculated at the varying rates in effect from time to time, compounded annually. If the Partner Loan Rate would exceed the maximum rate allowed by law, then the Partner Loan Rate shall instead equal such maximum rate.

"Partnership" means the limited partnership created and governed by this Agreement.

"Partnership Property" or **"Property"** means all property owned by or for the benefit of the Partnership, regardless of whether such property is owned in the name of the Partnership or the name of a nominee on behalf of the Partnership.

"Percentage Interest" of any one or more Partners is defined in Section 3.1, and, if recalculated, in Section 3.2.

"Person" includes any individual, partnership, corporation, trust, organization or other

[26] *Certain partnership action requires a majority of vote of all partners, including limited partners. See Article 8, (e.g. Removal of a General Partner, Dissolution of the Partnership).*
[27] *Certain partnership action requires a majority of vote of Limited Partners. See Article 13, (e.g. Reorganization of Partnership).*
[28] *The Partner Loan Rate should be filled in . Note, that partnership loans are often made when one or more partners will not agree to make a capital contribution. It is often a risky loan to carry a recalcitrant contributor. Therefore, it is best to make the rate relatively high to encourage contributions. A default rate of two percent over prime is filled in.*

Notes and Comments:

entity, unless the context requires otherwise.[29]

"Remaining Partners" means all Partners other than an Assigning, Removed, Retiring or Deceased Partner, as the context requires.

"Removed Partner" means any Partner who is removed as Partner and whose Interest is purchased, forfeited or converted to a Limited Partner in accordance with Section 9.2[30].

"Reserve" means the amount of cash from the total amount of Capital Contributions, or from Partnership debt or operations from time to time retained by the Partnership in its Reserve account for the purpose of maintaining amounts reasonably deemed sufficient by the General Partner for working capital and to pay the costs and expenses incident to the ownership and operation of the business of the Partnership.[31] The Reserve may be increased or decreased from time to time pursuant to Section 7.1.[32]

"Retiring Partner" means any Partner who tenders an Interest for Retirement pursuant to Section 8.3.

"RULPA" means the 1976 Uniform Limited Partnership Act, Minnesota Statutes, Chapter 322A, as amended from time to time, or corresponding provisions of subsequent acts.[33]

"Sale" means any transaction whereby the Partnership transfers any of its rights or interest in any Partnership Property to a third party except for transfers for the purpose of renting

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[29] *This definition of "person" is the same as under See M.S. § 322A.01(13) (pre-2005 Minnesota law); See M.S. § 321.0102(14)(post-2005 Minnesota law).*

[30] *A General Partner can be removed under Article 9 by the unanimous vote of the Limited Partners but only if there is a (1) bankruptcy (2) insolvency (3) gross negligence or (4) fraud of the General Partner by final judicial determination.*

[31] *Treas. Reg. § 1.704-1(e)(ii)(a) permits the general partner to retain income in the partnership for the reasonable needs of the business without the acquiescence of all the partners.*

[32] *The General Partners are given the right to establish Reverses for certain needs (e.g. Partnership Assessments-See Section 3.2 and Sale/Liquidation of Partnership Property –See ¶ 11.3).*

[33] *Minnesota has adopted the Revised Uniform Limited Partnership Act ("RULPA") codified in M.S. § 322A (pre-2005 Minnesota law); and the Uniform Limited Partnership Act 2001 codified in M.S. §321(post-2005 Minnesota law).*

Notes and Comments:

Partnership Property or providing a mortgage or other security interest on any Partnership Property as security for Partnership debt.

Section 1.2 **Interpretation and Construction**. All references to Articles and Sections refer to this Agreement, unless otherwise specifically stated. All Schedules or Exhibits that are attached hereto are hereby incorporated into this Agreement by reference. All headings are for reference purposes only, and shall not affect the interpretation of this Agreement. All references to one gender shall include all genders, and any reference to the singular shall include the plural, where appropriate, and vice versa.[34]

ARTICLE 2
FORMATION

Section 2.1 **Formation of Partnership**. The Partners hereby form the Partnership pursuant to the provisions of RULPA, and the rights and liabilities of the parties shall be as provided under Minnesota law. This Agreement of Limited Partnership of **[LN] FAMILY LIMITED PARTNERSHIP** may be executed in one or more counterparts[35], each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.[36]

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[34] *It is important that the schedule of partner capital contributions be incorporated into the partnership agreement by reference.*

[35] *An FLP is a contract and as such can be executed in one or more counterparts, each of which becomes an original. This can be particularly important if execution of the FLP agreement cannot be done at a single closing and has to be sent to partners in different locations.*

[36] *A limited partnership is a partnership formed by two or more persons under Minnesota statute and having one or more general partners and one or more limited partners. See M.S. § 322A.01(9). Under Treas. Reg. § 301.7701-3, the so called "Check-the-Box Regulations, entities that are not corporations may choose how they are to be taxed without specifically qualifying as one form of entity or another. Any entity with two or more members can be classified either as a partnership or as an association taxed as a corporation. The default rule is that entities with two or more members are classified and taxed as partnerships. Not every joint operation is a partnership for tax purposes, however. An arrangement to share expenses is not a partnership because it is not seeking profit. See Treas. Reg. § 1.761-1(a). See Spiesman v. Commissioner, 28 T.C. 567 (1957)-family partnership not recognized, transfers of capital not respected by father. This issue is not affected by the Check-the-Box regulations. They apply only to business entities and have no provisions determining what is a business entity. See Treas. Reg. § 301.7701-1(a)(2).*

Notes and Comments:

Section 2.2 **Partnership Name**. The Partnership name shall be **[LN] FAMILY LIMITED PARTNERSHIP** and business shall be conducted under such proper trade names as the General Partners may determine.[37]

Section 2.3 **Partnership Office**. The principal place of business shall be at _____. The General Partners may also establish other offices of the Partnership as the General Partners may determine.[38]

Section 2.4 **Registered Agent**. [GP1/LP1], a resident of Minnesota, the principal address of which is_____, shall serve as the Partnership's registered agent in the State of Minnesota.[39]

Section 2.5 **Names and Addresses; Designation of Partners.** The General Partners of the Partnership and their addresses are set forth in the preamble to this Agreement. The names and addresses of the Limited Partners are as set forth on Schedule A.

Section 2.6 **Filing and Registering**. The General Partner shall promptly cause a Certificate of Limited Partnership to be filed of record in the office of the Secretary of State for the State of Minnesota. Such Certificate shall be amended from time to time as may be required by law. The General Partner shall not be required to deliver copies of the Certificates to the Limited Partners, but shall make such Certificate available to any Partner on request. The General Partner shall also register the Partnership as a foreign partnership in all appropriate states as may be required under applicable laws of such states.

Section 2.7 **Term**. The Partnership shall exist from and after the date on which this Agreement is executed and shall continue thereafter indefinitely, until December 31, 2050, when the

[37] *Minnesota statute requires that a limited partnership's name must contain the words: " limited partnership" or "LP" or "L.P." See M.S. § 322A.02(a)(1) ((pre-2005 Minnesota law); the name of the limited liability limited partnership must contain the full name "limited liability limited partnership" or "LLLP" or "L.L.L.P." and must not otherwise use LP or L.P. See M.S. §321.0108 (post-2005 Minnesota law).*

[38] *Minnesota statute requires that a limited partnership have a principal office. See M.S. § 322A.04(1) (pre-2005 Minnesota law). A limited partnership shall "designate and continuously maintain in this state an office, which need not be a place of its activity in this state…" See M.S. § 321.0114 (post-2005 Minnesota law).*

[39] *Minnesota statute requires that a limited partnership have a registered agent. See M.S. § 322A.04(2) (pre-2005 Minnesota law) See M.S. § 321.0114 (post-2005 Minnesota law). A registered agent can be a foreign corporation as long as the foreign corporation is authorized to do business in Minnesota. See M.S. § 322A.04(2). (pre-2005 Minnesota law) See M.S. § 321.0114 (post-2005 Minnesota law).*

Notes and Comments:

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Partnership shall be dissolved, wound up and terminated as provided herein, unless dissolved earlier under Article 10.[40]

Section 2.8 **Business and Purpose**.[41] The business and purpose of the Partnership is to invest the capital and undistributed income of the Partnership for the common benefit and profit of the Partners in the conduct of any legal business as provided in this Agreement. The Partners contemplate that assets in which the Partnership may invest may include, but are not limited to, interests in other business enterprises (regardless of the form in which such businesses are organized), interests in real estate and improvements thereon (including leasehold and mineral interests), tangible personal property, financial assets, and insurance on the lives of the Partners or other persons. In furtherance of this purpose, the Partnership shall have the powers as follows:

(1) To enter into, perform and carry out contracts of any kind necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Partnership and the conduct of its business;

(2) To engage in any and all general business activities reasonably related or incidental to the purpose of the Partnership;

(3) To receive, allocate and distribute income from or with respect to the business of the Partnership; and

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[40] *A limited partnership can have a term or no term. If a limited partnership has a term then the last day of upon which the limited partnership is to dissolve must be stated in the Certificate of Limited Partnership filed with the Minnesota Secretary of State. See M.S. § 322A.11(a)(4) A term if stated is generally between 25 and 50 years. (pre-2005 Minnesota law). A term if stated is generally between 25 and 50 years. A limited partnership has a perpetual duration. See M.S. § 321.0104 (post-2005 Minnesota law).*

[41] *Use the following optional language if the purpose of the FLP is to own real estate:*

> "**Business and Purpose**. The purposes of the Partnership are to acquire, own, restore, develop, construct, improve, operate, lease, manage, finance are refinance, sell, exchange, transfer or otherwise dispose of or derive economic benefit from the real and personal property and improvements constituting the Properties and any other assets or businesses, without limitation, which may be acquired or owned by the Partnership. Although the initial assets of this Partnership relate to ownership and operation of real properties, the business and purpose of this Partnership may include, in the future, other business interests or investments as may be agreed to by the Partners…"

Notes and Comments:

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(4) To arrange for or obtain letters or lines of credit, borrow money, and to issue evidence of indebtedness and to secure the same by mortgage, deed of trust, pledge or other lien, in furtherance of any and all of the purposes of the Partnership.[42]

[42] *For transfer tax purposes it is important to state the purpose or purposes of the FLP. This may help in an argument with the IRS that the partnership has a bona fide business purpose, has economic substance, is not a testamentary devise or a sham. See IRC § 2703; See Estate of Murphy, TCM 1990-472, Estate of Harrison, Jr. TCM 1987-8, TAM 9736004,TAM 9751003,TAM 9804001, TAM 9842003. Other possible purposes might be:*

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

Also, see the partnership income tax anti-abuse rules under Treas. Reg. § 1.701-2. The anti-abuse rules require, among other things, that (1) the partnership be bona fide and each partnership transaction or series of transactions (individually or collectively) be entered into for a substantial business purpose; (2) substance over form controls; and (3) tax consequences must reflect economic agreements among the partners.

Notes and Comments:

All actions of the Partnership shall be taken through the General Partners, subject to any explicit limitations contained in this Agreement.

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Notes and Comments:

ARTICLE 3
CAPITAL CONTRIBUTIONS AND ACCOUNTS[43]

[43] *As stated above, for financial accounting purposes a partner has a "capital account" that reflects his equity investment in the partnership. Partnership liabilities are not taken into account in computing a partner's capital account. Capital accounts are maintained at "book value". For example, if partner A contributes $100,000 to a partnership for a 50% partner B contributes land with a cost basis of $50,000 and a value of $100,000 to a partnership for a 50% interest both partners have IRC § 704(b) capital accounts of $100,000, even though the tax basis of the land is $50,000. A partner's capital account must be credited [increased] with the following items: (1) the amount of money the partner contributes to the partnership (2) the fair market value of property the partner contributes to the partnership (net of liabilities encumbering the contributed property that the partnership is considered to assume or take subject to under IRC § 752, (3) the partner's distributive share of partnership "book" income and gain (or items thereof), including income and gain exempt from tax. A partner's capital account must be debited [decreased] with the following items: (1) the amount of money distributed to the partner by the partnership (2) the fair market value of property distributed to the partner by the partnership (net of liabilities encumbering the distributed property that the partner is considered to assume or take subject to under IRC § 752 (3) the partner's distributive share of partnership expenditures described in IRC § 705(a)(2)(B)-expenditures of the partnership not deductible in computing taxable income and not properly chargeable to capital accounts, and (4) the partner's distributive share of partnership "book" loss and deduction (or items thereof), other than items already accounted for as distributive shares of partnership IRC § 705(a)(2(B). In general, no gain or loss is recognized by a partner or the partnership on the contribution of property to a partnership in exchange for an interest in the partnership. See IRC§ 721(a). The partnership has a transferred basis in the property received and a tacked holding period to the extent property transferred is capital or a IRC § 1231 asset but not to the extent attributable to inventory or receivables. See IRC § 722, IRC § 7701(a)(44) and IRC §1223(1). The partner also has an exchanged basis in his partnership interest with a tacked holding period. See IRC § 723, IRC § 7701(a)(44) and IRC §1223(1). Gain or loss may be recognized if the transfer is considered a sale instead of a contribution to the partnership. Also, be aware of the "mixing bowl" transaction under IRC § 737 and the disguised sale rules under IRC § 707. There is no depreciation recapture does not result from a transfer of such property to a partnership. See IRC § 1245(b)(3). Investment tax credit (ITC) recapture may result, however. A transfer of an installment obligation does not trigger immediate recognition. See Treas. Reg. §1.453-9(c)(2). The basis of inventory but not the inventory method (e.g. LIFO) carries over in a partnership non-recognition transaction. If the partner receives non-qualifying consideration on the transfer of property to the partnership gain may result. Such property is called "boot" because the taxpayer receives not only qualifying property bus something "to boot". If a partner receives boot on a transfer to a partnership the boot is treated as a distribution from the partnership. Gain is recognized only if the deemed distribution exceeds the total basis of the partner in his partnership interest. See IRC § 721(a) and IRC § 731(a) and IRC § 733. Liabilities increase a partner's basis in his partnership interest. Liabilities are netted. See IRC § 752, Treas. Reg. § 1.752-1(b). Liabilities in excess of bass is boot. It is an aggregate approach, however. Liabilities are in excess of basis and therefore boot if the aggregate amount of liabilities exceeds the aggregate basis of assets transferred. Accounts payable of a cash-basis taxpayer that would give rise to a deduction are not boot. See IRC § 704(c)(3). The receipt of a "profits interest" or a "capital interest" for services may result in immediate taxation. A taxpayer's receipt of a partnership interest in future profits for past services was taxable. See Diamond v. Commissioner, 492 F2nd 286*

Notes and Comments:

Section 3.1 **Capital Contributions of the Partners.** The Partners have been admitted to the Partnership in return for the unconditional obligation of each to contribute cash and property to the Partnership as provided in this Section 3.1. Each Partner hereby transfers to the Partnership any and all interests, leases and agreements relating to the Properties now held by such Partner.

(1) **Capital Contribution of the General Partners**. [GP1/LP1] and [GP2/LP2], as the General Partners, have been admitted to the Partnership and have received their General Interests in exchange for Capital Contributions of cash and/or property. The initial Percentage Interest of [GP1/LP1] and [GP2/LP2] shall be one percent (1%) and one percent (1%) respectively, based upon the ratio of value of contributed property credited to the General Partners relative to the total value of contributed property credited to all Partners pursuant to this Section 3.1.[44]

(7th Cir. 1974).

[44] *A General or Limited Partner's initial interest can be any percentage. However, most FLP agreements provide that the General Partner's initial interest in the FLP be a small percentage, (e.g. 1%), with most of the capital contributed assigned to Limited Partnership Interests (e.g. 99%) to facilitate transfers of Limited Partnership Interests to junior family members.*

A typical FLP capitalization might be as follows: Mr. and Mrs. Smith own the following property. The $5 Million commercial rental real estate and the $2.5 Million of marketable securities were used to capitalize the FLP; No IRC § 704(c) problem exists in that the partnership is capital intensive; No IRC § 721(b) investment company problem in that the marketable securities consist of less than 80% of the total partnership capital. The capitalization after gifts to junior family members using $675,000 of their respective lifetime gift tax applicable exclusion amounts for 2008 and assuming a 40% discount for lack of marketability looks as follows: [SEE NEXT PAGE]

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(2) **Capital Contribution of the Limited Partners.** The Limited Partners identified on Schedule A have been admitted to the Partnership to have received their Limited Interests in exchange for Capital Contributions of cash and/or property as provided on Schedule A. The initial Percentage Interest of each Limited Partner shall be based upon the ratio of total capital contributed to the Partnership in cash and value of contributed property credited to each Limited Partner relative to the total capital

	Initial Partner Interest	Partnership	Partnership		
Partners	**Percentage**	**Capital**	**Units**		
Smith LLC	1.00%	$75,000	1,000		
Limited Partner-Mr. Smith	49.50%	$3,712,500	49,500		
Limited Partner-Mrs. Smith	49.50%	$3,712,500	49,500		
	100.00%	$7,500,000	100,000		

			Net		
Descrtipion of Assets	**FMV**	**Debts**	**FMV**		
Commercial rental real estate	$5,000,000	$0	$5,000,000		
Homestead	$750,000	$250,000	$500,000		
IRA's	$1,000,000	$0	$1,000,000		
Marketable Securties	$3,500,000	$0	$3,500,000		
	$10,250,000	$250,000	$10,000,000		

	Initial Partner Interest	Partnership	Partnership	FMV	Partnership Interest
Partners	**Percentage**	**Capital**	**Units**	**Per Unit**	**FMV**
Smith LLC	1.00%	$75,000	1,000	$45.00	$45,000
Limited Partner-Mr. Smith	34.50%	$2,587,500	34,500	$45.00	$1,552,500
Limited Partner-Mrs. Smith	34.50%	$2,587,500	34,500	$45.00	$1,552,500
Limited Partner-Child A	15.00%	$1,125,000	15,000	$45.00	$675,000
Limited Partner-Child B	15.00%	$1,125,000	15,000	$45.00	$675,000
	100.00%	$7,500,000	70,000		$4,500,000

Notes and Comments:

contributed to the Partnership in cash and value of contributed property credited to all Partners pursuant to this Section 3.1.[45]

Section 3.2 **Assessments for Additional Capital Contributions**.[46] The Partners may be assessed for additional Capital Contributions in accordance with this Section 3.2. Assessment of additional Capital Contributions shall be made by the General Partners for the purposes enumerated by this Section 3.2 and shall not require a vote of the Partners. After the General Partners determine that an assessment shall be made, the General Partners shall provide a Notice of Assessment to each Partner stating the amount of the assessment to each Partner based upon each Partner's relative Percentage Interest. Such Capital Contribution shall be made by each General Partner within thirty (30) calendar days of the date of such notice. At the end of such thirty (30) day period, any unpaid assessment of additional Capital Contributions of a General Partner shall be a debt of the Non-Contributing General Partner with interest at the Partner Loan Rate.[47]

(1) **Purposes of Partnership Assessments.**[48] It is contemplated by the Partners that the General Partners may assess Partners for additional Capital Contributions only in good faith and for the reasonable business needs of the Partnership, including, but not limited to, the following purposes:

(a) To provide such funds as may be necessary to acquire Partnership Property agreed by the Partners to be acquired; or

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[45] *Junior family members are generally limited partners in an FLP. Senior family members or an entity that they control are most often general partners. That way management control is maintained by the senior family members. Minors may be limited partners if shown to be competent to manage property. Minors will generally not be recognized as partners unless control of the property is exercised by another person as fiduciary for the sole benefit of the child. See Treas. Reg. §1.704-1(e)(1)(viii). It is recommended that separate trust established for minors hold their Limited Partnership Interests.*

[46] *Every business operation periodically requires additional capital to operate. This provision gives the General Partners the power to assess all partners for additional capital for certain purposes. No vote is required.*

[47] *If a General Partner does not make the assessed required capital contribution it becomes a debt to the partnership subject to the payment of interest. The Partner Loan Rate is defined in ¶ 1.1-agreed up rate; or floating rate equal to 2% over prime.*

[48] *Assessments can <u>only</u> be made for the delineated purposes. The identified purposes can be expanded or eliminated. Generally, the purposes are to allow the partnership to continue or expand operations or to cure defaults under partnership contacts, loan agreements, etc.*

Notes and Comments:

(b) To meet current Partnership operating expenses or to reasonably increase the Reserve for the purposes of providing for such expenses in the future; or

(c) To provide cash to the Partnership in an amount necessary to cure a default on indebtedness of a Partner which is secured by Partnership Property; or

(d) To make reasonable improvements to Partnership Property as provided in this Agreement; or

(e) To make payments required of the Partnership to a Retiring, Deceased or Removed Partner pursuant to Article 8, Article 9 and Article 12; or

(f) Any other reasonable Partnership purpose.

(2) **Assessments for Additional Capital Contributions to Limited Partners.** The Limited Partners shall not be obligated to make additional Capital Contributions assessed; provided, however, the Limited Partners acknowledge that their Percentage Interest may be reduced as provided below if they fail to make additional Capital Contributions as provided in the Notice of Assessment. If the Limited Partner determines to make an additional Capital Contribution, such additional Capital Contribution shall be paid within thirty (30) days of the date of the Notice of Assessment.[49]

(3) **Assessment for Continuing Obligations.** The Partners may, by a unanimous vote of the Partners, obligate all of the Partners to make additional Capital Contributions in the future on a consistent contribution schedule for repetitive, continuing payments to be made by the Partnership. Examples of such continuing payments may include debt obligations, premiums on life insurance, property tax obligations, obligations of the Partnership to make distributions to a Partner in liquidation of a Partner's interest, or similar items. After the Partners have voted to make such a continuing assessment, all Partners shall be required to pay such assessments on the schedule agreed to by the Partners. Any unpaid assessment of additional Capital Contributions pursuant to such continuing assessment shall be a debt of the Non-Contributing

[49] *This provision provides that if a Limited Partner does not pay his assessment that his interest in the partnership with be reduced accordingly. The provision gives the Limited Partner the option to pay the assessment or take a reduction in his interest. A 30 day window is provided. Notice of the assessment is required.*

Notes and Comments:

Partner with interest at the Partner Loan Rate. Any Partner may, at any time, propose that such continuing assessment by terminated or modified upon a unanimous vote of the Partners.[50]

(4) **Right to Make Additional Capital Contributions in Lieu of Non-Contributing Partners; Recalculation of Percentage Interests.** If any General or Limited Partner fails to make an additional Capital Contribution within the time prescribed by this Section 3.2, the other Partners, General and Limited, shall have the option to contribute such assessment unpaid by the Non-Contributing Partner(s), in accordance with their relative Percentage Interests immediately prior to such assessment, which shall be paid within thirty (30) days of the date of the Notice of Assessment. Any payment made by the Partners other than the Non-Contributing Partner shall be credited to the contributing Partners' Capital Account(s) and the number of Partnership Units and the Percentage Interest of each Partner shall be reduced to the ratio of the total Capital Contributions by such Partner to the total Capital Contributions by all Partners following collection of such assessment from other Partners. If such recalculation takes place, the debt of the Non-Contributing Partner to the Partnership pursuant to Section 3.2(3) shall be reduced by the amount of the assessment paid by one or more other Partner(s), and all allocations and distributions shall thereafter be made on the basis of such recalculated Percentage Interests.[51]

(5) **Additional Contributions to Capital Upon Liquidation.** Upon dissolution and at the time of final liquidation of the Partnership, the General Partners shall be obligated to make an additional Capital Contribution to capital if such Capital Contribution is required by Section 11.3(5).[52]

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[50] *This provisions provides that by a unanimous vote of all partners (General and Limited) additional capital contributions ("capital calls") are required. No restrictions are provided. The capital call can be for any business purpose. If unpaid it becomes a Partner debt at the Partner Loan Rate. This applies both to General and Limited Partners.*

[51] *This provision allows another Partner to make a required Capital Contribution on behalf of another Partner if the other Partner does not make the contribution as required. Such a contribution will increase the contributing Partner's Capital Account and reduce the non-contributing Partner's Capital Account accordingly. Partnership units are adjusted accordingly. Debt is also adjusted accordingly.*

[52] *This provision is meant to comply with the economic effect rules of IRC § 704(b) requiring a deficit make-up on liquidation.*

Notes and Comments:

Section 3.3 **Capital Accounts.**[53] A separate Capital Account shall be maintained by the Partnership for each Partner in accordance with Code Section 704(b) and the Treasury Regulations promulgated thereunder, particularly Treas. Reg. Section 1.704-1(b)(2)(iv).

(1) Each Partner's Capital Account shall be credited with (increased by) the following:

(a) Capital Contributions by the Partner; and

(b) The fair market value of Property contributed by the Partner to the Partnership, net of liabilities secured by such contributed Property that the Partnership is considered to assume or take subject to; and

(c) Allocations to the Partner pursuant to Article 5 hereof of Partnership income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. Section 1.704-1(b)(2)(iv)(g) (adjustments to reflect book value) but excluding income and gain described in Treas. Reg. Section 1.704-1(b)(4)(i) (allocations to reflect revaluations).[54]

(2) Each Partner's Capital Account shall be debited with (reduced by) the following:

(a) The amount of money distributed to the Partner by the Partnership; and

(b) The fair market value of Property distributed to the Partner by the Partnership, net of liabilities secured by such distributed Property that such Partner is considered to assume or take subject to; and

[53] *As stated above, for financial accounting purposes a partner has a "capital account" that reflects his equity investment in the partnership. Proper capital account maintenance is required to comply with the economic effect requirements under IRC § 704(b). The basic rules for proper capital account maintenance are provided in Treas. Reg. § 1.704-1(b)(2)(iv)(a) and (b). Remember, capital accounts are required to be maintained at "book value" A separate set of books is kept for tax accounting versus financial [book] accounting purposes. The book/tax differences eventually "amortize or work-out" . A partner's capital account is credited with the fair market value of the property he contributes to the partnership, even though the partnership takes a carryover or exchanged basis in the asset for tax purposes.*

[54] *Again, the Treasury Regulations referenced and the above partnership provisions are taken almost verbatim from the capital account maintenance Regulations under Treas. Reg. § 1.704-1(b)(2)(iv)(a) and (b).*

Notes and Comments:

(c) Allocations of expenditures of the Partnership described in Code Section 705(a)(2)(B)[55]; and

(d) Allocations of Partnership loss and deduction (or items thereof) including loss and deduction described in Treas. Reg. Section 1.704-1(b)(2)(iv)(g)[56] but excluding loss and deductions described in Treas. Reg. Section 1.704-1(b)(4)(i).[57]

(3) In the event of a permitted sale or exchange of a Partner's Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Interest.[58]

(4) In the event of an adjustment to the adjusted tax basis of Partnership Property under Code Sections 732[59], 734[60] or 743[61], the Capital Accounts of the Partners so affected shall be adjusted to the extent provided in Treas. Reg. Section 1.704-1(b)(2)(iv)(m).[62]

(5) In all circumstances, cost recovery deductions, gain and loss with respect to contributed Property shall be governed by the principles set forth in Code Section 704(c)[63] and the Treasury Regulations promulgated thereunder.

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[55] *IRC § 705(a)(2)(B) Reference: "[E]xpenditures of the partnership not deductible in computing its taxable income and not property chargeable to capital account".*

[56] *Adjustments to reflect book value-requires reallocations of certain book/tax differences to comply with the economic effect rules of IRC§ 704(b).*

[57] *Adjustments to reflect book value-requires allocations to reflect revaluations of certain book/tax differences to comply with the economic effect rules of IRC§ 704(b).*

[58] *A purchaser of a partner's partnership interest succeeds to the selling partner's capital account. See Treas. Reg. § 1.704-1(b)(2)(iv)(l). A purchaser of a partnership interest takes a cost basis in the interest acquired. See IRC § 742 and IRC § 1012. The cost includes the purchaser's share of partnership liabilities. See IRC § 752(d); Treas. Reg. § 1.752-(h). Under the entity principle, sale of a partnership interest generally does not adjust a partnership's basis in its assets. See IRC § 743(a); Treas. Reg. § 1.743-1(a). If however, a IRC § 754 special basis election is in effect the purchaser's share of the inside basis of the partnership's assets is roughly the same as for a purchase of a pro rata share of partnership assets. See IRC § 743(a) and IRC § 754.*

[59] *Basis of distributed property other than money. See IRC § 754*

[60] *Optional adjustment to basis of undistributed partnership property. See IRC § 754*

[61] *Optional adjustment to basis of partnership property. See IRC § 754*

[62] *This Treasury Regulation refers to the mechanics of making the various IRC §743, IRC §732 and IRC §734 adjustments.*

[63] *Although there is generally no immediate tax on the contribution of property to a partnership IRC § 704(c)*

Notes and Comments:

(6) The foregoing provisions of this Section 3.3 and the other provisions of this Agreement are intended to comply with Treas. Reg. Section 1.704-1(b)[64], and shall be interpreted and applied in a manner consistent with such Treasury Regulation. In the event that a determination is made by the General Partners that it is necessary to modify the manner in which the Capital Accounts, or any debit or credit thereto, is accounted for in order to comply with such Treasury Regulation, the General Partners may make such modification, provided, however, that such modification shall not have a material effect on the economic agreement among the Partners. Pursuant to Article 13 hereof, the General Partners may amend this Agreement to implement the purpose of this Section 3.3(6) after informing the other Partners of the proposed Amendment to this Agreement for this purpose and providing the other Partners thirty (30) days to review the proposed Amendment and to oppose such Amendment by reason of its alteration of the economic agreement among the Partners. If any Partner shall object within such thirty (30) day period, Article 13 procedures for amendment of this Agreement shall apply.[65]

Section 3.4 **Interest on Capital Accounts.** No interest shall be paid by the Partnership on the Capital Contributions by the Partners as reflected in their Capital Accounts from time to time.[66]

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requires that a contributing partner (and not the other partners) remain responsible for the inherent tax consequences of property contributed when the unrecognized gains or losses are realized by the partnership. For example, if Partner A contributes land to the partnership having a tax basis of $25,000 and a fair market value at the time of contribution of $100,000 then the difference of $75,000 is a IRC§ 704(c) gain that will be allocated to Partner A if and when the partnership eventually sells the land. Note however, that it is only the pre-contribution gain that is attributable to the contributing partner under IRC § 704(c). If Partner A received a 50% interest in profits upon the contribution of the land to the partnership and the land was sold for $150,000, then only 50% of the excess or $25,000 [1/2 of the amount of appreciation in the asset after contribution] is allocated Partner A. Partner A will be allocated a total of $100,000 of the gain from the sale of the land. Partner B, holding the other 50% profits interest will be allocated $25,000 of the gain. Thus, Partner A can not "shift" the inherent gain in the property contributed to another partner. This is the purpose of IRC§ 704(c).

[64] *Again, this is a reference to the Treasury Regulation under IRC § 704(b) relating to substantial economic effect of partnership allocations.*

[65] *This provision allows the General Partners to amend or modify the FLP so that it complies with the Treasury Regulation under IRC § 704(b) relating to substantial economic effect of partnership allocations.*

[66] *This is to clarify that the partners contributions to the partnership are capital contributions and not loans. This provision is also consistent with Minnesota law. Interest may be paid on Capital Accounts but is not generally recommended. Minnesota law provides that no interest is paid on capital accounts unless so provided in the*

Section 3.5 **No Right to Return of Contribution or to Distributions of Capital.** No Partner shall have any right to withdraw capital from the Partnership, or to the return of any Capital Contribution, as reflected in any Partner's respective Capital Account from time to time, except for any proportionate Distributions, made by the General Partners, to the extent determined by the General Partners to be a return of or reduction of capital. [67]

Section 3.6 **Loans to the Partnership**. No Partner shall be required to lend any funds to the Partnership. Any Partner may, but shall not be obligated to, advance funds to the Partnership to pay any expenses or obligations of the Partnership, in the discretion of the General Partners. Any payment, advances or transfer accepted by the Partnership from a Partner, or for which a Partner has the right to reimbursement, which is not an agreed or required Capital Contribution shall be deemed a loan, shall not be treated as a Capital Contribution for any purpose, and shall not entitle such Partner to any increase in the Percentage Interest in the Partnership. Any such advances shall be made in exchange for a demand promissory note of the Partnership and shall bear interest at the Partner Loan Rate. The Partnership shall make payments on such advances from the operating cash flow of the Partnership at such times in such amounts and in such a manner as the General Partners may determine in the General Partners' discretion to be in the best interest of the Partners and the Partnership; provided, however, that the unpaid accrued interest and principal balance of such advances shall be immediately due and payable in full upon a Financing or Sale of any Partnership Property, unless waived in writing by the lending Partner.[68]

Section 3.7 **No Obligation of Partners to Fund.** No General or Limited Partner shall be obligated to fund, advance or lend monies which may be necessary to pay operating deficits, if any, incurred by the Partnership during the term of the Partnership except as explicitly set forth in this Article 3.[69]

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partnership agreement.

[67] *Again, this is to clarify that the partners do not have a right to a return of their investment in the partner on demand. Such a right would be disruptive to the partnership operations.*

[68] *This clarifies the difference between a capital contribution and a partner loan or advance to the partnership. The advance shall be evidenced by a demand promissory note, bearing interest at the Partner Loan Rate. Payments on the note are made when available, the entire note is due on demand or upon the sale of the partnership property unless waived. IRC § 707 permits a partner to engage in a transaction with the partnership other than in his capacity as a member of the partnership.*

[69] *This provision makes it clear that no partner is personally obligated to fund the partnership operation.*

Notes and Comments:

ARTICLE 4
PARTNERSHIP UNITS

Section 4.1 **Partnership Units.** [70] The term "Partnership Unit" refers to an arbitrary unit of measurement of a portion of an Interest in the Partnership and is used only for ease and convenience in expressing the relative quantity of a Partner's Partnership Interest, the proportionate share of privilege or obligation appertaining thereto, and the relationship of the Partnership Interests of two or more of the Partners. The Interests in the Partnership, as the same existed following the initial Capital Contribution by the Partners pursuant to Section 3.1 hereof, is acknowledged to have been divided into 100,000 such arbitrary Partnership Units, and have been credited to each General Partner and Limited Partner as follows:

Name of Partner	General Partner Units	Limited Partner Units
[GP1/LP1]		
[GP2/LP2]		
Total		

A Partnership Unit may, from time to time, vary in dollar value by reason of the computations provided for in Section 4.3 hereof.

Section 4.2 **Change in Partnership Units.** The total number of Partnership Units in existence will not change unless (i) additional Capital Contributions are made to the Partnership other than by all Partners in proportion to their respective Percentage Interests, (ii) the Partnership reacquires the capital Interest of a Partner, or (iii) the General Partners distribute cash or Property to one or more Partners other than distributions in proportion to the respective Percentage Interests of

[70] *It is generally considered convenient to subscribe ownership based on "units" rather than percentages. Units, once valued, can be more easily assigned and transferred that percentage interests. To make it even easier, the initial number of units is equal to 100,000 for ease of partition.*

Notes and Comments:

all Partners. If any such event occurs, the Partnership Units shall be revalued in accordance with Section 4.3 hereof.[71]

Section 4.3 **Revaluation of Partnership Units**.

(1) **Revaluation.**[72] The Partners agree that upon the Revaluation Date, the value represented by each Partnership Unit will be redetermined on the date of such event (the "Revaluation Date") in a manner consistent with Treas. Reg. Section 1.704-1(b)(2)(iv)(f)[73] to be effective as of the date of such event, and any such transaction described in Section 4.2 shall occur at such redetermined Partnership Unit value. The redetermined value represented by each Partnership Unit will be computed by determining the fair market value of Partnership Property (taking Code Section 7701(g)[74] into account) as of the Revaluation Date and such adjustment reflects the manner in which the unrealized income, gain, loss, or deduction inherent in such property not previously reflected in the Capital Accounts would be allocated among the Partners if there were a taxable disposition of such Partnership Property. Such determination may be made by the Partners by a Majority of Interests. If any such revaluation occurs, the Partner's Capital Account shall be adjusted in accordance with Treas. Reg. Section 1.704-1(b)(2)(iv)(g)[75] for allocations of depreciation, amortization, and gain or loss, as computed for book purposes, with respect to such Partnership Property in the manner prescribed by Code Section 704(c)[76] and the Treasury Regulations promulgated thereunder.

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[71] *This provision clarifies the point that once issued the total number of units will not change unless there is additional non prorata capital contributions, the partnership redeems a partner's interest, or there are non-prorata distributions of property to partners. In such a case the partnership units will be revalued.*

[72] *A partnership agreement may, upon the occurrence of certain events, increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property (including intangible asset such as goodwill) on the partnership's books.*

[73] *IRC § 1.704-1(b)(2)(iv)(f)- Revaluations of property. If a revaluation is made it must be done in compliance with the rules under Treas. Reg. § 1.704-1(b)(2)(iv)(f) otherwise the revaluation will run afoul of the capital maintenance rules under IRC § 704(b) See Treas. Reg. § 1.704-1(b)(2)(iv). In general, the adjustments must be based on fair market value, respect inherent gain, book depreciation, etc.*

[74] *IRC § 7701(g)-Clarification of fair market value in case of nonrecourse indebtedness. A property's fair market value cannot be less than the amount of any nonrecouse indebtedness to which the property is subject.*

[75] *IRC § 1.704-1(b)(2)(iv)(g)-Adjustments to reflect book value-Property may be properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property. This Treasury Regulation essentially requires adjustments to be make based on book value not tax basis.*

[76] *IRC § 704(c) requires that the contributing partner (and not the other partners) remain responsible for the*

Notes and Comments:

(2) **Balance Sheet**. The Partnership's accountant shall prepare the balance sheet required herein in accordance with accounting principles acceptable for tax-reporting purposes and applied on a consistent basis. The balance sheet prepared by the accountant of the Partnership shall be final, binding and conclusive upon the Partners for all purposes of this Agreement.[77]

ARTICLE 5
ALLOCATION OF INCOME, LOSSES AND DISTRIBUTIONS

Section 5.1 **Allocation of Distributions.** [78] Distributions shall be made to the Partners in the following priority:

(1) **Distributions Prior to Liquidation.** All Distributions other than Liquidating Distributions from any source, whether in cash or in property, shall be made in proportion to the Partners' relative Percentage Interests at the time of the Distribution.[79]

(2) **Liquidating Distributions.** Liquidating Distributions shall be made in accordance with Section 11.3(4).[80]

inherent tax consequences of property contributed when the unrecognized gains or losses are realized by the partnership

[77] *Pick your CPA carefully. Partnership tax and book accounting rules are at best difficult. Many practicing CPA's and most lawyers do not fully understand them.*

[78] *This section lays out priority of distributions of partnership property.*

[79] *Non-liquidating distributions are distributed in accordance with partner profit sharing ratios, not capital account balances. Non-liquidating distributions are generally non- taxable. In general, In–kind prorata distributions do not cause recognition of gain or loss by the partnership. See IRC § 731(b). However, non-prorata distributions result in gain or loss to the distributee partner and the partnership if any partner receives more that his or her prorata share of "hot assets"-substantially appreciated inventory and unrealized receivables-See IRC § 751.*

[80] *Liquidating distribution are made first in proportion to partners positive capital account balances. This is one of the requirements for substantial economic effect under the Treasury Regulations of IRC § 704(b). Liquidation distributions are divided into IRC § 731(a) payments and IRC § 731(b) payments. The former are generally taxable as ordinary income, the latter as capital gain. In- kind prorata liquidations are generally not taxable even if there are hot assets. Payments by installment obligations are more complex and may be taxable. An allocation of each installment payment must be made between IRC § 736(a) and IRC § 736(b) payments. See Treas. Reg. § 1.736-*

Notes and Comments:

(3) **Distributions of Property in Kind.** Any assets distributed in kind to a Partner shall be distributed at the fair market values of such assets at the date or dates of distribution, or, at face value of an installment obligation received upon Sale of Partnership Property.[81]

Section 5.2 **Allocation of Income, Loss, Gain, Deductions and Credits.** All items of income, loss, gain, deductions with respect thereto, and credits of the Partnership for each fiscal year shall be allocated as of the end of each fiscal year to each Partner, based upon each Partners' varying interest in the Partnership during the fiscal year. Such allocation represents the apportionment of such items among the Partners for bookkeeping purposes and for calculation and adjustment of Capital Accounts. Such allocations shall also be effective for income tax purposes, except to the extent tax allocations are explicitly provided in this Article to be made separately from book allocations. Actual distribution of cash generated by the Partnership which is available for distribution by the Partnership shall be made pursuant to Section 5.1, Section 11.3 and other provisions of this Agreement. Any Partner allocated a certain proportion of income, loss, gain or credit shall be allocated a like proportion of all items comprising such income, loss, gain or credit, except as expressly provided in this Agreement.[82]

(1) **Income, Loss, Gain and Credit, Generally.** All income, loss, gain and credit shall be allocated among the General and Limited Partners in accordance with their Percentage Interests at the time of such allocation. If the Percentage Interests of the Partners are redetermined pursuant to Section 3.2(4), Section 4.2 or Section 4.3, with the result that the Percentage Interests of the Partners are different at (i) the date on which certain items of revenue or expenditures are accounted for and allocated under

1(b)(5) and (6).

[81] *As stated above, in general, in–kind prorata distributions do not cause recognition of gain or loss by the partnership. See IRC § 731(b). Non-prorata distributions result in gain or loss to the distributee partner and the partnership if any partner receives more that his or her prorata share of "hot assets"-substantially appreciated inventory and unrealized receivables under IRC § 751.*

[82] *Partnerships are entities that for tax accounting purposes pass-through their income whether distributed or not. Losses of the partnership are also passed through to partners. See IRC §701 and IRC § 702. The deduction of losses is limited to the partner's basis in his partnership interest, with an unlimited carry forward of losses that are not allowed in the year incurred. See IRC § 704(d) and Treas. Reg. § 1.704-1(d). Loss deductions may be further limited IRC § 482,Allocation of income and deductions among taxpayers-income/loss reallocations by IRS for related parties. See also IRC § 465, Deductions limited to amount at risk. See also IRC § 469-Passive activity losses and credits limited. The character of the income is determined at the partnership level. See IRC § 703(a), Treas. Reg. § 1.703-1. Most tax elections are also made at the entity level. See IRC§703(b), Treas. Reg. § 1.703-1(b)*

Notes and Comments:

this Section and (ii) the date such items are actually received or paid in cash, then the allocations under this Section 5.2 shall be appropriately adjusted as of the later of the dates described in (i) and (ii) to cause the overall allocation to be consistent with the actual economic benefits of such revenue or burdens of such expenditures.

(2) **Partner's Minimum Gain Limitation**. In the event that by reason of the reductions to be made to a Limited Partner's Capital Account pursuant to Treas. Reg. Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6)[83], such Limited Partner would have an Adjusted Capital Account Deficit at the end of any Partnership fiscal year, then such Limited Partner shall be specially allocated items of Partnership gross income and gain in the amount of such excess to eliminate such Adjusted Capital Account Deficit as quickly as possible.[84]

(3) **Qualified Income Offset**. In the event a Limited Partner unexpectedly receives any adjustment, allocation or distribution described in Treas. Reg. Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6)[85], which has not otherwise been taken into account in determining such Limited Partner's Adjusted Capital Account Deficit, if any, then items of Partnership gross income and gain shall be specially allocated to such Partner in an amount and manner sufficient to eliminate such Limited Partner's Adjusted Capital Account Deficit as quickly as possible. This Section 5.2(3) is intended to constitute a "qualified income offset" under Treas. Reg. Section 1.704-1(b)(2)(ii)(d)[86] and shall be interpreted consistently therewith.

(4) **Minimum Gain Chargeback**. If during any Partnership fiscal year there is a net decrease in a Partner's share of Minimum Gain, as defined in Treas. Reg. Section 1.704-2(g), each Partner who would otherwise have an Adjusted Capital Account

[83] *IRC § 1.704-1(b)(2)(ii)(d)(4), (5), or (6) –Alternative test for economic effect adjustments.*

[84] *Again, minimum gain is computed by first computing for each partnership nonrecourse debt any gain the partnership would realize if it disposed of the property subject to that liability for no consideration other than full satisfaction of the debt, and then aggregating the separately computed gains. For any partnership taxable year, the net increase or decrease in partnership minimum gain is determined by comparing the partnership minimum gain on the last day of the immediately preceding taxable year with the partnership minimum gain on the last day of the current taxable year. See IRC. § 1.704-2(d).*

[85] *IRC § 1.704-1(b)(2)(ii)(d)(4), (5), or (6) –Alternative test for economic effect adjustments.*

[86] *A qualified income offset is required for the alternative test under IRC§ 704(b). A qualified income offset is a provision which requires the partnership to allocate income or gain to a partner who "unexpectedly" receives an adjustment, allocation, or distribution that causes a deficit balance in his capital account.*

Notes and Comments:

Deficit at the end of such year shall be specially allocated items of Partnership gross income and gain for such year (and, if necessary, subsequent years) in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible. The items to be allocated shall be determined in accordance with Treas. Reg. Section 1.704-2(j). This Section 5.2(4) is intended to comply with the minimum gain chargeback provisions of Treas. Reg. Section 1.704-2(f) and shall be interpreted consistently therewith. If any Limited Partner personally guarantees Partnership indebtedness at any time which is deemed a capital account restoration obligation pursuant to Treas. Reg. Section 1.704-1(b)(2)(ii)(c), and, if during any Partnership fiscal year there is a net decrease in such Partner's deemed capital account restoration with respect to such guarantee, special allocations of gross income and gain shall be made as provided in this Section 5.2(4) above to eliminate such Partner's Adjusted Capital Account Deficit.[87]

(5) **Reallocation of Special Allocations Mandated by Treas. Reg. Section 1.704-1(b) and Section 1.704-2.** If a special allocation is made of any item of Partnership income, gain, deduction, loss or credit by reason of Section 5.2(2) through Section 5.2(4), inclusive, a special allocation of items of Partnership gross nonrecourse and other deductions to a Limited Partner and gross income and gain to the General Partners shall be made in order to restore the Partner's Capital Accounts to the Partner's relative Percentage Interests as quickly as possible within the limitations of Treas. Reg. Section 1.704-2 regarding nonrecourse deductions allocable to the Limited Partners.[88]

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[87] *A minimum gain chargeback provision is required if there is nonrecourse debt financing. See Treas. Reg. § 1.704-1(b)(4)(iv). If nonrecourse debt is used to generate deductions the partner is getting a deduction without being at-risk on the debt that generated the deduction. "The deduction must follow the liability". To alleviate this result and to make allocations comport with the economic effect rules under IRC § 704(b) the minimum gain chargeback provision for nonrecourse debt is used. In essence, a minimum gain chargeback provision is substituted for a deficit make-up in the economic effect test. More accurately, it is added to a qualified income offset requirement of the alternative test. See Treas. Reg. § 1.704-2(e). The effect is to allow allocations of nonrecourse deductions even when they produce a deficit that does not have to be made up because there will be an equivalent chargeback of future income to offset the current deduction. This rule is somewhat overshadowed by the passive activity loss rules and the at-risk rules but is still important. If there is a net decrease in partnership minimum gain for a partnership taxable year, the minimum gain chargeback requirement applies and each partner must be allocated items of partnership income and gain for that year equal to that partner's share of the net decrease in partnership minimum gain. See Treas. Reg. § 1.704-2(f)*

[88] *Again, this a reference to the allocation and "reallocation" rules attributable to nonrecouse liabilities.*

Notes and Comments:

(6) **Special Allocations for Contributed Property.**[89] In accordance with Code Section 704(c) and applicable Treasury Regulations, income, gain, loss and deduction with respect to any property contributed to the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take into account of any variation between the adjusted basis of such Property to the Partnership for federal income tax purposes and the value ascribed to it under this Agreement. In addition, if the value of any Partnership Property is required to be adjusted pursuant to the provisions of Code Section 704(b) and the Treasury Regulations thereunder, subsequent allocations of income, gain, loss and deduction for tax purposes with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted value, in the same manner as under Code Section 704(c) and the applicable Treasury Regulations. Any elections or other decisions relating to such allocations shall be made by the General Partners in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 5.2(6) are solely for purposes of federal, state and local taxes, as appropriate, and shall not effect, or in any way be taken into account in, computing any Partner's Capital Account or share of profits, losses, other items or distributions pursuant to any provisions of this Agreement.

(7) **No Shift of Recapture Responsibility.** In making the allocation among the Partners of gain or profit, the ordinary income portion, if any, of such gain or profit caused by the recapture of cost recovery, depreciation, amortization or any other deductions shall be allocated among the Partners who were previously allocated related deductions in proportion to the amount of such deduction previously allocated to them, notwithstanding that a Partner's share of profits, losses or liabilities may increase or decrease from time to time. Nothing in this Section 5.2(7), however, shall cause the Partners to be allocated more or less gain or profit than would otherwise be allocated to them pursuant to this Article 5.[90]

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[89] *Again, this is the IRC § 704(c) pre-contribution gain rule. The purpose is to prevent the shifting of tax consequences among partners with respect to precontribution gain or loss. See Treas. Reg. § 1.704-3(a). Accounts payable are IRC § 704(c) property. See Treas. Reg. § 1. 704(a)(4). As stated above, IRC § 704(c) requires that the contributing partner (and not the other partners) remain responsible for the inherent tax consequences of property contributed when the unrecognized gains or losses are realized by the partnership.*

[90] *The character of the gain or loss- ordinary vs. capital- follows the partner. It cannot be shifted to other partners. See IRC § 704(c)(4); Treas. Reg. § 1.704-3(a)(4)*

Notes and Comments:

Section 5.3 **Adjustment to Tax Basis**. An election by the Partnership under Code Section 754 to adjust basis of Partnership assets pursuant to either Code Section 734 or Code Section 743 shall be made only upon the election of the General Partners. In the event such election is made, allocation of items of Partnership income, gain, loss and deductions shall be made in a manner consistent with such allocation of basis in accordance with Code Section 734 and/or Code Section 743, as the case may be.[91]

Section 5.4 **Assignees and Allocations.** The Partnership shall not be required to deal with any Person by reason of an assignment or transfer by a Partner of his, her or its Interest, except as specifically provided in this Agreement. Any payment by the Partnership to the one shown on the Partnership records to be entitled thereto as of the date of such distribution shall acquit the Partnership of all liability to any other Person who may be interested in such payment. In the case of the assignment of any Limited Interest during any fiscal year (whether or not such assignment results in the assignee becoming a substituted Limited Partner), all allocations under this Article 5 with respect to such Limited Interest in respect to such fiscal year shall be further allocated between the assignor and the assignee in proportion to the number of months during such fiscal year that each was the holder of such Interest, determined by reference to the date the assignment thereof became effective pursuant to Article 8 or Article 12.[92]

ARTICLE 6
FINANCIAL STATEMENTS, BOOKS AND BANK ACCOUNTS

Section 6.1 **Books and Records.** The General Partners shall maintain accurate and complete books and records for the Partnership at the principal place of business of the Partnership. All Partners and their representatives shall have full access and the right to inspect, examine and copy such books and records at all reasonable times at the expense of such Partner.[93]

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[91] *A IRC § 754 election allows a new purchasing partner to increase his "inside basis" in partnership assets. If the election under IRC § 754 is in effect the purchaser's share of the inside basis of the partnership assets is roughly that same as for a purchase of a prorata share of the partnership assets. The IRC § 754 adjustment only affects the purchaser's share of the inside basis of the partnership property. The other partners are not affected. See Treas. Reg. § 1.743-1(j)(1)*

[92] *This is a basic anti-assignment provision. Assignments of partnership interests are not respected unless authorized by the partnership agreement. However, assignment of partnership interests are permitted under Minnesota law. See M.S. § 322A.56. (pre-2005 Minnesota law); See M.S. § 321.0702. (post-2005 Minnesota law);*

[93] *M.S. § 322A..05 requires that each limited partnership shall keep at the partnership office the following things: (1) a current list of partners (2) copy of the certificate of limited partnership (3) tax returns (4) copy of the partnership agreement (5) financial statements for the last 3 years (6) value of partnership contributions. For a list of other required items see the statute cited. (pre-2005 Minnesota law); See M.S. § 321.0111 (post-2005 Minnesota*

Notes and Comments:

Section 6.2 **Financial Statements.** The General Partners shall exercise their best efforts to deliver to the Partners within ninety (90) days after each fiscal year accurate and complete financial statements, including a balance sheet and income and loss statement, a statement showing the Capital Account of each Partner, and Schedule K-1's reflecting the amounts of net income and net loss reportable for federal and state income tax purposes for each Partner. No financial statement need be audited.[94]

Section 6.3 **Compliance with Financing Agreements.** The General Partners shall take such steps in maintaining the Partnership books and records and in preparing and issuing financial reports as may be required in any financing and loan agreements to which the Partnership is now or becomes a party.

Section 6.4 **Banking.** The General Partners shall open and maintain in the name of the Partnership one or more separate bank or investment accounts, and, if deemed appropriate by the General Partners, one or more money market fund or similar interest-bearing investment accounts, in which shall be deposited all the monies of the Partnership and no other monies. The Partnership funds shall be used solely for Partnership purposes, shall not be commingled with any other fund, and all disbursements shall be made by such Persons as the General Partners may from time to time authorize. [95]

Section 6.5 **Ratification of Financial Statements.** Unless written objection is made by a Partner within sixty (60) days after receipt of Partnership annual financial statements, each such statement shall be deemed to have been ratified and accepted by all Partners.

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law).

[94] *As stated above, a partnership is a pass-through tax entity. Income, gain, loss, deduction, etc. are "passed through" and taxed to the individual partners. They report their share of income, gain, loss, deduction, etc. on their individual income tax returns, form 1040. The partnership files its own informational tax return, federal form, 1065, and issues each partner a K-1 containing a summary of the partner's allocable share of income, gain, loss, deduction, etc. Individual income tax return, form 1040, is due on April 15th of each year. Therefore, it is imperative that the individual partners receive their K-1's before that deadline- thus the 90 day deadline.*

[95] *An FLP bank account must be opened. A federal ID# must be obtained. If it is not, and funds are co-mingled with personal assets, the IRS may set the partnership agreement aside for not being a bona-find business arrangement. See anti-abuse rules under Treas. Reg. §1.701-2. A partnership must be bona fide and each partnership transaction must have a substantial business purpose. Also, if the partnership is not bona-fide it may be "unwound" for transfer tax purposes.*

Notes and Comments:

ARTICLE 7.
PARTNERSHIP MANAGEMENT

Section 7.1 **Rights and Authority of the General Partners.** The General Partners shall have the full power, right and authority to manage the Partnership business in all matters and shall have the sole and exclusive power on behalf of the Partnership to control the conduct of the Partnership business. Each Partner hereby grants to the General Partners all the necessary and appropriate powers and authority to carry out the purposes and conduct of the business of the Partnership, subject only to rights of the Partners to vote on specific matters as provided in Section 8.1 and limitations of the authority of the General Partners as provided in Section 7.2, including the following:

(1) To admit Partners to the Partnership in accordance with this Agreement;

(2) To manage the business of the Partnership and to hold, maintain, manage and dispose of any or all Partnership Property, on such terms deemed by the General Partners to be in the best interest of the Partners and the Partnership;

(3) To enter into any contracts appropriate for the character of the Partnership business, including, but not limited to, management contracts for the operation and management of the Partnership business, service contracts with accountants, attorneys and/or investment advisors, on such terms and for such compensation as the General Partners shall reasonably determine. [*Nevertheless, any transactions or business relationships with affiliates of the [GP] shall be disclosed to all Partners, be commercially reasonable and shall not be on less favorable terms to the Partnership than could have been obtained from unrelated parties under similar circumstances*.][96]

[96] *Treas. Reg. § 1.704-1(e)(ii)(c) provides that if the General Partners retain control of assets essential to the business (for example, through retention of assets leased to the partnership), the donee might not be treated as a partner for income tax purposes. In addition, Treas. Reg. § 1.704-1(e)(iii) provides that control inconsistent with ownership by the donee may be exercised indirectly as well as directly, for example, through a separate business organization. Where such indirect control exists, the reality of the donee's interest will be determined as if such control were exercised directly. Whether an alleged partner who is a donee of a capital interest in a partnership is the real owner of such capital interest, and whether the donee has dominion and control over such interest, must be determined from all the facts and circumstances. See Treas. Reg. . § 1.704-1(e)(2).*

Notes and Comments:

(4) To file and publish all certificates, statements or other instruments required by law for formation, certification and operation of the Partnership in all appropriate jurisdictions;

(5) To call informational meetings of the Partners when deemed desirable by the General Partners, but no regular meetings are contemplated or required;

(6) To make decisions as to accounting principles, methods and elections, whether for book or tax purposes. Such decisions may be different for book purposes than for tax purposes, although it is contemplated that to the extent practical the Partnership will maintain its books utilizing the same elections and principles used for tax purposes;

(7) To make any and all decisions relating to the terms of any Sale of any or all Partnership Property and to execute all instruments in connection therewith;

(8) To institute, defend, or engage in legal proceedings of any nature whatsoever relating to the Partnership, including proceedings for reorganization, composition, arrangement or relief from Partnership obligations;

(9) To delegate any authority of the General Partners to other Persons under the supervision of the General Partners;

(10) To take any necessary and appropriate action to acquire any Properties on behalf of the Partnership and to enter into any appropriate contracts, agreements, leases, or arrangements in connection therewith, including without limitation, the negotiation and execution of a mortgage of same upon such terms and at such rates at the discretion of the General Partners;

(11) To cause the Partnership to carry adequate insurance for public liability and property damage and destruction to the Properties and to name the General Partners, employees, and agents as additional insureds;

(12) To borrow money or obtain Financing and, if security is required therefore, to mortgage or otherwise encumber any part or all of the Properties in carrying on the normal, day-to-day business of the Partnership, and including borrowing to pay

Notes and Comments:

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amounts due to Partners, and to prepay, in whole or in part, increase, modify, consolidate, or enter any note, loan, mortgage or other security instrument, all on such terms as the General Partners deem to be in the best interest of the Partnership, subject to any applicable restrictions imposed by any agreement to which the Partnership is subject; and

(13) To lease all or any portion of the Properties without limitation as to the terms thereof.[97]

Section 7.2 **Delegation of Authority to General Partners; Restrictions on Authority of the General Partners.** All decisions made for and on behalf of the Partnership by the General Partners shall be binding upon the Partnership, and all power, authority and discretion of the Partners to act on behalf of the Partnership shall be vested exclusively in the General Partners, except where this Agreement explicitly requires the consent of a specified proportion of Partners to act. Notwithstanding the foregoing, actions and decisions by the General Partners shall be agreed to unanimously by the General Partners. No action or decision taken or made by any Partner other than as explicitly provided in this Agreement shall bind the Partnership, and no Partner shall purport to take any action on behalf of the Partnership beyond such Partner's actual authority.[98]

Without the express written consent of the Majority of Interests, the General Partners shall have no authority:[99]

(1) To do any act in contravention of this Agreement;

(2) To confess a judgment against the Partnership;

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[97] *General partners have equal rights in the management and conduct of the partnership business. See M.S. § 323A.4-01.(f) (pre-2005 Minnesota law); See M.S. § 321.0406. (post-2005 Minnesota law); Limited partners are generally not liable to third parties for the obligations of the partnership. See M.S. § 322A.26(a) (pre-2005 Minnesota law); See M.S. § 321.0303 (post-2005 Minnesota law); Limited partners do not generally participate in management although they can have voting rights if so stated in the partnership agreement. See M.S. § 322A.25. (pre-2005 Minnesota law); See M.S. § 321.0302 (post-2005 Minnesota law);*

[98] *This section lays out the General Partner's authority. In general, all management rights are vested in the General Partners. Unanimous agreement of the General Partners is required for action.*

[99] *This section lists those actions that require limited partner input. Additional restrictions could be imposed. Example, to enter into a lease over 2 years, to purchase equipment with a cost in excess of $100,000.*

Notes and Comments:

(3) To admit a Person as a General or Limited Partner except as provided in this Agreement;

(4) To perform knowingly any act that would subject any Limited Partner to liability as a general partner under the laws of any jurisdiction; or

(5) To enter into any binding or enforceable financing agreement which would require a guaranty of any part of such Financing without the express consent of the Partners required to provide such guaranty.

Section 7.3 **Responsibilities of the General Partners.** The General Partners shall have the responsibility and authority for the management of the Partnership business.[100] The nature of such responsibilities, authority and duties are as follows:

(1) To take all the action which may be necessary or appropriate for the continuation of the Partnership's valid existence as a Limited Partnership under RULPA and under the laws of the State of Minnesota or other jurisdictions in which the Partnership may do business;

(2) To prepare and cause to be filed on or before the due date (or any extension thereof) any federal, state or local tax returns required to be filed by the Partnership;

(3) To prepare and provide Partners with periodic reports as provided in this Agreement;

(4) To take such action and devote such time and energy as may be necessary for the proper and prudent management of the Partnership business;

(5) To take any and all reasonable action necessary and reasonably possible to assure that the Partnership complies at all times with the terms and provisions of the agreements to which it is a party; and

(6) To oversee the dissolution, winding up and termination of the Partnership.

[100] *Again, the general partners are give management rights to the exclusion of limited partners.*

Notes and Comments:

Section 7.4 **Rental, maintenance and improvement of certain real property.** The General Partners shall establish by unanimous agreement procedures related to the rental, maintenance and improvement of **[DESCRIPTION OF THE FAMILY CABIN]** or any successor property, real or personal, that becomes an assets of the Partnership. The procedures for **[DESCRIPTION OF THE FAMILY CABIN]** to which the Members have initially agreed are set forth in Exhibit B.

Section 7.5 **Compensation to and Reimbursement of the General Partners.** The General Partners shall be compensated and reimbursed as provided in this Section 7.4.

(1) **Compensation to the General Partners[101].** The General Partners shall be entitled to payments or compensation as may be agreed upon the express consent of a Majority of Interests.[102]

(2) **Reimbursement to the General Partners.** The Partnership shall pay all costs and expenses associated with: (i) carrying out the duties of the General Partners; (ii) oversight and management of the Partnership Property and (iii) the administration of the Partnership, including all accounting, documentation, professional, and reporting expenses, except to the extent the General Partners shall be obligated to provide (and are compensated for providing) such services under any separate written agreement with the Partnership. To the extent that it is reasonable and possible to do so, all Partnership expenditures should be billed directly to and paid by the Partnership, but any Partner shall be reimbursed for any such expenses paid by a Partner. Such costs to be paid by the Partnership shall include, but shall not be limited to, any of the following expenses when properly incurred by the Partnership:

(a) **Personnel Costs.** All costs of Personnel employed by the Partnership or directly involved in the business of the Partnership, including Persons who may also be employees of a Partner;

(b) **Professional Fees.** Legal, accounting, brokerage, and other similar or related fees;

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[101] *IRC § 704(e)(2) requires reasonable compensation to the General Partners. If not reasonable, the IRS can reallocate the income to make it reasonable. See Treas. Reg. § 1.704-1(e)(3)(b) and (c).*
[102] *A majority of General and Limited Partners is required to set General Partner compensation.*

Notes and Comments:

(c) **Management Expenses.** Fees and expenses paid to independent contractors, leasing agents, consultants, on-site managers, and other agents;

(d) **Accounting Expenses.** Costs of bookkeeping, accounting, and audits, to the extent that the expense of such audits, if they occur, are Partnership obligations under this Agreement and costs relating to the preparation of budgets, preparing and mailing reports furnished to the Partners, cash flow projections, similar reports and Partnership federal and state tax returns.

The Partnership shall not reimburse the General Partners for items generally constituting direct overhead or administrative expenses of the business of the General Partners, which shall be paid by the General Partners from the General Partners' compensation and from sources other than the Partnership.[103]

Section 7.6 **Restrictions on Limited Partners.** The Limited Partners shall not take part in, or interfere in any manner with, the management, conduct or control of the Partnership business or Partnership Property, or the Sale, leasing or refinancing of Partnership Property, except as explicitly provided for in this Agreement. The Limited Partners shall have no right or authority: (i) to act for or bind the Partnership; (ii) to enter into any transaction on behalf of the Partnership; or (iii) to make any conveyance or alienation of the Partnership Property.[104]

Section 7.7 **Indemnification; Liability of General Partners.** The Partnership shall indemnify, defend and hold the General Partners harmless against any claim, liability or expenses, including reasonable attorneys fees, incurred by the General Partners in connection with any acts or omissions relating to the organization, management, operation or liquidation of the Partnership, its business or Property, except liabilities, if any, which are specifically required under this Agreement to be paid by the General Partners from the General Partners' own funds without reimbursement. Notwithstanding the foregoing, the General Partners shall be liable for and shall not be indemnified for acts or omissions which constitute gross negligence, willful misconduct, intentional wrongdoing, or fraud against the Partnership.[105]

[103] *A General Partner is allowed reimbursement for advancing costs for partnership business. Only actual costs are reimbursed, not an allocation of overhead.*
[104] *Again, limited partners generally do not have any management rights, nor can they bind the partnership.*
[105] *General partners are indemnified by all partners against partnership actions other than acts or omissions which constitute gross negligence, willful misconduct, intentional wrongdoing, or fraud against the Partnership.*

Notes and Comments:

Section 7.8 **Other Activities.** Any Partner, General or Limited, and any entity in which any Partner has an interest, may engage in or possess any interest in any other ventures or businesses of any nature or description, independently or with others, without limitation, regardless of whether or not such other ventures or businesses compete with the business of the Partnership or any other Partner. No Partner shall have any duty to tender any business opportunity to the Partnership. Neither the Partnership nor any other Partner shall obtain any right to participate in any way in any such other venture, or the income or profits derived therefrom, by virtue of the existence of this Partnership.[106]

Section 7.9 **Execution of Documents.** Any deed, mortgage, bill of sale, lease, contract for deed, mortgage or other security interest, note, or other evidence of indebtedness, or other instrument purporting to convey or encumber the assets of the Partnership in their entirety or any portion of any real or personal property held in the name of the Partnership, or any other instrument, shall be signed on behalf of the Partnership by any General Partner and no other signature shall be required during the continuation or the winding up of the Partnership. Any third party dealing with any General Partner in the ordinary course of business shall be entitled to rely on a representation by such General Partner of authority to conduct such dealing on behalf of the Partnership (but this Section shall not relieve any General Partner of any liability to the Partnership or the Partners without actual authority).[107]

Section 7.10 **Tax Matters Partner.** To the extent Code Sections 6221-6632 apply to the Partnership, the General Partner is hereby authorized to designate the Tax Matters Partner, as defined by Code Section 6231, from time to time, and does hereby, designate [GP1/LP1] as the initial Tax Matters Partner of the Partnership, as provided in regulations pursuant to Code Section 6231. Each Partner, by execution of this Agreement, consents to such designation of the Tax Matters Partner and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. All expenses incurred by the Tax Matters Partner in connection with carrying out the duties of the Tax Matters Partner shall be paid or reimbursed from Partnership funds. The Tax Matters Partner shall have such power and authority to act on behalf of the Partnership and each Partner as provided by law. The indemnification provisions of Section 7.7 shall apply to the Tax Matters Partner. The Person who is the current Tax Matters Partner at any time shall have all the power and authority set forth herein,

[106] *This provision allows partners to engage in other enterprises. This is a blanket no-restriction provision. A partner is allowed to engage in other businesses even if they directly compete with the partnership business.*
[107] *The General Partner is given the exclusive authority to execute documents on behalf of the partnership.*

Notes and Comments:

regardless of who was the Tax Matters Partner for the tax year under review or for the period in which the legal proceedings were begun.[108]

ARTICLE 8
PROVISIONS AFFECTING LIMITED PARTNERS

Section 8.1 **Voting by Partners.**[109] The Partners shall vote on matters explicitly provided for in the following Sections:[110]

(1) Section 3.2(3) as to continuing assessments for additional capital contributions;

(2) Section 7.2(1)through Section 7.2(4) as to any matter described in those provisions;[111]

[108] *Under IRC § 6221-6632 a "tax matters" partner is required to do certain acts on behalf of the partnership. For example, A tax matters partner must keep other partners informed of any IRS proceedings and file certain tax court petitions.*

[109] *This section outlines those matters on which limited partners are permitted to vote. In general, it includes only major partnership action, for example, removal of a general partner, dissolution, amendment of the partnership agreement, etc.*

[110] *Treas. Reg. § 1.704-1(e)(2)(iv) generally requires participation in management of a general partnership. Treas. Reg. § 1.704-1(e)(2)(ix) eliminates this requirement for limited partnerships, since limited partners are prevented from participating in management as partners. The limited partners are, however, required to have a say in major issues similar to limited partnerships which involve unrelated parties. If the limited partner's right to transfer or liquidate his interest is subject to substantial restrictions (for example, where the interest of the limited partner is not assignable in a real sense or where such interest may be required to be left in the business for a long term of years), or if the general partner retains any other control which wuld ordinarily be exercisable by unrelated limited partners in normal business relationships, such restrictions on the right to transfer or liquidate, or retention of other control, will be considered strong evidence as to the lack of reality of ownership by the donee. Treas. Reg. § 1.704-1(e)(2)(ix).*

[111] *The items listed are: 1) to do any act in contravention of this Agreement; 2) to confess a judgment against the Partnership; 3) to admit a Person as a General or Limited Partner except as provided in this Agreement; 4) to perform knowingly any act that would subject any Limited Partner to liability as a general partner under the laws of any jurisdiction; or5) to enter into any binding or enforceable financing agreement which would require a guaranty of any part of such financing without the express consent of the Partners required to provide such guaranty.*

(3) Section 7.2(5) as to Financing of any Property in which case each Partner, General or Limited, who is required to guaranty any portion of such Financing must agree to such loan and consent to enter into such guaranty;

(4) Section 8.3(2) as to whether the Partnership will purchase the Interest of the Retiring Partner;

(5) Section 8.4(3) as to whether the Partnership will purchase the Interest of the Assigning Partner;

(6) Section 9.2 as to the removal of a General Partner;

(7) Section 9.3(2) as to continuation of the Partnership;

(8) Section 9.4 as to a proposed Permitted Substitute General Partner;

(9) Section 10.1(1) as to dissolution of the Partnership;

(10) Section 12.2 as to purchase of the Interest of a Deceased Partner;

(11) Section 13.1 as to amendment of the Partnership Agreement;

(12) Section 13.2 as to reorganization of the Partnership.

Unless otherwise provided in the above Sections, the General Partners shall provide each Limited Partner with written notice of any resolution upon which the Limited Partners are to vote, which notice shall be mailed by U.S. Mail to the addresses listed on Schedule A hereto, as amended from time to time. Limited Partners shall send their votes in the form of executed written statements to the General Partners by U.S. Mail postmarked within thirty (30) days of the date of postmark of the notice of resolution; provided, however, when time is of the essence, the General Partners may reduce such thirty (30) day period by contacting Limited Partners by telephone, informing them of the nature of the issue and the time period for such vote. A Limited Partner may appoint any General or Limited Partner as attorney-in-fact and proxy with full power of casting such Limited Partner's votes on the issues presented in the notice of resolution. Any Partner failing to vote shall be considered to be a vote in favor of such proposal.

Notes and Comments:

Section 8.2 **Excess Losses.** Notwithstanding anything to the contrary contained in this Agreement, the liability of any Limited Partner for losses and obligations of the Partnership or otherwise with respect to the Partnership shall in no event exceed in the aggregate the amount of such Limited Partner's respective capital interest in the Partnership.[112]

Section 8.3 **Prohibition Against Withdrawal; Tender of Interest for Retirement.**

(1) **General Prohibition.** No Limited Partner may voluntarily withdraw from the Partnership except as provided in this Agreement. Any attempted or purported withdrawal by a Limited Partner shall be without effect, shall constitute a breach of this Agreement and shall in no way alter any of such Limited Partner's obligations to the Partnership and the Partners. No Limited Partner shall be entitled to any Distributions or return of capital, except as otherwise provided for in Article 5 and Article 11. [113]

(2) **Tender of Limited Interest for Retirement.**[114] A Retiring Partner may tender his, her or its Interest in the Partnership for retirement at the end of any fiscal year by

[112] *This is statement of the law. Limited partners are only at-risk in an amount equal to their capital investment in the partnership. See M.S. § 322A.26-a limited partner is not liable for the obligations of a limited partnership (pre-2005 Minnesota law); See M.S. § 321.0303. (post-2005 Minnesota law)*

[113] *A limited partner may not withdraw from the partnership unless the partnership agreement so provides. This is a statement of current Minnesota law for partnership agreement formed after August 1, 1998. Minnesota law prior to August 1, 1998 provided that a limited partner could withdraw upon not less than six months prior written notice to each general partner. See M.S. § 322A.47 This provision was referred to as a "six-month put right", and was the same as RUPLA § 603. See M.S. § 321.0601 (post-2005 law). The IRS has argued that any provision in an FLP agreement that is more restrictive than state law would be an "applicable restriction" and must be ignored for valuation purposes under IRC § 2704(b); See TAM 9723009 (1997). For example, if the partnership agreement contained a provision similar to Minnesota's current partner withdrawal provision-a blanket prohibition of withdrawal by a limited partner- and state law where the partnership was formed provided for a six-month put right then the IRS could make the IRC § 2704(b) argument. The effect is to reduce the value of the partnership interest transferred.*

[114] *This is a buy sell provision. The partnership is given a first option to purchase the retiring partner's interest. Notice is required. A majority of the remaining partners must vote to redeem. If the partnership does not elect to purchase the retiring partner's interest the remaining partners may purchase such interest in proportion to their holdings. IRC § 2703 applies to buy sell provisions in a partnership agreement. It applies to any right, option, agreement or restriction . The value of the partnership interest under IRC §2703 is valued without regard to such right, option, agreement or restriction, unless it is:1) a bona fide business arrangement, 2) not a devise to transfer*

Notes and Comments:

serving written notice on the General Partners (the "Tender"). The Partnership or, secondarily, the Remaining Partners may exercise the option to purchase the Interest of the Retiring Partner as follows:

(a) **Partnership Option.** The Majority of Interests of the Remaining Partners may vote that it is in the best interest of the Partnership for the Partnership to purchase the Interest of the Retiring Partner, in which case the Retiring Partner shall sell such Interest to the Partnership as provided in Section 8.3(3). Such vote of the Remaining Partners shall be made in accordance with Section 8.1 and such vote shall occur within forty-five (45) days of the date on which the Retiring Partner delivers the Tender to the General Partners. The Partnership's option to purchase shall be exercised by giving written notice to the Retiring Partner, which notice shall be signed by the Majority of Interests which voted in favor of the purchase by the Partnership.

(b) **Remaining Partners' Option.** If the Partnership does not exercise its option under Section 8.3(2)(a) within the forty-five (45) day period provided above, then the Remaining Partners shall have the option for thirty (30) days following the expiration of the period described Section 8.3(2)(a) to exercise their option to purchase the Interest of the Retiring Partner, in which case the Retiring Partner shall sell such Interest to the Remaining Partners at a purchase price as provided in Section 8.3, allocated ratably among the Remaining Partners purchasing the tendered Interest. If there is more than one Remaining Partner, each Remaining Partner shall have the right to purchase a proportionate percentage of the Interest tendered by the Retiring Partner based upon the relative Percentage Interest of each Remaining Partner pursuant to Section 3.1(or Section 3.2(4), Section 4.2 or Section 4.3 if redetermined)) as of the end of the month in which the Tender is made. For purposes of determining the prorata portion of the Interest that each Remaining Partner is entitled to purchase, the Interests of the Remaining Partners shall be deemed to equal One Hundred Percent (100%) of the Partnership Interests. If a Remaining Partner does not elect to purchase its proportionate percentage of the Interest, then the other Remaining Partner(s) shall have the right to purchase such portion of the Interest. The Remaining

property to members of the decedent's family for less than adequate consideration and 3) the arrangement is comparable to similar arm's length transactions. Each element must be met independently.

Notes and Comments:

Partners' option to purchase shall be exercised by giving written notice to the Retiring Partner.

(c) **Purchase of Entire Interest.** Any exercise of the options by the Partnership and/or the Remaining Partners pursuant to Section 8.3(2)(a) or Section 8.3(2)(b) must result in a purchase of the entire Interest of the Retiring Partner in order to be effective. Therefore, if the exercise of the options by the Partnership and the Remaining Partners are with respect to less than the Retiring Partner's entire Interest, then the exercise of such options shall not be effective and the Retiring Partner shall remain a Partner in the Partnership.[115]

(3) **Purchase Price.** Any purchase of the Retiring Partner's Interest by the Partnership or the Remaining Partners shall be for a Purchase Price equal to the Purchase Price of the Interest of a Deceased Partner as determined pursuant to Section 12.3. The terms of the purchase shall be in accordance with Section 12.4 and Section 12.5, except that the "Valuation Date" shall be the date at the end of the month in which the Tender is made.[116]

Section 8.4 **Assignment or Transfer of Limited Partnership Interests.**[117] No Limited Partner may assign or transfer any part or all of a Limited Interest in the Partnership, whether voluntarily or involuntarily, and no substitution of others as Limited Partners can be made except in accordance with the conditions set forth in this Agreement, including rights of Partners to acquire an Interest of another Partner under this Section 8.4. The Partnership shall have no duty to recognize any purported or attempted assignment of a Limited Partner's Interest and shall have no obligation to deal with anyone other than a Limited Partner or an assignee of a Limited Partner Interest who has complied with the terms of this Article 8 and has been admitted to the Partnership as a Limited Partner.[118]

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[115] *The entire interest of the retiring partner must be purchased.*

[116] *The retiring partner's interest is purchase at fair market value. Fair market value is determined by appraisal. Different assets are valued differently. The buy-out is over 10 years, equal annual payments of principal and interest; interest is at the Applicable Federal mid-term or long-term Rate under IRC §1274(d).*

[117] *Section 8.3 dealt with withdrawal or retirement of a limited partner. This section deals with the transfer or assignment of a limited partnership interest. The general rule is that no assignments to unrelated third parties are allowed. However, certain family transfers are generally allowed without restriction.*

[118] *Again, this is a general prohibition against the assignment of limited partnership interests. Note, however, that Treas. Reg. § 1.704-1(e)(2)(ii)(b) requires that it is improper to limit the right of the donee limited partner to liquidate or sell his interest in the partnership at his discretion without financial detriment. Apparently, rights of*

Notes and Comments:

(1) **General Requirements of All Transfers.** Under no circumstances and in no event can a Limited Partner transfer any Limited Interest unless such transfer is approved by the General Partners and:

(a) Unless the transferor provides the Partnership with an opinion of counsel satisfactory in form and substance to the General Partners and their counsel to the effect that such assignment will not result in a loss of the registration exemption under the Securities Act of 1933, as amended, and any applicable state securities laws, unless such requirement is waived by the General Partners.[119]

(b) Unless the proposed transfer, when added to the total of all other Partnership interests so exchanged or disposed of within a period of twelve (12) consecutive months prior to such proposed sale, will not result in a termination of the Partnership for income tax purposes under Code Section 708.[120]

(c) Unless the transferor reimburses the Partnership for all costs incurred in connection with the proposed transfer, unless the General Partners agree to treat such costs as a Partnership expense.[121]

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first refusal are allowed, since the donee should not care, for financial purposes, who he sells the interest to. The key is that the interest is required to be sold for fair market value, resulting in no financial detriment. The restrictions in this section regarding assignments are included in most well drafted commercial partnership agreements.

[119] *A limited partnership interest is a security. The transfer of a limited partnership interest is generally an exempt transaction under federal and state securities law thus no disclosure is required.*

[120] *IRC § 708 provides that a partnership is terminated if within a 12 month period there is a sale or exchange of 50% or more of the total interest in partnership capital and profits. To avoid an inadvertent termination a review of the transaction is required by the General Partners. Death of one partner in a 2 person partnership is not a termination if the estate or other successor in interest continues to share in the profits or losses of the partnership. See Treas. Reg. §1.708-1(b)(i)(a). A disposition of a partnership interest by gift, bequest, or inheritance, or the liquidation of a partnership interest, in not a sale or exchange and does not cause termination of the partnership. See Treas. Reg. §1.708-1(b)(ii).*

[121] *This provision provides that the limited partner should pay the legal fees for the legal opinions required on the transfer of a partnership interest.*

Notes and Comments:

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(d) Unless the transferor causes to be filed with the Partnership a duly executed and acknowledged counterpart of the instrument evidencing acceptance by assignee of all the terms and provisions of this Agreement, along with any and all representations and warranties of the assignee as are reasonably deemed appropriate by the General Partners.[122]

(2) **Transfer of Limited Interests to Immediate Family Members.**[123] Notwithstanding any provision of this Section 8.4 to the contrary, a Limited Partner (the "Assigning Partner") may transfer all or any part of the Assigning Partner's Interest in the Partnership to (i) an Immediate Family Member of the Assigning Partner; (ii) a trust for the benefit of an Immediate Family Member of the Assigning Partner; or (iii) a "qualified terminable interest" trust (a "QTIP Trust") as such term as defined under Code Section 2056 and the Treasury Regulations promulgated thereunder, for the benefit of a spouse or surviving spouse of an Immediate Family Member of the Assigning Partner or the Assigning Partner; provided, however, that in either case, such transfer is made with the consent of the General Partner or a majority of the General Partners if there is more than one General Partner, which consent may be withheld in the complete discretion of the General Partner(s). Furthermore, the Assigning Partner may transfer all or any part of the Assigning Partner's Interests in the Partnership to a trust of which the Assigning Partner is a beneficiary and which trust is treated as a "grantor trust" under Code Sections 671-678, without the consent of the General Partners and free of any other limitations or conditions otherwise stated in this Section 8.4. Finally, the Assigning Partner may also transfer all or any part of the Assigning Partner's Interests in the Partnership to another limited partnership, the partners of which include the Assigning Partner, Immediate Family Members (or a trust for the benefit of an Immediate Family Member) of the Assigning Partner, and/or a QTIP Trust for the spouse of the Assigning Partner or the spouse of an Immediate Family Member. Nevertheless, upon termination of said grantor trust or partnership, any Interest may only be subsequently transferred with the consent of the General Partner(s) as provided above.

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[122] *This provision requires the assignee to agree to the terms of the FLP agreement before the assignment is effective.*

[123] *This provision allows transfers to family members without restrictions. The transfer can be outright to the family member, to a trust for the benefit of the family member, to a grantor trust for the benefit of the family member, to another limited partnership, or to a QTIP trust for a spouse of a family member, but only if a majority of the general partners consent. This provision is meant to provide flexibility so that senior family members can transfer limited partnership interests to junior family members either outright or in trusts for their benefit.*

Notes and Comments:

(3) **Receipt of a Written Offer to Purchase a Limited Interest.**[124] If an Assigning Partner receives a written offer for the purchase of all or any part of the Assigning Partner's Interest in the Partnership (an "Offer"), which Offer is acceptable to the Assigning Partner, then the Assigning Partner shall provide notice to the General Partners (the "Notice"), including the name of the Person to whom the Assigning Partner would like to sell, transfer, assign or otherwise dispose of his, her or its Interest, and a copy of the Offer. After providing the Notice:

(a) **Partnership Option.** Within forty-five (45) days after the receipt of the Notice, the Remaining Partners may vote, by a Majority of Interests of the Remaining Partners, that it is in the best interest of the Partnership for the Partnership to purchase the Interest of the Assigning Partner on the same terms and conditions as the Offer, or, at the election of the Remaining Partners, at the purchase price and upon such terms as provided in Article 12 hereof, regardless of the terms of such Offer, in which case the Valuation Date shall be the end of the month preceding the Notice. If the Partnership elects to purchase such Interest of the Assigning Partner, the Assigning Partner shall sell such Interest to the Partnership consistent with either the terms and conditions of the Offer or in accordance with Article 12, as the Partnership may elect, which shall be set forth in the Notice. Such vote of the Remaining Partners shall be made in accordance with Section 8.1 and such vote shall occur within ninety (90) days from the date of the Notice. The Partnership's option to purchase shall be exercised by giving written notice to the Assigning Partner.

(b) **Remaining Partners' Option.** If the Partnership does not exercise its option under Section 8.4(3)(a) within the ninety (90) day period provided above, then the Remaining Partners shall have the option for ninety (90) days following the Partnership vote described in Section 8.4(3)(a), to exercise the options to purchase the Interest of the Assigning Partner, in which case the Assigning Partner shall sell such Interest to the Remaining Partners consistent with either the terms and conditions of the Offer or in accordance with Article

[124] *This section relates to transfers to third parties. Again, this is a buy-sell provision. The partnership is given the first option to purchase, then the partners. The purchase price and terms are the same as the third party offer. The entire interest must be purchased. If neither purchase the limited partner's interest then he or she can sell it to the third party.*

Notes and Comments:

12, as the Remaining Partners may elect. If there is more than one Remaining Partner, each Remaining Partner shall have the right to purchase a proportionate percentage of the Interest offered by the Assigning Partner, based upon the relative Percentage Interest of each Remaining Partner pursuant to Section 3.1 (or Section 3.2(4), Section 4.2 or Section 4.3, if redetermined) as of the end of the month in which the Assigning Partner provided the Notice. For purposes of determining the pro rata portion of the Interest that each Remaining Partner is entitled to purchase, the Interests of the Remaining Partners shall be deemed to equal One Hundred Percent (100%) of the Interests. If a Remaining Partner does not elect to purchase its proportionate percentage, then the other Remaining Partner(s) shall have the right to purchase such share. The Remaining Partners' option to purchase shall be exercised by giving written notice to the Assigning Partner. If the Remaining Partner(s) elect to purchase less than the entire Interest that is the subject of the Offer, the Assigning Partner may elect not to sell such Interest and to continue to own the Interest that is the subject of the Offer. Transfers of Limited Interests from the Assigning Partner to Remaining Partners shall be made only after receiving the written approval of the General Partners and after meeting the general conditions of Section 8.4(1) for transfers.

(c) **Failure of Partnership and Partners to Purchase Interest.** To the extent that neither the Partnership nor the Remaining Partners elect to exercise their options pursuant to Section 8.4(3)(a) and Section 8.4(3)(b), then the Assigning Partner shall be free to sell, transfer or otherwise dispose of such Limited Interest to the Person or Persons specified in the Offer, but only for forty-five (45) days after complying with the general conditions of Section 8.4(1) for transfers have been met and such compliance is confirmed by the General Partners.

Section 8.5 **Effect of Death or Incompetence..**[125] Upon the death or adjudication of incompetence of a Limited Partner, his or her Legal Representative, custodian, guardian or administrator, as the case may be, shall have all of the rights of a Limited Partner under this Agreement, but only for purposes of settling his or her estate, and such power as the deceased or incompetent Limited Partner has to assign the interest of the Limited Partner and substitute his or her assignee as a substitute Limited Partner as reflected in this Article 8 and in Article 12.

[125] *This is a statement of the tax law under IRC § 708, and the Treasury Regulations thereunder. See Treas. Reg. § 1.708-1(a). Article 12 provides for a buy out of a deceased limited partners interest.*

Notes and Comments:

Section 8.6 **Rights of Assignees.**[126] Any attempted assignment of a Limited Interest not in compliance with this Article 8 shall be null and void, and such assignees shall be entitled to no rights with respect to Partnership affairs. Any assignee of a Limited Interest pursuant to an assignment in compliance with Section 8.4 shall become a Limited Partner with all rights and responsibilities thereof.

Section 8.7 **Power of Attorney.** [127] Each of the Limited Partners irrevocably constitutes and appoints any General Partner, or a General Partner's true and lawful attorney-in-fact, with full power of substitution, in his, her or its name, place and stead, to make, swear to, execute, certify or acknowledge and file:

(1) Any amendments to this Agreement of Limited Partnership which may be adopted pursuant to this Agreement or which may be required by RULPA, including amendments which may be necessary in the judgment of the General Partners for the purpose of conforming the provisions of Article 5 to the requirements of any Treasury Regulations promulgated under Code Section 704 regarding allocations of profits and losses, required for the admission, substitution, retirement or other withdrawal of a Limited Partner, for the reflection of the change of the capital contribution of any Limited Partner, or for the continuation of the business of the Partnership, provided that amendments required for the purpose of admitting a new Limited Partner shall be signed by such new or contributing Limited Partner.

(2) Any fictitious name or assumed name certificate or other instrument or amendment thereto which may be required to be filed by the Partnership.

(3) Any cancellation of any such certificate or instruments and any and all other documents and instruments which may be required upon the dissolution and liquidation of the Partnership.

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[126] *Again, a blanket prohibition against assignment of a limited partnership interest. Assignees have no rights unless permitted under the partnership agreement.*

[127] *This provision allows the general partners to perform certain acts that would normally require all partners to agree. It may be impractical to get agreement in certain situations, or the limited partners may not be willing to cooperate for any reason. A power of attorney gives the general partner the right to so act. The actions are generally to make sure the partnership is in compliance with certain federal tax and state partnership laws.*

Notes and Comments:

It is expressly intended that the foregoing power of attorney is irrevocable, coupled with an interest and shall survive the death or disability of the Limited Partner and the assignment of his, her or its Interest, but, in the case of an assignment, for only so long as necessary to effect the admission of the substituted Limited Partner.

Section 8.8 **Consent.** To the fullest extent permitted by law, all of the Limited Partners hereby consent to the exercise by the General Partners of all of the rights and powers conferred on the General Partners by this Agreement and/or applicable law.[128]

Section 8.9 **Reimbursement and Indemnification of Limited Partner.** If any Limited Partner reasonably makes any payment in satisfaction of a Partnership obligation (whether a disputed or undisputed obligation), whether or not pursuant to a guarantee of such obligation, such Limited Partner shall be entitled to immediate reimbursement from the Partnership; provided, however, that, if such payment is made without the consent of the General Partners, the paying Partner shall be entitled to reimbursement only to the extent such Partner establishes the existence of an actual enforceable Partnership obligation to pay such amount to such creditor.[129]

ARTICLE 9
PROVISIONS AFFECTING THE GENERAL PARTNER

Section 9.1 **Assignment of Interest.**[130] No General Partner shall be permitted to transfer all or any part of a General Interest unless the assignee qualifies as a Permitted Substitute General Partner under Section 9.4. Any attempted assignment not permitted under this Section shall be deemed to be an event of withdrawal by the General Partner, as defined in the RULPA.

[128] *This is an affirmative statement and agreement by the limited partners consenting to the powers of the general partners.*
[129] *Limited partners are not liable for partnership debt. This provision allows a limited partner to be reimbursed for any partnership debt otherwise paid by him or her.*
[130] *A general partner cannot assign his or her interest without the consent of a majority vote of all partners. A permitted substitute partner is any person the majority of partners so approve. Again, "person" includes an entity, for example an LLC.*

Section 9.2 **Removal of General Partner.**[131] A General Partner may be removed by a unanimous vote of all Interests other than the General Partner for whom removal is being sought but only upon the occurrence of the following events:

(1) **Bankruptcy and Similar Occurrences.** Such General Partner makes or attempts to make an Assignment of a General Interest for the benefit of creditors; is adjudicated bankrupt or insolvent; files a petition or answer seeking for such Partner any debt reorganization, debt arrangement, debt composition, liquidation, dissolution or similar relief under any statute, law or regulation; files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of such nature; or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Partner.

(2) **Judicial Determinations.** Final judicial determination that the General Partner (i) was grossly negligent by failure to perform material obligations under the Partnership Agreement, (ii) committed a fraud upon the Partnership or the Partners, or (iii) committed a felony in connection with the management of the Partnership or its business.

Upon such removal of a General Partner, such General Partner's interest shall be converted to that of a Limited Partner and, from that time forward, such removed General Partner shall receive only such allocations of income, loss, gain and distributions accorded to a Limited Partner. The removed General Partner shall be notified by registered mail of the removal, with such notice specifying the effective date of the removal. Removal of the General Partner shall be deemed to be an event of withdrawal by the General Partner, as defined in RULPA.

Section 9.3 **Effect of an Event of Withdrawal of General Partner**. [132] Upon an event of withdrawal by a General Partner pursuant to this Agreement or the provisions of RULPA:

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[131] *The removal of a general partner requires the unanimous agreement of all partners except the general partner being removed but only in certain circumstances 1) the general partner is insolvent or bankrupt 2) the general partner was grossly negligent in his duties 3) her commits fraud or 4) a felony in connection with partnership business. The act must be judicially determined.*

[132] *As stated above, withdrawal payments in partnerships are divided into those under IRC§ 736(a) payments that are deductible by the partnership and income to the withdrawing partner and those under IRC § 736(b) that are considered payments for the withdrawing partner's interest in partnership property that are usually non-deductible to the partnership and capital gain to the withdrawing partner. In a partnership where capital is material IRC § 736(a) only applies to payments that are specifically designated as retirement or other payments. There a few*

Notes and Comments:

(1) If there is a remaining General Partner then the Partnership shall not dissolve but shall continue with the remaining General Partner continuing to serve in such capacity.

(2) If there is no remaining General Partner, the Partnership shall dissolve and its affairs shall be wound up, unless within ninety (90) days of withdrawal, a Majority of Interests (other than the withdrawing General Partner) agree to continue the business of the Partnership and the Majority of Interests appoints of one or more General Partners, in which case the Partnership shall not dissolve.[133]

In the event of withdrawal, a General Partner shall be liable to the Partnership for damages as provided for in Section 322A.46 of RULPA[134]. Upon withdrawal, the General Partner shall be entitled to only those Distributions provided for in Section 5.1, and shall have only such other rights and shall be subject to such restrictions as are set forth herein.

Section 9.4 **Permitted Substitute Partners.** For purposes of this Article 9, a Permitted Substitute General Partner shall be any Person approved by the Majority of Interests.[135]

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constraints in tax law regarding the agreement of the partners as to how to allocate these type of payments, other than payments for a partner's "hot assets"-receivables and appreciated inventory. These payments are IRC § 736(a) payments-ordinary income. Consistency by the partnership and partner in the treatment of these items is required.

[133] *Even when there is no general partner the partnership is not dissolved automatically. The remaining partners have 90 days to appoint a new general partner. The 90 day rule is contained in M.S. § 322A.63(4)-Nonjudicial dissolution. See M.S. § 321.0801 (post-2005 law)*

[134] *M.S. 322A.46 reads in part that a withdrawing general partner is liable for "general damages" for breach of the partnership agreement if his withdrawal violates that partnership agreement and such damages may be offset against amounts otherwise distributable to the withdrawing general partner. (pre-2005 Minnesota law) See M.S. § 321.0604 (post-2005 law)*

[135] *Again, a new general partner must be approved of by a majority the all partners.*

ARTICLE 10
DISSOLUTION

Section 10.1 **Dissolution.**[136] The Partnership shall automatically be dissolved and its affairs wound up upon the occurrence of:

(1) Unanimous agreement of the Partners to dissolve the Partnership and wind up its affairs;[137]

(2) Termination of the term of the Partnership, as set forth in Section 2.7;[138]

(3) An event of withdrawal as defined in Article 9 followed by failure of the Partnership to continue under Section 9.3;

(4) The Sale of all Partnership Properties and the receipt of the final payment of the purchase price; or[139]

(5) Removal or withdrawal of sole General Partner or liquidation of the sole General Partner's Interest in the Partnership, if the Remaining Partners do not elect a substitute General Partner in accordance with Section 9.3 within thirty (30) days of the event of such removal, withdrawal or liquidation.

Thereafter, the Partnership shall be wound up and shall conduct only activities necessary to its liquidation or to the completion of transactions previously commenced.

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[136] *M.S. § 322A.63 provides for nonjudicial dissolution and M.S. § 322A.64 provides for judicial dissolution. (pre-2005 Minnesota law) See M.S. § 321.0801 and M.S. § 321.0802 (post-2005 law)*

[137] *This is the same as under Minnesota law. See M.S. § 322A.63(3) (pre-2005 Minnesota law) See M.S. § 321.0801, consent of all general partners and a majority of limited partners required to dissolve limited partnership (post-2005 law)*

[138] *This is the same as under Minnesota law. See M.S. § 322A.63(1) (pre-2005 Minnesota law) See M.S. § 321.0801 and M.S. § 321.0802 (post-2005 law); (pre-2005 Minnesota law); perpetual term See M.S. § 321.0104 (post-2005 law)*

[139] *This provision has no counterpart under Minnesota law.*

Notes and Comments:

ARTICLE 11
WINDING UP AND SETTLEMENT[140]

Section 11.1 **Sharing Income During Liquidation.** Upon any dissolution of the Partnership, the Partnership shall expeditiously wind up its affairs. The Partners shall continue to share Income and Losses during dissolution, including any gain or loss on disposition of Partnership Properties in the process of liquidation, as provided in Article 5; provided, however, interest income on an installment obligation derived from the Sale of any Property, and any interest expense on any underlying indebtedness related thereto, shall be allocated among Partners in the proportion in which such installment obligation would be distributed to Partners if distributed pursuant to Section 5.1(3).[141] For allocation purposes only, any Property distributed in kind in liquidation shall be valued and treated as though the Property were sold and the cash proceeds distributed; the difference between such fair market value of Property distributed in kind and its tax basis shall be treated as income or loss and shall be allocated among the Partners as provided for in Section 5.2. The fair market value of an installment obligation received upon Sale of Partnership Property shall be at face value.[142]

Section 11.2 **Winding Up and Distribution.** Upon the dissolution of the Partnership pursuant to this Article 11, the winding up of the Partnership business shall be carried out with due diligence consistent with the provisions of this Agreement.

(1) **Appointment of a Liquidator.**[143] The General Partners shall be responsible for taking all actions relating to the winding up and distribution of assets of the Partnership. The General Partners, or such responsible person as may be appointed by the General Partners shall be referred to hereinafter as the "Liquidator". The

[140] *"Winding up" is defined in M.S. § 322A.65. Upon the winding up of a limited partnership, the assets of the partnership shall be distributed according to the terms of the partnership agreement and as may be provided under M.S. § 322A.66. (pre-2005 Minnesota law) See M.S. § 321.0803 (post-2005 law)*

[141] *As stated above a pro rata distribution in kind does not cause recognition of gain or loss by the partnership. See IRC § 731(b). This is true even if the distribution consists of installment obligations. A prorata distribution of an installment obligation will not accelerate the recognition of gain. See Treas. Reg. 1.453-9(c)(2). Thus, the partnership provision provides that on liquidation the installment obligation be made 1) prorata and 2) in kind.*

[142] *An installment obligation can be disposed of directly or indirectly triggering immediate recognition of gain. A pledge of a promissory note as collateral for a loan can trigger immediate recognition of gain. The sale of an installment obligation at a discount from its face is common. When an installment obligation is disposed of this way, acceleration of unreported gain will occur. See IRC§ 453B. This partnership provision requires a distribution of the installment obligation to be at "face" to avoid an inadvertent trigger of gain on distribution.*

[143] *The general partners are identified as the liquidators. They may also appoint a liquidator. There is no corresponding statutory reference.*

Notes and Comments:

Liquidator shall have the right to exercise all of the powers granted generally to the General Partners in this Agreement in liquidation and winding up of the Partnership.

(2) **Duties of the Liquidator.** The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Partnership Property; provided, however, that if the Liquidator shall determine that an immediate Sale of part or all of the Partnership Property would cause undue loss to the Partners[144], the Liquidator may (but shall not be required to) defer the liquidation of the Partnership Property for a reasonable time in order to avoid such loss, except for such liquidation as may be necessary to satisfy the debts and liabilities of the Partnership to Persons and parties other than the Partners. The proceeds from the sale and liquidation of the Partnership Property shall be distributed as provided in this Article 11.

(3) **Pre-Liquidation Accounting.** Upon the dissolution of the Partnership, the Liquidator shall, within thirty (30) days, prepare and immediately furnish to each Partner a statement setting forth the assets and liabilities of the Partnership as of the date of its dissolution. Promptly following the complete liquidation and distribution of the Partnership Property, the Partnership's accountants shall prepare, and the Liquidator shall furnish to each Partner, a statement showing the manner in which the Partnership Property was liquidated and distributed.

Section 11.3 **Distribution of Proceeds from Sale and Liquidation of Partnership Property**. The net proceeds resulting from the Sale and liquidation of the Partnership Property shall be distributed and applied in the following order of priority:[145]

(1) **Liabilities to Creditors.** To the payment of debts and liabilities of the Partnership, other than loans or other debts and liabilities of the Partnership to Partners or former Partners.

(2) **Reserves.** To the setting up of any Reserves which the General Partners or the Liquidator deem reasonably necessary for contingent or unforeseen liabilities or

[144] *This provision gives the liquidator the discretion to time the sale to obtain the maximum benefit for partners. There is no immediacy to proceed to liquidate assets.*
[145] *This section lays out the priority of distributions. It is similar to that contain in M.S. § 322A.66. (pre-2005 Minnesota law) See M.S. § 321.0812 (post-2005 law)*
The partnership agreement generally controls priority of distributions after payment to creditors.

Notes and Comments:

obligations of the Partnership arising out of or in connection with the business of the Partnership; such Reserves may be paid to a trust established for the benefit of the Partners and may be distributed from such trust to the Partners from time to time in the discretion of the Trustee appointed by the General Partners in the same proportions as the amount paid to the trust by the Partnership would otherwise have been distributed to the Partners pursuant to this Partnership Agreement.

(3) **Liabilities to Partners.** To the payment of any unpaid loans, fees or other compensation, guaranteed payments, unreimbursed expenses, or other debts or liabilities of the Partnership to any Partners or former Partners, payable pro rata based upon such outstanding obligations until fully paid.

(4) **Liquidating Distributions to Partners.** To the Partners in proportion to their positive Capital Accounts after giving effect to all contributions, prior distributions, allocations and Capital Account adjustments for all taxable years, including the taxable year during which the final liquidating distribution occurs.

(5) **Additional General Partner Contribution to Capital.** Upon dissolution and at the time of final liquidation of the Partnership, each General Partner shall contribute to the Partnership an amount equal to the lesser of: (i) the deficit balance in the Capital Account of the General Partner, or (ii) the excess of 1.01 percent of the total capital contributions of the Limited Partners over the capital previously contributed by such General Partner.[146]

Section 11.4 **Right of Offset.** Should any Partner owe the Partnership any sums, including unpaid capital contributions, the Partnership is authorized to make an offsetting credit from any amounts otherwise payable to such Partner by the Partnership.[147]

Section 11.5 **Retention of Books.** Unless otherwise agreed upon, in the event of any winding up of the Partnership, the books and records of the Partnership shall be deposited with the accountants regularly employed by the Partnership and such books and records shall be retained for inspection and use by the Partners for a period of not less than seventy-six (76)[148] months following

[146] *This is the general partner's deficit make-up provision required by IRC § 704(b)*
[147] *This provision allows offsets against partner debt to the partnership. Without agreement, no such offset would be allowed.*
[148] *Books and records are kept of 6 years, 4 months,-time for most federal tax and state law statute of limitations to*

Notes and Comments:

the termination of the Partnership. Each Partner shall be furnished with a statement of the assets and liabilities of the Partnership as of the date of dissolution and the manner in which the assets have been applied and distributed.

ARTICLE 12
DEATH OF A PARTNER

Section 12.1 **Death of a Partner.** [149]Subject to the provisions of Section 8.4 and Section 9.1,[150] upon the death of any Partner, said Deceased Partner's Legal Representative shall be required, within a period of one-hundred and eighty (180) days from the date of death to offer (the "Offer") the Deceased Partner's Interest to the Partnership. The Partnership shall have the option pursuant to Section 12.2 to purchase the entire Interest of the Deceased Partner in accordance with this Article 12. If the Partnership does not exercise its option to purchase the Deceased Partner's Interest, then the Legal Representative of the Deceased Partner shall be substituted for the Deceased Partner with full rights as if an original Partner hereunder.

Section 12.2 **Option to Purchase Entire Interest of Deceased Partner.** Within ninety (90) days after the receipt of the Offer, the Majority of Interests of the Remaining Partners, may determine that it is in the best interest of the Partnership to cause the Partnership to purchase the Interest of the Deceased Partner on the terms and at the price set forth in this Article 12. Such vote of the Remaining Partners shall be made in accordance with Section 8.1 and such vote shall occur within ninety (90) days from the date of the receipt of the Offer. The Partnership's option to purchase shall be exercised by giving written notice to the Legal Representative.

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[149] *As stated above Section 12 deals with the buy-sell provision on the death of a partner. The partnership has the first option to purchase the deceased partner's interest. The partners have the second option to purchase. The entire interest must be purchased. The purchase price is determined by appraisal unless the parties agree. Different assets are appraised differently. Terms of payment are stated:10 year payout, annual payments, interest at the AFR rate; promissory note secured by a pledge of the partnership interest is allowed at the election of the deceased partner's estate.*

[150] *The references are to Section 8.4-general requirements on all transfer (e.g. opinion of counsel-SEC; termination under IRC § 708; payment of costs; consent by transferee to partnership agreement) / The reference to Section 9.1 is for a general partner-must be approved by a majority of the remaining partners.*

Notes and Comments:

Section 12.3 **Purchase Price.** The total value of all interests in the Partnership shall be determined as of the end of the fiscal year applicable to a Retiring Partner or the month preceding the month in which the Deceased Partner's death occurred (the "Valuation Date") as hereinafter set forth.

(1) **Fair Market Value of Real Estate Operating Assets.** If the Partnership is engaged in any real estate Investment Activity, the Partnership and the Retiring Partner or the Deceased Partner's Legal Representative shall agree upon the operating assets of the Partnership used with respect to any real estate Investment Activity. The fair market value of such operating assets (which may include the real estate, equipment used with respect to such real estate, working capital utilized by such Investment Activity) shall be determined by a real estate appraiser or appraisers which have M.A.I. Certification, as may be agreed upon by the Remaining Partners and the Retiring Partner or the Deceased Partner's Legal Representative. If agreement cannot be reached on the appointment of an appraiser, one appraiser shall be selected by the Retiring Partner or the Deceased Partner's Legal Representative and one shall be selected by the Partnership. A third appraiser shall be selected by the first two appraisers. In the event the two appraisers are unable to agree upon a third appraiser within thirty (30) days of their appointment, the Person then serving as the President of the Greater Minneapolis Chapter of the American Institute of Real Estate Appraisers, or any successor organization thereto (or similar organization in the locality of any Property held by the Partnership) exercising similar function, shall elect the third appraiser. The cost of such appraisal shall be shared equally by the Partnership and the Retiring Partner or the Deceased Partner's Legal Representative; provided, however, such cost shall not be expensed or accrued in determining fair market value hereunder. In determining fair market value the appraisers shall deduct from that value the amount of a reasonable real estate commission that an ordinary seller of similar property would reasonably incur.

(2) **Fair Market Value of Readily Traded Financial Assets.** If the Partnership owns stock, bonds or similar financial assets which, as of the Valuation Date, are readily tradable in an established securities market (which may include over-the-counter markets or by a specific local market-makers as well as established financial assets exchanges) ("Marketable Securities"), the fair market value of such Marketable Securities shall be established by such markets; provided, however, if the price so determined does not represent the fair market value for a particular Investment Activity due to blockage or some other market factor, the financial assets in such Investment Activity shall be separately appraised considering such other market factor(s) as provided in Section 12.3(3) below.

Notes and Comments:

(3) **Fair Market Value of Closely Held Financial Assets**. If the Partnership owns stock, bonds, partnership interests or similar financial assets of interests in business entities or trusts which, as of the Valuation Date, are not Marketable Securities, the assets owned in such Investment Activities shall be valued at their fair market value. The fair market value of such assets shall be determined by a qualified appraiser or appraisers as may be agreed upon by the Remaining Partners and the Retiring Partner or the Deceased Partner's Legal Representative. If agreement cannot be reached on the appointment of an appraiser, one appraiser shall be selected by the Retiring Partner or the Deceased Partner's Legal Representative and one shall be selected by the Partnership. A third appraiser shall be selected by the first two appraisers. In the event the two appraisers are unable to agree upon a third appraiser within thirty (30) days of their appointment, the Person then serving as the President of such Investment Activity shall elect the third appraiser. The cost of such appraisal shall be shared equally by the Partnership and the Retiring Partner or the Deceased Partner's Legal Representative; however, such cost shall not be expensed or accrued in determining fair market value hereunder. In determining fair market value the appraisers shall deduct from that value the amount reasonable real estate commission that an ordinary seller of similar property would reasonably incur.

(4) **Value of Other Assets; No Adjustment with Respect to Valuation of Liabilities.** The book value of all assets not otherwise described above shall be added to the value determined for the assets pursuant to Section 12.3(1), Section 12.3(2) and Section 12.3(3). The book value of such other assets shall include the cash surrender values of any life insurance policies owned by the Partnership on the lives of the Partners, but shall not include the proceeds of policies insuring the life a Deceased Partner in excess of its cash surrender value. No value shall be attributable to any intangible assets, including goodwill, trade name, or patents, other than as may be separately applied to the appraisal of individual Investment Activities as provided in Section 12.3(1), Section 12.3(2) and Section 12.3(3). Furthermore, no adjustment shall be made with respect to the secured or unsecured indebtedness of the Partnership which may carry interest rates or other terms which may vary from market rates or terms as of the Valuation Date.

(5) **Fair Market Value of All Partners' Interests.** The sum of the values of Partnership Assets determined pursuant to Section 12.3(1) through Section 12.3(4) shall be reduced by all liabilities of the Partnership, secured and unsecured and whether to

Notes and Comments:

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Partners or others, as of the Valuation Date based upon the accrual method of accounting for prepaid expenses such as insurance and taxes. The remainder shall be considered to be the total value of all Partners' Interests.

(6) **Purchase Price.** The purchase price of the Interest purchased or redeemed shall be equal to:

(a) The total amount distributable to the Retiring or Deceased Partner if the Properties were sold and Partnership was liquidated using the values determined in this Section 12.3, reduced by any discounts[151] for minority interest, lack of marketability, limitation upon management authority or otherwise as would apply in determining the fair market value of the Retiring or Deceased Partner's Partnership Interest if such Interest were sold to an unrelated third party. If the Purchasing Partner and Selling Partner fail to agree as to such discounts, then an additional appraisal of the fair market value of such Interest shall be conducted in the manner provided in Section 12.3(3) by qualified business appraisers.

(b) That value determined pursuant to Section 12.3(6)(a) shall be further reduced by any Distributions received with respect to such Interest sold following the date of valuation, which Distribution shall be applied to the initial payment on the purchase.

(7) **Expeditious Determination of Valuation.** The Partners agree that they will proceed as expeditiously as possible in the selection of their appraisers and in the determination of the value of the Interest by the appraisers.

Section 12.4 **Terms of Payment.** The purchase price shall be paid in ten (10) or fewer equal annual installments of principal and interest at the Applicable Federal Mid-Term or Long-Term Rate under Code Section 1274(d) (as applicable) as of the date of the closing of the transfer of any Interest on the unpaid balance, with the first payment to be made one year following the end of the month in which the Deceased Partner died or the end of the fiscal year in which the Retiring Partner withdraws from the Partnership or a Partner otherwise sells the applicable Partnership Interest.

[151] *The purchase price is a liquidation value <u>with</u> discounts. Consideration should be give to defining purchase price <u>without</u> discounts*.

Notes and Comments:

Section 12.5 **Evidence of Debt.** At the election of the Retiring Partner or Deceased Partner's Legal Representative, the purchaser of the Retiring or Deceased Partner's Interest shall: (i) issue its promissory note evidencing its purchase obligation secured by a pledge of the Interest purchased; (ii) deposit the Interest purchased into an escrow or (iii) enter into a contract of purchase with the Retiring Partner or Deceased Partner's Legal Representative to retain title to such Interest until payment has been received in full. In the event of a default in payment of the promissory note or contract of purchase, the holder of such instrument or contract may declare all of the unpaid balance immediately due and payable.

ARTICLE 13
AMENDMENT OF AGREEMENT

Section 13.1 **Amendment by Agreement.** Any Partner may at any time propose an amendment to this Agreement by submitting the same to all Partners, together with a statement of the purpose of the amendment and such other information as the proposing Partner deems material to the consideration of such amendment. Such proposed amendment shall be authorized and adopted upon an affirmative vote of a Majority of Interests.[152] Such vote shall be taken in the manner provided in Section 8.1. Any amendment to any provision which requires a unanimous vote by the Partners shall also require a unanimous vote to be amended, and any amendment which requires the affirmative vote by a particular Partner shall also require an affirmative vote by such Partner.[153]

Section 13.2 **Reorganization of Partnership.** The Partners recognize that it may be beneficial to the Partnership to reorganize the Interests of the Partners for the purpose of admitting additional Partners or receiving additional Capital Contributions from any Person on a basis other than the relative Percentage Interests of all Partners. At any time following the formation of this Partnership, any amendment to this Agreement which would result in the dilution of any Partner's right to receive Distributions from the Partnership, or creates a right to preferential Distributions in any Partner (in their capacity as a Partner, and not as a creditor of the Partnership) superior to the rights of the Partners as set forth in this Agreement, shall only be adopted by the unanimous agreement of all General Partners and a Majority of Limited Interests. However, this provision shall not apply to any change, adjustment, admission, withdrawal, expulsion, substitution or other occurrence which results from the operation of the explicit terms of this Agreement (other than as a

[152] *Amendments are allowed upon a majority vote of the partners.*
[153] *Certain amendments require the unanimous agreement of the partners-for example, removal of a general partner.*

Notes and Comments:

result of this Article 12) which shall be self-implementing and shall not be deemed an amendment to this Agreement requiring any vote of the Partners or other approval under this Article 13.

ARTICLE 14
NOTICES

Section 14.1 **Notices**. Except as otherwise provided in this Agreement, any and all notices, consents, waivers, directions, requests, votes or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same and shall be deemed properly given if sent by registered or certified United States Mail, postage prepaid, addressed (i) in the case of the Partnership or the General Partners, to the Partnership or the General Partner, as the case may be, at the principal place of business of the Partnership, (ii) in the case of any Limited Partner at his, her or its last address provided to the Partnership in Schedule A hereto. Any notice so given, except as otherwise provided in this Agreement, shall be deemed to have been received as of the date on which it was mailed. Each Partner may, by notice to the Partnership, specify any other address for the receipt of such instruments or communications.

[OPTIONAL PROVISION]

ARTICLE 15
ALTERNATIVE DISPUTE RESOLUTION ("ADR"); BINDING ARBITRATION[154]

Section 15.1 The Partners have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is the same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to the Agreement (a "Dispute"), that they will first utilize the procedures specified in this Article (the "Procedure") prior to any additional proceedings.

Section 15.2 **Initiation of Procedure**.

(1) **Direct Negotiations**.[155]

(2) **Selection of a Mediator**.

(3) **Time and Place of Mediation**.

(4) **Exchange of Information**.

[154] *An ADR provision is strongly recommended. An outline of such a procedure is provided.*
[155] *Headings are provided. Specifics are not. You may want to tailor your agreement.*

Notes and Comments:

(5) **Summary of Views**.
(6) **Parties to be Represented**.
(7) **Conduct of Mediation**.
(8) **Termination of Procedure**.
(9) **Arbitration**.
(10) **Fees of Mediation; Disqualification**.
(11) **Confidentiality**.

ARTICLE 16
MISCELLANEOUS[156]

Section 16.1 **Construction**.

Section 16.2 **Attorneys Fees**.

Section 16.3 **Tax Audit**.[157] In the event this Partnership is audited by the Internal Revenue Service, the costs and expenses incurred to defend and comply with the audit shall be an expense of the Partnership. Any audit of any individual Partner shall not be deemed to be an audit of this Partnership.

Section 16.4 **Binding Nature**.

Section 16.5 **Severance**.

Section 16.6 **Applicable Law**.

Section 16.7 **Foreign Qualification**.

Section 16.8 **Disclosure**. [158] Each of the Partners acknowledge that he or she (1) was urged in advance by the attorney who prepared this Agreement to secure separate independent legal counsel

[156] *The Article includes certain miscellaneous provisions relating to choice of law, etc.*
[157] *This section makes it clear that the partnership is obligated for the cost of a partnership audit, not the partners.*
[158] *This is a professional responsibility provision. Conflicts arise in multiple representation. Disclosure and waiver are the recommended course of action.*

Notes and Comments:

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

Notes and Comments:

CAUTION:

THIS PARTNERSHIP AGREEMENT IS PROVIDED FOR EDUCATIONAL PURPOSES AND SHOULD ONLY BE USED BY PERSONS WHO ARE FAMILIAR WITH ALL ASPECTS OF RELAVENT STATE AND FEDERAL PARTERSHIP AND TAX LAW RELATING TO THE FORMATION, OPERATION AND LIQUIDATION OF A FAMILY LIMITED PARTNERSHIP

IN WITNESS WHEREOF, the Partners have executed this Agreement with Schedule A attached in the manner appropriate for each, effective as of the date first above written.

General Partners:

_____
[GP1/LP1]

_____
[GP2/LP2]

Limited Partners:

_____
[GP1/LP1]

_____
[GP2/LP2]

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STATE OF MINNESOTA)[159]
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by **[GP1/LP1]** and **[she/he]** acknowledged the same to be **[his/her]** free act and deed.

_____
Notary Public

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by **[GP2/LP2]** and **[she/he]** acknowledged the same to be **[his/her]** free act and deed.

_____
Notary Public

[159] *Notarized signatures are not required but are recommended.*

CAUTION:

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Schedule A
To Limited Partnership Agreement
of
[LN] FAMILY LIMITED PARTNERSHIP

							Limited	General	
				Limited	General		Partners	Partner	
	Names and			Partners	Partner		Initial	Initial	
	Addresses-Partners			Capital	Capital		Percentage	Percentage	
	Description of Property Contributed	*	^	Contributed	Contributed	Totals	Interest	Interest	Units
1	Mr. Smith	GP	LP						
2	Mrs. Smith	GP	LP						
3	Mr. Smith		LP						
4	Mrs. Smith		LP						
5									
6									
7									
	Total Capital Contributions								
	* General Partner								
	^ Limited Partner								

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Schedule A
[Continued[
To Limited Partnership Agreement
of
[LN] FAMILY LIMITED PARTNERSHIP

Description of Property Contributed

CAUTION:

THIS PARTNERSHIP AGREEMENT IS PROVIDED FOR EDUCATIONAL PURPOSES AND SHOULD ONLY BE USED BY PERSONS WHO ARE FAMILIAR WITH ALL ASPECTS OF RELAVENT STATE AND FEDERAL PARTERSHIP AND TAX LAW RELATING TO THE FORMATION, OPERATION AND LIQUIDATION OF A FAMILY LIMITED PARTNERSHIP

EXHIBIT B

CAUTION:

THIS PARTNERSHIP AGREEMENT IS PROVIDED FOR EDUCATIONAL PURPOSES AND SHOULD ONLY BE USED BY PERSONS WHO ARE FAMILIAR WITH ALL ASPECTS OF RELAVENT STATE AND FEDERAL PARTERSHIP AND TAX LAW RELATING TO THE FORMATION, OPERATION AND LIQUIDATION OF A FAMILY LIMITED PARTNERSHIP

CERTIFICATE
OF
LIMITED PARTNERSHIP
OF
[LN] FAMILY LIMITED PARTNERSHIP[160]

Pursuant to the provisions of the 1976 Uniform Limited Partnership Act of the State of Minnesota, the undersigned, acting as a general partner under that certain Limited Partnership Agreement of [LN] FAMILY LIMITED PARTNERSHIP dated effective as of _____, 2008, being first duly sworn, upon oath, states as follows:

1. The name of the Limited Partnership is: "[LN] FAMILY LIMITED PARTNERSHIP.

2. The address of the office of the Partnership is _____. The name and address of the agent for service of process required to be maintained by Section 322A.04 of the Minnesota Statutes is [GP1/LP1], whose address is _____

3. The names and the business address of the general partners are [GP1/LP1] and [GP2/LP2], _____.

4. The latest date upon which the Limited Partnership is to dissolve is _____.

5. The Limited Partnership shall be formed effective as of _____.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this _____ day of _____, 2008.

_____
[GP1/LP1], a General Partner

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[160] *In order to form a limited partnership a certificate of limited partnership must be exceuted and filed in the office of Minnesota Secretary of State. The certificate must set forth:*

1. *The name of the limited partnership*
2. *The address of the office and the name and address of the agent for service of process required to be maintained;*
3. *The name and the business address of each general partner*
4. *The latest date upon which the limited partnership is to dissolve; and*
5. *Any other matters the partners determine to include therein.*

A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance. See M.S. § 322A.11(pre-2005 Minnesota law) See M.S. § 321.0201 (post-2005 law)

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_____

[GP2/LP2], a General Partner

NOTES