

12.06 Annotated Form of Basic Delaware Limited Partnership Agreement

This is a basic form of Agreement for a Delaware limited partnership. Where appropriate, it refers to relevant statutory provisions of DRULPA and portions of the previous text.

AGREEMENT OF LIMITED PARTNERSHIP OF ABC, L.P.

THIS AGREEMENT OF LIMITED PARTNERSHIP is made and entered into as of _____, 20 _____, by and among ABC, Inc., a _____ corporation, as the general partner (the "General Partner"), John H. Smith as the initial limited partner (the "Initial Limited Partner") and each of the persons or entities whose names are set forth on Exhibit A attached hereto, as the limited partners (the "Limited Partners").

WHEREAS, the General Partner and the Initial Limited Partner desire to document the agreement among the Partners, all upon the terms and conditions provided herein;

NOW THEREFORE, the parties hereto agree that this Agreement is hereby entered into and reads in its entirety as follows:

1. Certain Definitions. When used herein, the following terms shall have the meanings set forth below:

1.1 "Act" means the Delaware Revised Limited Partnership Act, 6 Del. Code Ann. § 17-101 through § 17-201, as amended from time to time.

1.2 "Affiliate" means, with respect to a Limited Partner, any entity or person controlling, controlled by or under common control with such Limited Partner and (b), with respect to the General Partner, (i) any shareholder of the General Partner (the "Shareholders"), (ii) any of the heirs, legal representatives, assignees or persons of law) or successors of the Shareholders, (iii) any person directly or indirectly by any of the Shareholders. As used in this Agreement, the term "control" of any person shall mean the ownership, directly or indirectly, of securities of such person possessing more than 50% of the voting power for the election of directors or the power to elect a majority of the persons constituting the board of directors of such person or exercising authority similar to that of a corporate board of directors.

1.3. "Agreement" means this Amended and Restated Agreement of Limited Partnership and all exhibits hereto, as hereinafter amended from time to time.

1.4 "Assignment" of a Partnership Interest means a transfer which entitles the transferee to be allocated income, gain, loss, deduction, credit or similar items and to receive distributions to which the transferor was entitled, to the extent those items are so assigned and transferred, but which does not entitle the transferee to become or to have or exercise the rights of a Limited Partner under this Agreement, including, without limitation, the right to consent, approve, vote, make any election, or otherwise take any action required or permitted of or by any Limited Partner hereunder or under the Act. [This definition of assignment contemplates that the Partnership will permit the assignment of partnership interests. It also distinguishes between the concept of assigning attributes of a Partnership Interest and the ability of an assignee to become a substitute partner. Alternatively, the agreement could prohibit any

and all assignments of partnership interests. See: DRULPA §§ 603, 702, and 704; §§ 12.03[17] and [18] supra.]

1.5. "Bankruptcy" means the filing of a voluntary case in bankruptcy under the federal bankruptcy law, and, in addition, any other status constituting bankruptcy within the meaning of the Act.

1.6. "Capital Contribution" in respect of any Partner means the total amount of cash which has been contributed by the Partner to the capital of the Partnership. [Alternatively, this definition could be expanded to include (1) property contributed or services rendered or (2) property to be contributed or services to be rendered. See: DRULPA § 101; § 12.03[14] supra.]

1.7. "Certificate" means the certificate of limited partnership of the partnership executed and filed pursuant to the Act as such certificate may be hereafter amended from time to time. [See: DRULPA §§ 201 and 202; § 12.03[2] and [3] supra.]

1.8. "Code" means the Internal Revenue Code of 1986, as from time to time amended.

1.9. "General Partner" means ABC, Inc. and any other person or entity which is admitted to the Partnership as a substituted General Partner [or any additional General Partner]. [The Agreement also provides for the admission of additional General Partners. If so, definition should be expanded to include additional General Partners.]

1.10. "Investment Memorandum" means that private placement memorandum dated the _____ day of _____, 20____, of which this Agreement is an exhibit, entitled, "PRIVATE PLACEMENT MEMORANDUM, ABC, L.P., A DELAWARE LIMITED PARTNERSHIP" which states that Limited Partner interests will be offered for sale pursuant to an offering document which complies with Regulation D of the Securities Act of 1933, as amended.]

1.11. "Limited Partner" means each person or entity whose name is set forth on the Certificate and any other person or entity which is admitted to the Partnership as a Substituted Limited Partner.

1.12. "Percentage In Interest" of the Limited Partners means Limited Partners holding _____ per centum (____%) of the Partnership Percentages of all of the Limited Partners. [The percentage could be a bare majority of greater than 50%, or a super majority, such as 60% or 75%. See: DRULPA § 302; § 12.03[7] and [8] supra.]

1.13. "Offering Expenses" means fees and expenses incurred in connection with the offering of Partnership Interests including fees and expenses of attorneys, accountants and other persons incurred in connection with the formation of the Partnership and the offering of the Partnership Interests.

1.14. "Operating Cash Flow" for a specified period shall mean the amount, if any, by which the total gross cash receipts from Operations of the Partnership exceed the sum of (1) the total cash disbursements of the Partnership for any such period paid in connection with Operations of the Partnership, including, without limitation, payments with respect to loans made to the Partnership by any Partner pursuant to the terms of this Agreement or under the Act, and (2) any estimated amounts reserved with respect to such period for contingencies or for operating expenses of the Partnership (to the

extent such operating expenses are permitted under Section 9.1(a) of this Agreement) and are deemed necessary or appropriate by the General Partner.

1.15. "Operating Profit or Loss" for a specified period shall mean, respectively, the excess of items of income and gain over items of deduction and loss, or the excess of items of deduction and loss over items of income and gain, from Operations of the Partnership during such period.

1.16. "Operations" shall mean all activities of the Partnership. [See: DRULPA ¶ 106; ¶ 12.03[2] supra.]

1.17. "Partner" means the General Partner or any Limited Partner.

1.18. "Partners" mean the General Partner and the Limited Partners.

1.19. "Partnership" means the limited partnership formed pursuant to this Agreement.

1.20. "Partnership Interest," as to any Partner, means all or any part of the interests of that Partner in the Partnership, including, without limitation its (i) right to a distributive share of the profits and losses of the partnership; (ii) right to a distributive share of the assets of the Partnership; (iii) right, if a limited partner, to consent to certain actions of the General Partner as set forth in Section 9.1 of this Agreement, and (iv) right, if the General Partner, to participate in the management of the affairs of the Partnership.

1.21. "Partnership Percentage" shall mean, in the case of the General Partner, _____ per centum (_____%), and in the case of each Limited Partner, the percentage set forth as such on the name of such Limited Partner on Exhibit A attached hereto. [See: DRULPA ¶¶ 103 and 504; ¶ 12.03[15] and [16] supra.]

1.22. "Prime Rate" means the prime rate of interest as set by [Select Financial Institution] and the same may change from time to time.

1.23. "Property" means any [set forth what investment and purchase will be made by the Partnership] acquired by the Partnership.

1.24. "Security" shall have the meaning specified in Section 2(1) of the Securities Act.

1.25. "Securities Act" means the Securities Act of 1933, as amended.

1.26. "Subscription Agreements" means those certain agreements, by and among the Partnership, the General Partner and each Limited Partner [executing this Agreement] pursuant to which each such Limited Partner subscribed to acquire a Partnership Interest. [Subscription Agreements could also contain a power of attorney whereby the subscribing Limited Partner grants the general partner the power to execute this Agreement on his behalf. This simplifies the procedures by which a Limited Partner becomes bound by the terms of one Agreement. See: DRULPA ¶¶ 101(10) and 205(b); ¶ 12.03[4] supra.]

1.27. "Substituted Partner" means a transferee of a Partnership Interest who becomes a Partner pursuant to the terms of this Agreement and succeeds, to the extent transferred, to the rights and powers and becomes subject to the

restrictions and liabilities of the transferor Partner and to the terms of this Agreement.

1.28. "Transfer" means sell, pledge, mortgage, hypothecate, assign, transfer, distribute, encumber, donate or in any other way dispose of or enter into any agreement, arrangement or understanding to do any of the foregoing (all or any of the foregoing being sometimes herein referred to as a "Transfer").

1.29. "Unit" means each _____ Dollars (\$____) of [cash] [property] [services] contributed to the Partnership as a Capital Contribution (exclusive of interest thereon).
[Add additional definitions if warranted pursuant to terms used in Agreement.]

2. Organization.

2.1. Formation. The General Partner and the Limited Partners hereby [continue] [form] the Partnership pursuant to the Act. [Use "continue" if Partnership previously formed under oral agreement and "form" if Partnership is being presently formed under this Agreement.]

2.2 Name. The name of the Partnership shall be _____. The General Partner may, in its sole discretion, change the name of the Partnership from time to time and the General Partner shall give written notice thereof to the Limited Partners.

2.3. Certificate. The General Partner shall file, as and when required by the Act, the Certificate and any amendments thereto. [See: DRULPA § 202; § 12.03[3] supra.]

2.4. The Offering. A maximum of _____ (____) Units of Partnership Interest at a purchase price of _____ per unit may be issued by the General Partner on behalf of the Partnership. The Agreement could also provide for different classes or types of Units which represent categories of limited partners. The categories could provide the limited partners with different rights and powers for different purchase prices. See: DRULPA § 302; § 12.03[5] supra.]

3. Principal Office. The principal office of the Partnership shall be at _____, which other place as the General Partner from time to time may determine after giving written notice of such change to the Limited Partners. The principal office need not be in Delaware. The Partnership shall at all times maintain a registered office and registered agent in the State of Delaware. [See: DRULPA § 104(a)(1); § 12.03[2] supra.]

4. Purposes of the Partnership. In general, the purpose of the Partnership shall be [state the business in which the Partnership is to engage; may be one or several such as, manufacturing of a product, real estate development, investment in other entities, etc. See: DRULPA § 106; § 12.03[2] supra.] To that end, the Partnership may engage in any and all lawful business activities in which limited partnerships formed in the State of Delaware under the Act may participate and do all things necessary, advisable, appropriate or expedient in connection with or incidental to the foregoing. The Partnership shall engage in no other principal business without the consent of a Majority in Interest. The provisions of this Section 4 shall in no way limit the management duties and powers given to the General Partner pursuant to Section 7 hereof.

5. Term. The Partnership shall continue for a term of _____ (____) years from the date of this Agreement unless prior to such date the General Partner and a Majority In Interest of the Limited Partners elect to extend the term of the Partnership for an additional _____ (____) years, subject, in any event, to the provisions for earlier dissolution contained in Sections 14.1 and 14.2 below. [DRULPA does not require a limited partnership to set forth a term of existence in its Certificate. However, a fixed term eliminates one of the characteristics attributable to a corporation, specifically, unlimited life. As a result, the Agreement typically contains a date on which the Partnership will terminate.]

6. Capital Contributions.

6.1 General Partner. The General Partner shall make a capital contribution to the Partnership of One Hundred Dollars (\$100.00). [If the General Partner is to have a greater interest, initial contribution could be greater. This amount is for example purposes only. Moreover, Capital Contributions may also consist of (1) property contributed or to be contributed or (2) services rendered or to be rendered. See: DRULPA §§ 101(2), 401 and 501; § 12.03[14] supra.]

6.2. Limited Partners.

(a) Initial Limited Partner has made a capital contribution of One Hundred Dollars (\$100) to the Partnership. Initial Limited Partner shall withdraw from the Partnership upon the termination of the term of the Partnership and the closing of the sale of the Limited Partners' interests, and shall receive in connection with such withdrawal the return of his capital contribution of One Hundred Dollars from the Partnership, without interest.

(b) All payments by the Limited Partners for Units shall be in cash. [Alternatively, Agreement could provide that the Capital Contribution be paid (1) in installments pursuant to the terms of a promissory note, (2) in future services or by contribution of property. See: DRULPA §§ 101(2), 401 and 501; § 12.03[14] supra.]

6.3. Limited Partner. [If Capital Contribution is to be paid in installments, or in future services or by future contributions of property, the Agreement may set forth penalties for failure to make Capital Contributions. See: DRULPA §§ 506 and 502; § 12.03[14] supra.]

(a) The failure of a Limited Partner to pay all or any portion of his Capital Contribution when due shall constitute an event of default ("Default"), of such Limited Partner (the "Defaulting Partner"). The Partnership shall give notice of the Default to such Defaulting Partner. If the Defaulting Partner fails to pay the amount due within ten (10) days following the sending of a notice of Default given by the Partnership, the General Partner may, at its option, and without further notice:

[If Capital Contribution was to be in cash:

(i) accelerate and declare to be due immediately and payable the full amount of any unpaid principal balance of the Defaulting Partner's promissory note (such amount shall bear interest from the payment due date of default at the lesser of (A) _____ per centum (____%) above the Prime Rate or (B) the maximum legal interest rate under applicable law (including choice of law rules), and]

(ii) if such payment of the full amount is not paid [or contributed] within ten (10) days after notice is given the defaulting partner that such payment is due:

A. The right to sell the entire partnership Interest of the Defaulting Partner to a third party or parties (including, without limitation, an existing Partner) at such price and on such other terms as the General Partner deems appropriate;

B. Declare the Partnership Interest of the Defaulting Partner forfeited and allocate all profit, loss and credits attributable to the Partnership Interest among the nondefaulting partners, or

C. Redeem the Partnership Interest of the Defaulting Partner. The Partnership is permitted to borrow funds in order to redeem the Partnership Interest. [See: DRULPA §§ 306 and 502(c).]

6.4. Use of Capital Contributions. The Capital Contributions of the Partners shall be utilized to pay for the development of Operations and the payment of all expenses in connection therewith.

6.5. Withdrawal of Limited Partners. No Limited Partner shall be permitted to withdraw prior to the expiration of the term of the Partnership. [DRULPA §§ 601, 603; § 12.03[17] supra.]

6.6 Withdrawal of Capital Contributions. Except as otherwise expressly provided herein, no Partner shall have the right to withdraw or reduce the contribution of such Partner to the Partnership without the prior express written consent of the General Partner and a Majority in Interest of Limited Partners. [Unless this section is included, the unanimous consent of all partners will be required to effect a compromise. See: DRULPA §§ 502(b), 602 and 603; § 12.03[14] supra.]

7. Rights, Powers and Duties of the General Partner.

7.1. Subject to the terms and provisions of this Agreement, the management and control of the Partnership and its business, assets and affairs shall rest exclusively with the General Partner, who shall have all the rights and powers which may be possessed by a general partner pursuant to the Act and such rights and powers as are otherwise conferred by law or are necessary, desirable or convenient to the discharge of its duties under the Agreement and to the management of the business and affairs of the Partnership.

Without limiting the generality of the foregoing powers of the General Partner, the General Partner, unless otherwise provided in this Agreement, shall have the following rights and powers which it may exercise in its sole discretion at the cost, expense and risk of the Partnership: [If different classes of General Partners are provided for, it is possible to have certain matters voted on by some, as opposed to all classes or groups of General Partners. For example, all General Partners must consent to items (a) through (d), but only Class A or Group A General Partners must consent to items (d) through (g). See: DRULPA § 405; § 12.03[5] supra.]

(a) To deal in any Partnership asset whether an interest in real estate or personalty, to sell (for cash or for debt to be held by the Partnership), exchange or convey title to, and to grant options for sale of all or a portion of the Property;

(b) To borrow money and as security therefor to encumber all or any part of the Property;

(c) To prosecute, defend and settle lawsuits and claims and to handle matters with governmental agencies;

(d) To open, maintain and close bank accounts for the Partnership and to designate and change signatories on such accounts;

(e) To incur and pay all legal, accounting, investment banking, independent financial consulting, litigation and other fees and expenses as it may deem necessary or appropriate for carrying on and performing the powers and authorities herein conferred;

(f) To negotiate and make any disposition of Property on such terms and conditions as the General Partner deems appropriate;

(g) To execute and deliver any contracts, agreements, instruments or documents necessary, advisable or appropriate to evidence any of the transactions specified above or contemplated hereby and on behalf of the Partnership to exercise Partnership rights and perform Partnership obligations under any such contracts, agreements, instruments or documents;

(h) To take such other action as the General Partner[s] deem[s] necessary or appropriate to carry out the purposes of the Partnership or this Agreement.

[Add specific additional powers of General Partner which relate to Operations of Partnership.] [Add specific provisions for the duties of persons other than the General Partner. See DRULES (10/1/04)]

7.2. Duties. The General Partner shall devote such time, effort and attention as the General Partner in its sole discretion shall deem necessary or appropriate to efficiently conduct the business and affairs of the Partnership in the best interests of the Partnership.

7.3. Powers and Authority of the General Partner. Notwithstanding any other provision of this Agreement, without the prior approval of a Majority In Interest of the Limited Partners or such other approval as may be required by applicable law, the General Partner shall not have the right or power to do any of the following without the approval or written consent of a Majority In Interest of the Partners:

(a) Borrow money on behalf of the Partnership;

(b) Encumber assets of the Partnership as security for, or otherwise cause the Partnership to guarantee the payment of, indebtedness of any other person or entity except any partnership, joint venture or other entity in which the Partnership may now or hereafter have an interest;

(c) Admit a person as a substitute or additional General Partner;

(d) Admit a person as a limited partner except as otherwise expressly permitted by this Agreement;

(e) Cause the Partnership to borrow money from or loan money to, sell assets or Property to or buy assets property of, the General Partner or its Affiliates;

(f) Possess Partnership property, or sell, transfer, assign, mortgage or pledge Partnership property, other than for a Partnership purpose;

(g) Amend this Agreement except as permitted in Section 18.4. of this Agreement;

(h) Execute or deliver any assignment for the benefit of creditors of the Partnership;

(i) Cause the Partnership to engage in any business except as necessary or appropriate to carry out the Operations for which the Partnership has been formed; or

(j) Merge the Partnership with or into any entity, whether or not the Partnership is the surviving entity. [The Agreement may provide for appraisal rights for the Limited Partners who do not approve of or consent to a proposed merger. See DRULPA § 212.]

[Many additional actions which may be made subject to approval of Limited Partners without exposing them to liability are set forth in the Act. See: DRULPA § 303; § 12.03[7] supra.]

7.4. Investment and Other Activities. The General Partner and Its Affiliates. The General Partner and Its Affiliates may engage in any other business or activity they choose, whether or not competitive with any business or activity of the Partnership, and such activities shall not be limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, development of property similar in use to the Property, and neither the Partnership nor any Limited Partner shall have any right, title or interest in or to any such business or activity. [See: DRULPA § 1101(d); § 12.03[13] supra.]

8. Status of Limited Partner.

8.1. Limited Liability. The Limited Partners shall not be bound by, or personally liable for, the expenses, liabilities or obligations of the Partnership, except as provided in the Act. The Limited Partners shall not be required or obligated to make contributions of any sort whatsoever to the capital of the Partnership in excess of their Capital Contribution; provided, however, that a Limited Partner receiving a distribution shall be liable to the Partnership to the extent provided by the Act. [See: DRULPA § 607; § 12.03[18] supra.]

8.2. Role of Limited Partner. To the extent the Limited Partners exercise rights with respect to material matters relating to the Partnership or its affairs, or otherwise exercise rights in relation to the Partnership, such powers shall be exercised under and in conformity with the provisions of the Act and this Agreement so as not to constitute taking part in the control of the business of the Partnership.

8.3. Certain Rights of Limited Partners. The Limited Partners shall have the following rights, powers, privileges, duties, and liabilities:

(a) [The Limited Partners shall have the right to the information to the extent required by Section 17-305(a) of the Act, and shall be entitled to such reports as are set forth in Section 15.3 hereof.] [See: DRULPA ¶ 305; ¶ 12.03[9] supra.]

or

[Except as provided in Section 15.3, Limited Partners shall have no right of access to information or to inspection of records unless the General Partner in its sole and absolute discretion determines otherwise in any particular case.] [This alternate provision should be used if the partnership intends to restrict access to information in accordance with Section 117-305(f) of the Act.]

(b) The Limited Partners shall receive from the Partnership the share of the distributions in the manner and at the times provided for in this Agreement.

(c) A Limited Partner shall not have the right to demand payment of the balance in his Capital Account at any time other than as provided herein. No Limited Partner shall have priority over any other Limited Partner either as to the return of capital or as to profits, losses, income, tax credits, or distributions, except with respect to a Defaulting Partner as provided in Section 6.3. No Limited Partner shall have the right to bring an action for partition against the Partnership.

8.4. Investment and Other Activities. The Limited Partners and Their Affiliates. The Limited Partners and Their Affiliates may engage in any other business or activity they choose, which is not competitive with any business or activity of the Partnership, and which is not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage, development of property similar in use to the Partnership's property, and neither the Partnership nor any General Partner shall have any right, title or interest in or to any such business or activity. [See: DRULPA ¶ 1101(d); ¶ 12.03[13] supra.]

9. Expense

9.1. Expense. Expenses and costs of the Partnership shall be borne as follows:

(a) The General Partner shall pay at the expense of the Partnership all costs and expenses of conducting the operations of the Partnership, including but not limited to:

(i) The fees, charges and expenses of such independent agents, attorneys, accountants, custodians, investment bankers, and other financial advisors and consultants as it may reasonably deem necessary or advisable for the affairs of the Partnership provided that the compensation to be paid by the Partnership to such persons is not in excess of normal and reasonable rates for the services performed;

(ii) The cost of preparing and filing, on behalf of the Partnership, all required local, state and federal tax returns and other documents relating to the Partnership, and all expenses relating to the preparation and duplication of any and all reports to be furnished to the Limited Partners;

(iii) The cost of any litigation by or against the Partnership or asserting any claim in respect of Partnership assets;

(iv) The out-of-pocket costs incurred by the General Partner in the course of Partnership business; and

[(v) The annual fee to be paid to the General Partner as fees for services rendered and unallocated administrative expenses in an amount equal to the sum of (i) _____ per centum (____%) of the Limited Partners' aggregate Capital Contributions, plus (ii) one and one-half per centum (1 1/2%) of such contributions in excess thereof.]

[Set forth additional expenses as the Operations of the Partnership warrant.]

9.2. Advances for Expenses. In the event the Partnership does not have readily available funds to pay all or any part of those expenses, the Partnership and a Limited Partner advances funds (in excess of such Limited Partner's agreed Capital Contribution) to or on behalf of the Partnership in respect of such expenses, such advances shall be loans to the Partnership and which loans shall be paid out of the first cash available to the Partnership prior to any other payment or distribution to any Partner with interest at a rate per annum equal to _____ per centum _____ above the Prime Rate, but not in excess of the rate allowed by law.

10. Capital Accounts; Allocations of Profit or Loss.

10.1. Capital Accounts.

(a) A separate capital account shall be maintained for each Partner (the "Capital Account"). The Capital Accounts may be adjusted as determined by the General Partner upon contribution to the capital of the Partnership or a distribution by the Partnership.

(b) Except as specifically provided in Sections 6 and 11, no Partner may contribute to or withdraw capital from, the Partnership.

(c) Loans by a Partner to the Partnership shall not be considered contributions to the capital of the Partnership and shall not increase the Capital Account of the lending Partner.

10.2. Operating Profit or Loss. The Operating Profit or Loss of the Partnership for each fiscal year, if any, shall be allocated among the Partners in proportion with their respective Partnership Percentages.

[The Agreement could set forth an alternative method of allocation. In addition, different groups or classes of partners (both general and limited) may be allocated different amounts. See: DRULPA ¶ 503; ¶ 12.03[15] supra.]

10.3. Transfer During Taxable Year. If any Partnership Interest is transferred, or is otherwise increased or decreased, at any time other than the end of a taxable year of the Partnership, the General Partner will allocate the various items of Partnership income, gain, deduction, loss, credit and allowance as computed for federal income tax purposes pro rata pursuant to an "interim-closing-of-the-books" method. [This provision is not included if there is an absolute prohibition against transfers. See: DRULPA ¶ 702; ¶ 12.03[19] supra; see Chapter 9 supra for additional provisions that may be included in Section 10 for tax purposes.]

11. Distributions.

11.1. Operating Cash Flow. Except as otherwise provided in Section 14.3 from time to time, as soon as practicable after income has been received from any of the Partnership Operations, and, in any event, at least annually, Operating Cash Flow, after repayment of any loans made by any Partner to the Partnership pursuant to this Agreement, shall be promptly distributed to the Partners in proportion with their Partnership Percentages.

[The Agreement could set forth a different method of distributions. See: DRULPA ¶ 504; ¶ 12.03[16] supra.]

11.2. Property Distributions. If distributions of property (rather than cash) are made by the Partnership, the General Partner or if there is no General Partner, a liquidating trustee, within the meaning of Section 17-803(a) of the Act, selected by a Majority in Interest of the Limited Partners (the "Liquidating Trustee"), as the case may be, shall use its best efforts to insure that such property is distributed to each Partner in undivided interests if the property is not made up of fungible elements, or in the appropriate units, if fungible, with each Partner receiving such Partner's pro rata share of the value and tax basis thereof. [See: DRULPA ¶ 803; ¶ 12.03[21] supra; Chapter 9 supra for additional provisions that may be included in Section 12.03 for tax purposes.]

12. Transfers of Partnership Interests. [See Section 12.03[19] supra if the Transfer of Partnership Interests is precluded. See: DRULPA ¶ 70; ¶ 12.03[19] supra.]

12.1. General Prohibition. Except for a Permitted Transfer as defined in Section 12.2 below, no Partner shall transfer, assign, sell or any part of such Partner's Partnership Interest, without the prior written consent of the General Partner (or if the transferring Partner is the General Partner, a Majority in Interest of the Limited Partners) and in compliance with the requirements of Section 12.3 below.

12.2. Permitted Transfers. A Transfer by a Partner of such Partner's Partnership Interest shall be deemed a Permitted Transfer (herein so called) if (a) in the case of the General Partner, such Transfer is a transfer of the General Partner's Partnership Interest to an Affiliate of such General Partner, and (b) in the case of a Limited Partner, such Transfer is a transfer to an Affiliate of such Limited Partner, or (c) in the case of any Partner's Partnership Interest, such Transfer is by gift, bequest or intestate transfer to family members of the Partner donor.

12.3. Condition Precedent. In addition to the written consent specified in Section 12.1 above, each of the following shall be a condition precedent to any Transfer (including without limitation a Permitted Transfer) and no Transfer may be made without first fulfilling each such condition:

(a) Such transferring Partner or such Partner's transferee shall have executed, acknowledged and delivered to the Partnership such instruments of transfer and assignment with respect to such Transfer as are in form and substance reasonably satisfactory to the General Partner;

(b) Such transferring Partner or such Partner's transferee shall have paid to the Partnership a fee which is sufficient to pay all reasonable expenses incurred by the non-transferring Partners and the Partnership in connection with such Transfer; and

(c) Such Transfer, in the opinion of counsel for the Partnership or other counsel reasonably satisfactory to the General Partner, would not

(i) require registration under the Securities Act;

(ii) subject the Partnership or the General Partner to registration under the Investment Company Act of 1940, as amended;

(iii) require that the General Partner or the Partnership register as an investment advisor under the Investment Advisors Act of 1940, as amended;

(iv) violate the laws of any nation, state or the rules or regulations of any government agency of which such counsel is aware;

(v) impair the ability of the Partnership to be taxed as a partnership (including [without limitation] (i) result in a termination of the Partnership for purposes of Section 708 of the Code; and (ii) result in the Partnership being taxed as an association taxable as a corporation under Section 7701 of the Code.); or

(vi) result in the loss of the limited liability of a Limited Partner under the Act.

12.4. Substituted Partner. No person who acquires a Partnership Interest shall become a Substituted Partner within the meaning of the Act unless:

(a) The General Partner gives its express written consent; and

(b) The transferee consents in writing to become a Substituted Partner and executes and acknowledges such other instruments as the General Partner deems necessary or advisable; or, in the case of a Transfer by the General Partner of its General Partner Partnership Interest, such instruments as the Majority Interest of the transferring Partners deem necessary or advisable to effect the admission of such person as a Substituted Partner, including without limitation, the written acceptance and adoption by such person of all of the provisions of this Agreement. [See: DRULPA ¶ 704; ¶ 12.03[19] supra.]

12.5. Rights of Certain Transferors and Transferees. In the event a Transfer by a Limited Partner of all or part of such Limited Partner's Partnership Interest is effected in accordance with the provisions of Sections 12.1, 12.2 and 12.3, but the transferee is not admitted to the Partnership as a Substituted Limited Partner pursuant to Section 12.4, such Transfer shall be deemed to be an Assignment and such transferee shall be entitled to be allocated all income, gain, loss, deduction, credit or similar items and to receive all distributions to which the transferring Limited Partner was entitled, to the extent of the Partnership Interest (or portion thereof) so transferred. Any such transferee who does not become a Substituted Limited Partner in accordance with this Agreement shall not be entitled to have or exercise any of the other rights or powers of a Limited Partner this Agreement (including, without limitation, any right to consent, approve, vote, make any election or otherwise take any action required or permitted of or by any Limited Partner hereunder or under the Act) and no Limited Partner who makes an Assignment of all or any part of its Partnership Interest shall have a right to have or exercise any of such other rights or powers of a Limited Partner with respect to any part of the Partnership Interest so assigned. Any Transfer by a Partner otherwise than in

accordance with the provisions of this Section 12 shall be void ab initio and neither the other Partners nor the Partnership shall be required to recognize or give any effect to any such Transfer. [Withdrawal penalties could also be imposed if restriction against Transfer is violated. See DRULPA § 306.]

13. Withdrawal of Partners; Removal of the General Partner; Admission of Substitute General Partner; Death or Incapacity of Limited Partners.

13.1 Withdrawal. Except as provided in the immediately following sentence, no Partner shall have the right to withdraw or resign from the Partnership. If a Partner makes a Transfer in accordance with Section 12 above of all of such Partner's Partnership Interest and if each of the transferees of such entire Interest have been admitted to the Partnership as Substituted Partners as provided in said Article 12, such transferring Partner may resign or withdraw from the Partnership following such admission.

13.2. Removal of General Partner.

(a) The General Partner shall be removed and cease to be the general partner of the Partnership in the event the General Partner:

(i) shall have all or substantially all of its assets placed in the hands of a receiver or trustee;

(ii) makes an assignment for the benefit of creditors;

(iii) files a voluntary petition in Bankruptcy;

(iv) is adjudged bankrupt or insolvent, or has entered against him an order for relief in a Bankruptcy or insolvency proceeding;

(v) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(vi) files an answer or other pleading admitting or failing to contest the truth of the allegations of a petition filed against it in a proceeding of the type described in subsections (b)-(e) of this Section 13.2;

(vii) seeks, consents to, or acquiesces in the appointment of a trustee or receiver of it or of all or substantially all of its assets;

(viii) dissolves and commences winding up its affairs;

(ix) resigns in violation of this Agreement;

(x) withdraws in violation of this Agreement;

(xi) is removed by an event that with the passage of the specified period becomes an event of withdrawal under Section 17-402(a) (4) or (5) of the Act (upon such event the General Partner shall notify each limited partner of the occurrence of the event within thirty (30) days after the date of occurrence of the event of withdrawal; or

(xii) is removed by the vote of ___% of the Partnership Interests.

(b) No removal in Section 13.2(a) shall become effective following the occurrence of any of the events specified above until a substituted General Partner has been appointed by a vote of ___% of the Partnership Interests. Such removed General Partner shall execute an amendment to the Certificate of Limited Partnership to reflect its removal. [This prevents the dissolution of the Partnership if the General Partner removed is the sole General Partner. See: DRULPA ¶ 801; ¶ 12.03[20] supra.]

13.3 Death, Bankruptcy or Incapacity of Limited Partners. The death, Bankruptcy or legal incapacity of one or more Limited Partners shall not terminate the Partnership; the rights of the Partner affected shall devolve upon his executor, administrators, personal representative, trustee or guardian.

14. Dissolution and Winding Up of Partnership.

14.1 Dissolution. The Partnership shall be dissolved upon the first to occur of any of the following events:

(a) The withdrawal of the General Partner pursuant to Section 13.2 above prior to the appointment of a substitute General Partner.

(b) The expiration of the term of the Partnership and the failure of the General Partner and a Majority in Interest of the Limited Partners to elect to extend such term as provided in Section 13.2.

(c) The mutual written agreement of all of the Partners to dissolve the Partnership; [This supercedes the majority limited partner vote now provided in DRULPA ¶ 801(2).]

(d) The occurrence of the events set forth in (and subject to the terms of) Section 17-204 and 17-205 of the Act. [This includes dissolution upon the time there are no limited partners (subject to the right to continue) and upon judicial decree and distribution DRULPA ¶¶ 801 and 802; ¶ 12.03[20] supra.]

14.2 Election Upon Dissolution. Upon a dissolution of the Partnership pursuant to Section 14.1(a) above, ___% of the Limited Partners, but not less than a majority in interest of the Limited Partners, may affirmatively elect to continue the business of the Partnership, and they shall select a substitute General Partner effective as of the date of withdrawal of the General Partner. In the event the Limited Partners fail to affirmatively elect to continue the business of the Partnership and to select a substitute General Partner effective as of the date of withdrawal of the General Partner within ninety (90) days of such a withdrawal, the Partnership shall be wound up pursuant to Section 14.3 below. [See: DRULPA ¶ 801; ¶ 12.03[20] supra.]

14.3. Winding Up. Upon the failure of the Limited Partners to elect to continue the business of the Partnership pursuant to Section 14.2 above, or upon a dissolution of the Partnership pursuant to Section 14.1 above, the General Partner or, if there is no General Partner, the Liquidating Trustee appointed by the vote of a [Majority in Interest] [___%] of the Limited Partners, shall take full account of the Partnership's assets and liabilities and shall determine which assets shall be distributed in kind and which assets shall be liquidated, which liquidation shall be carried out as promptly as is consistent with obtaining the fair value thereof. The cost and expenses related to the winding up of the Partnership, if any, shall be borne by the Partnership prior to distribution to the Partners. Assets or the proceeds of liquidation thereof shall be applied and distributed in the following order:

(a) To the payment of the provision of all of the Partnership's debts and liabilities to persons [other than Partners and former Partners] [including Partners and former Partners who are creditors] and the expenses of liquidation (including a reasonable reserve for contingent, conditional or unmatured claims or obligations of the Partnership and all claims and obligations which are known but which the identity of the claimant is unknown);

(b) To the payment and discharge of all of the Partnership's debts and liabilities for distributions to Partners; and

(c) To the Partners in accordance with the positive balances in their Capital Accounts (determined after giving effect to the allocation of all gains and losses realized in connection with the liquidation).

When the distribution plan set forth above has been completed, the General Partner or the Liquidating Trustee shall prepare, all the General Partners shall execute and acknowledge, and the Partnership shall file a Certificate of Cancellation of the Partnership with the Delaware Secretary of State. [See: DRULPA §§ 803 and 804; § 12.03[20] supra.]

15. Books of Account; Accounting and Reports; Bank and Tax Matters; Partnership Filings. [See generally, DRULPA § 305; § 12.03[20] supra. This Section is for example purposes. The only requirements are set forth in DRULPA § 305.]

15.1. Books of Account and Information. The Partnership's books and records and this Agreement shall be maintained at the principal office of the General Partner or at an office designated by the General Partner upon thirty (30) days' written notice to all Partners, and each Partner shall have access thereto at all reasonable times. Provided, however, that the Partnership shall make its books and records available at its principal office within five (5) days after receipt of written request from a Partner. The books and records of the Partnership shall be kept on the accounting and income tax basis selected by the Partnership's certified public accountants in accordance with generally accepted accounting principles applied on a consistent basis by the Partnership in reflecting all Partnership transactions and shall be appropriate and adequate for the Partnership's business.

15.2. Fiscal Year. The fiscal year of the Partnership shall be the taxable year that the Partnership is required to adopt for federal income tax purposes.

15.3 Accounting and Reports.

(a) Each Limited Partner shall, upon request, be furnished by the Partnership with an unaudited annual report containing (i) a balance sheet as of the end of its fiscal year and statements of income for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and on the accounting and income tax basis selected by the Partnership's certified public accountants, and (ii) a report of the activities of the Partnership during the period covered by the report. Such report shall also set forth unaudited distributions to Unit holders of the period covered thereby and shall separately identify distributions from (i) Cash Flow during the period, and (ii) from any other source. The General Partner shall make every reasonable effort to cause the Partnership to furnish such information within one hundred twenty (120) days after the end of each fiscal year, if so requested.

(b) The General Partner will use its best efforts to deliver appropriate tax information to each Limited Partner within ninety (90) days after the end of each Fiscal Year. In addition, concurrently with the delivery of such information, the General Partner shall deliver to each Limited Partner adequate information relating to the Partnership to enable each Limited Partner to complete and file such Partner's Federal income tax return.

15.4. Banking and Securities. All funds of the Partnership shall be deposited in such separate bank account or accounts as shall be determined by the General Partner, which funds shall be maintained separately from other bank accounts of the General Partner. Funds of the Partnership may be invested in government obligation of the United States or any of the several States, certificates of deposit and other money market securities or like short term obligations, consistent with the Partnership's requirements for liquidity. All withdrawals therefrom shall be made upon checks signed by the General Partner or by any person authorized to so do by the General Partner.

15.5. Partnership Returns: Certain Actions. The General Partner for each fiscal year of the Partnership shall file on behalf of the Partnership a Federal Partnership Return within the time prescribed by law (including extensions) for such filing. The General Partner shall also file on behalf of the Partnership such state or local income tax returns as may be required by law. The General Partner, at the expense of the Partnership, shall take all actions legally available to it to prevent the occurrence of any event which would cause the Partnership to be characterized as an association as a corporation rather than as a partnership.

15.6. Tax Matters Partner. The Tax Matters Partner (herein so called and as defined in Section 6231 of the Internal Revenue Code) of the Partnership shall be the General Partner. The General Partner shall serve as the Tax Matters Partner unless, on the effective date of such agreement, the Partnership has designated another Partner as Tax Matters Partner and that such partner has given its consent in writing to its appointment as Tax Matters Partner. The Tax Matters Partner shall receive no personal compensation from the Partnership for its services in that capacity, but all expenses incurred by the Tax Matters Partner in such capacity shall be borne by the Partnership. Any amounts of tax or expenses payable in respect to the determination of any tax imposed on the Partnership or its partners with respect to Partnership income or deduction shall constitute Partnership expense and shall be paid by the Partnership. The Tax Matters Partner is authorized to employ such accountants, attorneys and agents as it, in its sole discretion, determines is necessary to or useful in the performance of its duties. In addition, the General Partner shall serve in a similar capacity with respect to any similar tax related or other election provided by state or local laws.

If the General Partner is removed in accordance with Section 13.2 of this Agreement, the General Partner shall cease to be the Tax Matters Partner. The substitute General Partner shall automatically become the new Tax Matters Partner if the General Partner is removed. If the Partnership is to dissolve and wind up pursuant to Section 14.3 of this Agreement, the Liquidating Trustee shall be the Tax Matters Partner. [This provision is important to avoid having the removed General Partner remaining involved in the Partnership as a result of his role as Tax Matters Partner.]

16. Power of Attorney and Appointment of Agent.

16.1. General. Each Limited Partner hereby makes, constitutes and appoints the General Partner, with full power of substitution and resubstitution, its

true and lawful attorney-in-fact for it and in its name, place, and stead and for its use and benefit, to sign, execute, certify, acknowledge, swear to, file and record this Agreement and all certificates of limited partnership, fictitious or assumed name certificates, and other certificates and instruments which the General Partner deems necessary or appropriate to qualify or to continue the Partnership as a limited partnership or to conduct the business of the Partnership, and to sign, execute, certify, acknowledge, file and record all instruments amending this Agreement or any such certificates or instruments, as now or hereafter amended, that may be appropriate under this Agreement, including without limitation agreements or other instruments or documents (a) to reflect the exercise by the General Partner of any of the powers granted under this Agreement; (b) to reflect the admission to the Partnership of any Substituted Partner or to reflect the withdrawal of any Partner; and (c) which may be required of the Partnership or of the Partners by the laws of any state or any other jurisdiction. Each Limited Partner hereby grants to such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever requisite or advisable to be done in and about the foregoing as fully as such Limited Partner might or could do if personally present and hereby ratifies and confirms all that each such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. [See: DRULPA §§ 101 (11) and (12); § 12.03[2] supra.]

16.2. Nature. The power of attorney granted pursuant to Section 16.1 above:

(a) Is a special power of attorney coupled with an interest and is irrevocable during the existence of the Partnership and in connection with the dissolution or winding up thereof;

(b) May be exercised by any attorney-in-fact by signing separately as attorney-in-fact for each Limited Partner or by a single signature as attorney-in-fact for all Limited Partners.

16.3. Assignment. The power of attorney shall survive the transfer to Limited Partner of all or a portion of his interest in the Partnership, except that where the purchaser, transferee or assignee hereof has the right to be, or with the consent of the General Partner is admitted as a Substituted Limited Partner, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling each attorney-in-fact to execute, acknowledge, swear to and file any such agreement, certificate, instrument or document necessary to effect such substitution.

17. Liability and Indemnification of General Partner.

17.1. Exoneration. Except in case of gross negligence or willful misconduct, the doing of any act or the failure to do any act by the General Partner and its agents and employees, the effect of which may cause or result in loss or damage to the Partnership, if done in good faith to further the best interests of the Partnership, shall not subject such General Partner to any liability to any Limited Partner or the Partnership. [See: DRULPA § 1101(d); § 12.03[13] supra.]

17.2. Indemnification. The Partnership shall indemnify and hold harmless the General Partner and its agents and employees against any and all claims, actions, demands, losses, costs, expenses (including attorneys' fees), and damages to the fullest extent provided or permitted under the provisions of the Act; all judgments or other assessments against the Partnership wherein the

General Partner or its agents or employees are entitled to indemnification pursuant to this Section 17.2 shall first be satisfied out of any insurance proceeds available therefor and next out of assets of the Partnership, provided, however, that in no event shall any Limited Partner be personally liable for any amount pursuant to this Section 17.2 in excess of such Limited Partner's Capital Contribution. [See: DRULPA §§ 108 and 1101(d); § 12.03[13] supra.]

17.3. No Personal Liability. Anything in this Agreement to the contrary notwithstanding, the General Partner shall not be personally liable for the return of all or any portion of the Capital Contributions of the Limited Partners, it being expressly understood that any such return shall be made solely from Partnership assets.

18. Miscellaneous.

18.1. Notices. Whenever this Agreement requires or permits any consent, approval, notice, request, or demand from one party to another, such consent, approval, notice, request, or demand must be in writing to be effective and delivered to the party to be notified at the address stated below. Any party may change his or its address by giving written notice to the other party of any such change in the manner provided herein for giving notice.

(a) If to the General Partner:
ABC, Inc.

(b) If to the Partners, to:
ABC, L.P.

(c) If to a Limited Partner, to the address set forth under the name of such Limited Partner on Exhibit A attached hereto. Any party hereto may change the appropriate person, address or any telex or telecopy number to which any notice is to be directed by written notice given to the other party in accordance with the provisions of this Section 18.1. Any consent, approval, notice, request or demand shall be deemed to have been duly delivered: at the time delivered by hand, if personally delivered; when answered back if telexed; when receipt is acknowledged, if telecopied; and the day guaranteed for delivery after timely delivery to the courier, if sent by express courier guaranteeing a specific day for delivery.

18.2. Captions. Section and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

18.3. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

18.4. Amendments. Amendments to this Agreement which are of an inconsequential nature and do not adversely affect any Limited Partner in any material respect, or are necessary or are desirable to comply with any applicable law or governmental regulation, or are required or contemplated by

this Agreement (including, without limitation, any amendment to reflect the admission of an additional Limited Partner), may be made by the General Partner through use of the power of attorney granted to the General Partner by Section 16 of this Agreement and each Limited Partner shall be provided promptly with a copy of each amendment made through use of such power of attorney. Except as provided in the immediately preceding sentence, this Agreement may not be amended without the written approval of the General Partner and a Majority in Interest of the Limited Partners, provided, however, that no such amendment may enlarge the obligations or diminish the rights of any Limited Partner under this Agreement or modify the distributions of cash or allocations of Operating Profit or Loss without the prior express written agreement of all Limited Partners adversely affected thereby. This Agreement may not be modified or amended other than by an agreement in writing and all the parties hereto hereby waive any right to modify or amend this Agreement except as aforesaid.

18.5. Litigation. The General Partner shall prosecute and defend all actions at law or in equity as may be necessary to enforce or protect the interests of the Partnership. The Partnership and the General Partner shall respond to any final decree, judgment or decision first out of any insurance proceeds available therefor, next out of the assets of the Partnership, and finally out of the assets of the General Partner.

18.6. Governing Law. The local, internal laws of Delaware shall govern the validity of this Agreement, the construction of this Agreement, and the interpretation of the rights and duties of the parties hereto, notwithstanding any conflict of law doctrines of such state or jurisdiction to the contrary.

18.7. Counterpart Execution. This Agreement may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All counterparts shall be read together and shall constitute one Agreement.

18.8. Parties in Interest. Each and every covenant, term, provision and agreement herein contained shall be binding upon and inure to the benefits of the successors and assigns of the respective parties hereto, except that no party may assign or transfer its rights or obligations under this Agreement in any manner not expressly provided in this Agreement.

18.9. Entire Agreement. This Agreement, including all exhibits hereto, constitutes the entire understanding and agreement among the parties hereto with respect to the particular subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof.

18.10. Gender, Etc. When used in this Agreement, singular terms include the plural as appropriate in context, and masculine terms include the feminine and neuter genders as appropriate in context.

18.11. Survival of Rights. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties signatory hereto, their successors, personal representatives, heirs and assigns.

18.12. Indulgences, Etc. Neither the failure nor any delay on the part of any party hereto to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or particular

exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any other right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

18.13. Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday, or holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or holiday.

18.14. Third Party Beneficiaries. Notwithstanding anything to the contrary contained herein, no provision of this Agreement is intended to benefit any party other than the Partners hereto, their permitted successors and assigns and the Partnership and shall not be enforceable by any other party.

18.15. SECURITIES LAW. THE UNITS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER CERTAIN STATE SECURITIES LAWS. THE UNITS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE UNITS UNDER THE SECURITIES ACT, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERED TO ANY PARTNER WITHOUT AN OPINION OF COUNSEL SATISFACTORY TO THE PARTNER. THE REGISTRATION IS NOT REQUIRED.

IN WITNESS WHEREOF, this Amended and Restated Agreement of Limited Partnership has been executed effective as of the date hereof.

SAMPLE

GENERAL PARTNER:

ABC, Inc., as Attorney-in-Fact
for the Limited Partners

By: _____

INITIAL LIMITED PARTNER:

By: _____

John H. Smith

LIMITED PARTNERS:

By: _____

ABC, Inc., as Attorney-in-Fact
for the Limited Partners

EXHIBIT A

GENERAL PARTNER[S]

Name and Address

Partnership Percentage

LIMITED PARTNERS

Name and Address

Partnership Percentage